

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

Ramsi A. Woodcock,

Plaintiff,

v.

Case No. 5:26-cv-00262-BJB

Gregory Van Tatenhove et al.,

Defendants.

WOODCOCK'S SUPPLEMENTAL BRIEF REGARDING IRREPARABLE HARM

TABLE OF CONTENTS

Introduction.....	1
Argument.....	3
A. A Temporary Restraining Order Will Minimize the Ongoing Irreparable Harm Caused by the Defendants’ Dilution of the Message Woodcock Seeks to Send Through His Ongoing Association with the Law Faculty	3
1. The Inference of Irreparable Harm Is Automatic If, as This Court Has Asked Woodcock to Assume, Woodcock Has a Substantial Likelihood of Success on the Merits of His First Amendment Expressive Association Claim, So This Court’s Concern Must Relate to Whether Woodcock’s Harm is Ongoing Rather Than to the Question Whether, If It Is Ongoing, It Is Irreparable Harm	3
2. Woodcock Has Suffered Ongoing Infringement of His Right of Expressive Association Since the Announcement of the Appointment and that Infringement Will Increase Once Van Tatenhove Takes Office	4
3. A Temporary Restraining Order and Preliminary Injunction Would Minimize the Harm	7
4. Woodcock’s Harm and the Appropriate Response to It Are Analogous to the Harm Suffered by Plaintiffs in, and Judicial Responses to, Pre-Enforcement Challenges to the Application of Unconstitutional Statutes	10
5. The Difficulty of “Unscrambling” a Deanship Once It Has Gotten Under Way Is an Additional Source of Irreparability.....	11
6. Woodcock Sued as Soon as He Could Be Sure That His Claims Were Ripe.....	13

7.	The Inferences of No Harm to Others and a Public Interest Are Also Automatic If, as This Court Has Asked Woodcock to Assume, Woodcock Has a Substantial Likelihood of Success on the Merits of His First Amendment Expressive Association Claim.....	14
8.	Woodcock Has a Strong Likelihood of Success on the Merits.....	15
B.	A Temporary Restraining Order Will Minimize the Ongoing Irreparable Harm Caused by Van Tatenhove’s Tortious Interference with Woodcock’s Contract with the University for Compliance with Accreditation Standards.....	17
C.	Woodcock Requests a Temporary Restraining Order with Notice and Has Served All Parties with His Motion for a Temporary Restraining Order and his Amended Motion for a Temporary Restraining Order	19
	Conclusion	19

TABLE OF AUTHORITIES

Cases

<i>Abbott Laboratories v. Gardner</i> , 387 U.S. 136 (1967)	13
<i>Bays v. City of Fairborn</i> , 668 F.3d 814 (6th Cir. 2012)	14
<i>Blick v. Ann Arbor Public School Dist.</i> , 105 F.4th 868 (6th Cir. 2024)	16
<i>Boy Scouts of America v. Dale</i> , 530 U.S. 640 (2000)	16
<i>Connection Distributing Co. v. Reno</i> , 154 F.3d 288 (6th Cir. 1998)	3, 7, 15
<i>Elrod v. Burns</i> , 427 U.S. 347 (1976)	10
<i>Eu v. San Francisco County Democratic Central Comm.</i> , 489 U.S. 214 (1988)	16
<i>Federal Trade Commission v. HJ Heinz Co.</i> , 246 F.3d 708 (D.C. Cir. 2001)	2, 11
<i>Fischer v. Thomas</i> , 52 F.4th 303 (6th Cir. 2022)	2, 10, 11
<i>FAIR v. Rumsfeld</i> , 390 F.3d 219 (3rd Cir. 2004)	16
<i>Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc.</i> , 515 U.S. 557 (1995)	16
<i>JTH Tax, Inc. v. Freedom Tax, Inc.</i> , 2019 No. 3:19-cv-00085-RGJ (W.D. Ky. 2019)	14
<i>Kellogg Co. v. Exxon Corp.</i> , 209 F.3d 562 (6th Cir. 2000)	13
<i>Keyishian v. Board of Regents of Univ. of State of NY</i> , 385 U.S. 589 (1966)	2
<i>Midwest Guaranty Bank v. Guaranty Bank</i> , 270 F. Supp. 2d 900 (E.D. Mich. 2003)	15

<i>Newsom v. Norris</i> , 888 F.2d 371 (6th Cir. 1988).....	1, 3, 4, 8
<i>Ohio Republican Party v. Brunner</i> , 543 F.3d 357 (6th Cir. 2008).....	7, 19
<i>Ohio Republican Party v. Brunner</i> , 543 F.3d 361 (6th Cir. 2008).....	8
<i>Stenberg v. Cheker Oil Co.</i> , 573 F.2d 921 (6th Cir. 1978).....	7
<i>Text Order</i> , 2026 No. 5:26-cv-00262-BJB (E.D. Ky. 2026)	3, 4
<i>United Food & Commercial Workers Union v. Southwest Ohio Regional Transit</i> , 163 F.3d 341 (6th Cir. 1998).....	9
<i>United States v. Kozminski</i> , 487 U.S. 931 (1988).....	2, 12
<i>Pi Lambda Phi Frat. v. University of Pittsburgh v. University of Pittsburgh</i> , 229 F.3d 435 (3rd Cir. 2000).....	16
<i>Wilson v. Williams</i> , 961 F.3d 829 (6th Cir. 2020).....	15
<i>Federal Rules</i>	
Fed. R. Civ. P. 65(b)(1)(A).....	7, 19
Fed. R. Civ. P. 65(b)(2).....	19
<i>Other Authorities</i>	
<i>Hiring Process</i> , Becoming a Law Teacher, Association of American Law Schools, https://teach.aals.org/tenure-track/hiring/	2, 13
<i>Ramsi Woodcock</i> , J. David Rosenberg College of Law, https://law.uky.edu/people/ramsi-woodcock	6

INTRODUCTION

Woodcock respectfully submits this supplemental brief pursuant to the Court's Text Order dated July 17, 2026. In that Order, the Court invited briefing on whether "a TRO is necessary to avoid irreparable harm, even accounting for the irreparability of many abridgements of speech and even assuming Woodcock could make a sufficient showing regarding his likelihood of success on the merits, the lack of harm to others, and the public interest" given that Woodcock's requested July 15, 2026, deadline has passed.

The passing of Woodcock's deadline does not diminish the urgent need for emergency relief because (1) the University has postponed Van Tatenhove's start until **tomorrow, July 20, 2026**, Ky. Lantern, Ex. A (stating that "UK spokesperson Jay Blanton told the Kentucky Lantern Van Tatenhove's start day is Monday, July 20, and the lawsuit will not affect that"), and (2) the irreparable infringement on Woodcock's First Amendment rights is ongoing, having started when the appointment was announced on March 6, 2026, and continuing until such time as Defendants or this Court pause or terminate the appointment. Woodcock leverages his association with the law faculty to send the message that his career depends upon peer review. Accordingly, so long as Woodcock associates with the law faculty, he attempts to send that message. And so long as the appointment of a dean whom the faculty have judged to be a non-peer is actual or probable, the message Woodcock in fact sends through his association with the faculty is diluted. Because "even minimal infringement upon First Amendment values constitutes irreparable injury sufficient to justify injunctive relief," a temporary restraining order and preliminary injunction either blocking Van Tatenhove's start or reversing that start is necessary to alleviate the ongoing dilution of the message Woodcock sends through his ongoing association with the faculty. *Newsom v. Norris*, 888 F.2d 371, 378 (6th Cir. 1988). The First Amendment interest in stopping ongoing infringement of speech rights is particularly strong in this case because the message of peer review that Woodcock

wishes to send sounds in the key of faculty autonomy, and “academic” “freedom” “is” “a special concern of the First Amendment.” *Keyishian v. Board of Regents of Univ. of State of NY*, 385 U.S. 589, 603 (1966). The courts regularly provide emergency relief to halt “infringement upon” such “special” First Amendment “concern[s].” *See, e.g., Fischer v. Thomas*, 52 F.4th 303 (6th Cir. 2022) (granting an injunction pending appeal to protect campaign speech, which is another kind of speech that is a special concern of the First Amendment).

The need for emergency relief is heightened in this case because Van Tatenhove’s presence in office will be difficult to “unscramble[]” the longer he remains. *Federal Trade Commission v. HJ Heinz Co.*, 246 F. 3d 708, 726 (D.C. Cir. 2001). Because, as a non-peer, Van Tatenhove does not exercise the judgment of a peer, his presence will tend to attract hires who cannot withstand peer review and repel hires who can. This Court will be powerless to “compel[]” those who have been repelled to later join the faculty by “force of law”. *United States v. Kozłowski*, 487 U.S. 931, 943 (1988). And this Court would cause disruption to University operations if it were to order the termination of multiple non-peer faculty along with Van Tatenhove at the conclusion of the litigation. Thus, the obstacles to remedying the harm caused by Van Tatenhove’s appointment after he has been permitted to take office would make the harm of his appointment to Woodcock effectively irreparable even if the harm were not already irreparable on account of being an infringement upon First Amendment values. As August is application season for law professors,¹ grant of a temporary restraining order would send the signal that the law school is likely to remain a peer review institution, thereby attracting interest from candidates who are likely to be peers and deterring those who are not—and thereby preserving the status quo. Denial of a temporary restraining order would have the opposite effect of locking a non-peer candidate pool into place for hiring later in the year. And Van

¹ *Hiring Process*, Becoming a Law Teacher, Association of American Law Schools, <https://teach.aals.org/tenure-track/hiring/>.

Tatenhove has said that he intends to “grow” the “faculty” and to be “entrepreneurial” this year.

Herald-Leader Article 4/24/26 (Tight Budget), Dkt. 1-44, Page ID## 391–92.

ARGUMENT

A. A Temporary Restraining Order Will Minimize the Ongoing Irreparable Harm Caused by the Defendants’ Dilution of the Message Woodcock Seeks to Send Through His Ongoing Association with the Law Faculty

1. The Inference of Irreparable Harm Is Automatic If, as This Court Has Asked Woodcock to Assume, Woodcock Has a Substantial Likelihood of Success on the Merits of His First Amendment Expressive Association Claim, So This Court’s Concern Must Relate to Whether Woodcock’s Harm is Ongoing Rather Than to the Question Whether, If It Is Ongoing, It Is Irreparable Harm

“The Supreme Court has unequivocally admonished that even minimal infringement upon First Amendment values constitutes irreparable injury sufficient to justify injunctive relief.” *Newsom*, 888 F. 2d at 378. Thus, “to the extent that” Woodcock has established “a substantial likelihood of success on the merits of” his “First Amendment claim,” he “has also established” “irreparable harm as a result of the deprivation of the claimed free speech rights.” *Connection Distributing Co. v. Reno*, 154 F. 3d 281, 288 (6th Cir. 1998). This Court has asked Woodcock to identify the irreparable harm that a temporary restraining order and preliminary injunction would relieve *assuming* that Woodcock is able to show a substantial likelihood of success on the merits. Text Order, No. 5:26-cv-00262-BJB (E.D. Ky. Jul. 17, 2026) [hereinafter “Text Order”] (suggesting an interest in supplemental briefing on irreparable harm “even assuming Woodcock could make a sufficient showing regarding his likelihood of success on the merits”). Because irreparable harm follows immediately from the assumption of a substantial likelihood of success, the Court does not appear to be asking whether Woodcock’s harm is irreparable. Rather, the Court appears to be asking whether Woodcock continues to suffer harm at all. For if there is no ongoing harm for the Court to enjoin, then there can be no ongoing irreparable harm for the Court to enjoin. The Court’s interest in whether there is

ongoing harm to enjoin appears to be reflected in the Court’s observation that “it’s unclear how this Court could unring the bell.” *Id.* Accordingly, Woodcock will focus this supplemental brief primarily on the question whether he is suffering ongoing harm as a result of the violation of his right of expressive association.

2. Woodcock Has Suffered Ongoing Infringement of His Right of Expressive Association Since the Announcement of the Appointment and that Infringement Will Increase Once Van Tatenhove Takes Office

Woodcock’s harm is ongoing and will increase once Van Tatenhove takes office.

a) Woodcock’s Harm Will Increase Once Van Tatenhove Takes Office

The announcement of Van Tatenhove as dean has partially diluted Woodcock’s message and hence has partially harmed Woodcock. The Defendants are preventing Woodcock from using his association with the law faculty to send the message that his professional advancement depends upon judgment of his scholarship by persons determined by the faculty to be fit to render such judgment—that is, the message that Woodcock is subject to “peer review.” TRO Motion, Dkt. 2, Page ID# 578. Defendant DiPaola initially diluted Woodcock’s message, and thereby caused at least a “minimal infringement upon” his First Amendment rights, when he announced the appointment of Van Tatenhove, because the announcement created a meaningful probability that Van Tatenhove, who had been rejected by the faculty as “unacceptable”, would actually assume the role of dean and assume the power to recommend termination of Woodcock based on a review of his scholarship, including scholarship in which Woodcock engaged between the date of the announcement and Van Tatenhove’s start. *Id.* at 572, 594; *Newsom*, 888 F. 2d at 378.

The announcement did not, however, render Van Tatenhove’s start as dean certain and therefore did not completely dilute Woodcock’s message of peer review. Uncertainty about whether Van Tatenhove will actually take office will not be fully resolved until he actually takes office. Within

a week of the announcement, Woodcock wrote to Capilouto (the University's president) and the University's Board of Trustees to report that the appointment would violate ABA rules that give the law faculty power over their membership and leadership and hence protect the ability of members, including Woodcock, to associate to send the message of peer review. Complaint ¶¶ 3, 29, Dkt. 1, Page ID## 3–4, 16. Not receiving a response, Woodcock also filed a complaint with the ABA and alerted the public, to whom the board is accountable, by publishing an op-ed in the Louisville Courier Journal. Complaint ¶ 29, Dkt. 1, Page ID# 16. Eventually the Governor publicly criticized the appointment and, in response, the board voted to consider revoking its delegation of authority to the president to appoint deans. *Id.* at ¶ 30, Page ID# 17. It was not until June 30, when the board voted to carry out the revocation but failed to bring the question whether to reject Van Tatenhove to a vote, that it was clear that the board would not act to stop the appointment. *Id.* at ¶ 35, Page ID# 19. Even then, whether Van Tatenhove will actually take office has remained unclear. On June 9, the ABA informed Woodcock that, after reviewing his complaint, it had determined that there were grounds to initiate an investigation and would forward the complaint to the law school for a response—but that the investigation would be confidential and there would be no further communication from the ABA regarding its outcome. *Id.* at ¶ 29 n.9, Page ID# 29. It has remained possible that, in the face of an ABA investigation, the University might withdraw the appointment. Only Van Tatenhove's actual start in the position will graduate the power of a non-peer to terminate Woodcock based on a review of his scholarship from a meaningful possibility to a reality.

Because the announcement of Van Tatenhove created a meaningful probability, but not a certainty, that Van Tatenhove would become dean, the announcement did not completely dilute Woodcock's message of peer review. It created an "infringement" upon his First Amendment rights that was at least "minimal," but was not total. When he declared his affiliation with the faculty on papers that he posted to SSRN, or as a roundtable participant at a conference, he sent the message

that his work might still be subject to peer review, but also that there was good reason to think that it might not. Van Tatenhove's start as dean on July 20, 2026 will further dilute Woodcock's message, inflicting additional irreparable harm on Woodcock. Once Van Tatenhove starts, it will become impossible for Woodcock to send the message that his work might still be subject to peer review. A new non-peer dean with final authority to give Woodcock a tenure-ending negative performance evaluation based upon a review of his scholarship will now be on duty. TRO Motion, Dkt. 2, Page ID# 572.

b) Woodcock's Harm Is Ongoing

The injury that Woodcock suffers from the impairment of his message of peer review is ongoing because Woodcock seeks to send his message of peer review *through his association with* the faculty. Whenever a member of the public sees Woodcock's faculty biography on the law school's website,² or sees his membership in the faculty reported in the asterisk footnote of one of Woodcock's law review articles, and whenever Woodcock posts one of those articles to SSRN or notes his membership at a conference, Woodcock seeks to send the message that he is subject to peer review. Complaint ¶ 16, Dkt. 1, Page ID# 10; Asterisk Footnotes, Dkt. 1-34. The University first diluted that message when it announced Van Tatenhove as dean, and then, when he starts as dean, will impair the message further. Those acts of dilution are ongoing because Woodcock's association with the faculty is ongoing, and hence he continually seeks to repeat his message of peer review. After the announcement, he was in effect forced to append, to each repetition of the message conveyed by his association with the faculty that "I am subject to peer review," the proviso that "well, actually, there is reason to think that I might not be subject to peer review anymore." After Van Tatenhove takes office, Woodcock will be altogether unable to leverage his association with the faculty to say "I am

² Ramsi Woodcock, J. David Rosenberg College of Law, <https://law.uky.edu/people/ramsi-woodcock>.

subject to peer review” at all, with or without appending the proviso. Or at least his association with the faculty will convey no more than the message that “although I am not now subject to peer review, it is possible that in the distant future the faculty will get a new permanent dean whom it believes to be a peer and from then on I will be subject to peer review once again.”³

3. A Temporary Restraining Order and Preliminary Injunction Would Minimize the Harm

Woodcock requests a *noticed* temporary restraining order. All defendants were served with his motion. Accordingly, the “immediate and irreparable injury” standard imposed by Fed. R. Civ. P. 65(b)(1)(A) does not apply. Instead, the standard for issuance of the temporary restraining order requested by Woodcock is the same as that for issuance of the preliminary injunction requested by Woodcock. *Ohio Republican Party v. Brunner*, 543 F. 3d 357, 361 (6th Cir. 2008). He must show that he “would suffer irreparable injury absent” the order. *Id.* “The purpose of a preliminary injunction” and, by extension, a temporary restraining order, “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 (6th Cir. 1978). The Court should “take proposed action that the court finds will minimize the irreparable injury.” *Id.* An order barring Van Tatenhove from assuming his duties is necessary to “minimize” “irreparable injury” because, under this Court’s precedents, issuance of the order would be predicated on a ruling that Woodcock has a substantial likelihood of success at trial, and that in turn would send the message that Van Tatenhove is unlikely ever to become dean of the law school. *Connection Distributing Co.*, 154 F. 3d at 288.

Broadcast of the signal that Van Tatenhove is unlikely ever to become dean of the law school would reduce Woodcock’s harm in two ways. First, it would forestall (or if implemented after Van

³ For ease of exposition in this supplemental brief, Woodcock characterizes the effect of Van Tatenhove’s appointment on Woodcock’s speech as a “dilution” or “impairment.” However, as these examples reflect, the effect can equally be characterized as compelling Woodcock to send a different message that he does not wish to send. *Cf.* TRO Motion, Dkt. 2, Page ID## 583–84.

Tatenhove's start, reverse) the additional dilution of Woodcock's ongoing message created by Van Tatenhove's assumption of his duties relative to the partial dilution created by the announcement of Van Tatenhove as dean. Second, it would relieve part of the dilution of Woodcock's message caused by the announcement of the deanship. That is because the announcement sent the message that Van Tatenhove was more likely than not to assume the position whereas grant of the preliminary relief sends the inverse message that he is more likely than not to be barred from assuming the position. The probability of Van Tatenhove assuming the position is necessarily lower after a court determines that there is a substantial likelihood that he will be barred from the position than when there is a substantial likelihood that he will assume the position. The message sent by Woodcock's association with the faculty flips from "I might still be subject to peer review but probably not anymore" to "I am probably still subject to peer review but there's a chance that I might not be." The second message is closer to the message "I am subject to peer review" than the first. And less dilution of Woodcock's speech means less irreparable harm. *See Newsom*, 888 F. 2d at 378. And because this Court's precedents required that both the temporary restraining order and the preliminary injunction be decided based on likelihood of success, issuing those orders will send the same message regarding Van Tatenhove's ultimate exclusion from the deanship, and so relieve Woodcock's irreparable harm in the same way. *Ohio Republican Party v. Brunner*, 543 F. 3d at 361 (6th Cir. 2008) (the TRO and preliminary injunction standards are the same); *Connection Distributing*, 154 F. 3d at 288 (likelihood of success dispositive in First Amendment cases).

Because preliminary relief will stop the additional increment of irreparable harm created by Van Tatenhove's assumption of the deanship, this Court has sufficient basis in that additional increment of harm to grant preliminary relief. The fact that preliminary relief will also relieve some of the ongoing harm caused by the announcement provides a second basis for granting the relief. This second basis remains even if this Court takes the view that Van Tatenhove's start in office will not

meaningfully increase the level of harm suffered by Woodcock and so does not provide a basis for preliminary relief by itself. Grant of preliminary relief will create a situation in which, for the first time since the announcement of the deanship, it will appear likely that Van Tatenhove will not ultimately serve as dean. It will therefore minimize irreparable harm, as a temporary restraining order and preliminary injunction are supposed to do.

Because Woodcock's association with the faculty is ongoing, and so his attempts to send the message of peer review are ongoing, Woodcock stands to suffer irreparable harm from dilution of his message every single day that Van Tatenhove occupies the deanship. Every day, the public notes Woodcock's affiliation on the law school website, or on his own personal website, or in the asterisk footnote of his working paper on graphical metaphors in law and economics available on SSRN, and every day, Woodcock's message of peer review has been partially diluted by the announcement of Van Tatenhove as dean, and every day after Van Tatenhove assumes the dean position, Woodcock's message of peer review will be additionally diluted. SSRN Posts, Dkt. 1-35, Page ID# 314. A temporary restraining order is therefore required to minimize the ongoing harm from continuing for even one more day. This is true whether this Court issues the order in time to stop Van Tatenhove from taking office or later. Either way, an injunction is required to minimize the irreparable harm that will manifest the following day, and the day after that, and so on, as Woodcock continues to attempt to use his association with the law faculty to send his message of peer review. "The difference between mandatory and prohibitory injunctive relief"—ordering Van Tatenhove to relinquish his post after taking it up or preventing him from taking it up—"does not warrant application of differing legal standards." *United Food & Commercial Workers Union v. Southwest Ohio Regional Transit*, 163 F. 3d 341, 348 (6th Cir. 1998). If an order preventing Van Tatenhove from taking his post would have been warranted, then an order requiring him to relinquish his post is equally warranted. *Id.* But the fact that an injunction would be warranted whether or not Van

Tatenhove has assumed the deanship does not defeat the urgency of issuing an order. Because Woodcock's attempts to send his message through his association with the law faculty are ongoing, every day of delay is another day during which Van Tatenhove's appointment dilutes Woodcock's message and inflicts irreparable harm on Woodcock. And it is another day of harm that this Court should strive to avoid. "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

4. Woodcock's Harm and the Appropriate Response to It Are Analogous to the Harm Suffered by Plaintiffs in, and Judicial Responses to, Pre-Enforcement Challenges to the Application of Unconstitutional Statutes

The trajectory of harm in this case is analogous to the trajectory of harm in a typical pre-enforcement challenge to the application of a law that violates the First Amendment. *See e.g., Fischer v. Thomas*, 52 F. 4th 303 (6th Cir. 2022). In such cases, the threat of future enforcement chills the speech of a plaintiff and therefore inflicts irreparable harm on him before enforcement takes place. When the plaintiff sues to block enforcement and seeks a temporary restraining order to prevent the commencement of the enforcement action, the plaintiff, like Woodcock in this case, has already suffered harm. The fact that the plaintiff has already suffered harm does not preclude the plaintiff from obtaining preliminary relief. That is because the harm to plaintiff is ongoing—his speech is chilled day after day—plus commencement of the enforcement action will cause him *additional* harm. Regardless of whether enforcers ultimately conclude that the plaintiff has broken the law, the commencement of their enforcement action will increase the probability of ultimate sanction for speech and thereby deepen the chill to the plaintiff's speech. In the same way, the harm to Woodcock is ongoing and will increase once Van Tatenhove takes office. For the plaintiff in the pre-enforcement case, issuance of a temporary restraining order both precludes the additional chill associated with commencement of an enforcement action and alleviates some of the ongoing chill associated with the threat of enforcement. Similarly, in this case a temporary restraining order would

eliminate the additional speech dilution associated with Van Tatenhove's start as dean and alleviate some of the ongoing partial dilution caused by the announcement that Van Tatenhove would become dean.

Consider the example of *Fischer v. Thomas*. 52 F. 4th 303 (6th Cir. 2022). In that case, the Kentucky Judicial Conduct Commission sent a letter to judicial candidates suggesting that they may have violated judicial canons prohibiting candidates from claiming to be the nominee of a political party or making commitments with respect to particular cases. *Id.* at 306. The Commission invited the candidates to attend an "informal conference" to "discuss" the allegations. *Id.* 306. Before the informal conference rolled around, Sixth Circuit concluded that the letter chilled speech and enjoined the Commission from "initiating formal proceedings" against the candidates. *Id.* at 313. The injunction would not have completely eliminated the chill on the candidates' speech because there remained a chance that the Court might deny a permanent injunction after trial, leaving the candidates to face sanctioning by the Commission. But the injunction did forestall the additional irreparable harm of facing a formal enforcement action, with the attendant greater probability of actual enforcement, during the campaign. And it also reduced the chill that the candidates were facing even before the commencement of any enforcement action because it sent the signal that the candidates were likely (though not guaranteed) to obtain a permanent injunction down the line and avoid sanctions for their speech altogether.

5. The Difficulty of "Unscrambling" a Deanship Once It Has Gotten Under Way Is an Additional Source of Irreparability

Harm is also irreparable where "it will be impossible as a practical matter to undo the" challenged acts. *Federal Trade Commission v. HJ Heinz Co.*, 246 F. 3d 708, 726 (D.C. Cir. 2001). This "uncrambl[ing]" problem presents an additional source of irreparability of the ongoing harm to Woodcock. *Id.* The longer Van Tatenhove remains in office, the harder it will be for this Court to

reverse the effects of his deanship if this Court eventually rules in Woodcock's favor at trial. Because, as a non-peer, Van Tatenhove does not exercise the judgment of a peer, his presence will tend to attract hires who cannot withstand peer review and repel hires who can. As one professor noted, a consequence of Van Tatenhove's appointment is that "good people will leave" and "[n]ew candidates – faculty, staff, and students – will be repelled." Michael Email, Dkt. 1-37, Page ID# 326. In consequence, over time, peers will tend to be replaced by non-peers. This will increase the dilution of Woodcock's message of peer review and magnify the irreparable harm to him. This Court will be powerless to command that the good people who have left return or that the good people who have been repelled from applying for jobs reapply. *United States v. Kozminski*, 487 U.S. 931, 943 (1988) (discussing government authority to compel labor). And while this Court could in theory order the termination of any non-peers hired by Van Tatenhove, the compelled departure of one or more faculty alongside Van Tatenhove would disrupt law school operations to a greater extent than would barring him from taking office in the first place. Thus, the obstacles to remedying the harm caused by Van Tatenhove's appointment after he has been permitted to take office would make that harm effectively irreparable even if it were not already so as a result of being an infringement on First Amendment values. This is certainly true with respect to the decision whether to grant a permanent injunction, because, if this case were to go to trial, a final judgment might not be reached for a year or more, during which the substitution of non-peer for peer faculty would proceed. It is also true with respect to the issuance of a temporary restraining order over the days or weeks in advance of a preliminary injunction determination. August is job application season for law professors.⁴ A temporary restraining order blocking Van Tatenhove's appointment now would send a signal to prospective applicants that Woodcock is likely to prevail on the merits and therefore that

⁴ *Hiring Process*, Becoming a Law Teacher, Association of American Law Schools, <https://teach.aals.org/tenure-track/hiring/>.

the law school would likely afford them peer review. This will tend to dissuade applicants who cannot withstand peer review from applying and encourage those who can withstand it to apply, thereby forestalling the harm arising from a broader de-peering of the faculty that would otherwise start to manifest with Van Tatenhove's assumption of the deanship.

6. Woodcock Sued as Soon as He Could Be Sure That His Claims Were Ripe

The Court's references in the Text Order to "late[ness]" and "immin[ence]" suggest a possible concern regarding whether Woodcock delayed bringing this action. As a threshold matter, the doctrine of laches, which provides the basis for denying relief because of unreasonable delay does not apply to requests for injunctive relief. *Kellogg Co. v. Exxon Corp.*, 209 F. 3d 562, 568 (6th Cir. 2000). It applies only to damages for harm incurred before the suit was filed. *Id.* In this case, Woodcock seeks a temporary restraining order and preliminary injunction to stop future harm. He continually seeks to leverage his association with the faculty to send his message of peer review, and he seeks an injunction to ensure that this message is not diluted *going forward* by Van Tatenhove's leadership of the faculty.

Even if a doctrine existed that might defeat the presumption of irreparable harm in the event of unreasonable delay by the moving party, any delay was reasonable in this case. A plaintiff "does not" need to "bring suit right away" if "the plaintiff's claim has yet to ripen into one sufficiently colorable to justify litigation." *Kellogg Co.*, 209 F. 3d at 570. Ripeness requires that the record be fit for review. *Abbott Laboratories v. Gardner*, 387 U.S. 136, 152 (1967). At the time that DiPaola announced the appointment of Van Tatenhove, it was not clear that the record was fit for review because the University and the ABA have internal complaints processes for violations of accreditation rules. Complaint ¶ 29, Dkt. 1, Page ID# 16. Because the appointment violated two ABA accreditation rules, appeals to the University or the ABA might have sufficed to overturn the appointment. *Id.* at ¶ 3, Page ID## 3–4. Woodcock diligently reported the violations within the University and to the

ABA. *Id.* at ¶ 29, Page ID# 16. He also sought to bring public oversight to bear by publishing an Op-Ed on the matter. *Id.* The board subsequently reversed its delegation of authority and the ABA initiated an investigation. *Id.* at ¶¶ 29 n.9, 35, Page ID## 19, 29. It was only after the board failed to act at the most recent board meeting on June 30 that it became clear that the University would not block the appointment, rendering the university's action final and Woodcock's standing assured. Woodcock filed suit within two weeks of that determination. *Id.* at ¶ 35, Page ID # 19. This turnaround is in line with turnarounds by well resourced corporate plaintiffs in high stakes intellectual property cases. *See, e.g., JTH Tax, Inc. v. Freedom Tax, Inc.*, No. 3:19-cv-00085-RGJ (W.D. Ky. May 9, 2019) (holding that an eleven-month delay was reasonable where case not ripe until the next tax season rolled around).

7. The Inferences of No Harm to Others and a Public Interest Are Also Automatic If, as This Court Has Asked Woodcock to Assume, Woodcock Has a Substantial Likelihood of Success on the Merits of His First Amendment Expressive Association Claim

As noted above, if this Court determines that Woodcock has a substantial likelihood of success on the merits of his expressive association claim, the inference of irreparable harm follows immediately. The same is true for the other two temporary restraining order and preliminary injunction factors. If this Court determines that Woodcock has a substantial likelihood of success on the merits of his expressive association claim, the inference of a lack of harm to others, and that issuance of an order is in the public interest, both follow immediately. “[W]hen First Amendment rights are implicated, the factors for granting a preliminary injunction essentially collapse into a determination” of likelihood of success on the merits. *Bays v. City of Fairborn*, 668 F. 3d 814, 819 (6th Cir. 2012). Accordingly, the “crucial inquiry” in a First Amendment case is “whether the plaintiff has demonstrated a likelihood of success on the merits.” *Id.* This is especially true for defendants, such as Capilouto and Dipaola, who have been sued in their official capacity as government agents. For them, “the harm to the opposing party and the public interest factors merge” because “the

Government is the opposing party.” *Wilson v. Williams*, 961 F. 3d 829, 844 (6th Cir. 2020). And “it is always in the public interest to prevent the violation of a party’s constitutional rights.” *Connection Distributing Co. v. Reno*, 154 F. 3d at 288.

Even absent this presumption, Capilouto and DiPaola would not be able to establish harm to the government from issuance of a temporary restraining order or preliminary injunction. Any harm that they may claim from a midsummer’s preemption of a dean transition is “self-inflicted” “loss”. *Churchill Downs Tech. Initiatives Co. V. Mich. Gaming Control Bd.*, No. 25-1235, slip op. at 15 (6th Cir. Dec. 16, 2025). They had ample opportunity to reconsider their decision to appoint Van Tatenhove in April in the face of public outcry. Complaint ¶¶ 30–33, Page ID## 17–18. They chose instead to continue with their plan. *Id.* They cannot “later claim that an injunction should not issue because of costs which [they] must incur in order to remedy [their] own misconduct.” *Midwest Guaranty Bank v. Guaranty Bank*, 270 F. Supp. 2d 900, 924 (E.D. Mich. 2003). In any event, Woodcock requests that this Court appoint the law school’s Faculty Executive Committee to run the law school until this case is resolved and a dean agreeable to the faculty is selected. TRO Motion, Dkt. 2, Page ID## 573. This will avoid any downtime associated with a search for an interim dean. And the faculty’s long experience with the institution will serve it well in this caretaker role.

8. Woodcock Has a Strong Likelihood of Success on the Merits

The Court will find Woodcock’s chief points regarding his substantial likelihood of success on the merits of his expressive association claim in his Motion. TRO Motion, Dkt. 2, Page ID## 576–86. Woodcock will not reargue them here. However, Woodcock wishes to point out that the requirements for an expressive association claim are clearly met in this case. There is a violation of the First Amendment right to expressive association if (1) the members of a group “associate partly to express a message”, (2) state action “significantly burden[s] the group’s ability to spread its message” and (3) “this burden on speech outweigh[s] any governmental interests justifying the

burden”. *Blick v. Ann Arbor Public School Dist.*, 105 F. 4th 868, 882 (6th Cir. 2024). “The Supreme Court has cast a fairly wide net in its definition of what comprises expressive activity”, holding that any “associate[ion]” “in pursuit of” “educational” “ends” qualifies. *Pi Lambda Phi Frat. v. University of Pittsburgh*, 229 F. 3d 435, 443 (3rd Cir. 2000); *Boy Scouts of America v. Dale*, 530 U.S. 640, 648 (2000). That includes law faculties. *FAIR v. Rumsfeld*, 390 F. 3d 219, 230–31 (3rd Cir. 2004). The Supreme Court further “give[s] deference to an association’s assertions regarding the nature of its expression” and “what would impair its expression.” *Dale*, 530 U.S. at 653. In a case brought directly by a member of the association rather than the association itself via derivative standing, that deference must be accorded to the member’s assertions regarding the nature of the group message in which he seeks to participate through his association with the group. That message need not be “exact”, “particularized”, or “wholly articulate”. *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc.*, 515 U.S. 557, 569, 574 (1995). And the group itself spoke plainly about “what would impair its expression” when it expressed a “collective view[]” that Van Tatenhove is “unacceptable” because he “does not possess the necessary qualifications” for the job. Faculty Email Rejecting Van Tatenhove, Dkt. 1-9, Page ID # 123–24. The Supreme Court further treats an action that “limits” an association’s “discretion in how to . . . select its leaders”—which is just what Capilouto, DiPaola, and Van Tatenhove have wrought in this case—as an unconstitutional “burden” on First Amendment rights. *Eu v. San Francisco County Democratic Central Comm.*, 489 U.S. 214, 230–31 (1988). And because the University’s mission to “[e]xpand[] knowledge through . . . scholarship” is essentially identical to the faculty’s mission to “advanc[e]” “legal knowledge” through “scholarship,” the government has no interest in interfering with the message of peer review that is constitutive of any effort to advance knowledge, including its own. University Mission Statement, Dkt. 1-19, Page ID # 161; Faculty Rules § 13.B, Dkt. 1-31, Ex. 30 at 22. Woodcock’s likelihood of success on the merits is therefore substantial.

B. A Temporary Restraining Order Will Minimize the Ongoing Irreparable Harm Caused by Van Tatenhove's Tortious Interference with Woodcock's Contract with the University for Compliance with Accreditation Standards

The trajectory of harm in Woodcock's tortious interference claim is the same as that for his First Amendment claim, but the character of the harm is different. Woodcock accepts a massive pay cut relative to what he could earn as a lawyer in industry in exchange for the economic value of various services for which he has contracted with the University, including that of peer review, which gives his research credibility with the public. TRO Motion, Dkt. 2, Page ID # 592. Woodcock constantly seeks to use the peer review platform supplied to him by the University to attract the attention of the public to his scholarship. For example, in March, he uploaded a working paper to the public research repository SSRN on graphical metaphors in law and economics that he hopes will attract the attention of the public in part because of the credibility that peer review lends to his work. SSRN Posts, Dkt. 1-35, Page ID# 314; TRO Motion, Dkt. 2, Page ID# 572. The announcement of Van Tatenhove's appointment partially reduced the value of peer review to Woodcock in the same way that it caused him First Amendment harm by partially diluting the message of peer review that he wished to send. It opened up the possibility that Woodcock's SSRN paper would be evaluated by a non-peer dean as part of Woodcock's next performance review, partially undermining the credibility of the paper. And commencement of Van Tatenhove's deanship will further reduce that value by making evaluation of Woodcock's scholarship by a non-peer dean almost certain—in the same way that the commencement of Van Tatenhove's deanship will increase Woodcock's First Amendment harm by increasing the dilution of the message of peer review that he wishes to send. After Van Tatenhove starts, the credibility of Woodcock's SSRN piece will fall again because now it will be almost certain that a non-peer will evaluate it. These losses are irreparable because it is difficult to determine what part of the value supplied by the University in return for Woodcock's pay cut is derived from the peer review platform that the University supplies to him and what part is due to

other services that the University provides him, such as the discretion to select his own research topics. *Id.* at 594–95.

Moreover, like Woodcock’s First Amendment claim, Woodcock’s tortious interference claim did not ripen until it became clear, after the board’s failure to act on June 30, that Van Tatenhove’s start in office was imminent. In order to state a tortious interference claim, Woodcock must be able to show either that the interference caused a breach of contract or that breach is imminent. *Id.* at 591. Woodcock’s contract prohibits the University from violating accreditation standards that forbid appointment of a dean over the objection of the faculty and prohibit the appointment of a dean who is not a tenured member of the faculty. *Id.* at 588–89; Complaint ¶ 3, Page ID## 3–4. Because it was not clear until the conclusion of the June 30 board meeting that Van Tatenhove would be permitted to start, a violation of Woodcock’s contract was not obviously imminent until that time, and so Woodcock’s tortious interference claim was not ripe until that time. As noted above, Woodcock sued less than two weeks later. Furthermore, as in the case of Woodcock’s expressive association claim, Woodcock is entitled to a temporary restraining order and preliminary injunction as soon as possible because his harm is ongoing, and that remains true whether the Court enters the order before Van Tatenhove takes office or shortly thereafter. The credibility of Woodcock’s SSRN paper will greatly improve, for example, if a temporary restraining order and preliminary injunction are granted, because these will send the signal that Van Tatenhove is unlikely eventually to be appointed and that readers therefore can expect that a peer dean will evaluate the paper at Woodcock’s next performance review. This will allow Woodcock to avoid a difficult-to-calculate, and hence irreparable, economic loss.

C. Woodcock Requests a Temporary Restraining Order with Notice and Has Served All Parties with His Motion for a Temporary Restraining Order and his Amended Motion for a Temporary Restraining Order

The Court suggested that Woodcock address service. As noted above, Woodcock seeks a temporary restraining order *with notice*. He served all defendants with his Motion and his Amended Motion. Accordingly, the “immediate and irreparable injury” standard imposed by Fed. R. Civ. P. 65(b)(1)(A) does not apply. Instead, the standard for issuance of the temporary restraining order requested by Woodcock is the same as that for issuance of the preliminary injunction requested by Woodcock. *Ohio Republican Party v. Brunner*, 543 F. 3d 357, 361 (6th Cir. 2008). Because Woodcock seeks a temporary restraining order with notice, he also asks this Court to extend the temporary restraining order beyond the normal 14-day expiration deadline pursuant to Fed. R. Civ. P. 65(b)(2) as necessary to minimize irreparable harm while the parties conduct expedited discovery in advance of any hearing the Court may wish to schedule on Woodcock’s request for a preliminary injunction.

CONCLUSION

WHEREFORE, Woodcock requests that this Court grant his Amended Motion for a Temporary Restraining Order, Preliminary Injunction, Expedited Discovery, Stay, Status Conference, and Document Preservation, Dkt. 9.

Respectfully submitted,

/s/ Rima N. Kapitan (to be admitted *pro hac vice*)

/s/ Joe F. Childers

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CERTIFICATE OF SERVICE

I hereby certify that on July 19, 2026, a copy of the foregoing was served electronically in accordance with the method established under this Court's CM/ECF Administrative Procedures and Standing Order upon all parties in the electronic filing system in this case.

/s/ Joe F. Childers

Counsel for Plaintiff