IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

BRIAN GORMAN,	*	
Plaintiff,	*	
v.	*	Case No. 1:25-cv-03157
SCHATZEL, et al.,	*	
Defendants.	*	

* * * * * * * *

PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO DISMISS THE FIRST AMENDED COMPLAINT

Plaintiff Brian Gorman, by and through undersigned counsel, respectfully submits this Opposition to Defendants' Motion to Dismiss the First Amended Complaint (ECF 37), and states as follows.

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INTRODUCTION

Defendants' motion asks this Court to resolve contested factual disputes at the pleading stage, on the strength of characterizations drawn from their own internal correspondence. That is not what Rule 12(b)(6) permits. Plaintiff's First Amended Complaint incorporates facts noted as missing in this Court's dismissal of the original complaint. Where the Court found no allegation that Manasse, Clifford, and Elliott knew of the complaint naming them, the FAC now pleads three independent bases for that knowledge. FAC ¶¶ 42–43. Where the Court found the reliance allegation wanting, the FAC pleads forms of detriment the original did not. FAC ¶ 160. Defendants' motion does not engage those additions; it repeats the arguments made against the original pleading.

The due process claim now rests on a procedural defect Defendants do not answer at all: President Schatzel's termination letter offered Professor Gorman thirty days to appeal, but conditioned his receipt of the year of severance compensation the ART Policy already guaranteed him unconditionally, on choosing *not* to appeal. FAC ¶¶ 97, 124(b). He could have the appellate review or severance, not both. Nor was Professor Gorman told what he was accused of. The letter states three grounds for termination, two of which (misuse of the University's electronic systems and non-compliance with administrative directives) appear nowhere in the March 2022 evaluation letter Defendants offer as his notice. The motion should be denied.

STANDARD OF REVIEW

On a motion under Rule 12(b)(6), the Court accepts all well-pleaded factual allegations as true and draws all reasonable inferences in the plaintiff's favor. *Ashcroft v. Iqbal*, 556 U.S. 662, 677-8 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); see also *E.I. du Pont de Nemours & Co. v. Kolon Indus., Inc.*, 637 F.3d 435, 440 (4th Cir. 2011). As this Court has

explained, the purpose of Rule 8(a)(2) is to provide defendants "fair notice" of the claims and the grounds for entitlement to relief, and the federal pleading rules "do not countenance dismissal of a complaint for imperfect statement of the legal theory supporting the claim asserted." *McPherson v. Baltimore Police Dep't*, 494 F. Supp. 3d 269, 277 (D. Md. 2020) (quoting *Johnson v. City of Shelby*, 574 U.S. 10, 11 (2014) (per curiam)).

Plausibility is not probability. To satisfy the pleading standard, "a plaintiff need not 'forecast' evidence sufficient to prove the elements of the claim." *Walters v. McMahen*, 684 F.3d 435, 439 (4th Cir. 2012) (quoting *Robertson v. Sea Pines Real Estate Cos.,* 679 F.3d at 291 (4th Cir.2012). The Court's function is to assess whether the plaintiff "is entitled to offer evidence to support the claims[,]" not to weigh whether he will ultimately prevail. *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974).

A. Defendants' Exhibits May Not Be Credited for the Truth of Their Contents.

Defendants attach and quote at length from Dean Chulos' March 2022 letter and the September 2022 termination letter. A court may consider documents "integral to the complaint and authentic[,]" *Johnson v. Baltimore Police Dep't*, 452 F. Supp. 3d 283, 296 (D. Md. 2020) (quoting *U.S. ex rel. Oberg v. Pennsylvania Higher Educ. Assistance Agency*, 745 F.3d 131, 136 (4th Cir. 2014)), but this is a "narrow exception" to the rule confining the analysis to the the complaint itself and only integral documents. *Id.* (quoting *Zak v. Chelsea Therapeutics Int'l, Ltd.*, 780 F.3d 597, 607 (4th Cir. 2015)).

The authenticity of a document does not permit a court to accept the accuracy of the assertions made within it. In *Johnson*, this Court rejected precisely that move, holding that while a document may be "unquestionably authentic, that authenticity does not *ipso facto*" allow the court to determine the accuracy of assertions made *within* it. 452 F. Supp. 3d at 297. And even

where a court can consider facts or documents outside of the pleading itself, "the Court must still construe them in a light most favorable to Plaintiffs." *Id.* at 296. Defendants offer their exhibits not for their terms but for the truth of the performance criticisms they contain, i.e. the very characterizations the FAC alleges were false. FAC ¶¶ 64, 70, 72, 77. The Court may note that the letters were sent and what they said, but it may not treat their contents as established fact.

Defendants also invoke Rule 12(b)(1). Where a jurisdictional challenge does not dispute the truth of the complaint's jurisdictional allegations, the plaintiff receives the same protections as under Rule 12(b)(6). *Kerns v. United States*, 585 F.3d 187, 192-3 (4th Cir. 2009). And "when the jurisdictional facts are inextricably intertwined with those central to the merits, the court should resolve the relevant factual disputes only after appropriate discovery, unless the jurisdictional allegations are clearly immaterial or wholly unsubstantial and frivolous." *Kerns v. United States*, 585 F.3d 187, 193 (4th Cir. 2009).

ARGUMENT

I. THE OFFICIAL-CAPACITY CLAIMS FOR PROSPECTIVE RELIEF ARE PROPERLY BEFORE THE COURT.

Defendants argue that the *Ex parte Young* exception does not apply because Defendant Schatzel "is no longer the President of the University" and lacks authority to order reinstatement. ECF 37-1 at 1415. At most, it identifies a modest defect in party designation that brief amendment cures.

A. The Individual-Capacity Claims Are Unaffected by Dr. Schatzel's Departure.

Professor Gorman sues Defendants Schatzel, Perreault, Chulos, Barker, and Hughes in *both* their individual and official capacities. FAC ¶¶ 5–9, 113. The two sets of claims seek

different relief from different sources. The individual-capacity claims seek retrospective relief for each Defendant's own conduct. As to Dr. Schatzel, that conduct includes her September 23, 2022 letter terminating Professor Gorman's tenured appointment for "willful neglect" without identifying the charges with particularity, and conditioning his post-termination compensation on his forgoing an appeal in a manner the ART Policy does not permit. FAC ¶¶ 95–97. Defendants' argument is addressed entirely to the availability of prospective relief under *Ex parte Young*. It does not touch, and cannot reach, the individual-capacity claims in Counts I and II.

B. The Official-Capacity Claims Run Against the Offices, Which the FAC Identifies.

The official-capacity claims are pleaded "for prospective injunctive relief." FAC ¶¶ 5–9, 113, 126. In each instance, the FAC identifies the office, not merely the person who occupied it: President of Towson University (¶ 5); Provost (¶ 6); Dean of the College of Liberal Arts (¶ 7); the Office of Human Resources (¶ 8); and Chair of the Department of Sociology, Anthropology, and Criminal Justice (¶ 9).

That framing is the correct one, and it is the same premise Defendants themselves advance in their sovereign immunity discussion: an official-capacity suit is a suit against the office and the governmental entity it represents, not against the individual. ECF 37-1 at 14. The identity of the *current* occupant is relevant to who can provide relief, not on whether the facts pled as to the behavior of the prior officeholder amount to a legal violation.

C. *McBurney*'s "Special Relation" Inquiry Does Not Control Where the Challenged Conduct Is Discretionary Employment Action Rather Than Statutory Enforcement.

Defendants' reliance on *McBurney v. Cuccinelli*, 616 F.3d 393 (4th Cir. 2010), is misplaced. *McBurney* addressed whether a high-level state officer bore a sufficient connection to the *enforcement of a state statute* challenged as unconstitutional to be a proper *Ex parte Young*

defendant. *Id.* at 399-400 (finding that the state's attorney general cannot be sued with regard to constitutionality of state's FOIA-equivalent because the office is not responsible for the law's enforcement). This prevents a plaintiff from naming high officials as a stand for the State.

This case is not a challenge to statute; instead, Plaintiff alleges that the identified officials, acting under color of state law, FAC ¶¶ 16, 99, 117, retaliated against protected speech and deprived Professor Gorman of a constitutionally protected property interest without due process, and it seeks reinstatement to remedy the ongoing deprivation. FAC ¶¶ 113–114, 126.

"Every circuit, including [the Fourth], has held that claims for reinstatement to previous employment meet the *Ex Parte Young* exception." *Biggs v. N. Carolina Dep't of Pub. Safety*, 953 F.3d 236, 243 (4th Cir. 2020). The operative question is therefore not whether a named official enforces a challenged statute, but whether a named official can grant the prospective relief sought.

D. Defendants' Judicial-Notice Request Exceeds Rule 201.

Defendants ask the Court to take judicial notice, from a university web page and from the ART Policy, of the substantive proposition that Professor Gorman "has not plausibly alleged that any of the defendants have the authority to reinstate his position." ECF 37-1 at 14 & nn.7–8. Rule 201 permits notice only of facts "not subject to reasonable dispute." Fed. R. Evid. 201(b).

The identity of the current President is a proper subject of notice, but the propositions Defendants layer on top of it are not. Professor Gorman does not dispute that the ART Policy vests in the President the authority to appoint and terminate tenured faculty; he disputes Defendants' broader use of the Policy to attempt to establish, at the pleading stage, how that Policy was *in fact* applied to him and what obligations the remaining Defendants bore under it.

The ART Policy may be considered because the FAC relies on it. But it may be considered for its terms, not as proof of Defendants' characterization of how those terms operated upon the Plaintiff. The FAC alleges that Defendants departed from the Policy repeatedly: by using an evaluation designation the Policy does not contain, FAC ¶ 68; by raising a misconduct allegation outside the Policy's misconduct procedures, FAC ¶¶ 71, 73–74; by imposing a suspension the Policy does not authorize as a sanction, FAC ¶ 121; by taking actions the Policy does not authorize in rejecting the PDP and foreclosing peer collaboration, FAC ¶¶ 90–91; and by conditioning compensation on non-appeal in contravention of the Policy's express terms, FAC ¶ 97. *Whether* and *how* the Policy was applied to Professor Gorman are questions resolved on the pleadings by accepting the FAC's allegations as true.

E. The Appropriate Remedy Is a Brief and Modest Amendment, Not Dismissal.

Defendants observe that Dr. Schatzel no longer serves as President and that the sitting President possesses authority under the ART Policy over the employment of tenured faculty. ECF 37-1 at 14 & n.8. Professor Gorman does not dispute either proposition. But their consequence is narrow: the reinstatement he seeks is relief the office of the President can grant, the FAC named that office — the caption merely identifies the prior occupant. Defendants cite no authority for dismissing an adequately pleaded claim for prospective relief on such a ground.

Should the Court deem it necessary, Plaintiff requests leave under Rules 15(a)(2) and 21 to add the current President, in his official capacity as President of Towson University, to the official-capacity claims in Counts I and II. The amendment would add one defendant, in one capacity, seeking one form of relief; it introduces no new allegations, theories, or discovery, and leaves the existing caption undisturbed, and seeks no damages from the added Defendant. It would relate back under Rule 15(c)(1)(B)–(C): it arises from the same conduct set forth in the

original pleading, and the Office of the Attorney General has appeared for the University's officials since the inception of this action such that the added Defendant will not be prejudiced in defending on the merits; as such, the current President should have known of the action and its official capacity pleading against his office.

F. In the Alternative, Any Dismissal Should Be Without Prejudice.

Should the Court decline to grant leave as requested above, Plaintiff respectfully requests that any dismissal of the official-capacity claims be without prejudice and with leave to amend within fourteen days to name any current officeholder the Court deems necessary. Leave to amend should be freely given when justice so requires. *See Foman v. Davis*, 371 U.S. 178, 182 (1962). Dismissal of a claim for prospective relief on the basis of a party-designation defect — curable by adding a single defendant in a single capacity (where the Office of the Attorney General has represented the University's officials since the inception of this action and the current officeholder has therefore had notice of it) — would not serve the interests of justice.

II. QUALIFIED IMMUNITY CANNOT BE RESOLVED ON THE PLEADINGS.

Defendants argue that qualified immunity is due to them because Professor Gorman "offers only conclusory allegations that do not implicate a violation of his constitutional rights," followed by cross-references to their merits sections. ECF 37-1 at 13. That is a restatement of their Rule 12(b)(6) position under a different heading.

A. Qualified Immunity Reaches Only Part of This Case.

Qualified immunity "is not available in an official-capacity suit brought against a government entity or a government officer as that entity's agent." *Ridpath v. Board of Governors Marshall Univ.*, 447 F.3d 292, 306 (4th Cir. 2006) (citing *Kentucky v. Graham*, 473 U.S. 159, 165-

67 (1985)). The Fourth Circuit held that "to the extent Ridpath's claims are asserted against the Administrators in their official capacities, the Administrators likewise are not entitled to qualified immunity." *Id.* at 307. The defense therefore does not reach the official-capacity claims for prospective injunctive relief in Counts I and II, and it has no application to the state-law claims in Counts IV through VI. At most, Defendants' argument may narrow this case, not dispose of it.

B. The Fourth Circuit Has Denied Qualified Immunity to University Officials on Materially Similar Allegations.

Ridpath is closely analogous. A public university employee reported NCAA rules violations, was made a "scapegoat" for the institution's misconduct, was reassigned, and was later stripped of his teaching duties. *Id.* at 301-302. He brought § 1983 claims for First Amendment retaliation and Fourteenth Amendment due process against university administrators in their individual and official capacities. The administrators moved to dismiss under Rule 12(b)(6) on qualified immunity grounds. The district court denied the motion, and the Fourth Circuit affirmed as to both claims. 447 F.3d at 313–15, 320–21.

On the retaliation claim, the court found the right clearly established, observing that "a long line of decisions, both the Supreme Court's and our own established that a public employee could not be fired solely for making protected statements." *Id.* at 320. Read in the proper light, the complaint alleged "that the Administrators retaliated against Ridpath for making protected statements that they did not like," conduct that "goes to [the] very core" of the right rather than its "gray edges." *Id.* at 321. The same is alleged here.

Defendants cite *Katti v. Arden*, 161 F.4th 217, 228 (4th Cir. 2025), for the standard governing protected speech at a public university. ECF 37-1 at 15-16. To the extent they may suggest on reply that *Katti* narrowed *Ridpath*'s application to university officials, it did not. *Katti*

cited *Ridpath* approvingly, describing it as "denying qualified immunity to university officials on an instructor's retaliation claims," and characterized *Hollis v. Morgan State University*, 153 F.4th 369 (4th Cir. 2025), as "reversing summary judgment on a professor's discrimination and retaliation claims." *Id*. at 229. The same decision confirmed that there is no categorical "university exception" to the civil rights laws. *Id*. at 229.

C. Factual Novelty Does Not Confer Immunity.

Defendants quote case law on the element of qualified immunity as to whether "there existed either controlling authority . . . or a robust consensus of persuasive authority . . . that would have given the defendants fair warning that their conduct was wrongful[,]" but then do not conduct meaningful analysis. ECF 37-1 at 12-13 (quoting *Turner v. Thomas*, 930 F.3d 640, 644–45 (4th Cir. 2019)). What follows is a cross-reference to their merits arguments. *Id.* at 13 (citing *infra* Sections IV.A, IV.B). To the extent an argument is implied, it is that no decision has held it unconstitutional to terminate a tenured professor on the specific facts pled in this matter. That is not the test. But "the very action in question [need not have] previously been held unlawful," because "a general constitutional rule already identified in the decisional law may apply with obvious clarity to the specific conduct in question." *Ridpath*, 447 F.3d at 313 (quoting *Hope v. Pelzer*, 536 U.S. 730, 739-41 (2002)). Officials "can still be on notice that their conduct violates established law even in novel factual circumstances[,]" and the real question is whether the law gave "fair warning." *Id.*

The rights at issue have been clearly established for decades: a public employee's right to be free from retaliation for citizen speech on a matter of public concern, *Pickering v. Board of Education*, 391 U.S. 563 (1968); *Connick v. Myers*, 461 U.S. 138, 142 (1983), and a public

employee's right to notice of the charges, an explanation of the evidence, and an opportunity to respond before termination, *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532 (1985).

D. Qualified Immunity Should Be Deferred Until the Record Is Developed.

Even where qualified immunity is properly raised, discovery may be needed to assess the defense. In *Ridpath*, the court emphasized that the qualified immunity question remained "open for further assessment upon development of the factual record," citing *McVey v. Stacy*, 157 F.3d 271, 279 (4th Cir. 1998), which affirmed a district court's decision "to defer deciding qualified immunity until the record is better developed." 447 F.3d at 318 n.23. Based on a reading of the Complaint most favorable to the Plaintiff, the Court was "unable to say that Ridpath cannot build a factual record to demonstrate that his clearly established First Amendment rights were contravened." *Id.* On *Pickering* balancing specifically, the court explained that whether the plaintiff's speech impaired his workplace "is not to be assessed under Rule 12(b)(6) but in Rule 56 summary judgment proceedings." *Id.* at 318 (citing *McVey* at 278-79).

Rhoads v. Riddell confirms this point. There, the district court denied qualified immunity at *summary judgment*, i.e. even after full discovery, because disputed facts regarding the defendants' knowledge and conduct meant that "[w]hether the conduct allegedly violative of the right actually occurred . . . must be reserved for trial." 180 F.4th 171, 177-78 (4th Cir. 2026) (quoting *Willingham v. Crooke*, 412 F.3d 553, 559 (4th Cir. 2005)). The Fourth Circuit affirmed. If a developed evidentiary record could not resolve the defense there, the *entirely undeveloped* record here cannot resolve it.

This Court has applied the same principle to immunity defenses at the pleading stage. In *Johnson v. Baltimore Police Department*, the Court held that assertions of immunity "fail at this stage" where the complaint alleged facts permitting a reasonable inference of malice or gross

negligence, noting that "[w]hether one acted with malice or gross negligence is typically a fact-dependent determination." 452 F. Supp. 3d at 298-99. Whether Defendants here acted from retaliatory motive is likewise fact-dependent, and the determination cannot be made where no discovery has occurred.

E. Defendants' "Discretionary Function" Framing Assumes the Disputed Fact.

Defendants argue that Professor Gorman complains of "discretionary choices related to the execution of university policies." ECF 37-1 at 12. The FAC does not allege that Defendants exercised academic judgment poorly. It alleges that they applied a rating designation the ART Policy does not authorize, FAC ¶ 68; identified no policy-based deficiency in his work, FAC ¶ 69; introduced a misconduct allegation without the notice the Policy requires, FAC ¶¶ 71, 73; applied a "No Backtracking" rule to foreclose deliberation, FAC ¶ 75; imposed a suspension the Policy does not authorize as a sanction, FAC ¶ 121; and conditioned appeal rights on forfeiting the post-termination compensation the Policy guarantees, FAC ¶ 97. Plaintiff alleges conduct that *departs* from the governing policy; therefore, Plaintiff alleges facts that support an inference that the Defendants were not acting *within* the discretion allowed by the governing policy.

Defendants' invocation of *Ziglar v. Abbasi*, 582 U.S. 120, 155 (2017), for the proposition that officials "employed by the same governmental department do not conspire when they speak to one another," ECF 37-1 at 12, gestures toward the intracorporate conspiracy doctrine without asserting it. Defendants have not raised that defense, and where defendants raise an issue such as immunity "only in a reply brief, a district court is entitled to refuse to consider it at that stage of the proceedings." *Ridpath*, 447 F.3d at 305.

III. THE FIRST AMENDMENT RETALIATION CLAIM IS ADEQUATELY PLED.

"To state a colorable First Amendment retaliation claim, a plaintiff must allege that (1) he engaged in protected First Amendment activity, (2) the defendant took some action that adversely affected his First Amendment rights, and (3) there was a causal relationship between his protected activity and the defendant's conduct." *Jones v. Solomon*, 90 F.4th 198, 213 (4th Cir. 2024)(quoting *Martin v. Duffy* (*Martin II*), 977 F.3d 294, 299 (4th Cir. 2020)). Defendants contest the first and third elements.

Under *Katti*, a public university professor's speech is protected if it addresses a matter of public concern *either* in his capacity as a private citizen *or* by way of scholarship and teaching. 161 F.4th at 228 (citing *Adams v. Trustees of the University of North Carolina-Wilmington*, 640 F.3d 550, 560–61 (4th Cir. 2011) and *Garcetti v. Ceballos*, 547 U.S. 410 (2006)). The test is disjunctive. Professor Gorman satisfies the citizen-speech prong.

A. Professor Gorman Spoke as a Citizen, Not Pursuant to Official Duties.

Defendants' argument rests on *Garcetti v. Ceballos*, and the proposition that faculty committee work is part of a professor's job. ECF 37-1 at 16–17. But *Garcetti* asks whether the specific speech was made pursuant to the employee's official duties. 547 U.S. 410 (2006). The FAC alleges that it was not: Professor Gorman's position as a professor of criminal justice "did not require him to investigate faculty hiring processes, report conflicts of interest in Search Committee proceedings, file Ethics Point referrals, or submit whistleblower complaints to the Governor's Office." FAC ¶ 101.

Defendants catalogue each of the FAC's protected-activity allegations by date, ECF 37-1 at 16–17, and then treat them as a single undifferentiated category of employee speech. That is not the reality of the allegations. The communications differ in audience, in channel, and in subject, and the later ones fall outside any duty of a criminal justice professor.

The FAC alleges that on March 10, 2022, Professor Gorman submitted a formal whistleblower complaint to the President, the Provost, the Chief Human Resources Officer, and University Counsel, reporting hiring, promotion, and retention practices, denial of merit pay, and retaliation, FAC ¶ 53, and that on April 11, 2022, he submitted a complaint to the Governor's Office, FAC ¶ 54. Neither was made pursuant to the duties of a criminal justice professor. By March 2022 Professor Gorman was no longer serving on the search committee whose proceedings he had questioned; he was reporting the institution's handling of his prior reports and the retaliation he had suffered for making them, which no provision of the ART Policy assigns to any faculty member. The April 11 complaint was directed outside the University altogether, to an office with no role in the internal administration of an academic department.

Defendants' only response to the external complaint appears in a footnote: that under the Maryland Whistleblower Law, complaints "must be made to the Secretary of Budget and Management." ECF 37-1 at 17 n.10. Whatever the merits of that observation under state law, it is irrelevant here, and it is affirmatively unhelpful to Defendants. First Amendment protection does not depend on a speaker selecting the statutorily correct recipient. If anything, the point confirms that the complaint fell outside any prescribed channel of Professor Gorman's employment, which is precisely why it was citizen speech.

The FAC further alleges that the University did not regard this speech as part of his duties, pointing to Chulos' directive that Professor Gorman bring his concerns directly to Chulos and "refrain from reporting them more broadly." FAC ¶ 101. An employer does not instruct an employee to stop performing his job duties.

Defendants' authorities do not reach this speech. *Porter v. Board of Trustees of North Carolina State University*, involved a communication to a faculty committee forwarding a news

article with a sarcastic comment that "expressed no viewpoint and made no mention of policy or anything else that might be of public concern." 72 F.4th 573, 583 (4th Cir. 2023). *Plouffe v. Cevallos* was decided on summary judgment after development of the record; further, *Plouffe's* speech was internal to the University's hiring process. 777 F. App'x 594, 603 (3d Cir. 2019) Here, Plaintiff raised objections *beyond* his role on the hiring Committee; e.g. to the Governor's office. Likewise, *Hong v. Grant*, 516 F. Supp. 2d 1158 (C.D. Cal. 2007), concerned speech within the internal committee process on which the professor was then serving, not a report to the University President or an external state official outside the university system. *Henderson v. City of Flint* is unpublished and out of circuit, and it is premised the Plaintiff's expressly including "following financial best practices" and generally "overseeing the financial management of [the City of] Flint[.]" 751 F. App'x 618,623 (6th Cir. 2018). Plaintiff had no such affirmative financial oversight duty as a professor; the FAC alleges no such duty and alleges an instruction to the contrary from Chulos, FAC ¶ 101, which the Court accepts as true at this stage.

B. The Speech Addressed Matters of Public Concern.

The FAC alleges that Professor Gorman's complaints addressed the integrity of a publicly funded university's faculty hiring process, conflicts of interest in search committee proceedings, conflicts of interest in the expenditure of public funds, and the promotion and retention of faculty at a public institution. FAC ¶ 100. Speech addresses a matter of public concern when it concerns "an issue of social, political, or other interest to a community." *Ridpath*, 447 F.3d at 317 (quoting *Urofsky v. Gilmore*, 216 F.3d 401, 406–07 (4th Cir. 2000) (en banc)). Fraud or misuse in the expenditure of public funds at a state university is a quintessential matter of public concern. See *Lane v. Franks*, 573 U.S. 228, 241 (2014).

Defendants quote *Connick*'s observation that not every remark within a government office is of public concern. ECF 37-1 at 18 (citing *Connick,* 461 U.S. at 145–48). But the FAC does not allege a dispute over 'internal office affairs.' It alleges reports that a search committee member concealed a relationship with a candidate from some of her fellow committee members, FAC ¶ 50, and that a nationally advertised, publicly funded faculty position was compromised as a result.

To the extent *Pickering* balancing is reached, it favors Professor Gorman on this record. The FAC alleges that his speech caused no disruption to University operations, and that the only disruption the University's own investigation identified was that colleagues experienced "discord" in response to the conduct he reported. FAC ¶¶ 102, 104. Institutional discomfort with a whistleblower's disclosures is not the operational disruption *Pickering* contemplates. 391 U.S. at 572–73. In any event, the Fourth Circuit has said directly that whether an employee's speech impaired his workplace "is not to be assessed under Rule 12(b)(6) but in Rule 56 summary judgment proceedings." *Ridpath*, 447 F.3d at 318 (Only "[o]nce a factual record is developed through discovery, the evidence could support the inference that Ridpath's workplace was impaired as a result of his comments and that he simply had to be terminated from his adjunct teaching position.")

C. Causation Is Adequately Pled.

Defendants' causation argument depends on an omission. They assert that "[a]ll of the tenure-related actions that Mr. Gorman claims were retaliatory lack sufficient temporal proximity to his alleged speech," and support it by measuring from the Fall 2020, January 2021, and April 2021 communications to the February 9, 2022 PTR Committee meeting — a gap they characterize as ten months. ECF 37-1 at 19-20.

The FAC alleges escalating protected activity in spring 2022. On March 10, 2022, Professor Gorman submitted a whistleblower complaint directly to Schatzel, Perreault, and University Counsel. FAC ¶ 53. On April 11, 2022, he submitted an external complaint to the Governor's Office. FAC ¶ 54. Perreault imposed the suspension and campus ban on June 21, 2022 (approximately three months after the March 10 complaint addressed to her and to the President). FAC ¶¶ 84, 105(d). Schatzel issued the termination letter on September 23, 2022 (approximately six months after that complaint and five months after the complaint to the Governor's Office). FAC ¶¶ 95, 105(e). Defendants' causation discussion does not mention either 2022 complaint.

1. The intervals track Defendants' own process.

A three-month interval supports an inference of causation, particularly where the gap tracks the employer's own decisional calendar. In *Hollis*, the Fourth Circuit found causation adequately supported where protected activity and adverse action "were separated by less than three months," reasoning that the interval "tracked the defendants' own processes for acting against Dr. Hollis, with the retaliatory action occurring at the 'natural decision point.'" 153 F.4th at 384-85 (quoting *King v. Rumsfeld*, 328 F.3d 145, 151 n.5 (4th Cir. 2003)).

That is the structure here. Plaintiff made the March 10, 2022 complaint (to University leadership) and the April 11, 2022 complaint (to the Governor's office). After the University's spring 2022 semester ended, adverse action commenced: the June 17, 2022 PDP deadline that Defendants themselves set, FAC ¶ 83, and the suspension issued four days later, FAC ¶ 84. The PDP process continued over the summer and early fall semester, bridging the interval to the September 23, 2022 termination. Defendants acted during the first summer recess following his March whistleblower complaint to the President and April escalation to the Governor's office. The June PDP was just three months and one week after the report to the Governor's office. That the

actions fell across the University's summer recess reinforces the point: the adverse action was initiated at a juncture Defendants' own calendar made convenient.

Hollis also distinguishes an authority Defendants might invoke on rebuttal. The *Hollis* defendants relied on *Roberts v. Glenn Industrial Group*, 998 F.3d 111 (4th Cir. 2021), for the proposition that three months is too long to establish causation independently. The court rejected the analogy on two grounds: *Roberts* turned in part on the absence of evidence that the employer knew of the protected activity, and *Roberts* "did not involve the kind of lengthy process that bridges the temporal gap." 153 F.4th at 385 n.7. Neither distinction assists these Defendants. Knowledge is expressly pled, FAC ¶¶ 108–112, and the PDP process is precisely such a bridging process.

2. Defendants' departures from the ART Policy are evidence of pretext.

The FAC pleads a series of departures from the governing policy: an evaluation designation the ART Policy does not contain, FAC ¶ 68; no identification of policy-based deficiencies, FAC ¶ 69; a misconduct allegation raised outside the Policy's misconduct procedures, FAC ¶¶ 71, 73; a "No Backtracking" rule foreclosing further deliberation, FAC ¶ 75; a suspension the Policy does not authorize, FAC ¶ 121; the rejection of a development plan Defendants lacked authority to reject, and the foreclosure of the peer collaboration the Policy contemplates, FAC ¶ 91; and post-termination compensation conditioned on non-appeal contrary to express Policy terms, FAC ¶ 97.

These are affirmative circumstantial evidence of improper motive. A university's deviations from its own internal policies are circumstantial evidence in this matter. See *Hollis*, 153 F.4th at 383. The *Hollis* district court had reasoned that policy deviations were irrelevant absent a showing that the deviations were themselves motivated by animus. The Fourth Circuit held that this "gets things backwards: The deviations *themselves* are the circumstantial evidence from which pretext and discriminatory intent may be inferred." *Id.* (citing *Village of Arlington Heights v.*

Metropolitan Housing Development Corp., 429 U.S. 252, 267 (1977) ("Departures from the normal procedural sequence also might afford evidence that improper purposes are playing a role.")).

3. Defendants have offered shifting rationales.

Offering "different justifications at different times" is "in and of itself" evidence of pretext. *Hollis*, 153 F.4th at 383 (citing *EEOC v. Sears Roebuck & Co.*, 243 F.3d 846, 852–53 (4th Cir. 2001)). The rationale advanced by Defendants in March 2022 concerned documentation and scholarly output. FAC ¶ 77; Defs.' Ex. 1. The grounds stated for termination six months later were failure to submit a Professional Development Plan, violations of the University's electronic-use policy, and non-compliance with administrative directives. Defs.' Ex. 2. Two of the three appear nowhere in the March letter. Those are different justifications.

4. Defendants apply the wrong legal standard.

Defendants cite *Huang v. Board of Governors of the University of North Carolina*, 902 F.2d 1134, 1140 (4th Cir. 1990), for a "rigorous" but-for requirement. ECF 37-1 at 19. *Ridpath* forecloses the argument they build on it. There, the Fourth Circuit recited the identical standard: that the causation requirement is "rigorous" in that the protected expression must have been the "but for" cause (citing *Huang*, 902 F.2d at 1140) — and then still held the allegations sufficient *at the Rule 12(b)(6) stage*. 447 F.3d at 318–19. But-for causation is a standard of *proof*, not a pleading barrier. Plaintiff alleges sufficient facts in the FAC to seek discovery to prove causation.

5. Additional indicia of retaliatory motive are pled.

The FAC alleges hostility within the department predating and surrounding his reporting: Manasse's statement that "anyone who goes against the department will never see a pay increase for the rest of their life," which ¶ 106 pleads as evidence of retaliatory intent by the faction that

controlled the Five-Year Review. FAC ¶¶ 44, 106. And it alleges the structural fact connecting the speech to the review: the PTR Committee that unanimously rated Professor Gorman "unsatisfactory" comprised the three individuals he had named in his January 2021 complaint together with Collins, Durington, and Pryor. FAC ¶¶ 66, 105(b). Two senior faculty declined to participate. FAC ¶ 66. Chulos, Hughes, and Perreault placed them there. FAC ¶ 105(b).

Defendants' argument that it is implausible that Plaintiff's actions could create retaliatory intent that "exclusively controlled the decision-making of eleven different University faculty members and officials" misstates the FAC. ECF 37-1 at 20. It is pled that the Committee sitting in judgment of him was composed of faculty connected to his complaints, FAC ¶¶ 66, 109–111, and that the administrators who placed them there had themselves received his complaints, FAC ¶ 112. Defendants add that the inference is weaker because Professor Antunes, whom the FAC identifies as a conflicted committee member, is not a defendant. *Id.* But Antunes did not sit on the PTR Committee, FAC ¶ 66; the FAC alleges retaliation by those who received Professor Gorman's reports and those he named in them who then judged him, not by everyone connected to the search.

IV. THE PROCEDURAL DUE PROCESS CLAIM IS ADEQUATELY PLED.

Defendants' argument on due process is confined to the third element: that the procedures employed were constitutionally adequate. See *Doe v. Virginia Polytechnic Institute & State University*, 77 F.4th 231, 236 (4th Cir. 2023). Defendants' argument improperly relies on treating the *existence* of procedural steps as proof of their adequacy.

A. Conditioning His Ability to Appeal the Termination Appeal on Forfeiting a Year of Compensation Was Not a Meaningful Opportunity to Be Heard.

The termination letter afforded Professor Gorman thirty days to request a hearing. It then stated: "[i]f you choose not to appeal, the University will provide you with a one-time lump sum payment for compensation . . . beginning October 21, 2022." FAC ¶ 97. The FAC alleges that the ART Policy provides that compensation "shall continue for a period of one year commencing on the date on which the appointee received notice of termination," and does not condition that compensation on the employee's decision not to appeal. *Id.* That is the deprivation, and the FAC pleads it as such: Schatzel conditioned "the ART Policy's unconditional one-year post-termination compensation guarantee on Professor Gorman's decision not to appeal, thereby imposing an unconstitutional condition that used the threat of economic harm to deter the exercise of his right to contest the termination." FAC ¶ 124(b). Under the Policy, a terminated tenured faculty member receives a year of compensation and may appeal. Under the letter, he may have one or the other.

Cleveland Bd. of Educ. v. Loudermill requires not merely that a procedure exist but that the employee receive a meaningful opportunity to present his side of the story. 470 U.S. at 543-544. A remedy that may be invoked only by surrendering a benefit the governing policy confers unconditionally is not meaningful in that sense; it is an inducement not to invoke it. Under *Mathews v. Eldridge*, adequacy is measured by the private interest affected, the risk of erroneous deprivation, and the government's interest. 424 U.S. 319, 321 and 335 (1976). A condition that deters the only available review increases the risk that an erroneous deprivation goes uncorrected. Defendants do not defend that condition, and the Policy they rely on throughout their motion does not contain it. Their entire response is a single clause: that the University "gave him post-termination appeal rights." ECF 37-1 at 22. That the right was nominally extended is not in dispute; what the FAC alleges is that it was only offered *if* Plaintiff gave up the year of severance pay that he was entitled to under existing policy and his tenure contract.

B. The Charges Stated in the Termination Letter Were Never Put to Professor Gorman.

Under *Loudermill*, a tenured public employee is entitled to notice of the charges, an explanation of the employer's evidence, and an opportunity to respond before termination. 470 U.S. at 546. Defendants recite the criticisms in Dean Chulos' March 4, 2022 letter and assert that it "clearly provided Mr. Gorman with notice of the charges against him." ECF 37-1 at 22.

But the charges on which Professor Gorman was terminated are not the criticisms in that letter. The termination letter states three grounds (failure to submit a Professional Development Plan, violation of the University's Acceptable Use Policy through mass electronic communications, and failure to comply with directives from the Provost, Dean, and Chair) and describes them as "the charges supporting your termination." Defs.' Ex. 2. The March 4 letter concerns the contents of a review portfolio. Defs.' Ex. 1.

Notice of portfolio deficiencies is not notice of a charge that one has misused the University's electronic systems or defied administrative directives. Neither was identified to Professor Gorman as a ground for termination, and no proceeding was convened at which he could respond to either. The September 9, 2022 meeting concerned the rejection of his Professional Plan. FAC ¶¶ 90, 92–94. *Loudermill* requires notice and an opportunity to respond to the charges that form the basis of the deprivation, not to different ones.

C. The Scholarly Misconduct Allegation Bypassed the Procedures Policy Requires.

The FAC alleges that during the February 2022 review, the PTR Committee members "raised an allegation of scholarly misconduct against Professor Gorman concerning his co-authored scholarship without prior notice to Professor Gorman, without affording him an opportunity to respond, and without written disclosure that such an allegation would be

considered at the review." FAC ¶ 71. It further alleges that no basis existed under the ART Policy for raising misconduct within a post-tenure review "rather than through the separate misconduct procedures that provide notice and due process protections." FAC ¶ 73; *see also* FAC ¶¶ 22, 33, 74.

Defendants' motion asserts in its own voice that Professor Gorman's portfolio "caused concerns of scholarly misconduct." ECF 37-1 at 3. It offers no record support, and neither contemporaneous document supplies it. Dean Chulos' March 4 letter (the document Defendants offer as the source of Professor Gorman's notice) never characterizes any conduct as misconduct, never invokes the ART Policy's misconduct provision, and gave no indication that a misconduct finding was under consideration. Defs.' Ex. 1. The termination letter does not mention scholarly misconduct. Defs.' Ex. 2. A charge that surfaces in Defendants' briefing but in neither document is not one of which Professor Gorman had notice. The ART Policy provides that tenure "shall be terminated only due to misconduct or under other extraordinary causes," FAC ¶ 32, and defines misconduct to include "professional or scholarly misconduct" and "willful neglect of duty," FAC ¶ 33, with separate procedures attached. Defendants recite the FAC's allegation that misconduct was raised at the February 2022 review, ECF 37-1 at 21, but never answer the allegation that raising it in that forum circumvented those procedures. A misconduct finding reached without the process the Policy prescribes for misconduct is the deprivation the FAC alleges.

D. The Opportunity to Be Heard Was Foreclosed in Advance.

The FAC alleges three procedural failures in the sequence leading to termination. First, the suspension. On June 21, 2022, Perreault notified Professor Gorman that he was "issued a sanction of suspension with pay, effective immediately," and was "not to come to campus, teach any courses, or advise any students." FAC ¶ 84. The FAC alleges this was imposed without pre-

deprivation notice of the grounds, explanation of the evidence, or opportunity to contest it, and that the ART Policy does not authorize suspension as a sanction for failure to timely submit a PDP. FAC ¶ 121. Defendants identify the suspension as a basis of the claim, ECF 37-1 at 21, and then say nothing further about it.

Second, the rejection of the Professional Plan. Hughes transmitted a written rejection dated September 8, 2022 — one day before the meeting convened to address it — and the FAC alleges the letter "was not provided to Professor Gorman in advance" of that meeting. FAC ¶¶ 90, 122. An employee cannot respond to grounds he has not seen.

Third, the meeting itself. Defendants characterize the September 9, 2022 meeting as an opportunity to respond. ECF 37-1 at 22. The FAC alleges otherwise. The meeting lasted approximately ten minutes by Zoom. FAC ¶ 92. Chulos "stated that there would be no questions, discussion, or debate during this interaction." FAC ¶ 93. When Professor Gorman attempted to respond and asked how his review was deficient, Chulos stated that the meeting "was convened only to fulfill a procedural requirement under the ART Policy." FAC ¶ 94. A proceeding at which the employee is told there will be no questions, discussion, or debate, convened by an official who describes it as a formality, and conducted without advance disclosure of the decision under review, is not the "opportunity to present his side of the story" *Loudermill* requires. 470 U.S. at 546.

The FAC likewise alleges that the remediation opportunity was structurally obstructed. It alleges that the PDP is, under the ART Policy and the AAUP guidance it follows, a "developmental" and cooperative instrument; that Professor Gorman "made numerous requests of the chair, Dean and faculty peers for PDP expectations, which went unanswered"; and that Defendants had no authority "to prohibit faculty peers from collaborating on the PDP," nor "to reject the PDP, by claiming Professor Gorman did not correctly guess what would please their

subjective and hidden expectations." FAC ¶ 91. It further alleges that the campus ban denied him access to library resources, departmental colleagues, and other institutional resources "during the period in which he was required to prepare a PDP." FAC ¶ 85. Defendants characterize the University as having offered him support and guidance through that process, ECF 37-1 at 22; the FAC alleges the opposite, and on a Rule 12(b)(6) motion its allegations are taken as true.

V. THE SECTION 1983 CONSPIRACY CLAIM IS ADEQUATELY PLED.

A § 1983 conspiracy claim requires that defendants "acted jointly in concert and that some overt act was done in furtherance of the conspiracy which resulted in deprivation of a constitutional right." *McPherson*, 494 F. Supp. 3d at 285 (quoting *Hinkle v. City of Clarksburg*, 81 F.3d 416, 421 (4th Cir. 1996)). Under either federal or Maryland law, "the allegations in the Complaint must lead to an inference that the defendants reached an understanding to pursue a common, unlawful goal." *Id.* In *McPherson*, this Court rejected the contention that such allegations were "insufficient or conclusory" where the complaint pleaded "factual allegations outlining how the [defendants] worked together to achieve that end." *Id.*

This Court dismissed the Plaintiff's original conspiracy count on a single ground: the Complaint did not allege that Manasse, Clifford, and Elliott knew of Professor Gorman's whistleblower complaint against them. ECF 31 at 8. The FAC addresses that deficiency directly.

A. The FAC Alleges Specific Facts Supporting Each Defendant's Knowledge.

The FAC alleges that Manasse, Clifford, and Elliott "were each specifically named in the January 18, 2021 complaint, which Chulos acknowledged in writing on January 20, 2021." FAC ¶ 42. It alleges that each "had actual knowledge of that complaint," and supports that allegation three ways: Chulos communicated with members of the department regarding the complaint; a university human resources investigation was opened in connection with the conduct underlying

it; and the OHR inquiry noted that Professor Gorman's reports had caused "discord" within the department. FAC ¶ 43. Defendants address these allegations serially and in isolation, arguing that each "falls short" standing alone. ECF 37-1 at 23. That is not the standard. The question is whether the allegations, *taken together and with all reasonable inferences drawn in Plaintiff's favor*, make knowledge plausible. A departmental HR investigation cannot proceed without the investigated conduct being put to the faculty involved. A finding that the department experienced "discord" as a result of the complaint presupposes that the department knew of it.

Knowledge is a state of mind, and even the heightened pleading standard of Rule 9 provides that "[m]alice, intent, knowledge, and other conditions of a person's mind may be alleged generally." Fed. R. Civ. P. 9(b). Requiring a plaintiff to plead, before discovery, the specific communication by which each defendant learned of a complaint naming him would make the claim unpleadable in every case.

B. The FAC Pleads Concerted Action and Overt Acts.

The FAC pleads two coordinated tiers. The Committee Tier (Pryor, Collins, Durington, Manasse, Elliott, and Clifford) controlled the Five-Year Review and executed a predetermined plan to find it "unsatisfactory" without identifying policy-based deficiencies or deliberating in good faith. FAC ¶ 133. The Administrative Tier (Schatzel, Perreault, Chulos, Barker, and Hughes) adopted the tainted evaluation, imposed measures the ART Policy does not authorize, conducted a proceeding designed to foreclose response, and conditioned the Policy-guaranteed compensation on non-appeal. FAC ¶ 134.

The structural facts supporting concerted action are pleaded throughout: the evaluating committee was composed entirely of faculty connected to Professor Gorman's complaints — those he named, FAC ¶¶ 41–42, those who received his reports directly, FAC ¶ 110, and those alleged

to have learned of them through the departmental proceedings, FAC ¶¶ 109, 111; two uninvolved senior faculty declined to serve, FAC ¶ 66; all six voted unanimously for a designation the governing policy does not contain, FAC ¶¶ 67–68; Collins, as chair, imposed a "No Backtracking" rule foreclosing further deliberation, FAC ¶¶ 75, 136; and he and Durington then offered to "vet" Professor Gorman's forthcoming scholarship against their personal expectations, FAC ¶ 76. That the subjects of his complaints became his sole evaluators within roughly a year supports an inference of retaliatory purpose shared across both tiers. FAC ¶ 138.

The FAC likewise catalogs the overt acts: the unanimous vote using a non-Policy term; the unnoticed misconduct allegation; the "No Backtracking" rule; the conditional offer to vet his scholarship; Chulos' transmission of the tainted evaluation; Hughes' rejection letter delivered one day before the pre-termination meeting; Perreault's unauthorized suspension and campus ban; Chulos' conduct of the September 9 meeting; Schatzel's termination letter with its compensation condition; and Barker's investigation and recommendation supporting termination — the last taken contrary to the University's own representation to Middle States that Human Resources is not involved in faculty personnel management, FAC ¶¶ 78–80, 139. These are the "overt act[s] . . . in furtherance" that *Hinkle* requires. 81 F.3d at 421.

VI. THE INTERFERENCE CLAIMS ARE ADEQUATELY PLED.

Defendants argue that Counts IV and V fail for want of a targeted business relationship and a causal nexus, invoking *Medical Mutual Liability Society of Maryland v. B. Dixon Evander & Associates*, 339 Md. 41 (1995). ECF 37-1 at 24. Plaintiff does not dispute the elements as stated in *Carter v. Aramark Sports & Entertainment Services, Inc.*, 153 Md. App. 210, 240 (2003).

The FAC alleges a valid employment contract defined by the ART Policy, terminable only for misconduct or extraordinary cause and subject to procedural protections. FAC ¶ 142. It alleges

that each Defendant knew of that contract and identifies the basis of each Defendant's knowledge individually. FAC ¶ 143. That is the targeted relationship: Professor Gorman's tenured appointment, which the FAC alleges was the object of the acts specified in ¶ 144.

On causation, Defendants argue that the termination followed "a long series of events" and therefore cannot be traced to the Committee's acts. ECF 37-1 at 25. That inverts the FAC's allegations. The series Defendants recite began with the Committee's evaluation. The PDP requirement was imposed "to address the vague commentary and feedback from the PTR Committee's evaluation." FAC ¶ 83. The suspension followed the PDP deadline. FAC ¶ 84. The termination followed the rejection of the plan. FAC ¶¶ 90, 95. Every step traces to the evaluation the FAC alleges was predetermined. FAC ¶ 133.

Defendants further observe that Counts IV and V are duplicative. Plaintiff acknowledges the substantial overlap and does not oppose consolidation of the two counts into a single claim for intentional interference, which the Court may order without dismissal.

VII. THE INTENTIONAL MISREPRESENTATION CLAIM IS ADEQUATELY PLED.

Defendants attack Count VI on the reliance theory this Court found wanting in the original Complaint: that Professor Gorman relied by preparing a Professional Development Plan. ECF 37-1 at 25–26; ECF 31 at 11. The FAC no longer rests on that theory alone. As to falsity, the FAC does not merely allege that the Committee's assessment was wrong. It alleges a specific, verifiable defect: the term "unsatisfactory" "is not an authorized evaluation designation under the ART Policy, which provides only for ratings of 'not meritorious,' 'satisfactory (base merit),' and 'excellent (base merit plus performance merit).'" FAC ¶ 156; *see also* FAC ¶ 68. Whether a governing policy contains a particular designation is a fact capable of proof. The FAC further alleges that the Committee identified no policy-based deficiency, raised a misconduct allegation

without notice, and disregarded his peer teaching evaluations and imminent book publication. FAC ¶¶ 69–70, 157.

As to reliance, the FAC pleads three forms of detriment. FAC ¶ 160. Defendants address only the first. Professor Gorman "allowed internal grievance and appeal deadlines to run during the remediation period in reliance on the representation that the process was a legitimate institutional proceeding subject to resolution through the PDP." *Id.* And "in light of the termination letter's conditioning of the ART Policy's severance provision on non-appeal, he did not file a formal appeal, thereby losing internal appellate remedies he would otherwise have pursued." *Id.* Neither depends on when the Professional Plan was submitted.

Those allegations do not require Professor Gorman to have believed the substantive assessment of his portfolio. They allege reliance on the representation that the proceeding was a bona fide institutional process governed by the ART Policy — a representation the FAC alleges was false because the Committee employed a designation the Policy does not authorize and bypassed the Policy's misconduct procedures. FAC ¶¶ 156–158.

The FAC also pleads Hughes' participation with particularity: as Chair and ex officio participant she knew the designation was unauthorized and that no policy-based deficiency had been identified, had authority to correct or decline to forward a facially deficient evaluation, and did neither. FAC ¶ 158. At the pleading stage, that suffices. Whether the reliance alleged in ¶ 160 in fact occurred, and what it cost, are questions for discovery.

VIII. ANY DISMISSAL SHOULD BE WITHOUT PREJUDICE.

This Court has ruled once on the sufficiency of Plaintiff's pleading, and the FAC was drafted to address the specific deficiencies the Court identified. Discovery has not commenced. No scheduling order has issued. Leave to amend should be freely given when justice so

requires. *Foman v. Davis*, 371 U.S. 178, 182 (1962). Defendants themselves acknowledged that policy in declining to oppose the first amendment. ECF 34 at 1. Should the Court find any count insufficiently, Plaintiff seeks leave to amend to ameliorate.

As set forth in Section I, Plaintiff also requests leave to add the current President of Towson University in his official capacity, should the Court conclude that the official-capacity claims require a current officeholder. Plaintiff respectfully requests leave to amend within a period the Court deems appropriate.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court deny Defendants' Motion to Dismiss the First Amended Complaint. At minimum, the motion should be denied as to Counts I and II, and as to Count III, which cures the sole deficiency the Court previously identified. In the alternative, Plaintiff requests that any dismissal be without prejudice and with leave to amend. Pursuant to Local Rule 105.6, Plaintiff respectfully requests a hearing on the Motion.

Dated: August 28, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of August, 2026, a copy of the foregoing Plaintiff's Opposition to Defendants' Motion to Dismiss the First Amended Complaint was served via the Court's CM/ECF system upon all counsel of record, including:

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