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 EMERGENCY MOTION FOR AN INJUNCTION PENDING APPEAL

Plaintiff Ramsi A. Woodcock ("Woodcock"), through counsel, moves under Federal Rule of Civil Procedure 62(d) and Federal Rule of Appellate Procedure 8(a)(1) for an injunction pending appeal.

INTRODUCTION

Since December 12, 2025, Woodcock has asked the Court to halt the University of Kentucky's investigation of his speech long enough to decide whether the investigation is constitutional. DN 19. When it has had jurisdiction, the Court has allowed the investigation to continue without yet deciding that motion or its November 11, 2026 supplement. DN 37; DN 83; DN 86; DN 87; DN 97. On November 17, 2026, the Court declined to bar the investigation's last step, findings by President Capilouto that amount to a decision whether to charge Woodcock with violating University rules. The Court suggested that the University complete that step by Thanksgiving, before the preliminary-injunction hearing the Court intends to hold in early December. Nov. 17 Tr. 30:22–31:20, 34:22–35:18, 36:20–23 (DN 110 at 3736–42). That ruling effectively denies Woodcock's motion for a preliminary injunction with respect to the investigation. Woodcock has

appealed this ruling. Woodcock now asks the Court to enjoin the University Officials, while the appeal is pending, from taking any step in furtherance of the investigation, including its culminating step, the issuance of findings, or any other step to initiate, advance or conclude any disciplinary, sanction or termination process arising from the investigation or from the speech that is its subject, such as the issuance of a statement of charges, referral of the matter to a hearing, conduct of a hearing, or imposition of a sanction.

Each factor favors the injunction. A First Amendment retaliation claim asks whether Woodcock engaged in protected speech, whether the University Officials took action that would deter a person of ordinary firmness, and whether the speech motivated that action. The record already before the Court, including the investigator's own report, satisfies each element. The University Officials have identified no basis for the investigation that does not rest on protected speech. The fact-gathering is over. The only step left is the President's review of the report and decision whether to bring charges against Woodcock, made by the official who publicly condemned his views before the investigation began. That decision is the culmination of a threat of discipline that the University has kept in place for sixteen months. The Sixth Circuit has enjoined a state commission from taking exactly that step while an appeal was pending. *Fischer v. Thomas*, 52 F.4th 303, 313 (6th Cir. 2022) (order). "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) (plurality opinion). The President's review, itself chilling, continues while the appeal is pending. The University Officials have identified no legitimate interest that waiting for the Court of Appeals would harm.

BACKGROUND

The University opened this investigation after Woodcock posted his Petition for Military Action Against Israel ("the Petition"), without a complaint from any University student or faculty member.

Woodcock posted the Petition on July 6, 2025, to discussion groups hosted by the Association of American Law Schools ("AALS"). DN 65-7.

Twelve days after Woodcock posted the Petition, on July 18, 2025, President Capilouto announced the investigation. His message named no speech but the Petition, which he said "can be interpreted as antisemitic in accordance with state and federal guidance." DN 19-3 at 496–97. The same day, the University removed Woodcock from teaching "pending an investigation" and banned him from the law building. *Id.*; DN 19-3 at 493. The record contains no complaint from any University student or faculty member. Two of the student reporters told the investigator that they had not filed complaints. Ex. A at 46. Former Dean Duff testified that the complaints came from professors who had attended Woodcock's conference talks and from "outside interests." DN 40 at 1980, 1982, 1989. The investigator interviewed the four students whose reports the University later added only "[a]fter issuing the initial Notice of Investigation" on July 22, 2025. Ex. A at 2.

The investigation has reached its last step: the President's decision whether to bring charges. The investigator delivered her report on November 10, 2026. DN 89. The investigator's August 25, 2025 procedures letter states that the investigator "will not serve as the decision-maker" and that the President will issue a letter that determines whether Woodcock "is responsible or not responsible" and "will include any sanction," including, the investigator wrote, possible "termination of a tenured appointment." DN 19-15 at 1570–71. The Court has described the President's decision as one about "whether discipline would be appropriate and whether to pursue further sanction-related proceedings." DN 37 at 34 n.12, PageID 1791. Counsel for the University Officials agrees: "The next step as to whether formal charges would be made . . . is made by the president." Nov. 13 Tr. 4:23–5:1 (DN 109 at 3662–63). Woodcock's suspension, which the University Officials call a "temporary administrative assignment," is not a subject of this motion. But the suspension, too,

continues. The Dean has said that the suspension "will not be reviewed until the investigation is complete." DN 65-8 at 2405.

Woodcock has asked the Court to halt the process at each stage. His motion for a preliminary injunction, pending since December 12, 2025, asked the Court to halt the investigation. DN 19; DN 19-1 at 190, 215. The Sixth Circuit remanded on August 24, 2026, "for consideration of Woodcock's motion for a preliminary injunction." *Woodcock v. Univ. of Ky.*, 188 F.4th 969, No. 26-5057, slip op. at 2 (6th Cir. Aug. 24, 2026). The University Officials had held the investigation for nine months during that appeal. They resumed it the day after the Sixth Circuit ruled. DN 65-2 at 2358, 2362, 2369. Woodcock then moved for a temporary restraining order and, in the alternative, for an order under the All Writs Act preserving the Court's jurisdiction. DN 65 at 2315, 2336–38. The Court denied both but set an evidentiary preliminary-injunction hearing for November 19, 2026. DN 83; DN 86. Woodcock renewed the All Writs request on November 4, DN 84 at 8, and the Court denied that request on November 5, DN 87. After the investigator's report issued, Woodcock asked the Court to bar findings, charges, hearings and sanctions, and to rule at the November 19 hearing. DN 97 at 3385, 3388. On November 17, the University Officials asked the Court to postpone the hearing until after the President decides. DN 105 at 3605 ¶ 4. The Court continued the hearing and denied Woodcock's request for an order barring findings in the meantime, recognizing that the continuance "necessarily denies the sort of interim . . . relief of ordering a stop to the investigatory process until the preliminary injunction hearing can be held." Nov. 17 Tr. 34:17–35:18, 36:20–23 (DN 110 at 3740–42); DN 107. The Court described an order requiring the University to have the process "wrapped up by Thanksgiving or by December 1st or December 15th" as "a perfectly reasonable, if not necessarily approved response." Nov. 17 Tr. 31:13–20 (DN 110 at 3737).

On November 10, counsel for the University Officials agreed in writing to give ten days' notice before the President issues findings. DN 93 at 3351. On November 17, the University Officials

described their promise more narrowly, as notice before an "administrative disciplinary process begins." DN 105 at 3605 ¶ 3. They have not said whether the narrower description withdraws the earlier agreement. Neither description of the promise prevents the President from continuing to review the report and the materials on which it rests in the meantime.

Record evidence. Woodcock submits with this motion the record evidence on which it relies. Exhibit A is the redacted investigative report that the University Officials filed publicly in Franklin Circuit Court on November 17, 2026. Because the University Officials have filed that version publicly, their motion to seal the redacted report here, DN 102, is moot as to that version. Exhibit B is the redacted version of Woodcock's final response to the evidence, which Woodcock filed publicly in the same court on the same day. Woodcock cites the report for its concessions. Woodcock disputes many of the report's characterizations, including those in its Part III.B, and will address them separately. Exhibit C is Woodcock's declaration, which authenticates Exhibits D through F. Citations to "Nov. 17 Tr." are to the transcript of the November 17, 2026 status conference, DN 110, by page and line.

STANDARD

The Court considers the same four factors that govern a preliminary injunction: whether the movant is likely to succeed on the merits of the appeal, whether the movant will suffer irreparable harm, whether an injunction would injure other parties, and whether the public interest favors an injunction. *Monclova Christian Acad. v. Toledo-Lucas Cnty. Health Dep't*, 984 F.3d 477, 478 (6th Cir. 2020); *Overstreet v. Lexington-Fayette Urb. Cnty. Gov't*, 305 F.3d 566, 572–73 (6th Cir. 2002). "In First Amendment cases," however, "the crucial inquiry is usually whether the plaintiff has demonstrated a likelihood of success on the merits." *Bays v. City of Fairborn*, 668 F.3d 814, 819 (6th Cir. 2012) (quotation omitted).

ARGUMENT

I. Woodcock Is Likely to Succeed on Appeal

A. The Court of Appeals Has Jurisdiction

The November 17 ruling is appealable because, in practical effect, it refused the injunction. An order that does not in terms refuse an injunction is appealable under 28 U.S.C. § 1292(a)(1) when it has "the practical effect of doing so," the order threatens a "serious, perhaps irreparable, consequence," and the order can be "effectually challenged" only by immediate appeal. *Carson v. Am. Brands, Inc.*, 450 U.S. 79, 83–84 (1981) (quotation omitted). The November 17 ruling meets each requirement. Woodcock asked the Court to bar findings until it ruled on his motions. The Court denied that request, recognizing that its ruling "necessarily denies" that relief, Nov. 17 Tr. 34:22–35:2 (DN 110 at 3740–41), and, in the same ruling, encouraged the University to reach a decision before any hearing. Nov. 13 Tr. 41:7–15 (DN 109 at 3699); Nov. 17 Tr. 31:13–20 (DN 110 at 3737). Findings are the step the motions seek to enjoin. The motions ask the Court to halt "the steps that would carry the investigation forward into charges and sanctions." DN 97 at 3388. An order that encourages that step while refusing to bar it refuses the injunction. The Court also explained its view of the merits: a request "to halt the investigation or bar the president" is "harder to justify at least as far as the precedent." Nov. 17 Tr. 15:19–23 (DN 110 at 3721); *see* Nov. 13 Tr. 28:15–19 (DN 109 at 3686). Findings issued before the Court rules would inflict the injury the motions seek to prevent: a declaration by the official who condemned Woodcock's views that his speech violates University rules, opening the way to charges. That declaration would deter Woodcock, and every faculty member who learns of it, from speaking on the same subject. No later order could undo that deterrence or restore the speech lost while it lasted. The University Officials have also said that they would then ask this Court to abstain. DN 69 at 2436 n.20.

B. The Retaliation Test Has Three Elements

A retaliation claim has three elements, and the record already establishes that each is satisfied in this case. A First Amendment retaliation claim "essentially entails three elements: (1) the plaintiff engaged in protected conduct; (2) an adverse action was taken against the plaintiff that would deter a person of ordinary firmness from continuing to engage in that conduct; and (3) there is a causal connection between elements one and two—that is, the adverse action was motivated at least in part by the plaintiff's protected conduct." *Thaddeus-X v. Blatter*, 175 F.3d 378, 394 (6th Cir. 1999) (en banc). A public employee's speech is protected when the employee speaks as a citizen on a matter of public concern and the employee's interest in speaking outweighs the employer's interest in the efficient performance of its work. *Connick v. Myers*, 461 U.S. 138, 146–47, 150 (1983); *Pickering v. Bd. of Educ.*, 391 U.S. 563, 568 (1968). Speech made pursuant to official duties is not citizen speech, *Garcetti v. Ceballos*, 547 U.S. 410, 421 (2006), but that rule does not reach a professor's scholarship and teaching, which the First Amendment protects. *Meriwether v. Hartop*, 992 F.3d 492, 505 (6th Cir. 2021). Once the plaintiff shows that protected speech was a "motivating factor," the burden shifts to the defendant to show "by a preponderance of the evidence that it would have reached the same decision . . . even in the absence of the protected conduct." *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 287 (1977). That showing turns on what the defendant knew when it acted, because an employer "could not have been motivated by knowledge it did not have." *McKennon v. Nashville Banner Publ'g Co.*, 513 U.S. 352, 360 (1995).

The question in this case is not whether "the mere fact of an investigation" is unlawful. DN 86 at 3286. The courts of appeals apply the same objective ordinary-firmness test. *Constantine v. Rectors & Visitors of George Mason Univ.*, 411 F.3d 474, 500 (4th Cir. 2005) (collecting cases from the Second, Third, Fifth, Sixth, Seventh, Eighth and Tenth Circuits). Woodcock does not contend that every

investigation touching protected speech is unconstitutional. He contends that this investigation retaliates against protected speech because protected speech is the only reason for it.

C. No Basis for the Investigation Exists That Does Not Rest on Protected Speech

The University Officials have never identified a legitimate basis for the investigation. As the Court has observed, "a practical description of why it is important for the university" has been "rather thin or even missing." Nov. 13 Tr. 22:10–13 (DN 109 at 3680). Each possible account of what triggered the investigation leads to the same place.

The Petition. The Petition, which triggered the investigation, is protected speech. The posting of the Petition to AALS discussion groups was the trigger. President Capilouto's announcement named no other speech. DN 19-3 at 496–97. The Sixth Circuit has said so. *Woodcock*, slip op. at 2. No University Defendant has ever denied that the posting of the Petition triggered the investigation. The Petition is protected; it addresses colonization, apartheid and genocide, matters of the highest public concern. Woodcock posted the Petition to discussion groups that another organization hosts, to an audience of outsiders, with a statement that his institutional affiliation implied no endorsement. DN 65-7; DN 40 at 1988–89. Former Dean Duff testified that the University acted because "the taxpayers of Kentucky should not have to fund someone's personal viewpoints," and that Woodcock's work on Israel and Palestine "wasn't" academic work. DN 40 at 1993, 1995. Speech that the University itself treats as personal is citizen speech. *See Josephson v. Ganzel*, 115 F.4th 771, 784 (6th Cir. 2024) (professor's remarks on outside organization's panel, in his individual capacity, were not made pursuant to official duties); *DeCrane v. Eckart*, 12 F.4th 586, 594–95 (6th Cir. 2021). If the Petition were instead scholarship, *Meriwether* would protect it. 992 F.3d at 505. The record contains no complaint from any member of the University community. DN 40 at 1980, 1982, 1989; Ex. A at 46. The Court has recognized that the University "seemingly has not identified any past or future campus disruption," DN 86 at 3286, and that the University lacks "a tremendously

strong case in terms of threatened future disruption or need to investigate retroactively," Nov. 17 Tr. 9:15–21 (DN 110 at 3715). Former Dean Duff testified that the statements attributed to Woodcock, "if made in the classroom, would have been very intimidating," and that the investigation would show whether "he didn't make any such statements in the classroom." DN 40 at 1974, 1984. The investigation was a search for classroom speech that the University had no reason to believe had occurred. "[U]ndifferentiated fear or apprehension of disturbance" cannot outweigh a professor's speech. *Hardy v. Jefferson Cmty. Coll.*, 260 F.3d 671, 682 (6th Cir. 2001) (quotation omitted).

President Capilouto's message described the Petition as "calling for the destruction of a people based on national origin," condemned "any call for violence," and said that the Petition "can be interpreted as antisemitic." DN 19-3 at 496. Neither label removes the Petition from the First Amendment's protection. Advocacy of force is protected unless it is "directed to inciting or producing imminent lawless action and is likely to incite or produce such action." *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969) (per curiam). A call on nations to go to war incites no lawless action. The University itself supports a war. It lit its buildings in Ukraine's colors, and a University webpage has linked for four years to a list of donation drives that includes groups working "in cooperation with" Ukraine's armed forces. SAC ¶ 132 (DN 84-1) at 2785. The Petition criticizes a state, which the Petition calls "the last major Western colony remaining in Africa or the Middle East," and does not mention Jews. DN 65-7.

The way the University hired its investigator confirms that the posting of the Petition to AALS discussion groups set the University in motion. General Counsel Thro countersigned an engagement letter with McGuireWoods dated July 16, 2025, ten days after Woodcock posted the Petition to AALS discussion groups and two days before the University acted. Ex. D at 1, 3. The University did not file the engagement with the General Assembly's contract review committee, as its own

procedures require, or obtain the Governor's approval, as KRS 12.210(1) requires. DN 84-3 at 2841; DN 84-77 at 3244. A university that skips those steps is responding to a new development that demands speed. Between July 6 and July 16, the only new development was the posting of the Petition to AALS discussion groups. Timing that close is itself evidence of causation. *See Mickey v. Zeidler Tool & Die Co.*, 516 F.3d 516, 525 (6th Cir. 2008). The complaints from those days whose contents are in the record concerned that posting. Ex. A at 73; Ex. B at 46. Their authors disclaimed any wish for an investigation, as shown below. Because the Petition is protected and the University had no other basis when it acted, the University Officials cannot show that they would have acted "even in the absence of the protected conduct." *Mt. Healthy*, 429 U.S. at 287.

Departures from ordinary practice confirm causation and rebut any same-decision defense. *See Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 267 (1977) ("Departures from the normal procedural sequence also might afford evidence that improper purposes are playing a role."). Although the retaliation test does not require it, the record also answers the Court's question whether anything about the investigation is "vindictive, disproportionately burdensome, or otherwise out of the ordinary." DN 86 at 3287. Much is. Under the University's policy, an investigator refers the investigation materials to the Equal Opportunity Executive Director, who decides whether probable cause supports a hearing. DN 84-10 at 2924. Here the President makes that decision. DN 37 at 34 n.12, PageID 1791. The Executive Director did not know how the outside investigator came to be hired. DN 40 at 1946. Former Dean Duff assumed that "counsel for the president, for the university" had decided to launch the investigation. *Id.* at 1987. And the University engaged the investigator without the approvals that its procedures and state law require. DN 84-3 at 2841; DN 84-77 at 3244. The University does not ordinarily investigate a report merely because it receives one. When a report does not describe harassment, the Office of Equal Opportunity holds a "nonpunitive" conversation or "just close[s] the case." DN 40 at 1961–63.

Here, the University opened a full investigation on the strength of complaints from outside the University. *Id.* at 1980, 1982, 1989.

The manner of speaking. The manner of Woodcock's speech supplies no basis either, because that manner was itself protected speech. The Court has suggested that the report concerns "not just what [Woodcock] said or believed, but the manner and means of speaking." Nov. 13 Tr. 39:21–25 (DN 109 at 3697). The "manner" at issue is itself protected speech: posts to an outside organization's discussion groups, remarks at outside conferences, and a petition hosted on a personal website. The First Amendment protects a speaker's right to select "the most effective means" of speaking. *Meyer v. Grant*, 486 U.S. 414, 424 (1988). Two of the outside law professors who complained about the AALS posts understood this and expressly opposed an investigation. One wrote to the Dean, "I don't want you to do anything about Ramsi, because I'm a First Amendment absolutist." Ex. A at 73. Another told the Dean that Woodcock's views were "not your business as dean," *id.*, and later told the investigator that Woodcock's "views are protected by the First Amendment" and that his conduct "does not merit an outside investigation," Ex. B at 33; Ex. E-1. The investigator calls the posts "spamming." Ex. A at 2. But the organization that hosts the discussion groups has confirmed that "[i]n each case, we opted to release your postings fully." Ex. B at 32; DN 84-15 at 2953.

The conference remarks and the University's selective response. The conference remarks at George Mason and Hong Kong supply no independent basis either. The University had known Woodcock's views for more than sixteen months before it acted. On February 14, 2024, Woodcock presented early-stage work titled "A Law and Economic Argument for Dismantling Israel" at a College faculty research seminar. Ex. A at 34. Woodcock circulated the paper's abstract to the faculty email list that morning. DN 84-31 at 3027; Ex. B at 44; Ex. C ¶ 2. In May 2024, Woodcock circulated a statement on Palestine to the faculty list in which he called for an end to Israel and Zionism. DN 84-32 at 3028–29; Ex. B at 34. Faculty colleagues circulated political statements to the same listserv without

investigation, including messages about the war in Ukraine. DN 19-8 at 1113; Ex. B at 34; DN 84-72 at 3197–3210. An emeritus member of the law faculty answered Woodcock on the same list that Gaza's government "made the classic error of poking the bear," and that those who "allow [their] non combatant children and neighbors to remain" on a battlefield have "neither right nor reason to be surprised if they become victims of that battle." DN 84-76 at 3233–35, 3243. No University official investigated those messages. SAC ¶ 136 (DN 84-1) at 2787. Effective July 1, 2025, on the unanimous recommendation of the College of Law's promotion and tenure committee and the then-Dean, the University promoted Woodcock to full professor. Ex. A at 33; DN 84-1 at 2743. The conference remarks reached University leadership only in June 2025, through complaints from people outside the University. One complaint went to the Board of Trustees, whose Chair forwarded it to the Provost. Ex. B at 45; Ex. E-2. Another complaint was forwarded to the President, the Provost, the General Counsel and the Acting Dean. Ex. B at 46; Ex. A at 131. The University did not act on those complaints. When the Vice Provost raised one of the conference remarks with Woodcock on July 9, 2025, she did not mention the Petition, an investigation, a suspension or termination, and suggested at most that Woodcock keep his conference remarks to the subject of his panel. SAC ¶ 66 (DN 84-1) at 2760. Other institutions hosted Woodcock at both conferences, without University approval or review of what he would say. *Id.* ¶ 81 at 2766. The University paid for neither trip. Ex. C ¶ 5. Other University faculty speak at outside academic events on matters beyond their announced topics without consequence. A University professor of Russian studies, invited in 2022 to lecture at two other universities on twentieth-century Russian poetry, opened the lectures, according to the transcripts YouTube generated for the recordings, by referring to "Russia's horrific war in Ukraine" and "[R]ussia's cruel and violent war." Ex. F-1 at 2:08; Ex. F-2 at 1:01. Woodcock is aware of no investigation of those remarks. Ex. C ¶ 8. Remarks at an outside event, at the host's invitation, can be a professor's own speech. *See Josephson*, 115 F.4th at 784. If the

remarks were part of Woodcock's job, they were scholarship, protected "whether that speech is germane to the contents of the lecture or not." *Meriwether*, 992 F.3d at 507.

The student accounts. The student accounts cannot supply a basis for the University's July 18 action, because the University did not have them when it acted. The investigator interviewed "four students who reported additional conduct" only "[a]fter issuing the initial Notice of Investigation." Ex. A at 2. Every student report followed President Capilouto's July 18 message. Ex. B at 38. One student reporter "first learned of the Petition from the University President's July 2025 message." Ex. A at 91. Another, who is not enrolled in the College of Law and has never met Woodcock, learned Woodcock's name only after that message. Ex. C ¶ 9; Ex. B at 38. At least two student reporters told the investigator that they had not filed complaints. Ex. A at 46. Woodcock asked how each student reporter came to the investigator's attention. The University declined to say. *Id.* The two student reporters who took Woodcock's classes described normal law classes in which Woodcock did not raise Israel or Palestine. *Id.* at 93, 95; Ex. B at 36–37. One student reporter stated that she knew Woodcock was speaking in his personal capacity. Ex. B at 35. Students' discomfort with writings they elected to seek out off campus is not harassment. Even if it were, "[t]here is no categorical 'harassment exception' to the First Amendment's free speech clause." *Saxe v. State Coll. Area Sch. Dist.*, 240 F.3d 200, 204 (3d Cir. 2001) (Alito, J.).

D. The Imminent Charging Decision Would Deter a Person of Ordinary Firmness

Findings by the President, the step now imminent, would deter a person of ordinary firmness from speaking. The courts of appeals have held that a threat of discipline can be an adverse action. *Kubala v. Smith*, 984 F.3d 1132, 1140 (6th Cir. 2021) ("threats alone can constitute an adverse action if the threat is capable of deterring a person of ordinary firmness from engaging in protected conduct" (quoting *Hill v. Lappin*, 630 F.3d 468, 474 (6th Cir. 2010))); *Levin v. Harleston*, 966 F.2d 85, 89–90 (2d Cir. 1992) (college president's creation of a committee to review a professor's speech

"conveyed a chilling threat of discipline"); *Coszalter v. City of Salem*, 320 F.3d 968, 976 (9th Cir. 2003) ("a threat of disciplinary action"); *see also Barton v. Clancy*, 632 F.3d 9, 29–30 (1st Cir. 2011) (retaliation need not take the form of a tangible "adverse employment action"). The Fourth and Seventh Circuits distinguish official speech accompanied by "a threat, coercion, or intimidation intimating that punishment, sanction, or adverse regulatory action will imminently follow" from speech that carries no such threat. *Suarez Corp. Indus. v. McGraw*, 202 F.3d 676, 687 (4th Cir. 2000); *Hutchins v. Clarke*, 661 F.3d 947, 956 (7th Cir. 2011) (quoting *Suarez*, 202 F.3d at 687). Here, the whole process carries a threat of termination, which the suspension and the building ban have reinforced from the first day. The Court has suggested otherwise, that the investigation's conclusion "would seem to relieve rather than exacerbate the allegedly adverse actions and potentially lead to an administrative process that would allow him to challenge any additional sanctions." DN 87. Respectfully, the conclusion of the investigation would advance the ongoing retaliatory process. A finding of responsibility issued by the University's chief executive, with termination as the stated possible sanction, DN 19-15 at 1571, would declare that Woodcock's speech on Israel and Palestine violates University rules. Each later statement by Woodcock would then risk a second violation. That is the "choice between self-censorship and uncertain sanctions" from which the Sixth Circuit protected candidates in *Fischer*, 52 F.4th at 313. The Judicial Conduct Commission had called the candidates to a meeting, after which the Commission "would decide . . . whether to institute formal proceedings." *Fischer v. Thomas*, 78 F.4th 864, 867 (6th Cir. 2023). The Sixth Circuit enjoined the Commission, pending appeal, "from taking any action, including initiating formal proceedings." *Fischer*, 52 F.4th at 313. The court explained that "the risk of the Commission opening a formal proceeding 'lurks in the background of the invitation,'" and asked "what judicial candidates would feel like they could simply ignore this sort of governmental investigation?" *Id.* at 309 (quoting *Speech First, Inc. v. Schlissel*, 939 F.3d 756, 765 (6th Cir. 2019)). Woodcock stands where those candidates

stood, subject to a process that could result in serious discipline and that is, in the Court's words, "past one hurdle but not reached the final hurdle." Nov. 13 Tr. 21:2–5 (DN 109 at 3679). The President's continuing review of the report subjects Woodcock's speech to the kind of close monitoring that can itself be an adverse action. *See Josephson*, 115 F.4th at 788. The threat is greatest at this terminal stage.

The University conveyed that threat from the first day. President Capilouto announced to the University community that Woodcock's views were "repugnant" and removed him from teaching "pending an investigation." DN 19-3 at 496–97. The University chose an investigator who had contributed to the Heritage Foundation's Project 2025, as Woodcock's counsel pointed out to her in writing. DN 26-3 at 1442. The investigator's procedures letter told Woodcock that he would not see her report, that the President would decide the findings and "any sanction," and that the President might find "termination of a tenured appointment" appropriate. DN 19-15 at 1570–71. The University Officials have told this Court that the investigation could lead to "tenure revocation or a lengthy suspension without pay." DN 23 at 1298. The suspension confirms the threat. Woodcock does not seek relief from the suspension in this motion, but the suspension remains evidence of what the University intends. A university does not keep a tenured professor out of the classroom for sixteen months over a matter it expects to close without discipline. DN 65-8 at 2405. Here the threat is explicit and the decision imminent.

Nor would a later hearing relieve the harm. The injury is the chill that findings and charges inflict now, on Woodcock and on every colleague who is watching. No later exoneration can restore the speech deterred in the meantime. Defending a disciplinary proceeding is itself a burden that deters. The Second Circuit has held that "the threat of administrative disciplinary proceedings" "could have a deterrent effect." *Washington v. Cnty. of Rockland*, 373 F.3d 310, 320 (2d Cir. 2004). A person of ordinary firmness in Woodcock's position would also consider who decides. The hearing panels that

would follow are "only advisory" to the President, who decides "in their sole discretion" whether to pursue termination before the Board of Trustees. DN 19-3 at 526. Woodcock does not ask the Court to judge the fairness of those procedures. They matter because they tell a person of ordinary firmness that the prospect of charges ending in termination is real. That prospect is what chills. The University Officials have also told this Court that once "formal charges" are filed, "abstention under Younger or this Court's inherent powers would be appropriate." DN 69 at 2436 n.20. The University Officials thus intend to use the filing of charges as a reason to close this forum. Woodcock disputes that abstention would ever be appropriate here. But the University Officials' position makes relief before charges all the more urgent.

E. The Law Requires No Deference to Administrators Acting on Outside Complaints

No deference is owed here. The decisions at issue respond to political pressure. No faculty body made them. The Court has invoked a university's interest in "determin[ing] for itself on academic grounds who may teach" and the reminder that "[t]he administration of the university rests not with the courts." DN 86 at 3286–87. The deference the Supreme Court has described runs to "the faculty's professional judgment" in "the substance of a genuinely academic decision." *Regents of Univ. of Mich. v. Ewing*, 474 U.S. 214, 225 (1985). The Second Circuit deferred to an economics department's hiring choice because the choice was "made by experts in their good faith professional judgment, free from any influence from political entities in the state or other governmental or university officials outside the relevant discipline." *Heim v. Daniel*, 81 F.4th 212, 234 (2d Cir. 2023). Administrators, not faculty, decided to investigate, suspend and ban Woodcock. The procedures that would follow give the decisions to the President, not to any faculty body. The University Officials' defense nonetheless turns on academic questions, such as whether Woodcock's conference remarks were "germane" and reflected his "expertise." DN 63 at 2213, 2216. No faculty committee has answered those questions or will answer them. Until weeks after the investigation began, dismissal

charges against a tenured professor went to the Faculty Senate Hearing Panel (Privilege and Tenure). The President could take a case to the Board of Trustees only after accepting that panel's adverse report. DN 19-3 at 448–49. The interim regulation that the President has since adopted makes the panels "only advisory to the President," lets the President pursue termination "in their sole discretion," and permits panels without a single faculty member. DN 19-3 at 481, 524, 526. These are administrative actions, not exercises of faculty judgment. If courts deferred to decisions of this kind, *Meriwether* could not have held that a professor's speech was protected despite the university's contrary judgment. 992 F.3d at 507.

An "interest in banning disfavored viewpoints is not in line with the workplace management concerns" that justify deference to public employers. *Pernell v. Fla. Bd. of Governors of State Univ.*, 181 F.4th 1135, 1152 (11th Cir. 2026). Since *Garcetti*, numerous courts of appeals have recognized First Amendment protection for the on-the-job academic speech of professors against attempts by governments or university administrators to limit or sanction it. *Adams v. Trs. of Univ. of N.C.-Wilmington*, 640 F.3d 550, 562–64 (4th Cir. 2011); *Meriwether*, 992 F.3d at 504–06; *Heim*, 81 F.4th at 224–28; *Kilborn v. Amiridis*, 131 F.4th 550, 557–58 (7th Cir. 2025); *Demers v. Austin*, 746 F.3d 402, 411–12 (9th Cir. 2014); *Reges v. Cauce*, 175 F.4th 1014, 1030–31 (9th Cir. 2026); *Pernell*, 181 F.4th at 1152.

The academic-freedom cases from which the Court drew the phrase "who may teach" also address a different threat: political interference with a university's decisions. When Justice Frankfurter described a university's freedom to determine "who may teach," he was defending universities against government efforts to impose orthodoxy. *Sweezy v. New Hampshire*, 354 U.S. 234, 263 (1957) (Frankfurter, J., concurring in the result). As the Supreme Court later explained, "[i]n those cases, government was attempting to control or direct the content of the speech engaged in by the university or those affiliated with it," and the Court "was speaking in reaction to content-based

regulation." *Univ. of Pa. v. EEOC*, 493 U.S. 182, 197 (1990). It is precisely such content-based regulation that Woodcock opposes—an investigation of Woodcock's political speech by University administrators after the General Assembly directed public universities to adopt policies that "use as guidance" the IHRA definition of antisemitism, whose examples treat some criticism of Israel as antisemitic. DN 84-21 at 2975; DN 42-3 at 2098.

II. Woodcock Will Suffer Irreparable Harm

Findings would cause irreparable harm, because they would chill speech that no later ruling could restore. "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod*, 427 U.S. at 373. The Sixth Circuit has applied that rule to retaliation: "even minimal infringement upon First Amendment values constitutes irreparable injury sufficient to justify injunctive relief." *Newsom v. Norris*, 888 F.2d 371, 378 (6th Cir. 1989). The rule leaves no room for the view that a further period of chill is acceptable because it is short, or because the added chill from findings is "marginal" relative to the chill the investigation has already caused. Nov. 17 Tr. 35:3–5 (DN 110 at 3741). Actions "designed to threaten" a person's "economic livelihood" are likely to deter a person of ordinary firmness. *Josephson*, 115 F.4th at 788 (jury could find adverse action where colleagues closely monitored a professor's performance after his protected speech to build a record against his reappointment) (quotation omitted). The University Officials' latest description of their promise of notice does not clearly reach findings, so findings could issue before the Court of Appeals rules. DN 105 at 3605 ¶ 3; *compare* DN 93 at 3351. In the meantime, nothing prevents the President from continuing to review the report. That review is itself chilling. The official who condemned Woodcock's views is studying a 137-page record of his speech to decide whether to charge him. *See Levin*, 966 F.2d at 89–90. A finding could not be withdrawn in a way that restores the speech it deters. Woodcock has already curtailed his speech

about Palestine because of the investigation. DN 65-1 at 2344 ¶ 15. Colleagues and students already fear speaking about Palestine or supporting Woodcock. DN 106 at 3609.

The issuance of findings would tell every member of the University community that, if a faculty member says something the University Officials find inconvenient, the University Officials can generate a 137-page report on that speech and use the report as the basis for passing judgment on the speaker with a view to possible termination. Whatever the ultimate decision, the message would be clear and chilling. No court can later restore the words that members of the University community will hold back in consequence. Interim relief exists to protect "the efficacy of the court's remedial options." *Hutson, Inc. v. Waggener*, No. 5:25-cv-47-BJB, slip op. at 10 (W.D. Ky. Aug. 27, 2026) (cleaned up). That is especially so here, where the University Officials have said that they would ask this Court to abstain once charges issue. DN 69 at 2436 n.20.

III. The Injunction Will Not Harm Others and Serves the Public Interest

When a movant seeks an injunction against a likely First Amendment violation, "the likelihood of success on the merits often will be the determinative factor." *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012) (quotation omitted). If the movant shows a substantial likelihood of a constitutional violation, "no substantial harm to others can be said to inhere in its enjoinment." *Déjà Vu of Nashville, Inc. v. Metro. Gov't of Nashville & Davidson Cnty.*, 274 F.3d 377, 400 (6th Cir. 2001). The University Officials have no legitimate interest in carrying forward an investigation that retaliates against protected speech. The injunction would last only until the Court of Appeals rules. No student or colleague has complained of Woodcock's teaching. Ex. B at 36–37; Ex. A at 97. None would be affected. "[I]t is always in the public interest to prevent the violation of a party's constitutional rights." *G & V Lounge, Inc. v. Mich. Liquor Control Comm'n*, 23 F.3d 1071, 1079 (6th Cir. 1994).

IV. Relief Requested

Woodcock asks the Court to enjoin Defendants Capilouto, DiPaola, Thro and Van Tatenhove, in their official capacities, and all persons in active concert or participation with them, Fed. R. Civ. P. 65(d)(2), pending disposition of Woodcock's appeal, from: (1) taking any step in furtherance of the investigation of Woodcock (University of Kentucky Office of Equal Opportunity Investigation No. 2025-1230); (2) issuing, transmitting or giving effect to any letter of findings or determination arising from that investigation; (3) imposing, recommending, forwarding or applying any sanction arising from that investigation; (4) issuing any statement of charges, referral to a hearing or notice of hearing, or convening any hearing, appeal or other disciplinary, sanction or termination proceeding, arising from that investigation or from the speech that is its subject; and (5) taking any other step to initiate, advance or conclude any disciplinary, sanction or termination process arising from that investigation or that speech. Each item is independent. If findings issue before the Court rules, Woodcock asks the Court to enjoin every later step. Woodcock asks the Court to require no bond or a nominal bond. Because the University Officials have narrowed their description of the notice they will give, and because the President's review continues in the meantime, Woodcock asks the Court to rule as soon as possible and in any event by noon on November 23, 2026. Woodcock is also asking the Court of Appeals for the same relief under Federal Rule of Appellate Procedure 8(a)(2)(A) and will promptly inform that court of this Court's ruling. This motion, like the appeal, does not reach the relief concerning Woodcock's suspension and the building ban requested in items (a) and (b) of DN 19 and item (4) of DN 97. Those requests remain before this Court. A notice of appeal divests a district court only of "control over those aspects of the case involved in the appeal." *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982) (per curiam). An appeal from a preliminary-injunction ruling also "does not divest the district court of jurisdiction to proceed with the action on the merits." *Zundel v. Holder*, 687 F.3d 271, 282 (6th Cir. 2012) (quoting *Moltan Co. v.*

Eagle-Picher Indus., Inc., 55 F.3d 1171, 1174 (6th Cir. 1995) (quoting 9 James Wm. Moore et al., *Moore's Federal Practice* ¶ 203.11, at 3-54 (2d ed. 1989))). A proposed order is submitted with this motion.

CONCLUSION

Woodcock respectfully asks the Court to grant an injunction pending appeal.

Date: November 20, 2026

Respectfully submitted,

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/s/ Joe F. Childers

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