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 REPLY IN SUPPORT OF HIS MOTION FOR LEAVE TO FILE A SECOND AMENDED AND SUPPLEMENTAL VERIFIED COMPLAINT

The University officials who are defendants here (the "University Defendants") do not oppose leave to file the Second Amended Complaint, but ask the Court to rule on their motion for judgment on the pleadings that the Second Amended Complaint would replace. DN 90 at 3312, 3315. The Court should grant leave at or before the start of the November 19, 2026 hearing on Plaintiff Ramsi Woodcock's motion for a preliminary injunction. DN 86 at 3288. The University Defendants' remaining arguments come down to two requests that would delay that hearing and the case: that the amendment moot the pending motion for a preliminary injunction, and that the University Defendants be allowed to defer any response to the Second Amended Complaint until after the Court decides their pending motion for judgment on the pleadings, leaving them free to file a second round of Rule 12 motions. Neither request has merit.

I. The Amendment Does Not Moot the Motion for a Preliminary Injunction

An amended complaint supersedes the prior complaint. It does not supersede pending motions, which are not pleadings. Fed. R. Civ. P. 7(a). Whether a pending motion survives an amendment depends on what the motion tests. A motion for judgment on the pleadings tests the words of the

complaint, so revised allegations call for fresh analysis. A motion for a preliminary injunction tests the likelihood of success on the claims, on the law and the evidence, and it survives so long as the claims on which it rests remain in the case. The motion seeks relief under the First Amendment and the Due Process Clause against his reassignment away from teaching, the ban on his entering the law building, and the investigation of his speech. DN 19 at 181. Those claims remain, as Counts I and VIII, now supported by allegations of the events since the First Amended Complaint was filed. DN 84 at 2731; DN 84-1 at 2800–05, 2817–21. The law and the evidence at the hearing, not the wording of the pleading, will decide the motion.

The University Defendants' position inverts the rule they invoke. A district court "may exercise [its] discretion and apply a pending motion to dismiss to portions of an amended complaint that are 'substantially identical to the original complaint,'" but not where the amended complaint "substantially revised" the original with new allegations. *Crawford v. Tilley*, 15 F.4th 752, 759 (6th Cir. 2021) (cleaned up); DN 90 at 3318. That rule concerns pleading motions, which turn on allegations. It offers no reason to treat a motion for a preliminary injunction, which turns on evidence, as moot because the pleading has been revised and strengthened. The University Defendants concede that their two positions are "in tension," DN 90 at 3319, and they reconcile them only by asserting that "the cost" of amending is "mooting his motion for a preliminary injunction," *id.* at 3320, without citing any decision of the Supreme Court or the Sixth Circuit. The Sixth Circuit has held the opposite: a district court abused its discretion by declining to rule on a request for preliminary relief because the claim on which it rested appeared only in a proposed amended complaint. *Colvin v. Caruso*, 605 F.3d 282, 300 (6th Cir. 2010). The University Defendants' authorities are out-of-circuit district-court orders and *Royal Canin U.S.A., Inc. v. Wullschleger*, 604 U.S. 22 (2025), which addressed federal jurisdiction after an amendment removed the federal claims. And the University Defendants

themselves acknowledge that "Woodcock can obviously present evidence to support his motion for a preliminary injunction." DN 90 at 3320.

The University Defendants also say that Woodcock moved only to amend under Rule 15(a), not to supplement under Rule 15(d), because the Second Amended Complaint adds claims and replaces the earlier complaints. DN 90 at 3315–16 n.15. Woodcock moved under both rules. DN 84 at 2725, 2727–28. Rule 15(d) allows a supplemental pleading "setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented," and it "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). Nothing in Rule 15 requires a party to file amendments and supplements in separate pleadings. The Second Amended Complaint does both: it restates the claims of the earlier complaints and supplements them with the events since January 2026 that arise from the same course of conduct, including the continued reassignment and the conduct of the investigation. DN 84 at 2728. The decision the University Defendants cite affirmed a grant of leave to supplement and emphasized that Rule 15(d) gives district courts "broad discretion in allowing a supplemental pleading." *Ne. Ohio Coal. for the Homeless v. Husted*, 837 F.3d 612, 625 (6th Cir. 2016) (quoting Fed. R. Civ. P. 15(d) advisory committee's note to 1963 amendment). Woodcock moved on November 4, before the report issued, after the University Defendants argued that later events were not before the Court because he "has not filed a supplemental complaint under Fed. R. Civ. P. 15(d)." DN 84 at 2725 (quoting DN 79 at 2643). That is the course the Sixth Circuit prescribes for events that postdate the operative pleading. *Blick v. Ann Arbor Pub. Sch. Dist.*, 105 F.4th 868, 876 (6th Cir. 2024).

Although the pending motion survives the amendment, to remove any doubt that the requested relief reaches the steps that follow the University President's findings, Woodcock is filing with this reply a supplemental motion for a preliminary injunction, which rests on the Second Amended

Complaint if leave is granted and in the alternative on the First Amended Complaint. The supplemental motion adopts the existing briefing and record, requires no further briefing, and asks to be heard on November 19 as scheduled. It states the relief sought against each step, from the President's findings through any charges, hearing, sanction, or termination, so that the Court can address all of them at once. If the University Defendants wish to address the motion further, they may do so in the simultaneous pre-hearing memoranda that Woodcock has asked the Court to direct, DN 85, without any change to the hearing date. Until the Court rules, Woodcock asks the Court to direct that the University Defendants give the Court the ten days' notice that their counsel has agreed in writing to give Woodcock before any letter of findings, sanction, statement of charges, or referral to a hearing issues, at the same time they give it to Woodcock, as described in his response to the University Defendants' Notice of Completion of Investigation, filed today. Woodcock also asks the Court to decide this motion at or before the start of the November 19 hearing, so that the supplemental motion may be heard on the Second Amended Complaint.

II. The University Defendants Should Raise Any Challenge to the Second Amended Complaint Once, on a Fixed Schedule

The University Defendants propose an approach that would slow the case: the Court would first decide their pending motion against a complaint that is about to be replaced, and only then would they respond to the Second Amended Complaint, with a second round of Rule 12 motions to follow. Woodcock's proposal is more efficient: one round of briefing, directed to one complaint, on a fixed schedule. The University Defendants ask the Court to apply their pending motion for judgment on the pleadings to the Second Amended Complaint on the theory that it contains "the same claims." DN 90 at 3318. In the sense that matters for a pleading motion, it does not. The Second Amended Complaint adds two counts (Counts II and III), divides the due process claim into two (Counts VIII and IX), adds a compelled-speech theory (Count IV), adds a defendant, Dean Van

Tatenhove, and pleads the events of the past ten months, including the continued reassignment and the 2026–27 distribution of effort. The retaliation count alone now identifies ten adverse actions. DN 84-1 at 2802–03. A pending motion may be applied only to portions of an amended complaint that are "substantially identical" to the original, not to portions that have been "substantially revised." *Crawford*, 15 F.4th at 759. Woodcock does not object to applying the pending motion to any count that is in fact substantially identical. But the University Defendants ask for more: an extension of their deadline to respond to the Second Amended Complaint until fourteen days after the Court decides their pending motion. DN 90 at 3316, 3323. That would allow the University Defendants to obtain a ruling on their current motion and then file a new Rule 12 motion directed at the amended counts and allegations, including every event since December 2025. Rule 12(g)(2) limits successive motions, but not as to matter that is new in an amended pleading. The result would be two rounds of pleading motions, decided months apart, while Woodcock's claims for prospective relief wait.

The efficient course is the one Woodcock proposed, DN 84 at 2730, with the pending motion applied to any count that is substantially identical. The University Defendants should address the new counts and allegations in a supplemental brief filed within fourteen days after leave is granted, and should raise in that brief any Rule 12 challenge to the Second Amended Complaint. The University Defendants would then answer any claims that survive within fourteen days after the Court's ruling. The University Defendants' speculation about a Third Amended Complaint, DN 90 at 3317, is no reason to defer a response indefinitely. If anything, the University Defendants' acknowledgment that "the landscape of this action will shift considerably between the end of the investigation and the University's subsequent decisions," *id.*, confirms that the University's decisions are still to come and that the controversy is live.

III. Scheduling

The University Defendants say that Woodcock offered no basis for an expedited schedule. DN 90 at 3320. There are two bases. First, Woodcock seeks prospective relief against a continuing deprivation of First Amendment rights, and "[t]he 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). Second, a court must issue a scheduling order "as soon as practicable," Fed. R. Civ. P. 16(b)(2), yet nearly a year after Woodcock filed suit, no scheduling order has issued and no party has taken discovery. DN 84 at 2727. That basis holds whatever the Court decides on the motion for a preliminary injunction. Much of the record already exists or soon will. Admissible evidence received on the motion for a preliminary injunction "becomes part of the trial record and need not be repeated at trial," Fed. R. Civ. P. 65(a)(2), which includes the testimony from the December 19, 2025 evidentiary hearing and the evidence the Court will receive on November 19. The officials' written decisions to reassign Woodcock, to continue the reassignment, and to investigate his speech are in the record. DN 84 at 2731. The University Defendants also mischaracterize the proposal. Woodcock did not ask for a trial in ninety days. He proposed "focused discovery on the claims for prospective relief closing ninety days after the scheduling conference, and a trial of those claims promptly thereafter." *Id.* The limited discovery Woodcock seeks before the hearing is not inconsistent with that proposal; it addresses the questions the Court posed for the hearing. DN 85. Nor do the pending dispositive motions justify delay. The motions to dismiss filed by the Attorney General and the Secretary of Education concern only the claims against them, and the University Defendants' motion for judgment on the pleadings is directed at a complaint that the Second Amended Complaint will replace. Whatever the outcome of those motions, the scope of discovery will be set by the Second Amended Complaint, and the Court may set a schedule under Rule 16(b) and direct the parties to confer under Rule 26(f)(1) now. Woodcock asks that the Court

hold the scheduling conference at the conclusion of the November 19 hearing and adopt the schedule he proposed.

IV. The Sur-Reply

The University Defendants' reply in support of their motion for judgment on the pleadings attached materials outside the pleadings, including a settlement between the Department of Justice and the University of North Carolina that the First Amended Complaint does not reference and an EEOC charge referenced only in a complaint in a different case. DN 79-1; DN 79-3; *see* DN 90 at 3321–22. Separately, the University Defendants repeat the assertion that Woodcock refused to cooperate by withholding his laptop. *Id.* at 3321. They cannot fault Woodcock for declining to do what their own General Counsel told him he "need not" do. DN 19-4 at 1067 ("Professor Woodcock need not participate in the investigation, but the University will finish the investigation regardless of whether he participates."). Nor does § 1983 require exhaustion of state administrative remedies. *Patsy v. Bd. of Regents*, 457 U.S. 496, 516 (1982). The assertion is also inaccurate. Through counsel, Woodcock asserted his Fourth Amendment right to privacy in the personal files on the laptop, DN 26-6 at 1480–81, 1488, and he delivered the laptop on September 2, 2025, the first business day after the University's counsel agreed in writing to limits on review of those files. DN 84-1 at 2769 (citing DN 26-6 at 1495; DN 40 at 1900). The Court should exclude those materials, Fed. R. Civ. P. 12(d); if it considers them, Woodcock should be granted leave to file the sur-reply.

V. Conclusion

Woodcock respectfully asks the Court to grant leave to file the Second Amended and Supplemental Verified Complaint at or before the start of the November 19 hearing; to treat the motion for a preliminary injunction as directed to the Second Amended Complaint and to hear it together with the supplemental motion for a preliminary injunction; to direct the University

Defendants to raise any challenge to the new counts and allegations in a supplemental brief within fourteen days after leave is granted; to direct the parties to confer under Rule 26(f) now, hold a Rule 16 scheduling conference at the conclusion of the hearing, and adopt the proposed schedule; and to grant leave to file the sur-reply or exclude the materials outside the pleadings.

Date: November 11, 2026

Respectfully submitted,

/s/ Rima Kapitan

/s/ Joe F. Childers

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