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 MOTION FOR LEAVE TO FILE A SECOND AMENDED AND SUPPLEMENTAL VERIFIED COMPLAINT, TO DENY THE PENDING MOTIONS TO DISMISS AS MOOT, AND FOR AN EXPEDITED SCHEDULE

Plaintiff Ramsi A. Woodcock ("Woodcock") moves for leave to file the Second Amended and Supplemental Verified Complaint attached as Exhibit A (the "Second Amended Complaint") under Federal Rule of Civil Procedure 15(a)(2) and 15(d).[1] The Second Amended Complaint restates the claims of the Complaint (DN 1) and the Amended Complaint (DN 36) and adds the facts of the fifteen months since the University officials suspended Woodcock, banned him from the law building, and began investigating his speech—a suspension and an investigation that continue. The University Defendants (Capilouto, DiPaola, Thro, Duff, and Van Tatenhove) have argued that those later events are "not before the Court" because Woodcock "has not filed a supplemental complaint under Fed. R. Civ. P. 15(d)." DN 79 at 2643. The Second Amended Complaint puts them before the Court. It also bears directly on the preliminary injunction hearing the Court has set. DN 83 at 8. The Court has stated that "time and events have not stood still" since the December 2025 hearing and that Woodcock has not yet shown that the investigation or the reassignment is "vindictive,

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

disproportionately burdensome, or otherwise out of the ordinary." DN 83 at 6–7. The Second Amended Complaint is verified, and its allegations of the events since December 2025 answer those questions. Woodcock asks the Court to: (1) grant leave to file the Second Amended Complaint before the preliminary-injunction hearing; (2) deny as moot the motions directed at the Amended Complaint (DN 63, DN 67, and DN 81), with leave to renew them by supplemental briefs; (3) hold a scheduling conference at the conclusion of the preliminary-injunction hearing and set an expedited schedule toward a trial on the merits of Woodcock's claims for prospective relief; (4) treat Woodcock's motion for a preliminary injunction (DN 19), and his alternative request for an order under the All Writs Act preserving the Court's jurisdiction until it rules on that motion (DN 65 at 2337–38), as directed to the Second Amended Complaint; and (5) in the alternative, if the Court decides the University Defendants' motion for judgment on the pleadings (DN 63) on the Amended Complaint, grant leave to file the sur-reply attached as Exhibit B, which addresses the four exhibits and the new assertions of fact in the University Defendants' reply. A proposed order is submitted with this motion. LR 7.1(e).

BACKGROUND

Woodcock filed this action on November 13, 2025, DN 1, and moved for a preliminary injunction on December 12, 2025, DN 19 at 181. The motion seeks relief against the suspension, the ban, and the investigation under the First Amendment and the Due Process Clause. *Id.* The Court held a full-day evidentiary hearing on December 19, 2025, at which Woodcock, then-Interim Dean James C. Duff, and the University's Executive Director of the Office of Equal Opportunity testified. DN 40. Woodcock filed the Amended Complaint on January 7, 2026. DN 36. On January 8, 2026, the Court abstained and denied the motion. DN 37. On August 24, 2026, the Sixth Circuit reversed and remanded "for consideration of Ramsi Woodcock's motion for a preliminary injunction and

further proceedings consistent with the opinion of this court." 6th Cir. No. 26-5057, Doc. 99-3 at 1. The mandate issued on September 18, 2026. *Id.*, Doc. 109.

Since the remand, the University Defendants have moved for judgment on the pleadings, DN 63; Woodcock has moved for a temporary restraining order, DN 65; the Attorney General has moved to dismiss the two counts of the Amended Complaint that challenge 2025 Senate Joint Resolution 55 ("SJR 55"), DN 67 at 2411; and Secretary McMahon has moved to dismiss the claims against her, DN 81. After a hearing on October 6, the Court dismissed the University as a party. DN 73. On November 3, 2026, the Court denied the motion for a temporary restraining order and set a hearing on the motion for a preliminary injunction for November 19, 2026. DN 83. The University Defendants have told the Court that "[t]he Investigator anticipates submitting a final report by November 2, 2026." DN 63 at 2202 n.36. No scheduling order has issued. No party has taken discovery.

ARGUMENT

I. The Court Should Grant Leave to File the Second Amended Complaint

Rule 15(a)(2) directs that "[t]he court should freely give leave when justice so requires." The Supreme Court has held that "this mandate is to be heeded." *Foman v. Davis*, 371 U.S. 178, 182 (1962). Rule 15(d) permits a supplemental pleading "setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented." The Court "may permit supplementation even though the original pleading is defective in stating a claim or defense." Fed. R. Civ. P. 15(d). Rule 15(d) "plainly permits supplemental amendments to cover events happening after suit." *Griffin v. Cnty. Sch. Bd. of Prince Edward Cnty.*, 377 U.S. 218, 227 (1964). A supplemental pleading may allege that a condition of suit was satisfied after the action began. *Mathews v. Diaz*, 426 U.S. 67, 75 & n.8 (1976).

The Second Amended Complaint does what Rule 15(d) contemplates. The Second Amended Complaint pleads the events since January 2026 that arise from the course of conduct alleged in the Complaint and the Amended Complaint: the officials' continuation of the suspension for more than fifteen months; the expansion and conduct of the investigation; the removal of Woodcock's named professorship on July 1, 2026, which the University Defendants have explained to this Court by reference to Woodcock's "antisemitic views," DN 63 at 2198 n.10; Woodcock's requests to have the officials' public charge against him withdrawn or heard, and the officials' refusals; and the officials' statements to the Sixth Circuit about Woodcock's planned scholarship. Ex. A, Parts M, N, and R and Count VIII. The Second Amended Complaint also names Dean Gregory F. Van Tatenhove, who continued the suspension after he took office in July 2026, in his individual capacity, and asserts against the University Defendants the claim against SJR 55 that Woodcock told the Court he would bring. DN 78 at 2614. The Second Amended Complaint answers the University Defendants' objection that the length of the suspension is not pleaded, DN 79 at 2643, and their objection that no supplemental complaint brings post-filing acts before the Court, *id.* & n.59.

The Second Amended Complaint also restates the claims of the Amended Complaint in light of the parties' briefing and adds claims supported by the same course of conduct alleged in the prior complaints. The Second Amended Complaint adds claims for retaliation against Woodcock's petitioning and his reports and opposition to discrimination (Count II), for viewpoint discrimination (Count III), and for biased decision-makers and a structurally unfair disciplinary process (Count IX). It adds a compelled-speech theory to the overbreadth count (Count IV) and an Establishment Clause theory to the count challenging SJR 55 (Count XII). It omits the Amended Complaint's references to 42 U.S.C. § 1985, and it restates the claims against the Attorney General and the Secretary as described in Part II. The new claims arise from the suspension, the ban, and the investigation that the Complaint and the Amended Complaint challenge.

No reason to deny leave exists. Woodcock moves promptly. The Sixth Circuit's mandate issued six weeks ago. The Second Amended Complaint pleads facts through October 31, 2026. Because no scheduling order has issued and no discovery has begun, the amendment prejudices no party. The amendment is not futile. The Second Amended Complaint restates the claims on which the Sixth Circuit remanded for consideration of a preliminary injunction and pleads the facts on which the University Defendants say the claims depend.

The Second Amended Complaint asserts only federal claims and no claim for breach of contract. Woodcock pursues his claims under Kentucky law in the Franklin Circuit Court, because a federal court may not adjudicate state-law claims against state officials in their official capacities. *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 106, 121 (1984). Ex. A, Nature of This Pleading.

II. The Court Should Deny the Pending Motions as Moot and Permit the Movants to Renew Them by Supplemental Brief

Once filed, the Second Amended Complaint will be "the legally operative complaint." *Parry v. Mohawk Motors of Mich., Inc.*, 236 F.3d 299, 306 (6th Cir. 2000). The three pending dispositive motions address a pleading that will no longer control the case: the University Defendants' motion for judgment on the pleadings, DN 63; the Attorney General's motion to dismiss, which addresses Counts V and X of the Amended Complaint, DN 67 at 2411; and Secretary McMahon's motion to dismiss, DN 81. The Second Amended Complaint renumbers the counts, adds a defendant, and pleads facts that bear directly on the arguments the motions make, including the University Defendants' arguments about the length of the suspension and about qualified immunity. DN 79 at 2643, 2654–55.

The Second Amended Complaint also answers the arguments in the Attorney General's and the Secretary's motions. The Attorney General argues that "SJR 55 itself does no harm" to Woodcock. DN 67 at 2417. The Second Amended Complaint asserts the SJR 55 claim against the University

Defendants, who say they apply the IHRA definition to Woodcock because SJR 55 requires it, as well as against the Attorney General, and it challenges SJR 55 as applied and on its face. Ex. A, Part D and Count XII. The Secretary argues that Woodcock lacks standing, that his Establishment Clause claim fails, and that he challenges no final agency action. DN 81 at 2696, 2701, 2704. The Second Amended Complaint no longer pleads a separate Establishment Clause count against the Secretary. It pleads the Department's policy of applying the IHRA definition, the funding pressure that enforces it, and the University Defendants' reliance on federal guidance in investigating Woodcock, and it adds a claim for nonstatutory equitable relief under the First Amendment. Ex. A, Part E and Count XIII. The Secretary also argues that she was not served with the Amended Complaint. DN 81 at 2695. Woodcock will serve the Second Amended Complaint on the Secretary under Rule 4(i) and on Dean Van Tatenhove under Rule 4(e).

Some of the briefing on the pending motions will remain useful. To avoid starting over, Woodcock proposes that the Court deny the three motions as moot and permit each movant, within fourteen days after the Second Amended Complaint is filed, to file a supplemental brief that identifies the arguments the movant renews, states the counts of the Second Amended Complaint to which each argument applies, and addresses any new allegations. Woodcock would file a supplemental response within fourteen days after each supplemental brief is filed, and the movant could reply within seven days after the supplemental response is filed. The Court could then decide the renewed motions on the existing briefs and the supplemental briefing. Woodcock also asks that his November 20, 2026 deadline to respond to Secretary McMahon's motion (DN 81) be suspended until the Court rules on this motion.

III. The Court Should Hold a Prompt Scheduling Conference and Set an Expedited Schedule Toward Trial on the Merits

Woodcock asks the Court to hold a scheduling conference under Rule 16 and to set a schedule that brings Woodcock's claims for declaratory and injunctive relief to a prompt trial on the merits. The parties have already tried part of the case. The Court heard a full day of testimony on the preliminary-injunction motion on December 19, 2025. DN 40. That testimony becomes part of the trial record. Fed. R. Civ. P. 65(a)(2). The officials' written decisions to suspend Woodcock, to continue the suspension, and to investigate his speech are in the record. The investigation itself is nearly complete. DN 63 at 2202 n.36.

Woodcock therefore asks that the scheduling conference be held at the conclusion of the preliminary-injunction hearing, and that the Court, as Rule 26(f)(1) permits, direct the parties to confer under Rule 26(f) and file a joint report no later than two business days before the hearing. Woodcock proposes focused discovery on the claims for prospective relief closing ninety days after the scheduling conference, and a trial of those claims promptly thereafter. Woodcock's claims for damages against the officials in their individual capacities would proceed on a schedule the Court sets at the conference.

IV. The Motion for a Preliminary Injunction Remains Pending, and the Second Amended Complaint Bears on the Preliminary-Injunction Hearing

Granting leave to amend should not moot Woodcock's motion for a preliminary injunction (DN 19). The motion seeks relief under the First Amendment and the Due Process Clause against the suspension, the ban, and the investigation. DN 19 at 181. The Second Amended Complaint restates those claims as Counts I and VIII on the same facts, supplemented by later events. A verified complaint carries the same weight as an affidavit. *El Bey v. Roop*, 530 F.3d 407, 414 (6th Cir. 2008). The Second Amended Complaint's verified allegations of the events since the December 2025

hearing therefore answer the questions the Court has identified for the hearing. They show that the investigation and the reassignment would deter a person of ordinary firmness from speaking, that Woodcock's speech was protected in the forums in which he spoke, and that the investigation and the reassignment are "vindictive, disproportionately burdensome, or otherwise out of the ordinary." *See* DN 83 at 5–7. DN 83 did not address Woodcock's alternative request for an order under the All Writs Act, 28 U.S.C. § 1651(a), directing Defendants not to issue the investigative report or any findings or sanction until the Court rules on the motion for a preliminary injunction. DN 65 at 2315, 2337–38. Woodcock asks the Court to grant leave before the hearing and to treat the motion for a preliminary injunction, and that request, as directed to the Second Amended Complaint.

V. In the Alternative, the Court Should Grant Leave to File a Sur-Reply on the New Material in the University Defendants' Reply

If the Court decides the University Defendants' motion for judgment on the pleadings on the Amended Complaint rather than denying the motion as moot, Woodcock asks for leave to file the eight-page sur-reply attached as Exhibit B. A motion is submitted for decision after the reply is filed. LR 7.1(g). The Clerk submitted DN 63 to chambers on November 3, 2026. The University Defendants' reply attaches four documents that their motion did not—an EEOC charge, a letter from Woodcock's counsel, the settlement agreement between the United States and the University of North Carolina, and Administrative Regulation 10:1, DN 79-1 to 79-4—and asserts facts that appear nowhere in the Amended Complaint. When a movant "submits in a reply brief new reasons and evidence," the court must "allow the nonmoving party an opportunity to respond." *Seay v. Tenn. Valley Auth.*, 339 F.3d 454, 481–82 (6th Cir. 2003). The sur-reply addresses only the new material.

The sur-reply also asks the Court, if the Court would otherwise rely on the EEOC charge, the letter, or the reply's other new assertions of fact, to exclude that material under Rule 12(d) rather than convert the motion into one for summary judgment. Under Rule 12(d), if "matters outside the

pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56," and "[a]ll parties must be given a reasonable opportunity to present all the material that is pertinent to the motion." Woodcock makes the same request here. If the Court declines to grant leave to file the sur-reply, Woodcock asks the Court to exclude that material under Rule 12(d).

CONCLUSION

Woodcock respectfully asks the Court to: (1) grant leave to file the Second Amended and Supplemental Verified Complaint (Exhibit A) before the preliminary-injunction hearing and direct the Clerk to file it; (2) deny as moot the motions directed at the Amended Complaint (DN 63, DN 67, and DN 81), with leave to renew them by supplemental brief on the schedule proposed above, and suspend Woodcock's deadline to respond to DN 81; (3) hold a scheduling conference at the conclusion of the preliminary-injunction hearing and set an expedited schedule toward a trial on the merits of Woodcock's claims for prospective relief; (4) treat Woodcock's motion for a preliminary injunction (DN 19), and his alternative request for an order under the All Writs Act preserving the Court's jurisdiction until it rules on that motion (DN 65 at 2337–38), as directed to the Second Amended Complaint; and (5) in the alternative, grant leave to file the sur-reply (Exhibit B) or exclude under Rule 12(d) the new material in the University Defendants' reply.

Date: November 4, 2026

Respectfully submitted,

/s/ Rima Kapitan

/s/ Joe F. Childers

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