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 ATTORNEY GENERAL'S MOTION TO DISMISS

Plaintiff Ramsi A. Woodcock ("Woodcock"), through counsel, responds to Attorney General Russell Coleman's Motion to Dismiss as follows:

INTRODUCTION

The Attorney General moves to dismiss the two counts of the Amended Complaint that challenge 2025 Senate Joint Resolution 55, 2025 Ky. Acts ch. 157 ("SJR 55"): Count V, which alleges a denominational preference in violation of the Establishment Clause, and Count X, which alleges that SJR 55 violates the Free Speech Clause. DN 67 ("MTD"). The motion rests on a single premise, repeated throughout: that SJR 55 "does not regulate speech" because it "only directs Kentucky's public postsecondary institutions to adopt policies." MTD at 2415, 2418, 2421–22, 2426.

That premise does not comport with the text of SJR 55 or the facts alleged. SJR 55 commands every public university in the Commonwealth to adopt policies to "combat antisemitism" that use as their guide a definition whose examples use undefined terms and classify core political speech about Israel and Zionism as antisemitic. It then requires each university to count the reports of antisemitism it receives, the investigations it opens, and their outcomes, and to report those

numbers to the Council on Postsecondary Education, which reports them to the Legislative Research Commission. 2025 Ky. Acts ch. 157, §§ 1–2. Legislation that directs the State's universities to police their faculty's speech using a viewpoint-laden definition regulates speech. It does not escape the First Amendment by acting through its instrumentalities.

Nor is the connection between SJR 55 and Woodcock's injury speculative. The University's own officials say that state law requires them to apply the IHRA definition in investigations like the one against Woodcock. The Attorney General has told both the Sixth Circuit and the public that the University acted in compliance with SJR 55. Whether SJR 55's unconstitutional applications are substantial, and whether its preference for one faith's religious nationalism survives strict scrutiny, are questions that cannot be resolved against Woodcock on the pleadings. In any event, Woodcock intends to seek leave to amend to add facts that have emerged since the Amended Complaint was filed and to assert Count X against the University Officials, who apply SJR 55 to him. The motion should be denied.

STANDARD OF REVIEW

The Court accepts the Amended Complaint's factual allegations as true, construes the complaint in the light most favorable to Woodcock, and asks whether it states a plausible claim. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Gunasekera v. Irwin*, 551 F.3d 461, 466 (6th Cir. 2009). The Attorney General also invokes the rule that dismissal is proper where "the plaintiff can prove no set of facts in support of the claim which would entitle [the] plaintiff to relief." MTD at 2416 (quotation omitted). The Supreme Court retired that formulation in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 562–63 (2007), but it would not help the Attorney General if it applied, because it is more forgiving to plaintiffs than the plausibility standard. In deciding the motion, the Court may consider the Amended Complaint, matters of public record, and items in the record of the case. *Bassett v. Nat'l Collegiate Athletic Ass'n*, 528 F.3d 426, 430 (6th Cir. 2008). Those include the Attorney General's

filings in this case and in the Sixth Circuit, and his office's published statements about SJR 55, of which the Court may take judicial notice. Fed. R. Evid. 201(b). Woodcock cites them not for their truth but for what the Attorney General has said SJR 55 does.

ARGUMENT

I. Woodcock Has Standing to Challenge SJR 55 (MTD Part I)

The Attorney General argues that a declaration that SJR 55 is unconstitutional "would not redress [Woodcock's] alleged injury," because it "would not prevent the University from continuing its investigation" or from using the definition on its own. MTD at 2418. The argument fails on both traceability and redressability.

1. Traceability

An injury is fairly traceable to a law that has a "determinative or coercive effect upon the action of someone else." *Bennett v. Spear*, 520 U.S. 154, 169 (1997). 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). Traceability does not require proximate cause. "[A]ny harm flowing from the defendant's conduct, even indirectly, is said to be 'fairly traceable.'" *Grow Michigan, LLC v. LT Lender, LLC*, 50 F.4th 587, 592–93 (6th Cir. 2022) (quotation omitted).

The Amended Complaint alleges that the University moved against Woodcock after SJR 55 became law and that SJR 55 "imposes on public universities in Kentucky the IHRA definition of antisemitism." Am. Compl. ¶¶ 3, 33 (DN 36) at 1617, 1624. It alleges that the University's Office of Equal Opportunity uses the IHRA definition and its examples in "investigating any complaints of antisemitism," and that the definition is being applied to Woodcock. *Id.* ¶¶ 36, 84, 164 at 1625, 1643–44, 1665–66. The record confirms the link. The General Counsel wrote that the University would assess Woodcock's speech under the definition "mandated by the Kentucky General

Assembly." DN 19-4 at 1067. The Notice of Investigation itself charged Woodcock under the University's discrimination policy, which, it said, "incorporates the International Holocaust Remembrance Alliance's definition of anti-Semitism." First NOI (DN 19-15) at 1558. The Executive Director of Equal Opportunity, asked about the Woodcock investigation, testified that the definition "would require, by state law, to apply to investigations around potentially anti-Semitic claims." DN 40 at 1951. Even in restating Woodcock's claim, the University Officials' motion calls it "the antisemitism definition mandated by the General Assembly," without disputing that description. DN 63 at 2221. And the Attorney General told the Sixth Circuit that "[i]n compliance with SJR 55, UK adopted IHRA's definition of antisemitism through its Office of Equal Opportunity." Br. of Att'y Gen. Russell Coleman at 15, *Woodcock v. Univ. of Ky.*, No. 26-5057 (6th Cir. Apr. 23, 2026), Doc. 55 ("AG Br."). The Attorney General has said publicly that "[u]nder the direction of those guidelines, the University of Kentucky temporarily suspended the teaching duties of law professor Ramsi Woodcock," and that the University did so "[i]n reliance on those guidelines." Ex. A at 1; Ex. B at 1. The Attorney General cannot tell the public that SJR 55 directed the University's action against Woodcock and tell this Court that striking SJR 55 down would change nothing.

2. Redressability

The Attorney General's argument that the University might continue its investigation or apply the IHRA definition on its own misstates what redressability requires. A plaintiff "satisfies the redressability requirement when he shows that a favorable decision will relieve a discrete injury to himself. He need not show that a favorable decision will relieve his every injury." *Larson v. Valente*, 456 U.S. 228, 243–44 n.15 (1982); *see Parsons v. U.S. Dep't of Justice*, 801 F.3d 701, 716 (6th Cir. 2015) ("partial redress can also satisfy the standing requirement"). In *Larson* the State had relied on the challenged rule "as the sole statutory authority" for its demand, and then claimed "independent

bases" for its position in the Supreme Court. 456 U.S. at 241. The Court held that the State's change of position did not render the controversy "any less concrete," *id.*, and that the possibility the State might reach the same result "on some ground other than" the rule "does not deprive this Court of jurisdiction." *Id.* at 242. The same is true here. A declaration that SJR 55 is unconstitutional would remove the legal mandate that the University's own officials cite as the reason they apply the IHRA definition to Woodcock. It would also relieve the ongoing chill on Woodcock's speech, and on the speech of others at the University, that the University's imposition of the IHRA definition at SJR 55's direction produces. Am. Compl. ¶¶ 117, 126 (DN 36) at 1656, 1658.

Nor does redress here depend on "guesswork as to how independent decisionmakers will exercise their judgment." *Murthy v. Missouri*, 603 U.S. 43, 57 (2024) (quoting *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 413 (2013)). A statutory command is the clearest example of a law's "determinative or coercive effect" on a third party. *Bennett*, 520 U.S. at 169; *see Turaani v. Wray*, 988 F.3d 313, 316 (6th Cir. 2021) (indirect causation requires that the government "cajole, coerce, command"). SJR 55 provides that each university's governing board "shall adopt policies to combat antisemitism" that "use as guidance" the IHRA definition. 2025 Ky. Acts ch. 157, § 1. As shown above, the University's General Counsel, its Executive Director of Equal Opportunity, and the Attorney General himself have all tied the University's use of the definition to that command. DN 19-4 at 1067; DN 40 at 1951; AG Br. at 15; Ex. A at 1. Those statements are the showing the Sixth Circuit found missing in *Ames v. LaRose*, 86 F.4th 729, 732–33 (6th Cir. 2023), where the plaintiff offered "no indication" that the third party would act differently without the statute. *See also S.F. Cnty. Democratic Cent. Comm. v. Eu*, 826 F.2d 814, 823–24 (9th Cir. 1987) (refusing to infer that institutions' adherence to a statutory command "merely reflect[s] a neat coincidence of what the parties want and what the statutes require"), *aff'd*, 489 U.S. 214 (1989).

Unlike the White House officials in *Murthy*, who had "already abandoned their pressure campaign," 603 U.S. at 74 n.11, the General Assembly has not withdrawn its command. SJR 55 requires the University to implement its policies "through June 30, 2028" and to report the number and outcomes of its antisemitism investigations each year. 2025 Ky. Acts ch. 157, §§ 1, 2. A legislator testifying for SJR 55 told the House committee that considered it that the General Assembly would renew the resolution if necessary: "I hope that by 2028, we don't need to re-up this, but if we do, then we will do that." Hearing on S.J. Res. 55 Before the H. Standing Comm. on Postsecondary Educ. at 35:12–36:10 (Ky. Mar. 11, 2025) (statement of Rep. Daniel Grossberg) (Ex. C). When a government defends a law as consequential while insisting that striking it down would change nothing, "courts can appropriately be skeptical." *Diamond Alternative Energy, LLC v. EPA*, 606 U.S. 100, 122 (2025).

Finally, any question whether a judgment against the Attorney General alone would bind the University will be resolved by the amendment Woodcock intends to seek, which would assert Count X against the University Officials, who apply SJR 55's mandate to Woodcock. *See* Part IV, *infra*. *Haaland v. Brackeen* turned on the fact that the officials who applied the challenged law were "nonparties who would not be bound by the judgment." 599 U.S. 255, 293 (2023). The University Officials are parties already. A judgment declaring SJR 55 unconstitutional and enjoining them from applying the policies it requires would bind the officials who matter. 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 amendment will resolve the Attorney General's objection as to the relief Count X seeks.

II. The Amended Complaint States a Free Speech Claim Against SJR 55 (MTD Parts I–II)

A. SJR 55 Regulates Speech

SJR 55 is not, as the Attorney General describes it, a law that "merely" asks universities to adopt policies. MTD at 2417. It commands the governing board of every public postsecondary institution to "adopt policies to combat antisemitism" that "use as guidance" the IHRA definition. 2025 Ky. Acts ch. 157, § 1. It requires each institution to count "the number of reports alleging antisemitism," "the number of investigations opened," and "the outcomes of those investigations," and to report those numbers each year to the Council on Postsecondary Education, which must publish them and report them to the Legislative Research Commission. *Id.* §§ 1(4), 2. The Attorney General's own brief in the Sixth Circuit describes SJR 55 as a law that "requires Kentucky's public universities to combat antisemitism . . . ." AG Br. at 16.

The definition that SJR 55 requires universities to use as guidance reaches speech. Its examples treat as potentially antisemitic "[d]enying the Jewish people their right to self-determination, e.g., by claiming that the existence of a State of Israel is a racist endeavor," "[a]pplying double standards" to Israel, and "[d]rawing comparisons of contemporary Israeli policy to that of the Nazis." Am. Compl. ¶ 24 (DN 36) at 1621; *see* MTD at 2413–14. Those are statements of political opinion about a foreign state and a political ideology. A university policy that uses those examples to identify antisemitism, and a law that requires every public university to adopt such a policy and to measure itself by the investigations it opens, regulates political speech. Am. Compl. ¶¶ 93, 211–13 (DN 36) at 1647, 1676.

The Attorney General's premise that SJR 55 cannot regulate speech because it "only directs" universities to adopt policies, MTD at 2415, fails for another reason. It makes no difference that SJR 55 operates through the universities rather than through a criminal prohibition. The universities are

arms of the State. A public university's policy restricting speech is subject to the First Amendment. *See Dambrot v. Cent. Mich. Univ.*, 55 F.3d 1177, 1182–84 (6th Cir. 1995) (holding university's discriminatory-harassment policy overbroad and vague). A State may not accomplish through its instrumentalities, or even through private intermediaries, what it may not do directly. *Nat'l Rifle Ass'n of Am. v. Vullo*, 602 U.S. 175, 190 (2024) ("a government official cannot do indirectly what she is barred from doing directly"); *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 66–68 (1963). A law that directs every public university to classify speech by a viewpoint-laden definition is a regulation of that speech, whichever official carries it out.

B. SJR 55's Instruction to "Adhere to the First Amendment" Does Not Save It

The Attorney General argues that because SJR 55 also directs institutions to "adhere to the First Amendment," it is "impossible for a public university to both comply with SJR 55 and at the same time violate a faculty member's free speech rights." MTD at 2424. If that were the law, no speech code could ever be challenged so long as it recited the Constitution. The Sixth Circuit rejected that reasoning in *Dambrot*, refusing to save a university's harassment policy on the strength of the policy's own assurance that it would not "interfere impermissibly with individuals[']rights to free speech." 55 F.3d at 1183. A general instruction to respect the First Amendment does not tell a faculty member which of the IHRA examples his speech may safely approach. Nor does it cure a definition whose operative examples target protected speech. The University's own experience illustrates the point. The General Counsel promised that the University would apply the IHRA definition "in a manner consistent with the First Amendment" in the same letter in which he announced that the University would use it to investigate Woodcock's political speech. DN 19-4 at 1067.

C. Whether SJR 55 Is Overbroad Cannot Be Decided on the Pleadings

The Attorney General invokes the framework of *Moody v. NetChoice, LLC*, 603 U.S. 707 (2024), for facial challenges. MTD at 2421. *Moody* requires a court first to determine a law's full scope and then to weigh its unconstitutional applications against its constitutional ones. 603 U.S. at 724–26. The Supreme Court vacated both judgments in *Moody* because the lower courts had not undertaken that inquiry, which depends on a developed understanding of how the law operates. *Id.* at 725–26. The Attorney General cannot short-circuit that inquiry by declaring that SJR 55 has no unconstitutional applications because it "does not regulate speech." MTD at 2421. The Amended Complaint alleges that SJR 55 directs universities to regulate political speech, that it reaches a substantial amount of protected expression, and that it chills protected speech, including at the University. Am. Compl. ¶¶ 117, 126, 211–13 (DN 36) at 1656, 1658, 1676. The Sixth Circuit has struck down a university harassment policy as overbroad because speech "regardless of political value, can be prohibited upon the initiative of the university." *Dambrot*, 55 F.3d at 1183. Whether SJR 55's legitimate sweep is small relative to its reach into protected speech is a question for a developed record.

Count X is also not only a facial challenge. It alleges that SJR 55 directs the adoption of policies "such as the University antisemitism policy that serves as the basis for the University's suspension, banishment, and investigation of Professor Woodcock under threat of termination." Am. Compl. ¶ 210 (DN 36) at 1676. As applied to Woodcock, the claim requires no weighing of hypothetical applications.

D. SJR 55 Discriminates on the Basis of Viewpoint and Is Vague

The Attorney General argues that the IHRA examples identify conduct that may "indicate antisemitic intent" only "when considered in context." MTD at 2422. But the examples single out

one side of a political debate. They treat criticism of Zionism and the State of Israel as potential evidence of antisemitism, while support for Zionism and the State of Israel is never treated as evidence of bigotry toward anyone. Am. Compl. ¶¶ 24, 211 (DN 36) at 1621, 1676. "When the government targets not subject matter, but particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant." *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995). The Attorney General's observation that the definition excludes criticism of Israel "similar to that leveled against any other country" confirms the problem rather than solving it, because the examples leave to the enforcing official the judgment of which criticism is "similar" and which applies a "double standard." MTD at 2413, 2423.

For the same reason, SJR 55 is vague. A law is unconstitutionally vague if it "is an unrestricted delegation of power, which in practice leaves the definition of its terms to law enforcement officers, and thereby invites arbitrary, discriminatory and overzealous enforcement." *Leonardson v. City of East Lansing*, 896 F.2d 190, 196 (6th Cir. 1990) (quotation omitted) (cited at MTD at 2426). The Attorney General defends SJR 55 on the ground that it leaves the content of each university's policy to the university and its application to "context." MTD at 2422, 2425, 2428. That is a description of the delegation *Leonardson* condemns. The Amended Complaint identifies the undefined and subjective terms on which the definition depends, including "a certain perception of Jews," "double standards," and the "right of self-determination," and alleges that the University's policy does not say whether the examples are part of the policy at all. Am. Compl. ¶ 214 (DN 36) at 1676–77.

The undefined "right of self-determination" shows how far the definition can reach. The definition treats "[d]enying the Jewish people their right to self-determination" as antisemitic but does not say what that right is. Israel's Basic Law declares that the right to national self-determination in the State of Israel is "unique to the Jewish people." Basic Law: Israel—The Nation State of the Jewish People § 1(c) (2018) (unofficial translation). If the right is understood that way, a

speaker who argues that everyone living in Israel should share equally in self-determination denies "the Jewish people their right to self-determination." Opposition to discrimination then becomes evidence of antisemitism. Am. Compl. ¶ 214 (DN 36) at 1676–77. Where a rule "interferes with the right of free speech," "a more stringent vagueness test should apply." *Vill. of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 499 (1982).

E. The General Assembly's Police Power Does Not Answer a First Amendment Claim

Much of the motion defends SJR 55 as a reasonable exercise of the General Assembly's police power under Section 29 of the Kentucky Constitution, citing decisions applying rational-basis review to state economic and regulatory legislation. MTD at 2419–21. Woodcock does not challenge the General Assembly's authority to protect students from harassment and discrimination. He challenges the means it chose: a directive to classify political speech as antisemitism by reference to a viewpoint-based definition. The police power of a State does not authorize it to regulate speech in violation of the First Amendment. A legislature's "rational speculation" does not satisfy the scrutiny that applies to viewpoint-based regulation of speech. MTD at 2419 (quotation omitted). Harassment, threats, and discrimination directed at Jewish students are already prohibited by Title VI and the Kentucky Civil Rights Act, as SJR 55 itself recognizes in requiring that students be told of their rights under those laws. 2025 Ky. Acts ch. 157, § 1(1). What SJR 55 adds is the classification of protected speech.

III. The Amended Complaint States an Establishment Clause Claim (MTD Part III)

Count V alleges a denominational preference. The IHRA definition, which SJR 55 requires every public university to use as guidance, treats as antisemitic the denial of a right of self-determination grounded in adherence to one faith, while affording no such protection to the claims of any other religious group. Am. Compl. ¶¶ 162–67 (DN 36) at 1665–67. A critic who rejects every right of self-

determination grounded in religious affiliation may criticize Christian or Muslim religious nationalism without being accused of bigotry, but not Jewish religious nationalism. *Id.* ¶¶ 27, 163 at 1622, 1665. "The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another." A law that grants such a preference is subject to strict scrutiny. *Larson*, 456 U.S. at 244, 246. The government bears "the burden to show that the relevant law, or application thereof, is 'closely fitted to further a compelling governmental interest.'" *Catholic Charities Bureau, Inc. v. Wis. Lab. & Indus. Rev. Comm'n*, 605 U.S. 238, 248 (2025) (quoting *Larson*, 456 U.S. at 251).

The Attorney General does not carry that burden on a motion to dismiss. The Attorney General argues first that SJR 55 does not require any particular action or punishment. MTD at 2427–28. But Count V challenges the preference embedded in the definition that SJR 55 requires every institution to use as guidance. The University is applying that definition to Woodcock. Am. Compl. ¶¶ 164, 166 (DN 36) at 1666. The Attorney General then says that "it is unclear how a strict scrutiny analysis would apply," and asserts, without any facts, that a law with "only four subsections of prescribed content" is narrowly tailored to "advancing religious freedom." MTD at 2429. Whether the Commonwealth can show that a preference for one faith's claim of self-determination is closely fitted to a compelling interest, when the interest in protecting students from harassment is already served by laws that prefer no faith, is a question the Commonwealth must answer with evidence. It cannot be resolved against Woodcock on the pleadings. Finally, SJR 55's instruction to "adhere to the First Amendment" is no more effective against an Establishment Clause claim than against a free speech claim. MTD at 2429.

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

If the Court concludes that any allegation against the Attorney General is insufficient, Woodcock asks that dismissal be without prejudice. 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). Since the Amended Complaint was filed in January 2026, the Executive Director's testimony has been filed with the Court. The University Officials and the Attorney General have also made the statements described above confirming that the University applies the IHRA definition to Woodcock because SJR 55 requires it. DN 40 at 1951; DN 63 at 2221; AG Br. at 15–16; Exs. A–B. Woodcock intends to seek leave to amend to add those facts, to plead the as-applied challenge to SJR 55 expressly, and to assert Count X against the University Officials who apply SJR 55 to him, as well as against the Attorney General.

CONCLUSION

Woodcock respectfully asks the Court to deny the Attorney General's motion to dismiss (DN 67) or, in the alternative, to dismiss without prejudice and with leave to amend.

Date: October 23, 2026

Respectfully submitted,

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INDEX OF EXHIBITS

Exhibit A: Office of the Attorney General, Press Release, AG Coleman Defends Law Aimed at Protecting Kentucky Students from Antisemitism (Feb. 4, 2026)

Exhibit B: Office of the Attorney General, Press Release, AG Coleman Comments Following Sixth Circuit Argument on Antisemitism at the University of Kentucky (July 28, 2026)

Exhibit C: Transcript of Excerpt, Hearing on 2025 Senate Joint Resolution 55 Before the House Standing Committee on Postsecondary Education (Mar. 11, 2025) (35:12–36:10)