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 RESPONSE TO SECRETARY MCMAHON'S MOTION TO DISMISS

Plaintiff Ramsi A. Woodcock ("Woodcock"), through counsel, responds to Secretary Linda McMahon's Motion to Dismiss Plaintiff's Amended Complaint (DN 81) as follows:

INTRODUCTION

The Secretary of Education moves to dismiss the claims against her in the Amended Complaint on four grounds: (1) that the Amended Complaint was never served on her; (2) that Woodcock's injuries are not traceable to the Department of Education; (3) that the Establishment Clause count fails to state a claim; and (4) that the Department's 2021 Questions and Answers document on Executive Order 13899 is not final agency action. DN 81 ("Mot.") at 2688–89. None of these grounds warrants dismissal. The Secretary concedes that the United States Attorney's Office received service of the summons and original complaint, so process was served; a later pleading is served under Rule 5, and any lapse in serving it is cured by service, not by dismissal. Woodcock has since served it.

Woodcock's injuries are fairly traceable to the Secretary. The University officials who suspended and are investigating Woodcock have said repeatedly that they act on "federal guidance" and a

"federal law obligation," which is the showing of traceability the Sixth Circuit requires at the pleading stage. And the Department's policy binds its own Office for Civil Rights to consider the IHRA definition of antisemitism and its examples in every complaint of antisemitism, while the Department enforces that policy through threats to the federal funds on which the University depends.

The Second Amended and Supplemental Verified Complaint ("SAC"), which Woodcock tendered on November 4, 2026, and which the Court has said it is inclined to allow, answers each ground the Secretary raises. DN 84; DN 84-1; DN 87. The SAC carries the Establishment Clause claim against the Secretary forward within Count XIII, through the APA and a nonstatutory claim in equity, the vehicles for a claim against a federal officer. SAC ¶¶ 277, 280 (DN 84-1) at 2830–31. The SAC pleads in detail the federal pressure campaign, the University officials' reliance on federal guidance, and the University's dependence on federal funds. SAC ¶¶ 47–55 (DN 84-1) at 2753–56. And the SAC pleads, in the alternative to its claim under the Administrative Procedure Act ("APA"), a nonstatutory claim in equity that does not depend on final agency action. *Id.* ¶ 280 at 2831. The Court should deny the motion and, when it grants leave to file the SAC, treat the motion as directed to the SAC and deny it on that pleading as well. In the alternative, any dismissal should be without prejudice and with leave to amend.

BACKGROUND

Woodcock filed this action on November 13, 2025. The Secretary's motion states that the United States Attorney's Office "did not receive service of the original Complaint until December 11, 2025," which acknowledges that it did receive service on that date. Mot. at 2694. On January 7, 2026, before the Secretary's time to respond had run and before any attorney had appeared for her, Woodcock filed the Amended Complaint, which named the Secretary in an Establishment Clause count and an APA count. *Id.*; Am. Compl. ¶¶ 161–68, 199–208 (DN 36) at 1665–67, 1674–76.

The case was then stayed and on appeal. On October 1, 2026, counsel for the Secretary appeared and asked for an extension "to Answer or otherwise respond to the Plaintiff's Amended Complaint," explaining that "the time for Answer passed but the case was stayed . . . and then on appeal." DN 66 at 2408. The Secretary then moved to dismiss the Amended Complaint on its merits. Mot. at 2688–2707.

On November 4, 2026, Woodcock moved for leave to file the SAC. DN 84. The SAC sues the Secretary in her official capacity only and asserts against her only claims under the APA and the Constitution, for declaratory and injunctive relief. SAC ¶¶ 7, 15, 281 (DN 84-1) at 2740, 2742, 2831. The SAC's § 1983 counts, including its Establishment Clause counts, do not name the Secretary. Id. at 2815, 2827 (Counts VII, XII). Count XIII, the only count against the Secretary, asserts the Establishment Clause claim against the Secretary under 5 U.S.C. § 706(2)(B) and in equity. *Id.* ¶¶ 277, 280 at 2830–31. Count XIII challenges the Department's policy of applying the IHRA definition and its examples to speech in enforcing Title VI, under 5 U.S.C. § 706(2)(A)–(C) and, in the alternative, as a nonstatutory claim in equity. *Id.* ¶¶ 274–80 at 2829–31.

The Court responded that it "is inclined to grant the motion but deny its subsidiary request to treat the pending dispositive motions as moot, except to the extent the Defendants themselves seek to supplement any previously filed motion(s)," and extended Woodcock's deadline to respond to the Secretary's motion to November 20, 2026. DN 87. At the status conference of November 13, 2026, the Court indicated that it would allow the SAC, treating it as "the new operative complaint," without requiring the Defendants to update their pending motions or to respond to the new pleading until a later order. DN 109 at 3695–96. The Court has not yet entered an order granting leave. Woodcock therefore responds to the motion as directed to the Amended Complaint and shows, for each ground, why the SAC also defeats it.

STANDARD OF REVIEW

The Secretary's standing argument is a facial attack, so the Court must "take[] the allegations in the complaint as true." Mot. at 2696 (quoting *Ohio Nat'l Life Ins. Co. v. United States*, 922 F.2d 320, 325 (6th Cir. 1990)). At the pleading stage, "general factual allegations of injury resulting from the defendant's conduct may suffice." *Bennett v. Spear*, 520 U.S. 154, 168 (1997) (quotation omitted). The Secretary's remaining arguments are tested under Rule 12(b)(6), which asks whether the complaint, read in the light most favorable to Woodcock, states a plausible claim. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Because "courts look to the amended complaint to determine jurisdiction," *Rockwell Int'l Corp. v. United States*, 549 U.S. 457, 473–74 (2007), the SAC will govern each of these questions once the Court grants leave.

ARGUMENT

I. Woodcock Served Process on the Secretary, and a Rule 5 Lapse Does Not Warrant Dismissal (Mot. Part I)

The Secretary does not contend that Woodcock failed to serve process. Rule 12(b)(5) permits a motion for "insufficient service of process," and process is the summons, which "must be served with a copy of the complaint" under Rule 4. Fed. R. Civ. P. 4(c)(1), 12(b)(5). The Secretary concedes that the United States Attorney's Office received service of the original complaint on December 11, 2025. Mot. at 2694. The summons reached the Secretary and the Attorney General by certified mail on December 15, 2025, and the United States Attorney on December 11, 2025. DN 111 at 3744. The Secretary argues instead that Woodcock did not serve the Amended Complaint under Rule 5(a)(1), because the Amended Complaint was filed before her counsel had registered to receive electronic notice. *Id.* at 2695–96.

That argument does not support dismissal. Rule 5 governs service of a "pleading filed after the original complaint," and it requires no summons. Fed. R. Civ. P. 5(a)(1)(B). Rule 5 requires that a

later pleading be served under Rule 4 only on "a party who is in default for failing to appear," and only if the pleading "asserts a new claim for relief against such a party." Fed. R. Civ. P. 5(a)(2). The Secretary was not in default. Rule 5(a)(2) protects a party who has been served and has chosen not to answer from exposure to new claims in a pleading the party never received. *Blair v. City of Worcester*, 522 F.3d 105, 109 (1st Cir. 2008). The Secretary needs no such protection. Her counsel appeared, asked the Court for time to respond to "the Plaintiff's Amended Complaint," and acknowledged that "the time for Answer passed." DN 66 at 2408. The Secretary then quoted, analyzed, and moved to dismiss the Amended Complaint paragraph by paragraph. Mot. at 2692–2707. The decision on which the Secretary relies, by her own description, ordered an evidentiary hearing to resolve conflicting affidavits about service. Mot. at 2695 (describing *Howard v. Land End Investors Trust*, No. 3:17-CV-322, 2018 WL 11512262 (E.D. Tenn. Feb. 13, 2018)). Dismissing claims against a party who has read and responded to the pleading, for want of a formal delivery of the same pleading, would "exalt form over substance." *Blair*, 522 F.3d at 109.

Any defect is also cured. Woodcock filed the SAC through the Court's electronic-filing system on November 4, 2026, after counsel for the Secretary had become a registered user, which is service under Rule 5(b)(2)(E). DN 84; DN 84-1. On November 20, 2026, Woodcock also emailed the Amended Complaint to counsel for the Secretary, who confirmed in writing that she consents to electronic service. Ex. 1; Fed. R. Civ. P. 5(b)(2)(E). The service argument is therefore moot as to both pleadings.

II. Woodcock Has Standing to Sue the Secretary (Mot. Part II)

The Secretary argues that Woodcock's injury is not fairly traceable to the Department and would not be redressed by relief against her, because the University officials acted out of their own bias, cited a state resolution rather than federal guidance, and moved against Woodcock years after the

Department issued its 2021 Questions and Answers document. Mot. at 2696–2700. Each argument fails on the allegations, and the SAC removes any doubt.

A. Woodcock's Injury Is Fairly Traceable to the Department's Policy

Traceability does not require that the defendant's action be "the very last step in the chain of causation." *Bennett*, 520 U.S. at 168–69. An injury is traceable to government action that has a "determinative or coercive effect upon the action of someone else." *Id.* at 169. Standing may rest on "the predictable effect of Government action on the decisions of third parties." *Dep't of Com. v. New York*, 588 U.S. 752, 768 (2019). The Secretary acknowledges that "causation need not be proximate." Mot. at 2697 (quoting *Parsons v. U.S. Dep't of Just.*, 801 F.3d 701, 713 (6th Cir. 2015)).

Parsons, the case on which the Secretary relies, decides the question in Woodcock's favor. The plaintiffs in *Parsons* challenged a Department of Justice report that designated their group a gang, alleging injuries inflicted by a state trooper, an Army recruiting sergeant, and a city police department. 801 F.3d at 713–14. The Sixth Circuit held the injuries traceable to the federal report because "the law enforcement officials themselves acknowledged that the DOJ gang designation had caused them to take the actions in question." *Id.* at 714. The court rejected the argument that the officials' independent judgment broke the chain, explaining that "it is still possible to motivate harmful conduct without giving a direct order to engage in said conduct," and held that "the allegation that a defendant's conduct was a motivating factor in the third party's injurious actions satisfies the requisite standard." *Id.* The court also held that "the fact that a defendant was one of multiple contributors to a plaintiff's injuries does not defeat causation." *Id.*

The University officials here have done what the officials in *Parsons* did. Capilouto announced the investigation by declaring that Woodcock's petition "can be interpreted as antisemitic in accordance with state and federal guidance," invoked Title VI, and announced a review of "whether this employee's conduct may violate federal and state guidance as well as university policies." SAC ¶

54 (DN 84-1) at 2755 (quoting DN 19-3 at 496–97). The University's General Counsel, Thro, wrote that "the University has a federal law obligation to investigate." SAC ¶ 54 (DN 84-1) at 2755 (quoting DN 19-4 at 1067). On October 30, 2026, the University Defendants told this Court that "[t]he IHRA's definition was adopted into policy to comply with both federal and state directives," that the University must investigate Woodcock "to ensure it complies with its obligation under federal law," and that this duty "is further illustrated by" a settlement resolving Title VI investigations opened by the Department of Justice and the Department of Education's Office for Civil Rights. *Id.* (quoting DN 79 at 4–5 & n.17, 22). Those statements tie the officials' treatment of Woodcock's speech to federal guidance as directly as the troopers' statements in *Parsons* tied their stops to the federal gang designation.

The SAC also alleges how the Department produces that effect. Executive Order 13899 directs that agencies enforcing Title VI "shall consider" the IHRA definition and its examples. SAC ¶ 47 (DN 84-1) at 2753. The Department's Office for Civil Rights has stated that it "will consider the IHRA definition in handling complaints of anti-Semitism." *Id.* ¶ 48 at 2753. In March 2025, the Department's Acting General Counsel co-signed a letter that made it a "precondition" of negotiations over Columbia University's federal funding that Columbia "[f]ormalize, adopt, and promulgate a definition of antisemitism," noting that the Executive Order "uses the IHRA definition." *Id.* ¶¶ 49–50 at 2753–54. The letter came in a campaign in which federal agencies canceled or paused about $400 million in grants to Columbia. *Id.* ¶ 49 at 2753. Columbia announced on July 15, 2025, that it was incorporating the IHRA definition into its policies. *Id.* ¶ 51 at 2754. Three days later, on July 18, 2025, the University removed Woodcock from teaching and announced the investigation. *Id.* ¶ 1 at 2738. The University received $255.3 million in federal awards in fiscal year 2025, more than half of its grant and contract awards. *Id.* ¶ 48 at 2753. An institution that depends on federal funds for half of its grant and contract awards, and that has watched federal

agencies cut off $400 million in another university's grants while demanding that the university adopt a definition of antisemitism modeled on the IHRA definition, will predictably apply that definition to a professor's speech about Israel. That is the "predictable effect" that *Department of Commerce* holds sufficient. 588 U.S. at 768.

The Secretary's contrary arguments do not defeat traceability. The Secretary first argues that the Amended Complaint attributes the officials' conduct to their own pro-Israel views and to their departure from University procedures. Mot. at 2698. But the officials' own motives do not cancel the motive they have announced. A defendant that is "one of multiple contributors" to the injury remains a cause of it. *Parsons*, 801 F.3d at 714. The Secretary next argues that the University's Office of Equal Opportunity cites a 2021 Kentucky Senate resolution rather than the Department's guidance. Mot. at 2699. The University's President and General Counsel cite federal guidance and federal law. The University Defendants now say that the definition was adopted "to comply with both federal and state directives." SAC ¶ 54 (DN 84-1) at 2755. Woodcock pleads that the officials apply the definition at the direction of 2025 Senate Joint Resolution 55 ("SJR 55"), at the Department's urging, or of their own accord, and that each application is unlawful. *Id.* ¶ 46 at 2752–53. A plaintiff may plead concurrent causes in the alternative. Fed. R. Civ. P. 8(d)(2)–(3). The presence of a state-law mandate does not make the federal pressure any less a "motivating factor." *Parsons*, 801 F.3d at 714.

The Secretary also argues that the timeline defeats causation, because the Department issued its Questions and Answers document in 2021 and the University did not act against Woodcock's speech in 2024. Mot. at 2699–2700. The SAC does not attribute Woodcock's injury to a web page that sat unenforced for four years. The SAC challenges the Department's policy and its enforcement through the funding threats of 2025, which preceded the University's action by months, and Columbia's capitulation, which preceded it by days. SAC ¶¶ 49–51, 275 (DN 84-1) at 2753–54, 2829.

The timeline supports traceability. Finally, the Secretary argues that Woodcock has abandoned any claim that the Department chilled his speech. Mot. at 2697. The SAC alleges that Woodcock has stopped submitting scholarship about Palestine and has sharply reduced his other speech about Palestine because of the University rules applied to him and the officials' enforcement of those rules. SAC ¶¶ 162–63 (DN 84-1) at 2797–98. The University Defendants continue to apply the definition to Woodcock. *Id.* ¶ 279 at 2830–31.

B. Relief Against the Secretary Would Redress Woodcock's Injury

Relief against the Secretary would redress Woodcock's injuries at least in part. A plaintiff "need not show that a favorable decision will relieve his every injury." *Larson v. Valente*, 456 U.S. 228, 243–44 n.15 (1982). "[P]artial redress can also satisfy the standing requirement." *Parsons*, 801 F.3d at 716. The SAC asks the Court to set aside the Department's policy of applying the IHRA examples to protected speech and to enjoin the Secretary from "requiring, encouraging, or conditioning federal funds on the application of those examples to the protected speech of faculty, including at the University of Kentucky." SAC (DN 84-1) at 2833 (Prayer ¶ F). That relief would remove one of the reasons the University Defendants give for applying the examples to Woodcock's speech. *Id.* ¶ 55 at 2755–56. The officials have told Woodcock and this Court that federal law obliges them to investigate him. An order declaring that federal law imposes no such obligation, and forbidding the Secretary to press one, would remove the federal command on which the officials rely. *Bennett*, 520 U.S. at 171 (injury redressable where the third party would likely act differently "if the Biological Opinion is set aside").

The Secretary's own conduct elsewhere confirms that relief would matter. In the *Khalil* litigation, the government, including the Secretary, stipulated that it "does not and will not" require Columbia to adopt the IHRA definition or condition funding on its adoption. SAC ¶¶ 53, 279 (DN 84-1) at 2754–55, 2830–31. The government has given no such assurance as to Kentucky or the University.

Id. If an assurance of that kind mattered to Columbia, an order of this Court to the same effect would matter to the University of Kentucky.

III. Woodcock States an Establishment Clause Claim Against the Secretary (Mot. Part III)

The SAC presses the Establishment Clause claim against the Secretary through Count XIII. The SAC alleges that the Department's policy is "contrary to constitutional right," 5 U.S.C. § 706(2)(B), because the policy "gives a preference to one faith's religious nationalism." SAC ¶ 277 (DN 84-1) at 2830. In the alternative, the SAC seeks to enjoin the Secretary from enforcing Title VI in violation of the First Amendment, of which the Establishment Clause is part. *Id.* ¶ 280 at 2831. The SAC asks for a declaration that the policy violates the First Amendment. *Id.* at 2833 (Prayer ¶ F). The Amended Complaint asserted the same claim against the Secretary as a separate count. Am. Compl. ¶¶ 161–68 (DN 36) at 1665–67. Under either pleading, the claim states a claim for relief.

The Secretary joins the University Defendants' and the Attorney General's Establishment Clause arguments. Mot. at 2703. Woodcock has answered those arguments, and he relies on those answers here. DN 70 at 2469; DN 78 at 2623–24. The Secretary adds that the IHRA definition itself does not mention self-determination, and that the only reference to self-determination in the Questions and Answers document appears in its Appendix. Mot. at 2702. The Appendix lists, among the "[c]ontemporary examples of antisemitism," the example "[d]enying the Jewish people their right to self-determination." *Id.* at 2702–03 (quoting DN 81-1). The Department describes the Executive Order as requiring federal agencies to consider the IHRA examples in enforcing Title VI. DN 81-1 at 2710–11. That example is the denominational preference Woodcock challenges, and its placement in an appendix does not change its effect. Am. Compl. ¶¶ 162–67 (DN 36) at 1665–67. The Secretary also argues that the definition's statement that criticism of Israel "similar to that leveled against any other country" is not antisemitic protects Woodcock. Mot. at 2702–03. Whether the

University officials, applying the definition at the Department's urging, have treated Woodcock's speech as that kind of criticism is a question of fact that the Amended Complaint resolves in Woodcock's favor at this stage. A denominational preference is subject to strict scrutiny. *Catholic Charities Bureau, Inc. v. Wis. Lab. & Indus. Rev. Comm'n*, 605 U.S. 238, 247–48 (2025). The Secretary does not attempt to satisfy it.

IV. Woodcock States a Claim for Review of the Department's Policy (Mot. Part IV)

A. Finality Under Section 704 Does Not Limit the Court's Jurisdiction

The Secretary asks the Court to dismiss the APA claim under Rule 12(b)(1), arguing that because the Questions and Answers document is not final, "the Court lacks subject matter jurisdiction over this claim." Mot. at 2707. The Sixth Circuit has rejected that framing. The APA "is not a jurisdiction-conferring statute"; the federal-question statute supplies jurisdiction over APA claims. *Jama v. Dep't of Homeland Sec.*, 760 F.3d 490, 494 (6th Cir. 2014). In *Jama*, the district court had dismissed for lack of jurisdiction because the challenged decisions were not "final agency action," and the Sixth Circuit held that "dismissal pursuant to 12(b)(1) was improper." *Id.* at 493–94. Whether agency action is final goes to whether the plaintiff's "allegations state a claim" on the merits. *Id.* at 495 (quotation omitted). The question is therefore whether Woodcock has plausibly alleged final agency action, with every inference drawn in his favor.

B. The Department's Policy Is Final Agency Action

Agency action is final if it is both "the consummation of the agency's decisionmaking process" and a decision "by which rights or obligations have been determined or from which legal consequences will flow." *Tennessee v. U.S. Dep't of Educ.*, 104 F.4th 577, 598 (6th Cir. 2024) (quoting *Bennett*, 520 U.S. at 177–78). The Secretary disputes only the second condition. Mot. at 2705. The Sixth Circuit asks whether the action will "mandate, bind, or limit other government actors" in the

future, *Arizona v. Biden*, 40 F.4th 375, 387 (6th Cir. 2022) (quotation omitted), and takes a "'pragmatic' approach" to the inquiry. *Tennessee*, 104 F.4th at 598 (quotation omitted). To decide whether an action is binding, the court looks to its text and to "surrounding context—for example, how an agency has made use of the action or what it has said about it." *Id.* at 599.

The Department's policy binds the Department. The Questions and Answers document states that "OCR, as required under the Executive Order, will consider the IHRA definition in handling complaints of anti-Semitism." DN 81-1 at 2710. The Executive Order provides that agencies enforcing Title VI "shall consider" the definition and its examples. *Id.* The document describes the Executive Order as the first presidential directive "requiring all federal agencies to consider the IHRA definition in enforcing Title VI." *Id.* An instruction that the Office for Civil Rights "will consider" the definition in every complaint of antisemitism leaves the Office no discretion to disregard it. *Tennessee* held documents final where the Department "le[ft] itself no room to take the position" that the statute did not reach the conduct its documents described. 104 F.4th at 599. The same is true here.

Legal consequences also flow from the policy, because it threatens recipients' federal funds. *Tennessee* held that the Department's Title IX documents created legal consequences because they told recipients "how to avoid liability," so that States would "risk losing their federal funding if they continue[d] to run their educational institutions in accordance with their own laws and policies." 104 F.4th at 599–600. The SAC alleges that the Department enforces its policy through exactly that threat. The Department's Acting General Counsel made adoption of a definition of antisemitism, with the Executive Order's IHRA definition as the model, a "precondition" of negotiations over Columbia's federal funding, after federal agencies canceled or paused about $400 million in Columbia's grants. SAC ¶¶ 49–50, 275 (DN 84-1) at 2753–54, 2829. Institutions that do not apply the definition face investigation and the loss of federal funds. *Id.* ¶ 276 at 2830. The University

Defendants have described the University's use of the definition as compliance with "federal . . . directives." The University Defendants also cite a settlement, entered to avoid "the prospect of defunding or other loss of federal support," that binds another university to maintain policies "prohibiting, preventing, and disciplining unlawful antisemitism." *Id.* ¶ 54 at 2755. How the Department "has made use of the action" is the context *Tennessee* directs courts to consider. 104 F.4th at 599.

Arizona v. Biden does not hold otherwise. The guidance in *Arizona* set enforcement priorities for immigration officers, preserved the officers' discretion, and did "not impose any direct costs on the States or threaten the loss of any federal funding." 40 F.4th at 386–88. Any costs to the States arose "only from officials who exercise their discretion under the Guidance." *Id.* at 388. The Department's policy, by contrast, requires its Office for Civil Rights to consider the IHRA definition in every complaint of antisemitism and operates on recipients through the threat of losing federal funds. Nor do the document's disclaimers decide the question. "Labels, it is true, do not control the inquiry. Legal effects do." *Id.* at 389. A "particular label placed upon [an agency action] is not necessarily conclusive, for it is the substance of what the [agency] has purported to do and has done which is decisive." *Tennessee*, 104 F.4th at 600 (quotation omitted). The Secretary's out-of-circuit decisions about other agencies' question-and-answer documents and websites, Mot. at 2706–07, cannot displace the Sixth Circuit's holding in *Tennessee* that the Department's own question-and-answer and similar documents were final agency action.

The Secretary seeks to distinguish *Tennessee* on the ground that the documents there announced a new interpretation, whereas the Department "has long recognized that anti-Semitism may violate Title VI." Mot. at 2707 n.5. Woodcock does not challenge the Department's recognition that antisemitic discrimination may violate Title VI. Woodcock challenges the requirement that the Department consider the IHRA definition and its examples, which classify core political speech

about Israel as evidence of antisemitism. SAC ¶¶ 275, 277 (DN 84-1) at 2829–30. That requirement is new. The Department's own document calls the Executive Order "the first presidential directive to all federal agencies . . . requiring all federal agencies to consider the IHRA definition in enforcing Title VI." DN 81-1 at 2710.

The SAC, moreover, challenges the Department's policy, not only the 2021 document. SAC ¶¶ 275–76 (DN 84-1) at 2829–30. Whether that policy, as the Department has enforced it since 2025, is final cannot be resolved against Woodcock on the face of a single document attached to the Secretary's motion.

C. The Nonstatutory Claim Does Not Depend on Final Agency Action

The SAC pleads, in the alternative, a nonstatutory claim in equity to enjoin the Secretary from enforcing Title VI in violation of the First Amendment. SAC ¶ 280 (DN 84-1) at 2831. The Sixth Circuit has held that "§ 702's waiver of sovereign immunity extends to all non-monetary claims against federal agencies and their officers sued in their official capacity, regardless of whether plaintiff seeks review of 'agency action' or 'final agency action' as set forth in § 704." *Muniz-Muniz v. U.S. Border Patrol*, 741 F.3d 668, 672 (6th Cir. 2013). Even if the Court were to conclude that the Department's policy is not final agency action, the SAC's claim against the Secretary would survive.

V. In the Alternative, Woodcock Should Be Granted Leave to Amend

The Court has indicated that it will allow the SAC and that the pending motions will remain pending, subject to any supplement the Defendants choose to file. DN 87. Woodcock asks the Court, when it grants leave, to decide the Secretary's motion against the SAC, the pleading that will govern the Court's jurisdiction. *Rockwell*, 549 U.S. at 473–74. If the Court concludes that any allegation against the Secretary in either pleading is insufficient, Woodcock asks that dismissal be

without prejudice and with leave to amend. Leave to amend is "freely give[n] when justice so requires." Fed. R. Civ. P. 15(a)(2); *Foman v. Davis*, 371 U.S. 178, 182 (1962).

CONCLUSION

Woodcock respectfully asks the Court to deny Secretary McMahon's Motion to Dismiss (DN 81) or, in the alternative, to dismiss without prejudice and with leave to amend.

Date: November 20, 2026

Respectfully submitted,

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EXHIBIT LIST

Ex. 1 — Email exchange between counsel for Woodcock and counsel for the Secretary regarding electronic service (Nov. 20, 2026)