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 THE UNIVERSITY DEFENDANTS' NOTICE OF SUGGESTION OF MOOTNESS

Plaintiff Ramsi Woodcock responds to the Notice of Suggestion of Mootness filed by the University officials who are defendants here (the "University Defendants"), DN 92, which asserts that "there is no longer a need for the November 19, 2026 hearing" on his motion for a preliminary injunction. DN 92 at 3341. The University Defendants have not moved to vacate the hearing. Their request that the hearing be canceled fails to account for three facts: Woodcock's reassignment away from teaching and service, which is in substance a suspension, DN 84-1 at 2762, continues through the academic year; the University President's findings have not issued, so the investigation is ongoing; and the proceedings still carry the now more imminent threat of severe sanction or termination based on Woodcock's protected speech. Woodcock sets forth this response in accordance with the Court's November 11, 2026 text order directing him to state his position on the University Defendants' contentions that expedited discovery is unnecessary and that his request for a preliminary injunction is moot.

I. The Controversy Over the Investigation Is Live

A case "becomes moot only when it is impossible for a court to grant any effectual relief whatever to the prevailing party." *Knox v. Serv. Emps. Int'l Union, Local 1000*, 567 U.S. 298, 307 (2012) (internal quotation marks omitted). For a preliminary injunction, the question is whether there remains "a reasonable possibility" that the challenged conduct will continue or recur at any point before final judgment. *Ohio v. U.S. Env't Prot. Agency*, 969 F.3d 306, 309 (6th Cir. 2020).

The "heavy burden" of showing mootness rests on the party asserting it. *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000). The University Defendants state that "[t]he voluntary cessation exception to mootness only applies 'if there clearly is no reasonable expectation that the alleged violation will recur.'" DN 92 at 3343. That inverts the rule. A defendant's voluntary cessation of challenged conduct "moots a case only if there clearly is 'no reasonable expectation that the alleged violation will recur.'" *Resurrection Sch. v. Hertel*, 35 F.4th 524, 528 (6th Cir. 2022) (en banc) (quoting *Speech First, Inc. v. Schlissel*, 939 F.3d 756, 767 (6th Cir. 2019)); *see Ohio*, 969 F.3d at 309. The University Defendants have not carried their burden.

A. Neither the Investigation Nor the Overall Course of Retaliatory Conduct Has Ended

The University Defendants' authorities involved conduct that had ended. In *Ohio*, the agencies had already provided the relief sought "by formally repealing" the challenged rule. 969 F.3d at 308. In *Ramsek v. Beshear*, the Governor "rescinded the Order." 989 F.3d 494, 498 (6th Cir. 2021). In *Resurrection School*, the State had "already rescinded the mandate." 35 F.4th at 528. And in *Herrell v. Benson*, the request to stay a university disciplinary process was moot because the process had run its course before the case reached federal court. 261 F. Supp. 3d 772, 775–76 (E.D. Ky. 2017). Nothing here has been rescinded, and nothing has run its course.

Here the challenged conduct is not merely possible. It is under way. The investigation does not end at least until the President issues his findings. The investigator's letter setting out "the procedures for this investigation" lists the evidence reviews and then the President's "Letter of Findings and Determination," which "will include any sanction," as steps in that procedure. DN 19-15 at 1569–71. The President's findings have not issued, and the University Defendants state that the University "has not yet decided whether to pursue disciplinary action." DN 92 at 3345. And on November 11, Dean Gregory Van Tatenhove declined to end Woodcock's reassignment until "the President decides next steps." Ex. 1. The First Amended Complaint asks the Court to order Defendants Capilouto and Thro to "cease the investigation" and to expunge "any record of the . . . investigation" from Woodcock's personnel file. DN 36 at 1677–78.

Woodcock challenges the reassignment, the investigation of his protected speech, and any charges, hearing, sanction, or termination that may follow both as individual forms of retaliation and as one continuing course of retaliation causing continuing harm: the threat that his protected speech will cost him his position, a threat that would deter a person of ordinary firmness from speaking. *See Thaddeus-X v. Blatter*, 175 F.3d 378, 398 (6th Cir. 1999) (en banc) (an "entire campaign of harassment" is actionable if, though "trivial in detail," it "may have been substantial in gross" (quoting *Bart v. Telford*, 677 F.2d 622, 625 (7th Cir. 1982))). That challenge does not depend on a hypothetical future sanction. The reassignment continues, and the investigation "carries the threat of termination." DN 65 at 2324. "[T]hreats alone can constitute an adverse action if the threat is capable of deterring a person of ordinary firmness from engaging in protected conduct." *Kubala v. Smith*, 984 F.3d 1132, 1140 (6th Cir. 2021) (quoting *Hill v. Lappin*, 630 F.3d 468, 474 (6th Cir. 2010)). That threat is present now, and it will remain present for as long as the proceedings continue.

There has been no cessation, voluntary or otherwise. The restoration of Woodcock's access to the law building does not render the injunctive relief Woodcock seeks moot. DN 92 at 3344. Dean

Van Tatenhove lifted the ban only after the Franklin Circuit Court, in Woodcock's state action, observed that nothing in the record justified it, DN 84-1 at 2783, and the University maintains that "[t]he Dean has absolute authority to determine the assignments of a faculty member," DN 19-4 at 1066. A change of this kind, made while litigation is pending, "raises suspicions that its cessation is not genuine." *Schlissel*, 939 F.3d at 769. And the restoration of access left the reassignment and the investigation in place.

B. The Reassignment Continues Through the Academic Year

The University Defendants say that Woodcock's fall assignment "ends in a month" and that his spring assignment "remains uncertain until the University decides what to do." DN 92 at 3345. But the University has already decided to keep Woodcock out of the classroom in the spring rather than return him to it.

On September 25, the University Defendants told the Court that the investigator expected to submit her final report by November 2. DN 63 at 2202 n.36. Three days later, the Dean wrote that his decision restoring Woodcock's building access "does not change your temporary administrative assignment" and that Woodcock's "Distribution of Effort will continue to be 100% professional development." DN 65-8 at 2405. On October 21, less than two weeks before the investigator's report was expected, the law school circulated a draft Spring 2027 course list that assigns Woodcock no course and gives the courses he teaches—Antitrust, Secured Transactions, Contracts, and Business Associations—to other instructors. DN 77 at 2612. The next day, the law school signed a 2026–27 distribution of effort that records Woodcock on "Administrative Leave" through May 31, 2027. DN 84-38 at 3058. And since the University Defendants announced on November 10 that the investigator "has completed the investigation," DN 89 at 3305, no one has ended the reassignment or restored Woodcock to the spring schedule, even as the University Defendants represent that the reassignment "cannot continue." DN 91 at 3329.

Independently of the investigation, the First Amended Complaint asks the Court to restore Woodcock "to his position as a full-time professor in the College of Law with the typical workload and privileges of a tenured professor." DN 36 at 1677. That request does not depend on whether the investigation has ended. The official-capacity claims therefore satisfy *Ex parte Young*: the First Amended Complaint "alleges an ongoing violation of federal law and seeks relief properly characterized as prospective." *Verizon Md., Inc. v. Pub. Serv. Comm'n of Md.*, 535 U.S. 635, 645 (2002) (internal quotation marks omitted); *see* DN 36 at 1677–78.

II. The Pending Motion to Amend Does Not Moot the Motion for a Preliminary Injunction

The University Defendants argue that the First Amended Complaint "fixes the controversy" as of January 7, 2026, and that the pending motion to amend may moot the motion for a preliminary injunction. DN 92 at 3346–48. The case the University Defendants cite for the first point explains the remedy for later events: a plaintiff "should file a 'supplemental' complaint under Federal Rule of Civil Procedure 15(d)." *Blick v. Ann Arbor Pub. Sch. Dist.*, 105 F.4th 868, 876 (6th Cir. 2024). Woodcock moved to do so on November 4, before the report issued, after the University Defendants argued that later events were not before the Court because Woodcock "has not filed a supplemental complaint under Fed. R. Civ. P. 15(d)." DN 84 at 2725 (quoting DN 79 at 2643). The University Defendants cannot now argue that the supplemental pleading whose absence they invoked moots the motion.

Nor has anything been superseded. The motion to amend has not been granted, and the Court has indicated that it would grant leave without treating the pending dispositive motions as moot. DN 87. The district-court order on which the University Defendants principally rely terminated pending motions only after the plaintiff, by stipulation, had filed a second amended complaint containing "new and different allegations," and it invited new motions "tailored to the allegations in

that operative pleading." *HealthCall of Detroit, Inc. v. Farmers Ins. Exch.*, No. 21-cv-12697, slip op. at 2–3 (E.D. Mich. Sept. 28, 2022) (ECF No. 35).

The Second Amended Complaint restates the claims on which the motion rests, on the same facts supplemented by later events, and Woodcock has asked the Court to treat the motion as directed to it. DN 84 at 2731–33. To remove any doubt, Woodcock has also filed a supplemental motion for a preliminary injunction that accounts for the possibility that charges, a hearing, or a sanction may follow before the Court rules on the motion for a preliminary injunction. The supplemental motion asks the Court to bar Defendants from taking those steps based on the investigation of Woodcock's protected speech, and it states the relief he seeks against each step, from the President's findings through any charges, hearing, or sanction. The Second Amended Complaint already requests that relief, asking the Court to enjoin the official-capacity defendants, "preliminarily and permanently," from "issuing any report, findings, or charge, convening any hearing, or imposing any sanction." DN 84-1 at 2831–32. The relief is also of the same character as the relief requested in the First Amended Complaint, which asks the Court to order Defendants Capilouto and Thro to "cease the investigation" and challenges "the threat of permanent sanction up to and including termination." DN 36 at 1666, 1678.

III. The Evidentiary Hearing Remains Necessary

The Court set the hearing to determine disputed factual questions, such as whether the investigation or the reassignment is "vindictive, disproportionately burdensome, or otherwise out of the ordinary," DN 86 at 3287, and whether the University can identify any "past or future campus disruption," *id.* at 3286. Those questions remain. The reassignment continues, as the Dean confirmed on November 11. Ex. 1.

And the investigator's report, which the University Defendants will submit for *in camera* review, is itself evidence on the Court's questions. The report discusses at length Woodcock's political speech on listservs, including discussion lists outside the University, quotes the reactions of people outside the University who disagree with Woodcock's views, and reflects invitations to witnesses to give their views of Woodcock's protected speech in ways that have no bearing on any University policy. The report adds a charge that neither notice of investigation made, finding that "[t]he impact of Respondent's actions was to interfere with this investigation." Factual Investigative Report at 22 (Nov. 10, 2026). The actions it describes include Woodcock's lawsuit challenging the investigation, the follow-up questions to witnesses that the investigation's own procedures allowed him to submit, and an email to his colleagues. *Id.* at 22–25. An investigation that treats a professor's lawsuit against it, and his exercise of procedural rights accorded to him under the terms of the investigation, as relevant to the investigation and as possible new grounds for sanction is out of the ordinary in the sense the Court described. Woodcock is filing provisionally under seal his October 29, 2026 final written response to the evidence reviews on which the report relies, and he expects to file his response to the report itself shortly. Read together with the report, the final written response shows that the report leaves most of that response unanswered, omits evidence that undercuts the complaints, and misstates the record, which further supports the conclusion that the investigation is vindictive. The hearing is the occasion for the Court to receive evidence from both sides, and many of the facts that bear on mootness are the same facts the hearing will establish.

IV. Request

Woodcock has been attempting to obtain a ruling on his motion for a preliminary injunction for nearly a year and has been out of the classroom that entire time. Woodcock's counsel rescheduled an in-person mediation that was to take place on November 18 in Bozeman, Montana, in another case,

Fick v. Montana State University, Cause No. DV 16-2022-642C (Mont. 18th Jud. Dist. Ct.), to keep the November 19 date. Woodcock respectfully asks the Court to reject the University Defendants' suggestion of mootness and to hold the hearing on November 19, 2026, as scheduled. A ruling following the November 19 hearing would allow the restoration Woodcock seeks to take effect before Spring 2027 classes begin on January 11, 2027. Univ. of Ky. Coll. of Law, 2026–2027 Academic Calendar. Moving the hearing would risk another semester out of the classroom. Holding the hearing as scheduled would also preserve the Court's ability to grant the relief the motion for a preliminary injunction seeks against the investigation of his speech, DN 19 at 181, before the President issues his findings. Because the University Defendants' counsel has agreed in writing that no letter of findings will issue without ten days' notice, and no notice has yet been given, the findings cannot issue before the hearing, and the Court will be able to rule on Woodcock's request to halt the investigation on November 19. If the hearing is cancelled or postponed, that opportunity may be lost.

Date: November 11, 2026

Respectfully submitted,

/s/ Rima Kapitan

/s/ Joe F. Childers

Rima Kapitan
Kapitan Gomaa Law, P.C.
P.O. Box 46503
Chicago, IL 60646
(312) 566-9590

Joe F. Childers
Joe F. Childers & Associates
The Lexington Building
201 West Short Street
Suite 300
Lexington, Kentucky 40507
(859) 253-9824
joe@jchilderslaw.com