UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION at LEXINGTON
CIVIL ACTION NO. 5:25-CV-00424

RAMSI A. WOODCOCK PLAINTIFF

V.

ELI CAPILUTO, ROBERT DIPAOLA,
WILLIAM THRO, JAMES DUFF,
LINDA MCMAHON, AND RUSSELL COLEMAN, DEFENDANTS

DEFENDANT LINDA MCMAHON'S MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT

Plaintiff Ramsi A. Woodcock is a professor at the University of Kentucky. In this suit, he claims that the University "moved in July 2025 to suspend him and ban him from the law building" based on a state law that went into effect in April of 2025. [*See* R. 36: Amended Complaint at ¶ 3.] Almost as an afterthought, Woodcock added Linda McMahon, the Secretary of the Department of Education, as a defendant to this suit. Specifically, he challenges a Question and Answer document that the Department of Education posted on their website in 2021, four years before any of the complained of conduct started. [*See id.* at ¶¶ 23, 203-04.] Broadly, Woodcock's claims against Secretary McMahon should be dismissed because this suit has little to nothing to do with her. On a more granular level, McMahon is entitled to a full dismissal of all claims against her because: (1) Woodcock never properly effectuated service of the Amended Complaint on her; (2) Woodcock does not have standing to sue the Department of Education; (3) Woodcock's Complaint fails to state an

Establishment Clause claim against McMahon; and (4) the 2021 Q&A document is not a final agency action subject to review under the Administrative Procedure Act.

FACTUAL BACKGROUND and PROCEDURAL HISTORY

In December of 2019, President Donald Trump[1] signed Executive Order 13899 on Combatting Anti-Semitism. Exec. Order No. 13415, 84 FR 68779 (2019), available at https://www.federalregister.gov/documents/2019/12/16/2019-27217/combating-anti-semitism. In its first section, the Executive Order states that this presidential administration:

> is committed to combating the rise of anti-Semitism and anti-Semitic incidents in the United States and around the world. Anti-Semitic incidents have increased since 2013, and students, in particular, continue to face anti-Semitic harassment in schools and on university and college campuses.

Id. at Section 1. While acknowledging that Title VI of the Civil Rights Act of 1964 "does not cover discrimination based on religion," the Executive Order explains that, "[d]iscrimination against Jews may give rise to a Title VI violation when the discrimination is based on an individual's race, color, or national origin." *Id.*

To address these concerns, the Executive Order requires "all executive departments and agencies [] charged with enforcing Title VI [to] consider the following:

> (i) the non-legally binding working definition of anti-Semitism adopted on May 26, 2016, by the International Holocaust Remembrance Alliance (IHRA), which states,

[1] Woodcock has not named President Trump as a defendant, and his Complaint does not appear to challenge this Executive Order.

> "Antisemitism is a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities"; and
>
> (ii) the "Contemporary Examples of Anti-Semitism" identified by the IHRA, to the extent that any examples might be useful as evidence of discriminatory intent.

Id. at Section 2(a). Directly following this, the Executive Order expressly instructs federal agencies "not [to] diminish or infringe upon any right protected under Federal law or under the First Amendment." *Id.* at Section 2(b). Moreover, the Executive Order states that, "[a]s with all other Title VI complaints, the inquiry into whether a particular act constitutes discrimination prohibited by Title VI will require a detailed analysis of the allegations." *Id.*

Actions Taken by the Department of Education

In 2021, the Department of Education's Office of Civil Rights (OCR) published a document titled "Questions and Answers on Executive Order 13899 (Combating Anti-Semitism) and OCR's Enforcement of Title VI of the Civil Rights Act of 1964" on their website. U.S. Dep't of Ed., Office for Civil Rights, "Questions and Answers on Executive Order 13899 (Combating Anti-Semitism) and OCR's Enforcement of Title VI of the Civil Rights Act of 1964," available at https://www.ed.gov/media/document/questions-and-answers-executive-order-13899-combating-anti-semitism-and-ocrs-enforcement-of-title-vi-of-civil-rights-act-of-1964-

2019-21235.pdf. [*See also* Exhibit A.] The following Questions and Answers appear most relevant to the claims made in this suit:

Question 3: Does the Executive Order define anti-Semitism?

Answer: No. However, the Executive Order provides that federal agencies "shall consider" the non-legally binding working definition of anti-Semitism adopted on May 26, 2016, by the IHRA that: "Antisemitism is a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities" in enforcing Title VI, and the IHRA's accompanying examples of anti-Semitism "to the extent that" any such "examples might be useful as evidence of discriminatory intent." The IHRA definition and examples are set out in the Appendix to this Questions and Answers document for reference.

…

Question 5: Does the Executive Order change how OCR will handle complaints of discrimination involving anti-Semitism?

Answer: No. OCR has long recognized that anti-Semitism may violate Title VI, including in 2004 and 2010 guidance documents, which explained that Title VI reaches many instances of discrimination based on a student's actual or perceived shared ancestry or ethnic characteristics.[2] In enforcing Title VI, OCR has investigated complaints of discrimination alleging anti-Semitism in schools and colleges, and has recently considered the IHRA definition in individual investigations, as appropriate. This enforcement approach is consistent with the Executive Order. Under the Executive Order, OCR will continue to investigate anti-Semitism consistent with OCR's jurisdictional authority, case processing procedures, the applicable Title VI legal framework, and constitutional principles, just as OCR does in all its investigations.

Question 6: Does the Executive Order mean that any anti-Semitic incident violates Title VI?

Answer: No. An anti-Semitic incident does not violate Title VI merely because it is anti-Semitic, or because it involves an example of anti-Semitism contemplated by the IHRA. Rather, the Executive Order states that a "detailed analysis" is required to determine if a particular act constitutes discrimination prohibited by Title VI, as is true "with all other Title VI complaints." Nor does the Executive Order "alter the evidentiary requirements" for agencies for determining whether a recipient's conduct amounts to actionable discrimination. Thus, OCR, as required under the Executive Order, will consider the IHRA definition in handling complaints of anti-Semitism, and will continue to apply the Title VI statute, regulations, and established standards.

Question 7: Does the Executive Order restrict free speech?

> Answer: No. The Executive Order instructs federal agencies that they "shall not diminish or infringe upon any right protected under Federal law or under the First Amendment." Additionally, the Executive Order requires consideration of the IHRA definition and accompanying examples only where useful as "evidence of discriminatory intent." OCR will enforce all civil rights laws under its jurisdiction without restricting speech or expression protected by the U.S. Constitution, and has made clear that schools working to prevent discrimination must respect the free speech rights of students, faculty, and others.[3]

Id. at pp. 2-3.

Woodcock's Claims

According to Woodcock's Amended Complaint, he was hired by the University of Kentucky's College of Law in 2018 to teach courses "primarily in the areas of business and commercial law, including antitrust, business associations, contracts and secured transactions." [R. 36 at ¶¶ 19, 21.] In 2023, he began teaching a seminar "on international law with a focus on government legitimacy." [*Id.*] In the fall of that year, Woodcock claims he determined that "Israel was committing genocide" in Palestine and "could be considered a Western colony in Palestine[,]" which "led him to conclude that Israel should be brought to an end." [*Id.* at ¶ 48.] In 2024, Woodcock says that he "started sharing [those] views" in academic settings in the following ways:

> He presented his conclusions at a faculty research seminar at the College of Law, emailed the faculty listserv about them, spoke about them at conferences, wrote and circulated petitions based upon them, published an op-ed about them, issued a call for papers and planned a conference about them, discussed them at faculty meetings, blogged about them, posted to social media about them, discussed them in online discussion groups for law professors, and set up a website, antizionist.net, intended to start a scholarly movement based upon them.

[*Id.* at ¶ 50.]

On July 1, 2025, "the University promoted Woodcock" from Associate Professor "to the position of Professor, the University's highest academic rank[.]" [*Id.* at ⁋ 22.] But, then, on July 9, 2025, in a meeting with Woodcock, the Vice Provost of the University expressed concerns about reports her office had received regarding Woodcock's discussion of genocide at academic conferences, among other concerns. [*See id.* at ⁋ 55.] Later in July, the University's President "issued a public statement decrying [Woodcock's] Petition for Military Action Against Israel[.]" [*Id.* at ⁋ 57.] That same day, the University informed Woodcock that it had launched an investigation into his writings, conduct at academic conferences, and postings on academic listservs. [*Id.* at ⁋ 61.] The University also put Woodcock on paid administrative leave, pending the outcome of the investigation. [*Id.* at ⁋ 62.]

On November 13, 2025, Woodcock filed this suit seeking declaratory and injunctive relief of various forms and monetary and punitive damages against the University defendants as well as attorney fees and costs. [*See* R. 1: Complaint at Page ID 38-39.] Regarding Secretary McMahon, Woodcock brought a § 1981 claim against her for race discrimination, and he also brought an APA claim, alleging that the Department of Education's use of the IHRA definition represents a final agency action that violates the free speech rights of government employees. [*See id.* at Page ID 36-38.]

The United States Attorney's Office did not receive service of the original Complaint until December 11, 2025.[2] The next day, on December 12, 2025, Woodcock filed a Motion for Preliminary Injunction against the University defendants, but the Motion does not appear to contain a Certificate of Service and the U.S. Attorney's Office did not receive a copy. [*See* R. 19.] Subsequently, a hearing was held on December 19, 2025 on the Motion without Defendant McMahon's knowledge or participation. [*See* R. 30.]

On January 7, 2026, before Secretary McMahon's time to respond had run and before the Court could rule on the Motion for Preliminary Injunction, Woodcock filed an Amended Complaint. [R. 36.] In the Amended Complaint, Woodcock dropped the racial discrimination claim against McMahon and added a claim that she, along with all other named defendants, violated the First Amendment's Establishment Clause by "requiring University officials to adopt special rules criticizing a Jewish-faith-based right of self-determination that violate the Establishment Clause's prohibition on asserting a preference for one religious denomination over others." [*Id.* at ¶ 166.] Woodcock kept the APA claim against McMahon but now alleges that the Department of Education's policy "mandating consideration of the IHRA definition" [*id.* at ¶ 205] is a final agency action affecting the free speech rights *and* establishment clause rights of government employees. [*See id.* at ¶ 206.] Defendant McMahon has still not been served with a copy of the Amended Complaint.

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[2] Woodcock does not appear to have filed returns of service for any of the defendants.

ARGUMENT

I. Woodcock's Claims Against McMahon Should Be Dismissed Under Rule 12(b)(5) for Insufficient Service of Process.

To the undersigned's knowledge, Woodcock has never served a copy of the operative complaint on Secretary McMahon, her counsel, or the Attorney General, and McMahon is therefore entitled to dismissal under Federal Rule of Civil Procedure 12(b)(5). This Court's electronic filing rules do contemplate that "[u]pon the electronic filing of a pleading or other document, the court's Electronic Case Filing System will automatically generate and send a Notice of Electronic Filing (NEF) to all Filing Users associated with that case."[3] However, counsel had not entered an appearance on behalf of Secretary McMahon prior to Woodcock's filing of the Amended Complaint, as her time to respond to the original Complaint had not yet run. *See Howard v. Land End Investors Trust*, No. 3:17-CV-322, 2018 WL 11512262 (E.D. Tenn. Feb. 13, 2018) (finding that "Plaintiffs fail[ed] to satisfy [the Court's electronic service] criteria not only because their Amended Complaint lacks a certificate of service but also because, at the time they filed the Amended Complaint, [defense] counsel was not yet a participant in the Court's Electronic Filing System" and ordering an evidentiary hearing to make sense of warring affidavits regarding service). Because service was required under Rule 5(a)(1) and Woodcock failed to meet

[3] *See* Eastern and Western Dist. of Ky. Joint General Order No. 18-3, "In Re: Electronic Case Filing Administrative Policies and Procedures" (Nov. 8, 2018), available at https://www.kyed.uscourts.gov/sites/kyed/files/jt18-3.pdf, at Section 12.2.1, p. 13.

that requirement, Woodcock's claims in his Amended Complaint against Secretary McMahon should be dismissed under Rule 12(b)(5).

II. Alternatively, Woodcock's Claims Against McMahon Should be Dismissed Under Rule 12(b)(1) Because He Lacks Standing to Bring Them.

"To sue in federal court a plaintiff must demonstrate that he or she has standing under Article III of the Constitution." *Am. C.L. Union of Ohio Found., Inc. v. DeWeese*, 633 F.3d 424, 428-29 (6th Cir. 2011) (citing *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 103, (1998). To establish that he has standing, Woodcock must "demonstrate (1) actual or threatened injury which is (2) fairly traceable to the challenged action and (3) a substantial likelihood the relief requested will redress or prevent [his] injury." *Id.* at 429.

Here, the Amended Complaint, taken on its face, does not establish that Woodcock has standing to challenge the Department of Education's issuance of the Q&A document or use of the IHRA definition. "A *facial* attack on the subject matter jurisdiction alleged by the complaint merely questions the sufficiency of the pleading." *Ohio Nat. Life Ins. Co. v. United States*, 922 F.2d 320, 325 (6th Cir. 1990). Thus, in considering a facial attack, this Court must "take[] the allegations in the complaint as true[.]" *Id.*

Even assuming all Woodcock's allegations are true, whatever injury he has endured or might endure in the future is not fairly traceable to the Department of Education (ED). Further, even if this Court were to grant Woodcock's request for

injunctive relief against Secretary McMahon, he cannot show that such an injunction would "redress or prevent his injury."

The "fairly traceable" component of the standing test is essentially a causation test. *See Parsons v. U.S. Dep't of Just.*, 801 F.3d 701, 713 (6th Cir. 2015). However, according to the Sixth Circuit, "causation need not be proximate" to satisfy the test. *Id.* "However, the Supreme Court has cautioned that standing, albeit not precluded, is generally more difficult to establish when the injury is indirect." *Id.* (citing *Summers v. Earth Island Inst.*, 555 U.S. 488, 493 (2009). Woodcock certainly does not claim any direct injury from ED's actions. The Amended Complaint puts the blame squarely on the University for Woodcock's suspension, banishment, investigation, and "imposition of the IHRA on the campus[.]" [*See* R. 36 at ⁋ 117.] Woodcock has also dropped his claim that ED's actions worked to chill his free speech; after all, Woodcock admits that he began speaking out *after* the ED's publication of the 2021 Q&A document.

Instead, Woodcock broadly claims that "the University's tolerance of [his anti-Israel] speech ended summer 2025 after federal government threats to withdraw funding from universities, federal enforcement of the IHRA definition, and passage of Kentucky Senate Joint Resolution 55 enabled and pressured administrators to suppress speech critical of Israel and Zionism." [*Id.* at ⁋ 53.] However, Woodcock's 63-page, 215-paragraph Complaint contains virtually no information about how ED itself directly or even indirectly affected him or the University's decisions related to

him. Instead, the Complaint gives a litany of reasons for the University's decisions that are all unrelated to any influence wielded by ED.

First, Woodcock accuses the investigator appointed by the University as well as the University president himself of holding pro-Israel views and "long associat[ion] with organizations that oppose Professor Woodcock's view that Israel should be brought to an end." [R. 36 at ¶¶ 39, 58, 60.] In other words, Woodcock contends that powerful University actors are biased against his views because of their personal beliefs rather than ED's influence.

Separately, Woodcock describes the University defendants as rogue employees, who "may have been acting outside the scope of their employment in carrying out the suspension, banishment, investigation, and adoption of the IHRA definition of antisemitism" without following proper University policies and procedures for rewriting University regulations or policies. [*See id.* at ¶ 116.] Woodcock offers no ED-connected reason for why the University defendants would take such drastic measures. In fact, he also indicates that the University defendants took over an investigative process that is normally reserved for the Office of Equal Opportunity, which handles Title VI investigations. [*Id.* at ¶ 115.] Again, nothing in the 2021 Q&A document would encourage such actions.

Second, the University's written correspondence to Woodcock, which is cited to and quoted throughout his Amended Complaint, clearly indicates that the University is investigating Woodcock for violation of the university's own policies, including its

Ethical Principles and Employee Code of Conduct, its Institutional Statements Policy, its spam policy, and its antidiscrimination policy. [*Id.* at ⁋⁋ 70, 76.]

Paragraphs 81 through 83 of the Amended Complaint explain what the Employee Code of Conduct, Institutional Statements, and spam policy cover; however, none of them seem to address the definition of antisemitism. Paragraph 84 indicates that the University's Office of Equal Opportunity (or OEO) "has adopted the IHRA definition of antisemitism for use in 'investigating any complaints of antisemitism" [*id.* at ⁋ 84], but the link to the OEO's website, provided in a footnote to paragraph 36 of the Amended Complaint, plainly states that "[i]n investigating any complaints of antisemitism," the OEO uses the IHRA's definition of antisemitism "recognized by Kentucky 2021 Regular Session Senate Resolution 67[.]" Notably, there is no mention of the ED's use of the IHRA definition or the ED's 2021 Q&A document.

Third, the timeline does not fit with any theory that ED influenced the outcome here. Despite the publication of the Q&A document in 2021, Woodcock admits that the University "[d]efendants did not subject [him] to investigation, suspension, or banishment for this speech in 2024." [R. 36 at ⁋ 88.] Woodcock also admits that "[t]he immediate cause of the University's change in approach appears to be that, on July 6, 2025," the same day as his first meeting with the Vice Provost, "Plaintiff posted links to antizionist.net, including a link to his Petition for Military Action against Israel, to four online discussion groups for law professors hosted by the Association

of American Law Schools[.]" [*Id.* at ¶ 54.] And, of course, Woodcock also points to Kentucky Senate Joint Resolution 55 [*see id.* at ¶¶ 3, 33], which went into effect in April of 2025 and specifically applies to "public post-secondary education institutions" like the University. *See* Ky. Sen. Joint Res. 55 (2025), available at https://apps.legislature.ky.gov/law/acts/25RS/documents/0157.pdf.

Woodcock does attempt to indirectly link the University's decisions to the federal government more broadly, but not specifically to the Department of Education or Secretary McMahon. For example, the Amended Complaint references the "Task Force to Combat Antisemitism coordinated by the Department of Justice's Civil Rights Division" and alleges that entity has taken efforts to "suppress pro-Palestinian speech" at universities like Columbia and Harvard. [*Id.* at ¶ 31-32.] The Amended Complaint also casts blame on the Heritage Foundation's Project Esther [*see id.* at ¶ 31] and points to the detention of "Palestinian rights activist Mahmoud Khalil near the Columbia University campus" [*id.* at ¶ 35], but nothing in the Amended Complaint factually connects ED's actions or influence to the University's decisions to investigate and suspend Woodcock. Without such a connection, McMahon's actions are not fairly traceable to Woodcock's injuries, and the Amended Complaint provides no plausible argument that Woodcock's injuries would be redressed if he received the relief against Secretary McMahon that he proposes. After all, nothing in the Amended Complaint indicates that ED's use of the IHRA's definition of antisemitism actually influenced the University to act adversely against Woodcock.

III. Woodcock's Establishment Clause Claim Should Be Dismissed for Failure to State a Claim Under Rule 12(b)(6).

Woodcock claims that the adoption of the IHRA definition of antisemitism violates the Establishment Clause by officially preferring "particular Jewish beliefs over other Jewish beliefs and beliefs not grounded in Judaism[.]" [R. 36 at ¶ 162.] The First Amendment's Establishment Clause does "mandate[] government neutrality between religions and subjects any state-sponsored denominational preference to strict scrutiny." *Cath. Charities Bureau, Inc. v. Wisconsin Lab. & Indus. Rev. Comm'n*, 605 U.S. 238, 241 (2025). Accordingly, the Supreme Court has held that "[t]he clearest command of the Establishment Clause is that the government may not officially prefer one religious denomination over another." *Id.* at 247 (cleaned up). "This principle of denominational neutrality bars States from passing laws that aid or oppose particular religions or interfere in the competition between sects[.]" *Id.* at 247-48 (cleaned up).

As a threshold matter, nothing about the Department of Education's 2021 Q&A document prefers Judaism or a certain Jewish belief over any other belief. To start, the Q&A document reaffirms that "Title VI does not cover discrimination based on religion" but instead protects "individuals who face discrimination on the basis of race, color, or national origin." U.S. Dep't of Ed. at 1 (quoting E.O. 13899). [Exhibit A.] However, "'[d]iscrimination against Jews may give rise to a Title VI violation when the discrimination is based on an individual's race, color, or national origin.'" *Id.* (quoting E.O. 13899). The Q&A document also clearly states that Executive Order

13899 does not define antisemitism, *see id.* at 2, and contrary to what the Amended Complaint says, the Q&A document neither defines "hate speech" nor does it even contain that phrase. [*Compare* R. 36 at ¶¶ 162, 163, 165 *to* Exhibit A.] Instead of defining antisemitism outright, the Executive Order requires federal agencies (not educational institutions) to consider the IHRA's "non-legally binding working definition of anti-Semitism[.]" *See* Dep't of Ed. at 2. The Q&A document further explains that "[a]n anti-Semitic incident does not violate Title VI merely because it is anti-Semitic, or because it involves an example of anti-Semitism contemplated by the IHRA." *Id.* Rather, consistent with the Executive Order, the Q&A document explains that "a 'detailed analysis' is required to determine if a particular act constitutes discrimination prohibited by Title VI, as is true 'with all other Title VI complaints.'" *Id.* (quoting E.O. 13899).

Further, the IHRA definition itself does not contain any reference to a Jewish right to self-determination. The only reference to self-determination in the Q&A document is located in the Appendix, which reads in pertinent part as follows:

> To guide IHRA in its work, the following examples may serve as illustrations: Manifestations might include the targeting of the state of Israel, conceived as a Jewish collectivity. **However, criticism of Israel similar to that leveled against any other country cannot be regarded as antisemitic**. . . . Contemporary examples of antisemitism in public life, the media, schools, the workplace, and in the religious sphere could, taking into account the overall context, include, but are not limited to: …

> - Denying the Jewish people their right to self-determination, e.g., by claiming that the existence of a State of Israel is a racist endeavor.
> …

Id. at p. 5 (emphasis added). [*Compare to* R. 36 at ¶ 24.] In short, nothing in the Q&A document indicates that "some people are entitled to political rights specifically in virtue of their religious affiliation" as the Amended Complaint alleges. [*See* R. 36 at ¶ 162.] Moreover, the very thing that Woodcock accuses Defendants as a whole of doing – that is, punishing him for voicing criticism of Israel similar to allowable criticism of other countries[4] [*see id.* at ¶¶ 1, 25-28] – is expressly prohibited by the IHRA's own language, copied in the Q&A's Appendix.

The University Defendants' Motion for Judgment [R. 63 at Page ID 2219-23] and the Kentucky Attorney General's Motion to Dismiss [R. 67 at Page ID 2427-29] also address Woodcock's Establishment Clause arguments, and Secretary McMahon joins with those arguments and incorporates them by reference herein. As the University defendants observed, when confronted with a similar challenge to Executive Order 13899, the federal district court in the Western District of Missouri found that "[w]hile the executive order does seek to foster protections against a certain religion[,] the purpose of the executive order has a secular purpose as it goes to enforcing the mandate of Title VI." *McClanahan v. Trump*, No. 3:25-CV-05025-

[4] Even in Woodcock's telling, the University was tolerating his speech about Israel (i.e. that it was a colonizing state engaged in genocide) [*see* R. 36 at ¶¶ 48, 50, 52] until he began promoting a petition for military action against Israel [*see id.* at ¶ 54].

MDH, 2025 WL 1643500, at *6 (W.D. Mo. June 9, 2025). Here, where Woodcock is not even challenging the Executive Order itself but instead is challenging ED's implementation of that Order, he has likewise "not shown how Executive Order 13899 [or ED's interpretation of it] either advances or inhibits the practice of religion in its principal or primary effect" nor has he shown that ED "has fostered an excessive government entanglement with religion in promulgating a directive combatting antisemitism." *Id.*

As far as ED's implementation is specifically concerned, the Q&A document laying out its position expressly promotes protection of all "students from discrimination on the basis of real or perceived shared ethnic or ancestral characteristics, regardless of religion." Dep't of Ed. at p. 3. Because there is simply no basis for an Establishment Clause challenge as against ED or Secretary McMahon, this claim should be dismissed under Federal Rule of Civil Procedure 12(b)(6).

IV. Woodcock's Administrative Procedure Act Claim Should Also Be Dismissed Under Rule 12(b)(1) Because This Court Lacks Jurisdiction to Hear It.

In his second and final claim against Secretary McMahon, Woodcock contends that "[b]y adopting a policy mandating consideration of the IHRA definition in the enforcement of Title VI, the [ED] has issued a final agency action[,]" which violates the Free Speech Clause and Establishment Clause rights of government employees. [R. 36 at ⁋⁋ 205-06.] The Administrative Procedure Act (APA) "generally allows anyone 'adversely affected or aggrieved by agency action' to seek judicial review."

Arizona v. Biden, 40 F.4th 375, 387 (6th Cir. 2022) (quoting 5 U.S.C. § 702). Even assuming for the sake of argument, like the Sixth Circuit did in *Arizona v. Biden*, that Woodcock has been adversely affected by ED's 2021 Q&A document, the APA "permits federal courts to review only 'final agency action,'" *id.* (quoting 5 U.S.C. § 704), and the Q&A document simply does not qualify.

To qualify as a "final agency action," the action "must (1) 'mark the consummation of the agency's decisionmaking process' and (2) be an action 'by which rights or obligations have been determined, or from which legal consequences will flow.'" *Id.* (quoting *U.S. Army Corps of Eng'rs v. Hawkes Co.*, 578 U.S. 590, 597 (2016)). Generally, "[i]f an action maintains officials' independent decisionmaking and can be discretionarily relied on, it likely lacks legal effect." *Id.* (cleaned up).

Like the guidelines at issue in *Arizona v. Biden*, the Q&A here lacks the legal effect necessary to meet the second prong of the test. There, the Court held that the Guidelines for the Enforcement of Civil Immigration did not "evoke binding legal effect" because:

> Consistent with its label, the Guidance couches its instructions on lots of conditional language that preserves officials' discretion. The document provides a "not exhaustive" list of factors as "examples" of what officials should consider. … It allows officials to make decisions "depending on the facts." … It cautions that it "does not compel an action to be taken or not taken" but "leaves the exercise of prosecutorial discretion to the[ir] judgment." … Even when the Guidance uses the word "requires," it does so in the context of "an assessment of the individual and the totality of the facts and circumstances." … Capping it off, the Guidance makes clear that it "is not intended to,

> does not, and may not be relied upon to create any right or benefit." … These are telltale signs all of a nonbinding policy statement, not of reviewable agency action.

Id. at 387-88.

Nearly all the same principles apply to the Q&A document at issue here. Under the Q&A document's guidance, the Department of Education's Office of Civil Rights still has discretion to determine what constitutes discrimination under Title VI on a case-by-case basis. Dep't of Ed. at 1-2. [Exhibit A.] Like the Guidelines in *Arizona v. Biden*, the Q&A specifically states that it "does not form an independent basis for action in matters determining a person's legal rights and obligations[,]" and "the contents of this document do not have the force and effect of law, and are not meant to bind the public in any way." *Id.* at 1. While the Q&A document also uses the word "requires," it only does so in the context of an individualized determination, requiring that the Office of Civil Rights *consider* the IHRA definition, which it emphasizes is only a working definition that is not legally binding. *Id.* at 2. Finally, the Appendix to the Q&A document similarly contains a non-exhaustive list of examples of what officials might consider but still leaves ample room for officials to engage in fact-dependent decision making. Other courts across the nation have also found Q&A documents like this one do not constitute final action for purposes of the APA and are therefore not reviewable. *See Board of Educ. For Silver Consolidated Schools v. McMahon*, 791 F.Supp.3d 1272, 1290 (D.N.M.) (2025) (FAQs are not a final agency action subject to APA review); *see also, Am. Fed'n of Tchrs. v. Dep't of Educ.*, 779 F.

Supp. 3d 584, 622–623 (D. Md. 2025) ("[t]his Court does not believe the FAQs are final agency action subject to its authority under the APA"); *Holistic Candlers & Consumers Ass'n v. FDA*, 664 F.3d 940, 946 (D.C. Cir. 2012) (concluding FDA website did "not constitute final agency action"); *Nat'l Veterans Legal Servs. Program v. U.S. Dep't of Defense*, 990 F.3d 834, 836 (4th Cir. 2021) (maintaining and managing a website are not final agency actions).[5] To summarize, the Q&A document contains all the "telltale signs of a nonbinding policy statement" and because it is therefore unreviewable under the APA, the Court lacks subject matter jurisdiction over this claim, and it should be dismissed under Federal Rule of Civil Procedure 12(b)(1).

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[5] Recently, in *State of Tennessee v. Department of Education*, 104 F.4th 577, 599 (6th Cir. 2024), the Sixth Circuit did find a Q&A document promulgated by ED reviewable under the APA, where the set of documents at issue represented a brand new interpretation of Title IX. Specifically, the documents announced that ED would now interpret sex discrimination under Title IX to encompass discrimination on the basis of sexual orientation and gender identity. *See id.* Unlike the Q&A document here, the set of documents at issue in *Tennessee* told "[s]tates how to avoid liability, thereby creating legal consequences." *Id.* Here though, the Q&A document specifically explains that the ED "has long recognized that anti-Semitism may violate Title VI, including in 2004 and 2010 guidance documents, which explained that Title VI reaches many instances of discrimination based on a student's actual or perceived shared ancestry or ethnic characteristics." Dep't of Ed. at p. 2 (citing to U.S. Dep't of Ed., Office of Civil Rights Letter (Sept. 13, 2004), available at http://ed.gov/media/document/letter-title-vi-and-title-ix-religious-discrimination-schools-and-colleges-2004-35132.pdf ("In OCR's experience, some cases of religious discrimination may also involve racial, ethnic or sex discrimination."). Moreover, ED's 2021 Q&A document at issue here does not contain the same liability and legal rights language present in the documents at issue in *Tennessee*.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 30, 2026, the foregoing was electronically filed with the clerk of the court by using the CM/ECF system.

/s/ Elizabeth Davis Stone
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Assistant United States Attorney