

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

Ramsi A. Woodcock,

Plaintiff,

v.

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

Eli Capilouto et al.,

Defendants.

**PLAINTIFF'S SUPPLEMENTAL RESPONSE TO THE UNIVERSITY OFFICIALS'
MOTION FOR JUDGMENT ON THE PLEADINGS**

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INTRODUCTION

The University Officials—President Capilouto, Provost DiPaola, and General Counsel Thro, each sued in his official and individual capacities, and former Dean Duff, now sued in his individual capacity only because Dean Van Tatenhove has been substituted in his official capacity—ask for judgment on the pleadings on every claim against them. DN 63 (“MJOP”). Plaintiff Ramsi A. Woodcock (“Woodcock”) devoted most of his October 5 brief to the questions the Court identified for the October 6 hearing, responded to the motion only briefly, and requested leave to file a supplemental response by October 16, the date LR 7.1(c) sets. DN 70 at 2450, 2464–74.¹ This is that response.

The motion asks the Court to do three things that Rule 12(c) does not permit. It asks the Court to accept the University Officials’ account of the facts, including matters outside the pleadings, over the Amended Complaint’s. It asks the Court to apply standards borrowed from the wrong bodies of law: Title VII’s “materially adverse” test for adverse action, a test for regulations of expressive conduct to rules that regulate speech, and the abandoned *Lemon* test to a claim of denominational preference. And it asks the Court to resolve fact-bound questions, such as whether an action would deter a person of ordinary firmness and how the *Pickering* balance comes out, that the Sixth Circuit holds cannot ordinarily be resolved against a professor at the pleading stage. The motion should be denied.

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

STANDARD OF REVIEW

A Rule 12(c) motion is reviewed like a Rule 12(b)(6) motion. MJOP at 2205. The Court accepts the Amended Complaint’s factual allegations as true and construes the complaint in the light most favorable to Woodcock. *Gunasekera v. Irwin*, 551 F.3d 461, 466 (6th Cir. 2009).

The motion relies on a number of matters outside the complaint that contradict the allegations of the complaint: a law firm’s request about Woodcock’s endowed professorship (MJOP at 2198 n.10); press reports and blog posts (*id.* at 2198 nn.12–13); the investigator’s expected completion date and the claim that the investigation is incomplete “solely because of Woodcock’s actions,” supported by correspondence about investigator bias, Woodcock’s laptop, and written questions (*id.* at 2202 nn.36–37 & Exs. 4–7); the assertion that the University paid Woodcock’s conference expenses (*id.* at 2216 n.113); and the assertion that a remark at a public event was part of Woodcock’s duties as chair of a law school committee (*id.* at 2216 & n.115). To the extent those materials are offered to contradict the Amended Complaint, Woodcock asks the Court to exclude them. The motion also characterizes Woodcock’s speech in terms that contradict the Amended Complaint: it says that Woodcock “publicly urges for the annihilation of a sovereign nation and the Jewish people who constitute it,” that he “seized the conference stage,” and that he was “simply ranting at the University’s expense.” MJOP at 2198, 2215–16. The Amended Complaint alleges that Woodcock’s scholarship and advocacy concern the decolonization of Palestine, that Palestinian Jews are among the Palestinian people whose right of self-determination Woodcock defends, and that Woodcock’s conference remarks were brief statements of his views. Am. Compl. ¶¶ 2, 41–50, 75, 89–90 (DN 36) at 1617, 1626–32, 1639–40, 1645–47. On this motion, the Amended Complaint’s account controls.

ARGUMENT

I. Immunity Does Not Bar Woodcock's Claims (MJOP Parts I–III)

A. *Ex parte Young* Permits the Claims for Prospective Relief

The University Officials argue that *Ex parte Young* does not apply because “there is no on-going violation of federal law,” since federal law permits investigations and reassignments. MJOP at 2205–06. That is an argument about the merits, and the *Ex parte Young* inquiry “does not include an analysis of the merits of the claim.” *Verizon Md. Inc. v. Pub. Serv. Comm’n*, 535 U.S. 635, 646 (2002). The Court “need only conduct a ‘straightforward inquiry into whether [the] complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective.’” *Id.* at 645 (quoting *Idaho v. Coeur d’Alene Tribe of Idaho*, 521 U.S. 261, 296 (1997) (O’Connor, J., concurring in part and concurring in the judgment)). Applying that inquiry to a professor who alleged that university officials retaliated against him for “arguably protected speech,” the Sixth Circuit held that requests for reinstatement and for expungement of personnel records are prospective relief that the Eleventh Amendment does not bar. *Josephson v. Ganzel*, 115 F.4th 771, 782–83 (6th Cir. 2024). Woodcock seeks the same relief: restoration of his regular duties, expungement of the suspension and investigation from his personnel file, and an end to an investigation that is still underway. Am. Compl. (DN 36) at 1677–78.

The University Officials’ sovereign-immunity argument fails for the same reason. The University Officials quote *Wolfe v. Morris* for the proposition that an official-capacity suit “is no different from a suit against the State itself.” MJOP at 2207 (quoting *Wolfe v. Morris*, 972 F.2d 712, 719 (6th Cir. 1992) (quoting *Will v. Mich. Dep’t of State Police*, 491 U.S. 58, 71 (1989))). The next sentences of *Wolfe* explain that this rule bars official-capacity suits for damages, but that “the eleventh amendment is not a bar to injunctive relief against the defendants in their official capacities.” 972 F.2d at 719; *see Will*, 491 U.S. at 71 n.10 (“official-capacity actions for prospective relief are not treated as actions

against the State” (quoting *Kentucky v. Graham*, 473 U.S. 159, 167 n.14 (1985))). Woodcock does not seek damages from the University Officials in their official capacities. *See* Am. Compl. (DN 36) at 1678. Dean Van Tatenhove, whom the University Officials acknowledge has been substituted for former Dean Duff in his official capacity, is bound by any injunction. MJOP at 2196; Fed. R. Civ. P. 25(d).

B. Qualified Immunity Does Not Warrant Judgment on the Pleadings

Qualified immunity “protects officials from individual liability for money damages but not from declaratory or injunctive relief.” *Flagner v. Wilkinson*, 241 F.3d 475, 483 (6th Cir. 2001); *see Gunasekera*, 551 F.3d at 471. The defense therefore cannot touch Woodcock’s claims for prospective relief. As to damages, “it is generally inappropriate for a district court to grant a 12(b)(6) motion to dismiss on the basis of qualified immunity,” because the time to decide the defense “is usually summary judgment and not dismissal under Rule 12.” *Wesley v. Campbell*, 779 F.3d 421, 433–34 (6th Cir. 2015).

The University Officials frame the rights at stake as a right to be free of investigation and a right “to teach classes in the law school.” MJOP at 2208. But the right Woodcock asserts is the right not to be punished for protected speech, and that right was clearly established long before July 2025. In *Josephson*, the Sixth Circuit rejected the argument that officials “can act as they choose until there is a case on all fours.” 115 F.4th at 789. The court explained that by 2017 “both the Supreme Court and this court had held that, absent a disruption of government operations, a public university may not retaliate against a professor for speaking on issues of social or political concern,” and that “a reasonable university official . . . would have understood that he could not lawfully terminate or threaten the economic livelihood of a professor because of his protected speech.” *Id.* The court held, too, that even if a professor’s academic speech was part of his official duties, “it was clearly established that such speech is protected.” *Id.* at 790; *see Meriwether v. Hartop*, 992 F.3d 492, 505 (6th Cir. 2021); *Hardy v. Jefferson Cmty. Coll.*, 260 F.3d 671, 680 (6th Cir. 2001). It was equally clear by 2009

that a professor deprived of a property interest in the terms of his appointment must be given notice and an opportunity to be heard, ordinarily before the deprivation. *Gunasekera*, 551 F.3d at 468–69, 471; see *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 53 (1993). Woodcock alleges that he received no notice before the suspension and no opportunity to be heard before or after it. Am. Compl. ¶¶ 62, 65, 177 (DN 36) at 1636–37, 1668.

The University Officials’ authorities do not show otherwise. *Cunningham v. Blackwell*, 41 F.4th 530 (6th Cir. 2022), which the motion describes as holding that the University’s practice of reassigning a professor during an investigation “does not violate a professor’s rights,” MJOP at 2200 n.25, decided only the second, clearly-established prong of qualified immunity, on a summary-judgment record. 41 F.4th at 536–37. The professors there, accused of falsifying billing records, were barred only from clinical work and kept their “other academic, research, and administrative obligations.” *Id.* at 535. The professors also had notice and a chance to be heard before the suspensions. Over an eight-month review, the compliance officer met with the professors, told them to stop the practice at issue, and “heard the professors’ accounts and offered them a chance to respond in writing.” The provost then imposed the suspensions in meetings with each professor, at which Shehata had “a chance to explain his position.” *Id.* at 534–35, 537. And the motion’s citation for the proposition that the Sixth Circuit “says otherwise” about a right to teach, MJOP at 2208 n.70, is to *Parate v. Isibor*, 868 F.2d 821, 832 (6th Cir. 1989), which rejected a nontenured professor’s substantive-due-process claim to teach at a particular university or a particular course and is discussed in Part V.A below.

II. The Amended Complaint States a First Amendment Retaliation Claim (MJOP Part IV)

The University Officials do not dispute causation. They argue only that Woodcock suffered no adverse action and that his speech was unprotected. MJOP at 2208–19. Neither argument can be resolved against Woodcock on the pleadings.

A. The Suspension, Exclusion, and Investigation Are Adverse Actions

a. The motion applies the wrong standard. An adverse action in the First Amendment context is one that “would chill or silence a person of ordinary firmness from future First Amendment activities.” *Josephson*, 115 F.4th at 787 (quotation omitted). The University Officials quote that standard, MJOP at 2210, but argue from Title VII cases that apply a different one. *Kuhn v. Washtenaw County*, 709 F.3d 612 (6th Cir. 2013), defined adverse action for a “Title VII discrimination claim” as “a materially adverse change in the terms or conditions of employment because of the employer’s actions.” *Id.* at 625 (quotation omitted). *Peltier v. United States*, 388 F.3d 984 (6th Cir. 2004), likewise a Title VII case, held that “a suspension with pay and full benefits pending a *timely* investigation into suspected wrongdoing is not an adverse employment action.” *Id.* at 988 (quotation omitted). *Dendinger v. Ohio*, 207 F. App’x 521 (6th Cir. 2006), which the motion also quotes, was a Title VII discrimination case, and it recognized that adverse action “is broader in retaliation cases than in discrimination cases,” applying the narrower rule only “[b]ecause Dendinger does not state a retaliation claim.” *Id.* at 527 n.6. The Sixth Circuit has since explained that *Dendinger* applied “the distinct standard from Title VII’s anti-discrimination provision,” and that this line of cases “not only involves the wrong standard” for retaliation claims but “does not survive” *Muldrow v. City of St. Louis*, 601 U.S. 346 (2024), even in discrimination cases. *Ahmed v. Hamtramck Pub. Schs.*, 178 F.4th 975, 982 (6th Cir. 2026). Applying the *Burlington Northern* retaliation standard, *Ahmed* held it “at least plausible that placement on paid administrative leave for over a year, pending investigation of alleged misconduct, would dissuade a reasonable worker from taking FMLA leave.” *Id.*

b. Adverse action is a question of fact. “The adverse-action inquiry is a question of fact,” and retaliation claims based on all but “genuinely ‘inconsequential’ official actions ‘should go to the jury.’” *Josephson*, 115 F.4th at 787 (quoting *Bell v. Johnson*, 308 F.3d 594, 603 (6th Cir. 2002)). The motion quotes *Thaddens-X v. Blatter*, 175 F.3d 378 (6th Cir. 1999) (en banc), for the proposition that

the standard screens out “inconsequential actions,” MJOP at 2210, but omits the rest of the sentence: the threshold “is intended to weed out *only* inconsequential actions, and is not a means whereby solely egregious retaliatory acts are allowed to proceed past summary judgment.” 175 F.3d at 398 (emphasis added). The Amended Complaint alleges far more than an inconsequential action: the President’s public condemnation of Woodcock’s views as “repugnant” and as a call for “the destruction of a people”; Woodcock’s removal from all teaching, research, and service; his exclusion from the law school building, faculty meetings, and student advising; the copying of personal files; an investigation into his political speech that threatens termination; the investigator’s instruction to “stop immediately” anything that might violate University policy; and the General Counsel’s warning that any further notice of investigation would be “an additional basis for the reassignment.” Am. Compl. ¶¶ 57–65, 72, 76, 80, 107, 122–23 (DN 36) at 1634–40, 1642, 1652, 1657–58. Each of those actions is a “credible threat to the nature and existence of one’s ongoing employment,” which the Sixth Circuit treats as “of a similar character to the other recognized forms of adverse action.” *Josephson*, 115 F.4th at 788 (quoting *Fritz v. Charter Twp. of Comstock*, 592 F.3d 718, 728 (6th Cir. 2010)). And *Josephson* held that a jury could find adverse action in a supervisor’s instruction that a professor tell students when he was “knowingly espousing approaches and views that differ[ed] from the official curricula” and in officials’ “tracking” of his conduct, measures far milder than those alleged here. *Id.* at 787–88.

c. The investigation is itself an adverse action. The University Officials argue that treating an investigation as adverse action would undermine their obligation to investigate discrimination. MJOP at 2210–11. The formal investigative process “itself is chilling even if it does not result in a finding of responsibility or criminality.” *Speech First, Inc. v. Schlissel*, 939 F.3d 756, 765 (6th Cir. 2019) (discussing standing). And an act “taken in retaliation for the exercise of a constitutionally protected right is actionable under § 1983 even if the act, when taken for a different reason, would have been

proper.” *Josephson*, 115 F.4th at 789 (quotation omitted). The October 5 brief explains why an investigation of this kind is adverse action. DN 70 at 2457–61.

Woodcock alleges that the investigation was not an inquiry into discrimination at all. No student or faculty member complained; the investigation began with reports from four professors who, the Amended Complaint alleges, teach at other universities; and the notices of investigation identify political speech, chiefly at conferences, on listservs, and online, and no conduct directed at any member of the University community. Am. Compl. ¶¶ 66, 69, 75, 77–78, 85 (DN 36) at 1637–42, 1644. The investigation was therefore not only likely to produce a chilling effect, but its purpose was to bring about exactly such an effect.

Woodcock’s Speech Is Protected

a. Only the petition need be protected. The President’s July 18, 2025 announcement identified only the Petition for Military Action Against Israel, which Woodcock had posted on July 6, 2025, to discussion groups hosted by the Association of American Law Schools (AALS). Am. Compl. ¶¶ 54, 57–59 (DN 36) at 1633–35. If the petition was protected and was a motivating factor, the burden shifts to the University Officials to prove that they would have acted anyway. *Lemaster v. Lawrence Cnty.*, 65 F.4th 302, 309 (6th Cir. 2023). The other speech that the notices later swept in cannot defeat the claim at the pleading stage. And the other speech is protected as well.

b. Woodcock did not speak as the University’s agent. Whether a public employee spoke as a government agent or as a citizen depends on “all of the circumstances surrounding the speech,” including the “impetus” for the speech, its setting, and its audience. *DeCrane v. Eckart*, 12 F.4th 586, 595–96 (6th Cir. 2021). Speech to supervisors is more likely to be speech as a government agent than speech “to outside individuals.” *Id.* at 596. And “the mere fact that a citizen’s speech concerns information acquired by virtue of his public employment does not transform that speech into employee—rather than citizen—speech.” *Lane v. Franks*, 573 U.S. 228, 240 (2014). Woodcock posted the petition on a

website he founded and circulated it in discussion groups hosted by another organization, to law professors at other institutions. Am. Compl. ¶¶ 1, 50, 54 (DN 36) at 1617, 1631–33. He made the conference remarks at academic conferences in Washington and Hong Kong. *Id.* ¶ 75 at 1639–40. None of that speech gave the appearance of being made on the University’s behalf. *Id.* ¶ 101 at 1649.

The University Officials’ contrary arguments rest on facts outside the pleadings. The Amended Complaint does not allege that the University paid for Woodcock’s travel; that Woodcock could not have reached the AALS groups from a personal account; that he used a University computer for the petition; or that his remark at a law school talk was made in a committee role. *Compare* MJOP at 2216 & nn.113, 115, *with* Am. Compl. ¶¶ 64, 77 (DN 36) at 1636, 1641–42 (alleging that Woodcock had not used his University laptop since 2021 and that the remark was a question to a visiting speaker about free speech on campus).

Even if those facts were in the record, they would not make the speech the University’s. In *Josephson*, the court held that a professor’s remarks were protected “[e]ven if” his participation in the event was part of his official duties, because the speech “stemmed from his scholarship.” 115 F.4th at 786. The disclaimer on which the motion relies, MJOP at 2216 n.112, played no part in that alternative holding. And *Porter v. Board of Trustees of North Carolina State University*, 72 F.4th 573 (4th Cir. 2023), on which the motion relies for the listserv posts, MJOP at 2212, 2216 n.114, did not hold that faculty email is unprotected. It held unprotected a question at a department meeting about a proposed course-evaluation question and an email to departmental colleagues that “expressed no viewpoint and made no mention of policy or anything else that might be of public concern” and was “an unprofessional attack on one of Appellant’s colleagues, sent only to other faculty members within the Department.” 72 F.4th at 583–84.

c. In the alternative, the speech is protected academic speech. If Woodcock spoke in his professional capacity, he spoke as a scholar, and “professors at public universities retain First Amendment protections at least when engaged in core academic functions, such as teaching and scholarship.” *Meriwether*, 992 F.3d at 505. That protection covers speech on matters of public concern “whether that speech is germane to the contents of the lecture or not.” *Id.* at 507. Woodcock’s conclusions about colonization and decolonization grew out of his research and his international-law seminar, and he shared them “in all of the ways in which a scholar would be expected to share research conclusions”: at a faculty research seminar, at academic conferences, in petitions and an op-ed, and in discussion groups for law professors. Am. Compl. ¶¶ 43–50 (DN 36) at 1628–32. The University Officials concede that the Court “must apply the Sixth Circuit’s faculty academic freedom exception to *Garvetti*,” which *Josephson* “extended to speech at academic conferences.” MJOP at 2212–13. Their objections that the Supreme Court has not recognized the exception and that academic freedom belongs to the institution, *id.* at 2213–15, are addressed to the wrong court.

The out-of-circuit and administrative-post cases that the motion cites do not narrow the exception as applied here. *Pernell v. Florida Board of Governors*, 181 F.4th 1135 (11th Cir. 2026), affirmed a preliminary injunction in favor of professors. *Pernell* recognized that a university may exclude “personal tangents irrelevant to the subject matter, conspiracy theories, and the like” as part of its authority over its curriculum. *Id.* at 1160. In this circuit, however, the academic-freedom exception protects classroom speech on matters of public concern whether or not the speech is germane to the lecture. *Meriwether*, 992 F.3d at 507. The classroom, where a professor speaks to “a captive audience of students” who cannot “effectively avoid further bombardment of their sensibilities simply by averting their [ears],” *Bonnell v. Lorenzo*, 241 F.3d 800, 820–21 (6th Cir. 2001) (quotation omitted); see *Saxe v. State Coll. Area Sch. Dist.*, 240 F.3d 200, 210 (3d Cir. 2001) (Alito, J.), is where a germaneness requirement would have its strongest claim. If the exception imposes no such

requirement there, it imposes none on scholarship shared at academic conferences and in discussion groups for law professors, which listeners join by choice and may leave at will. *Pernell* also held that “[a]n interest in banning disfavored viewpoints is not in line with the workplace management concerns that give the government extra leeway in the employee speech cases.” *Pernell*, 181 F.4th at 1152. *Savage v. Gee*, 665 F.3d 732, 738–39 (6th Cir. 2012), concerned speech that a librarian made “pursuant to his duties as Head of Reference and Library Instruction.” *Crosby v. University of Kentucky*, 863 F.3d 545, 553–54 (6th Cir. 2017), concerned a department chair’s property interest in that administrative post. Woodcock spoke as a law professor about his scholarship, not as an administrator.

d. Title VI does not strip the speech of protection. “There is no categorical ‘harassment exception’ to the First Amendment’s free speech clause.” *Saxe*, 240 F.3d at 204. The University Officials argue that speech amounting to harassment under *Davis v. Monroe County Board of Education*, 526 U.S. 629 (1999), is unprotected, MJOP at 2217–18, but they never identify any speech by Woodcock that meets that standard: conduct “so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits provided by the school,” 526 U.S. at 650, and “serious enough to have the systemic effect of denying the victim equal access to an educational program or activity,” *id.* at 652. The Sixth Circuit rejected a similar argument on a motion to dismiss in *Meriwether*. Absent any indication that the professor’s speech had inhibited a student’s education, the university’s “purported interest in complying with Title IX” was “not implicated by” his speech. 992 F.3d at 511. The Amended Complaint alleges that no member of the University community complained and that the speech at issue was not directed at anyone on campus. Am. Compl. ¶¶ 66, 69, 78, 91 (DN 36) at 1637–38, 1642, 1647.

e. Pickering balancing favors Woodcock and cannot be resolved against him on the pleadings. At the pleading stage, “employers must put on as strong or stronger evidence” to substantiate their *Pickering* interests

than they would need at summary judgment. *Myers v. City of Centerville*, 41 F.4th 746, 764 (6th Cir. 2022). In *Meriwether*, the Sixth Circuit held that the balance “strongly favor[ed]” the professor on a motion to dismiss, because “there [was] no suggestion that [his] speech inhibited his duties in the classroom, hampered the operation of the school, or denied [a student] any educational benefits,” and “[t]he mere ‘fear or apprehension of disturbance is not enough to overcome the right to freedom of expression.’” 992 F.3d at 511 (quoting *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 508 (1969)). Holding that the government always has a compelling interest in regulating employees’ speech on matters of public concern “would reduce *Pickering* to a shell,” and “[p]urportedly neutral non-discrimination policies cannot be used to transform institutions of higher learning into ‘enclaves of totalitarianism.’” *Id.* at 510 (quoting *Tinker*, 393 U.S. at 511). Speech on “an academic matter of substantial public concern” places a “heavy” burden on the employer. *Josephson*, 115 F.4th at 786.

The University Officials offer nothing but apprehension. Their first asserted interest is that Woodcock’s speech, “even if [it] currently does not amount to harassment under Title VI, . . . may cross that line at some future date.” MJOP at 2218. That is “undifferentiated fear or apprehension of disturbance” by definition. *Hardy*, 260 F.3d at 682 (quoting *Tinker*, 393 U.S. at 508). Their second is room for “interim measures” while the University performs *Pickering* balancing, MJOP at 2219, which assumes an interest that must be shown. Their third is Woodcock’s “public facing role,” *id.*, but *Hedgepeth v. Britton*, 152 F.4th 789 (7th Cir. 2025), on which they rely, upheld a high-school teacher’s discharge on a summary-judgment record of actual disruption and prior discipline, and observed that “[t]he more serious and politically charged the message, the stronger the government’s justification must be.” *Id.* at 796. *Patterson v. Kent State University*, 155 F.4th 635 (6th Cir. 2025), likewise rested on evidence that a professor’s “profanity-laced and race- and sex-based aspersions against colleagues” had produced “a dysfunctional work environment for several months.” *Id.* at

650. Here, by contrast, the Amended Complaint alleges that the University received no complaint from any student or faculty member and identified no disruption of its operations; that Woodcock had expressed the same views to his colleagues for more than a year without objection; and that the only complaints alleged came from outside the University. Am. Compl. ¶¶ 52, 58, 66, 69, 86–88 (DN 36) at 1632, 1634, 1637–38, 1644–45. Opposition from outside critics is the “classic illustration of ‘undifferentiated fear’” that cannot justify punishing a professor. *Hardy*, 260 F.3d at 682.

III. The Amended Complaint States an Establishment Clause Claim (MJOP Part V)

The Establishment Clause claim rests on a simple asymmetry. The IHRA definition treats as antisemitic “[d]enying the Jewish people their right to self-determination, e.g., by claiming that the existence of a State of Israel is a racist endeavor.” Am. Compl. ¶ 24 (DN 36) at 1621. The IHRA definition, as the University applies it, thus protects Jewish religious nationalism from criticism. No University policy protects any other religious nationalism. A professor who rejects a Christian right of self-determination, such as the one the Ku Klux Klan has claimed, is not charged with hate speech; the University would instead treat support for that claim as hate speech. *Id.* ¶ 163 at 1665. Nor, under the IHRA definition, would a professor be charged with hate speech for rejecting any other form of religious nationalism, such as Hindu nationalism (*Hindutva*), Serbian Orthodox nationalism, or Russian Orthodox nationalism. Only Jewish religious nationalism enjoys protection from criticism. *Id.* ¶ 27 at 1622.

The Amended Complaint therefore alleges a denominational preference. It alleges that the IHRA definition, as the University applies it, treats as antisemitism the denial of a right of self-determination grounded in adherence to one faith, while affording no such protection to claims of other religious groups, and that the definition’s self-determination example “facially differentiates among religions.” Am. Compl. ¶¶ 162–64, 167 (DN 36) at 1665–67. “The clearest command of the

Establishment Clause is that one religious denomination cannot be officially preferred over another,” and when government grants a denominational preference, courts “treat the law as suspect” and “apply strict scrutiny in adjudging its constitutionality.” *Larson v. Valente*, 456 U.S. 228, 244, 246 (1982). The Supreme Court applied that rule last year, after *Kennedy v. Bremerton School District*, 597 U.S. 507 (2022), and placed on the government “the burden to show that the relevant law, or application thereof, is ‘closely fitted to further a compelling governmental interest.’” *Catholic Charities Bureau, Inc. v. Wis. Lab. & Indus. Rev. Comm’n*, 605 U.S. 238, 248 (2025) (quoting *Larson*, 456 U.S. at 251). *Larson*’s rule does not depend on *Lemon v. Kurtzman*, 403 U.S. 602 (1971). *See Larson*, 456 U.S. at 252 (“application of the *Lemon* tests is not necessary to the disposition of the case before us”).

The University Officials quote *Larson*’s “clearest command,” MJOP at 2220 & n.129, but do not apply *Larson*’s rule or attempt to satisfy strict scrutiny. They argue instead that the claim fails the secular-purpose requirement that *Gordon v. City of Hamtramck* declined to discard, *id.* at 2221, and the three *Lemon* factors applied in *McClanahan v. Trump*, *id.* at 2222. But *Gordon* addressed a claim that a facially neutral resolution was enacted with a religious motive and did not decide whether the secular-purpose requirement survives *Kennedy*. *Gordon v. City of Hamtramck*, No. 25-1917, slip op. Part II.D (6th Cir. Aug. 21, 2026). And *McClanahan*, which the motion calls “[a]n Eighth Circuit court,” is a district court decision denying a temporary restraining order, MJOP at 2222 & n.138, that, as the motion describes it, applied the *Lemon* test that the motion itself acknowledges the Supreme Court has abandoned, *id.* at 2220–22. Nor is the University Officials’ assertion that “[n]o religious preference is made in AR 6:1,” *id.* at 2222–23, a basis for judgment on the pleadings. The Amended Complaint alleges the contrary, and the University Officials describe AR 6:1 as a regulation that “incorporates” the IHRA definition and acknowledge that its replacement imposes “substantively identical standards.” *Id.* at 2219–20 n.128. To the extent the historical inquiry that *Kennedy* describes

applies, the Amended Complaint alleges that there is no tradition of endorsing a religious group's right to form a government or of punishing criticism of that claim. Am. Compl. ¶ 165 (DN 36) at 1666.

IV. The Amended Complaint States Claims Against the University's Policies (MJOP Part VI)

The Amended Complaint challenges the University's speech policies on three grounds: the policies are overbroad; the spam policy and the investigator's "stop immediately" directive are prior restraints; and the policies are unconstitutionally vague. The motion's arguments against each fail, as shown below. None of the challenges is moot. The University Officials state that the University has replaced the Ethical Principles and AR 6:1 with regulations that "impose substantively identical standards," MJOP at 2219–20 n.128, and the notices of investigation invoked the challenged policies against Woodcock. Am. Compl. ¶¶ 76, 82 (DN 36) at 1640, 1643.

A. The Policies Are Overbroad

a. The motion applies the wrong test. The University Officials ask the Court to judge the policies under "the traditional test for assessing restrictions on expressive conduct." MJOP at 2223 (using the language of *Blau v. Fort Thomas Pub. Sch. Dist.*, 401 F.3d 381, 391 (6th Cir. 2005)). *Blau* applied that test to a school dress code, which regulated conduct and burdened expression only incidentally. 401 F.3d at 388–91. The policies here regulate speech itself: when and how a professor must disclaim the University, what a professor's private statements may contain, which political arguments count as antisemitism, and how many colleagues a professor may address at once. Am. Compl. ¶¶ 81–84 (DN 36) at 1642–44. A policy that regulates speech is overbroad if there is "a realistic danger that the statute itself will significantly compromise recognized First Amendment protections of parties not before the court." *Dambrot v. Cent. Mich. Univ.*, 55 F.3d 1177, 1182 (6th Cir. 1995) (quotation omitted); see *Speet v. Schuette*, 726 F.3d 867, 873 (6th Cir. 2013). And because the policies

restrict the speech of an entire faculty in advance, the University must show that the harms they address are “real, not merely conjectural.” *United States v. Nat’l Treasury Emps. Union*, 513 U.S. 454, 468, 475 (1995) (quotation omitted).

b. The allegations are not conclusory. The motion says that Woodcock pleads only that the policies “encompass speech that is fully protected.” MJOP at 2224. The Amended Complaint quotes the policies’ text and explains how each reaches protected speech. Am. Compl. ¶¶ 24–28, 81–84, 101–05, 145–48 (DN 36) at 1621–23, 1642–44, 1649–52, 1661–62. The neutrality policies require faculty speaking as scholars to “always take care to reinforce” that they do not speak for the University, forbid any content in private statements “that suggests the message . . . represents any academic or administrative unit, activity or initiative of the university,” and, since September 2025, require faculty at academic conferences to “make it clear that they are speaking for themselves.” *Id.* ¶¶ 82, 104–05 at 1643, 1651–52. Those rules reach every paper on Shakespeare and every conference presentation by every member of the faculty, whether or not anyone could mistake the speaker for the University. *Id.* ¶ 105 at 1651–52. The IHRA definition, as the University applies it, characterizes as antisemitic at least three categories of political argument about Israel that need not reflect any hostility toward Jews. *Id.* ¶¶ 24–28, 84 at 1621–23, 1643–44. Nor is overbreadth a matter of conjecture here. The University invoked these policies to remove Woodcock from teaching for his political speech. *Id.* ¶¶ 75–76 at 1639–40. And an instruction that a professor qualify his views when he teaches can itself be an adverse action. *Josephson*, 115 F.4th at 787.

c. The asserted interests do not fit the policies. The University Officials invoke an interest in preventing harassment and a hostile environment, quoting the Court’s earlier opinion. MJOP at 2224–25 (quoting DN 37 at 1783). That interest is real, but it cannot sustain rules that are not limited to harassment. A rule that requires every faculty member to disclaim the University before speaking about Shakespeare, or that treats a comparison between Israeli and Nazi policy as antisemitism

whether or not anyone is harassed, is not tailored to preventing harassment. In *Dambrot*, the Sixth Circuit struck down a university’s discriminatory-harassment policy as overbroad because “language or writing, intentional or unintentional, regardless of political value, can be prohibited upon the initiative of the university.” 55 F.3d at 1183. The court refused to save the policy on the strength of its promise not to “interfere impermissibly with individuals[] rights to free speech,” declining “to accept the representations of” the university. *Id.* The same is true of the representations in the University’s policies that they do not affect First Amendment rights. Am. Compl. ¶¶ 103, 135 (DN 36) at 1650, 1659–60. The University Officials’ other interest, in ensuring that faculty speech is “not mistaken as” the University’s, MJOP at 2224, cannot justify rules that apply whether or not any listener could make that mistake. Whether the policies sweep in a substantial amount of protected speech relative to their legitimate reach is, at a minimum, a question that cannot be decided against Woodcock on the pleadings.

B. The Spam Policy and the “Stop Immediately” Directive Are Prior Restraints

The University Officials defend only the spam policy, and only as a rule for the University’s “internal email system.” MJOP at 2225–26. The motion does not address the investigator’s instruction that Woodcock “stop immediately” anything that “might violate University policy,” which the Amended Complaint alleges is itself a prior restraint because it forbids speech in advance without any standard. Am. Compl. ¶¶ 76, 152–53 (DN 36) at 1640, 1663. And the speech to which the University applied the spam policy included posts to discussion groups hosted by the AALS, which are not part of any University mail system. *Id.* ¶¶ 54, 100, 152 at 1633, 1648–49, 1663.

The University Officials’ forum argument fails under any framework. If, as this Court has held, forum analysis does not apply when a public employer restricts an employee’s speech and *Pickering* alone governs, *Kyrkanides v. Capilouto*, No. 5:21-cv-00270-GFVT, slip op. Part II.A.2 (E.D. Ky. July 25, 2023) (Van Tatenhove, J.); see *Johnson v. Poway Unified Sch. Dist.*, 658 F.3d 954, 961 (9th Cir. 2011),

then a rule that restricts the speech of an entire faculty in advance must be justified by harms that are “real, not merely conjectural,” *Nat’l Treasury Emps. Union*, 513 U.S. at 475 (quotation omitted), and the University Officials identify none. If forum analysis does apply, as the University Officials urge, the University’s “internal email system,” MJOP at 2225, is not the relevant forum, and whether the University opened a forum for faculty expression depends on its “policy and practice” and the forum’s “compatibility with expressive activity.” *Kincaid v. Gibson*, 236 F.3d 342, 349 (6th Cir. 2001) (en banc) (quotation omitted). “[A]ctual practice speaks louder than words.” *Id.* at 351 (quotation omitted). The Amended Complaint alleges that faculty routinely use the law faculty listserv and the AALS groups for messages that have nothing to do with University business or that have political content, without sanction, and that the University has opened limited public fora for faculty speech. Am. Compl. ¶¶ 100, 131, 146 (DN 36) at 1648–49, 1659, 1661–62. Those allegations make it plausible that the listserv is at least a limited (or “designated”) public forum, in which content-based restrictions receive strict scrutiny. *Kincaid*, 236 F.3d at 347. And even in a nonpublic forum, restrictions, including restrictions on “a school’s internal mail facilities,” must still be reasonable and viewpoint neutral. *Am. Freedom Def. Initiative v. Suburban Mobility Auth. for Reg’l Transp.*, 978 F.3d 481, 491 (6th Cir. 2020). A restriction is not reasonable unless officials’ discretion is “guided by objective, workable standards.” *Minn. Voters All. v. Mansky*, 585 U.S. 1, 21 (2018); see *Am. Freedom Def. Initiative*, 978 F.3d at 494, 497. A policy that lets an official limit speech on “ambiguous and subjective reasons” confers “unbridled discretion,” and “the danger of censorship and of abridgment of our precious First Amendment freedoms is too great where officials have unbridled discretion over a forum’s use.” *United Food & Com. Workers Union, Loc. 1099 v. Sw. Ohio Reg’l Transit Auth.*, 163 F.3d 341, 359 (6th Cir. 1998) (quotations omitted). The spam policy forbids “mass mailings” except to “clearly identified groups for official purposes” and with “proper authorization and coordination with UK Public Relations and Marketing,” without defining a mass mailing, an official purpose, or

the standard for authorization. Am. Compl. ¶¶ 83, 153, 157 (DN 36) at 1643, 1663–64. And the Amended Complaint alleges that the University has not applied the policy to other faculty who post political messages to the same listservs, which supports a plausible inference of viewpoint discrimination. *Id.* ¶ 100 at 1648–49. The Fifth Circuit decision on which the motion relies affirmed summary judgment on the defendant’s “competent summary judgment evidence” and held only that the restrictions, on that record, were “uniformly applied system-wide” and “not content-based.” *Faculty Rts. Coal. v. Shabrokh*, 204 F. App’x 416, 419 (5th Cir. 2006); *see* MJOP at 2226. The Amended Complaint alleges the opposite.

C. The Policies Are Unconstitutionally Vague

The University Officials argue that the challenged terms are “generally well understood by those who want to understand” them. MJOP at 2227–28. That is not the test. Where a rule “interferes with the right of free speech,” “a more stringent vagueness test should apply.” *Vill. of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 499 (1982). And a rule is vague in either of two ways: if it “denies fair notice of the standard of conduct to which a citizen is held accountable,” or if it is “an unrestricted delegation of power, which in practice leaves the definition of its terms to law enforcement officers.” *Dambrot*, 55 F.3d at 1183–84. The challenged policies require faculty, and the officials who enforce the policies, to distinguish speech “in a professional or expert capacity” from speech as a “private individual,” to decide when there is “even the appearance” of speaking for the University, to know when a message becomes an undefined “mass mailing,” and to determine whether a political argument reflects “a certain perception of Jews.” Am. Compl. ¶¶ 81, 157–58 (DN 36) at 1642–43, 1664–65. The Attorney General, defending the resolution that directs the University to use the IHRA definition, describes the definition’s examples as conduct that may indicate antisemitism only “when considered in context of the conduct at issue,” without identifying what context. DN 67 at 2422, 2428. That description confirms that the definition leaves its application to

the judgment of the officials who enforce it. And the University investigator’s refusal, for the most part, to tell Woodcock which provisions his speech allegedly violated shows that the policies do not give fair notice even to the officials who invoke them. Am. Compl. ¶ 79 (DN 36) at 1642.

V. The Amended Complaint States Due Process Claims (MJOP Part VII)

A. Woodcock Was Deprived of Property Without Process

a. Property. The University Officials concede that Woodcock has a property interest in his tenured position but argue that the interest does not extend to teaching. MJOP at 2228–29. A tenured professor’s property interest is not limited to a paycheck. In *Gunasekera*, the Sixth Circuit held that a professor stated a claim when he was suspended from his graduate-faculty status, which carried the right to advise graduate students, and pointed to his “extensive documentation of the ways in which this suspension affects his career.” 551 F.3d at 468. In distinguishing a suspension with pay, *Gunasekera* identified as lost benefits terms of the job, “such as a reduced teaching load.” *Id.* The court also relied on decisions finding a deprivation in an unwanted transfer outside the plaintiff’s “chosen field” and in a professor’s exclusion from university committees. *Id.* The Amended Complaint alleges that teaching, research, and service are the fundamental duties of a faculty member, that University regulations require comparable workloads, and that the law school’s rules set a minimum teaching load of 40 percent; that the Dean replaced all three with “100% professional development” until an investigation with no fixed end date concludes; and that the reassignment impedes Woodcock’s teaching and research and exposes him to termination for failing to meet performance requirements. Am. Compl. ¶¶ 4, 62, 107–08, 118–21, 171–75 (DN 36) at 1618, 1636, 1652–53, 1656–57, 1667–68.

Parate v. Isibor does not hold otherwise. *Parate* rejected a nontenured professor’s substantive-due-process claim of a liberty interest in pursuing his occupation, holding that he had no “constitutional

right to teach a specific class.” 868 F.2d at 831–32. *Parate* did not address a tenured professor’s property interest in the duties of his position. Woodcock does not claim a right to teach a particular course; he claims that the University cannot strip a tenured professor of every duty that defines his position without process. *Kaplan v. University of Louisville*, 10 F.4th 569 (6th Cir. 2021), assumed that suspending a tenured professor from “research opportunities, clinical practice, teaching, etc.” deprives him of a cognizable property interest, *id.* at 581–82, and rejected the argument that *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985), “established a per se safe harbor for all paid suspensions,” 10 F.4th at 581 n.3.

b. Process. Woodcock alleges that he received no notice or opportunity to be heard before or after his reassignment, and that the Dean declined to discuss it with him. Am. Compl. ¶¶ 62, 65, 177 (DN 36) at 1636–37, 1668. That allegation states a claim. *Gunasekera*, 551 F.3d at 468–69. “The right to prior notice and a hearing is central to the Constitution’s command of due process,” and exceptions are tolerated “only in ‘extraordinary situations where some valid governmental interest is at stake that justifies postponing the hearing until after the event.’” *James Daniel Good*, 510 U.S. at 53 (quotation omitted). In the employment setting, such a situation arises when the employer must act quickly or “perceives a significant hazard in keeping the employee on the job.” *Kaplan*, 10 F.4th at 582 (quoting *Gilbert v. Homar*, 520 U.S. 924, 929–30 (1997)). In *Gilbert*, the employee had been arrested and formally charged with a felony by “an independent body,” which assured that the suspension was not “baseless or unwarranted,” and the employer still owed “a sufficiently prompt postsuspension hearing.” 520 U.S. at 932, 934 (quotations omitted). In *Kaplan*, the professor had made unauthorized financial commitments during a budget crisis, had not addressed concerns the university raised with him a month earlier, and received a two-day hearing at which he called witnesses. 10 F.4th at 582–83. And in *Cunningham*, the suspension was partial and followed an eight-month review in which the compliance officer heard the professors’ accounts and offered them a

chance to respond in writing. The provost then imposed the suspensions in meetings with the professors. 41 F.4th at 534–35, 537. Woodcock alleges none of those things. He alleges that the University acted in midsummer, without a complaint from anyone on campus, about speech that occurred elsewhere, and in disregard of its own regulation permitting reassignment in lieu of suspension only when “immediate harm” is threatened and only after consultation with a faculty committee. Am. Compl. ¶¶ 4, 62, 66, 69, 108 (DN 36) at 1618, 1636–38, 1652–53.

The investigation does not supply the missing process. The University Officials describe a process of written questions and evidence reviews, MJOP at 2230–31, but that process addresses whether Woodcock violated University policy, not whether he should be removed from teaching in the meantime; it culminates in a privileged report that Woodcock will not see and findings by the same President who initiated the investigation and publicly condemned Woodcock’s views; and a formal hearing becomes available only if the President seeks termination or a lengthy unpaid suspension. Am. Compl. ¶¶ 65, 72–73, 114–15, 180–81 (DN 36) at 1636–39, 1655–56, 1669; MJOP at 2231. The motion does not address the Amended Complaint’s separate allegation that the decisionmakers are biased. Am. Compl. ¶¶ 180–81 (DN 36) at 1669.

B. Woodcock Was Deprived of Liberty Without Process

The University Officials argue that Woodcock never requested a name-clearing hearing. MJOP at 2232. But he alleges that he asked the President to retract his statement on the day it was made and that he later made, in a September 11, 2025 letter, a “Request for Protection of Due Process Rights” that sought “[a] public statement from the University indicating that it wrongfully suspended Professor Woodcock” and compliance with University regulations that, as the Amended Complaint alleges, “provide for a hearing.” Am. Compl. ¶ 182 (DN 36) at 1669–70. A request need only be enough “to alert the University that [the employee] was complaining of a lack of due process in connection with a liberty interest.” See *Ludwig v. Bd. of Trs. of Ferris State Univ.*, 123 F.3d 404, 411 (6th

Cir. 1997). A demand for a retraction and a public statement that the suspension was wrongful asks for exactly what a name-clearing hearing provides: an opportunity to clear one's name in public. *See Gunasekera*, 551 F.3d at 469–70.

The University Officials' remaining arguments fail as well. A professor who has not been terminated may state a liberty claim when the stigmatizing statements are connected to a suspension that deprives him of benefits of his position. *See Gunasekera*, 551 F.3d at 469 n.3. The President's statement that Woodcock called for "the destruction of a people" and expressed "repugnant" views impugns his morality, not merely his competence. Am. Compl. ¶¶ 57, 59, 68, 172 (DN 36) at 1634–35, 1638, 1667. Although the President did not name Woodcock, "it was not difficult to infer who he was discussing," and a journalist contacted Woodcock within an hour. *Id.* ¶ 172 at 1667. And contrary to the motion's assertion, MJOP at 2233, the Amended Complaint alleges that the statement was false. Am. Compl. ¶¶ 57, 68 (DN 36) at 1634, 1638.

VI. The Amended Complaint States Race Discrimination Claims (MJOP Part VIII)

a. Discriminatory intent is plausibly alleged. A plaintiff need not plead a prima facie case; the complaint need only allege facts that make discriminatory intent plausible. *Keys v. Humana, Inc.*, 684 F.3d 605, 609–10 (6th Cir. 2012). The Amended Complaint alleges that one College of Law administrator joked about giving Woodcock a "fez," that another asked whether he is a "practicing" Muslim, and that a senior faculty colleague attributed his views to his Algerian mother; that the University permitted on-campus speech defending the military action in Palestine and applied a "both sides" requirement only to pro-Palestine events; that the University Officials did not act against non-Arab speakers who supported military action; and that the University Officials repeatedly characterized Woodcock's call to stop a genocide as a call for genocide, drawing on

stereotypes of Arabs and Muslims. Am. Compl. ¶¶ 186, 190, 196 (DN 36) at 1670–73. Those are facts, not a “threadbare recital.” MJOP at 2233.

b. Adverse action is plausibly alleged. The motion’s adverse-action argument relies on the same pre-*Muldrow* Title VII cases. MJOP at 2233. A discrimination plaintiff need show only “some harm respecting an identifiable term or condition of employment,” and the Sixth Circuit has held that paid administrative leave that kept an employee from her duties for over a year and was accompanied by reputational harm from a publicly announced investigation meets that standard. *Ahmed*, 178 F.4th at 984–85 (quoting *Muldrow*, 601 U.S. at 354–55). The Amended Complaint alleges comparable harm: removal from all of his teaching, research, and service for an investigation with no fixed end date, and reputational harm from a publicly announced investigation. Am. Compl. ¶¶ 57–65, 118–21, 188 (DN 36) at 1634–37, 1656–57, 1671.

c. The § 1981 claim is brought through § 1983. Count VII, brought against the University Officials, cites § 1983 in its caption, and its first substantive paragraph alleges that the defendants “violated 42 U.S.C. § 1983 by depriving Plaintiff of rights guaranteed under 42 U.S.C. § 1981 under color of state law.” Am. Compl. ¶ 185 (DN 36) at 1670. That is the vehicle *McCormick v. Miami University* requires. 693 F.3d 654, 661 (6th Cir. 2012). The motion makes no separate argument against the equal protection claim in Count VIII.

d. The intracorporate-conspiracy doctrine does not warrant judgment. The doctrine bars conspiracy claims only against employees “alleged to have been acting within the scope of their employment,” and the Sixth Circuit has recognized an exception where defendants acted outside that scope. *Jackson v. City of Cleveland*, 925 F.3d 793, 818–19 (6th Cir. 2019). The Amended Complaint alleges that the University Officials “may have acted outside of the scope of their employment,” because the suspension, exclusion, and investigation “were not authorized by any University policy or regulation” and the University Officials “sought to cover up this deficiency by summarily deleting or

rewriting conflicting regulations.” Am. Compl. ¶ 116 (DN 36) at 1656. Whether they did so is a question of fact. In any event, the doctrine addresses only the conspiracy theory of liability; it does not affect each University Official’s liability for his own conduct.

CONCLUSION

Woodcock respectfully asks the Court to deny the University Officials’ motion for judgment on the pleadings (DN 63).

Date: October 16, 2026

Respectfully submitted,

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