

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

Zainab Hakim; Henry MacKeen-Shapiro; Eaman Ali; Assmaa Eidy, Harrison Rhoades, Arwa Hassaballa; Rhea Chappell; and Zaynab Elkolaly;

Plaintiffs,

v.

Regents of the University of Michigan; Santa Ono, individually and as President of the University of Michigan; Geoffrey Chatas, individually and as Executive Vice President and Chief Financial Officer of the University of Michigan; Richard S. Holcomb, Jr., individually and as Associate Vice President for Human Resources of the University of Michigan; Amy Grier, individually and as Associate Director Staff Human Resources of the University of Michigan; Martino Harmon, individually and as Vice President for Student Life of the University of Michigan; Erik Wessel, individually and as Director of the Office of Student Conflict Resolution; and Donovan Golich, individually and as As Program Manager at the University of Michigan;

Defendants.

Case No. 2:25-cv-11265-SJM-EAS
Hon. Stephen J. Murphy, III
Hon. Mag. Elizabeth A. Stafford

**PLAINTIFFS' RESPONSE TO
DEFENDANTS' MOTION TO
DISMISS**

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**PLAINTIFFS' RESPONSE
TO DEFENDANTS' MOTION TO DISMISS**

NOW COME Plaintiffs ZAINAB HAKIM, HENRY MACKEEN-SHAPIO, EAMAN ALI, ASSMAA EIDY, HARRISON RHOADES, ARWA HASSABALLA; RHEA CHAPPELL; AND ZAYNAB ELKOLALY by and through their attorneys and for *Plaintiffs' Response to Defendants' Motion to Dismiss* state as follows:

1. Plaintiffs properly plead claims for relief under the First and Fourteenth Amendments of the United States Constitution.

2. Plaintiffs deny the allegations of the Defendants' motion and assert that Defendants fail to establish grounds for dismissal under Fed. R. Civ. P 12(b)(1) and Fed. R. Civ. P 12(b)(6).

3. Plaintiffs improperly seek to argue the facts through voluminous exhibits that are not central to the claims alleged. Defendants' exhibits should not be considered on this motion. If considered, Defendants' motion must be converted to a Rule 56 motion and give Plaintiffs should be provided an opportunity to conduct discovery and present pertinent material as required by Rule 12(d).

WHEREFORE, Plaintiffs pray that this Honorable Court enter an order denying, with prejudice, *Defendants' Motion to Dismiss the Amended Complaint with Prejudice*.

Respectfully submitted,

/s/ John C. Philo

/s/ Liz Jacob

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Date: September 18, 2025

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et. al.

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CERTIFICATE OF SERVICE

I hereby certify that on September 19, 2025, I electronically filed the Plaintiffs' *Response to Defendants' Motion to Dismiss* with the Clerk of the Court using the ECF system which will send notification of this filing to all attorneys of record.

Respectfully Submitted,

By: /s/ John C. Philo
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Richard S. Holcomb, Jr.,
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University of Michigan;
Amy Grier, individually and as
Associate Director Staff Human Resources
of the University of Michigan;
Martino Harmon, individually and as
Vice President for Student Life of the
University of Michigan;
Erik Wessel, individually and as
Director of the Office of Student
Conflict Resolution; and
Donovan Golich, individually and as
As Program Manager at the University
of Michigan;

Defendants.

Case No. 2:25-cv-11265-SJM-EAS
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**BRIEF IN SUPPORT OF
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BRIEF IN SUPPORT OF PLAINTIFFS’
RESPONSE TO DEFENDANTS’ MOTION TO DISMISS

NOW COME Plaintiffs ZAINAB HAKIM, HENRY MACKEEN-SHAPIRO, EAMAN ALI, ASSMAA EIDY, HARRISON RHOADES, ARWA HASSABALLA, RHEA CHAPPELL, AND ZAYNAB ELKOLALY by and through their attorneys and for their *Brief in Support of Plaintiffs’ Response to Defendants’ Motion to Dismiss the Amended Complaint* state as follows:

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STATEMENT OF ISSUES PRESENTED

- A. SHOULD DEFENDANTS' RULE 12 (b)(1) MOTION TO DISMISS BE DENIED WHEN THE PENDING MOTION FAILS TO IDENTIFY ANY CLAIM OF THE PLAINTIFFS OVER WHICH THIS COURT LACKS SUBJECT MATTER JURISDICTION; AND
- B. SHOULD DEFENDANTS' RULE 12 (b)(6) MOTION TO DISMISS BE DENIED WHEN PLAINTIFFS' FIRST AMENDED COMPLAINT:
1. PROPERLY PLEADS CLAIMS UNDER THE FIRST AMENDMENT AND PROVIDES FAIR NOTICE OF THE FACTUAL GROUNDS UPON WHICH THEIR CLAIMS REST;
 2. PROPERLY PLEADS DUE PROCESS CLAIMS UNDER THE FOURTEENTH AMENDMENT AND PROVIDES FAIR NOTICE OF THE FACTUAL GROUNDS UPON WHICH THEIR CLAIMS REST;
 3. MAKES DEMANDS FOR MONEY DAMAGES THAT ARE NOT BARRED BY LACK OF PERSONAL INVOLVEMENT OR ANY IMMUNITY;
 4. PROPERLY PLEADS RIPE CLAIMS;
 5. DOES NOT IMPERMISSIBLY SPLIT CLAIMS; AND
- C. SHOULD DEFENDANTS' MOTION TO DISMISS BE DENIED WHEREIN DEFENDANTS RELY UPON AN ASSERTION OF FACTS THAT ARE CLEARLY IN DISPUTE, AND UNAUTHENTICATED EXHIBITS THAT CONSTITUTE HEARSAY?

PLAINTIFFS ANSWER: **YES**

DEFENDANTS ANSWER: **NO**

I. INTRODUCTION

Since October 7, 2023, the University of Michigan (“U-M”) has departed from Constitutional duties, its policies, and its traditions in an attempt to silence advocates of Palestinian human rights and those who speak out for divestment from Israel.

Defendants took unprecedented actions to terminate employment and then permanently ban targeted employees and student workers from future employment of any kind within the entire U-M system, simply because they engaged in protected speech activity that was unrelated to their job responsibilities and occurred outside of work time. But-for their advocacy as private citizens in support of Palestinian human rights and for U-M to divest from Israel, Defendants would not have terminated Plaintiffs’ employment and banned them from future employment in violation of Plaintiffs’ First and Fourteenth Amendment rights as public employees.

II. STATEMENT OF FACTS

On August 1, 2025, Plaintiffs filed their First Amended Complaint (“AC”) and jury demand, which includes approximately sixty (60) pages of factual allegations in support of their claims. See ECF No. 23 (“AC”), ¶¶ 1-334, Page.ID. 376-434. The alleged facts include the following.

On November 17, 2023, Plaintiffs ARWA HASSABALLA, ZAYNAB ELKOLALY, and RHEA CHAPPELL were student employees who, outside their work hours, participated in a peaceful sit-in at the Ruthven Building. AC ¶¶ 98-121,

Page.ID 396-399. The sit-in sought a meeting with Defendant ONO and to advocate for divestment from Israel and companies profiting from genocide in Gaza. AC ¶¶ 100-105, Page.ID 396-397. The sit-in occurred late in the afternoon on a Friday and in the public areas outside of the President's office. AC ¶ 99, Page.ID 396.

Sit-ins in the public areas outside of the President's office are a time-honored U-M tradition. AC ¶¶ 59-80, Page.ID 389-392. Countless student workers have engaged in this very activity to speak-out on issues of public concern — divestment from South Africa, divestment from tobacco companies, divestment from the fossil fuel industry, etc. AC ¶¶ 76-80, Page.ID 392.

On May 3, 2024, Plaintiffs ZAINAB HAKIM, HENRY MACKEEN-SHAPIRO, EAMAN ALI, HARRISON RHOADES, and ASSMAA EIDY attended a peaceful protest on public sidewalks and green spaces near the U-M Art Museum, again to call for U-M to divest funds from Israel. AC ¶¶ 230-243, Page.ID 415-416. At the time of the protest, Plaintiffs HAKIM, MACKEEN-SHAPIRO, EIDY, and RHOADES *were not employees of the University*. AC ¶ 236, Page.ID 416.

In August 2024 (*nine months after the protest activity*), the Defendants REGENTS, ONO, CHATAS, HOLCOMB, and/or GRIER initiated employment actions against Plaintiffs HASSABALLA, ELKOLALY, and CHAPPELL for their participation in the Ruthven sit-in. AC ¶¶ 127-128, Page.ID 401; ¶¶ 163-174, Page.ID 406-407; ¶¶ 201-203, Page.ID 411. Defendants REGENTS, ONO,

CHATAS, HOLCOMB, and/or GRIER terminated the Plaintiffs' student employment and issued a permanent rehire ban covering the entire U-M system. AC ¶¶ 127-128, Page.ID 401; ¶¶ 163-175, Page.ID 406-408; and ¶¶ 201-203, Page.ID 411-412. Plaintiffs formally grieved their discharge and ban; however, Defendant CHATAS upheld these punishments. AC ¶¶ 144-145, Page.ID 403; ¶¶ 188-189, Page.ID 409; and ¶¶ 216-217, Page.ID 413.

In early April 2025 (*eleven months after the activity*), Defendants REGENTS, ONO, CHATAS, HOLCOMB, and/or GRIER began employment actions against the Plaintiffs HAKIM, MACKEEN-SHAPIRO, ALI, RHOADES, and EIDY for their participation in the U-M Art Museum protest. AC ¶¶ 214-313, Page.ID 416-430. Again, Plaintiffs contested the actions, however the decisions were again upheld. AC ¶¶ 214-313, Page.ID 416-430.

On April 16, 2025, U-M terminated Plaintiff HASSBALLA's volunteer role without warning, based solely on her permanent rehire ban. AC ¶ 155, Page.ID 405.

On May 1, 2025, Plaintiffs filed a federal lawsuit to defend their First and Fourteenth Amendment rights. On May 13, 2025, Defendants waived service. See Complaint, ECF No. 1, Page.ID 1, et. seq. and Waivers, ECF Nos 11-15, Page.ID 79-83.

On July 1, 2025 (*fourteen months after the activity at issue and two months after the complaint was filed*), Defendants REGENTS, ONO, CHATAS,

HOLCOMB, GRIER, HARMON, WESSEL, and/or GOLICH initiated retaliatory student disciplinary proceedings against Plaintiffs ALI, EIDY, and MACKEEN-SHAPIRO. AC ¶¶ 319-322, Page.ID 431-432. The student disciplinary proceedings concerned the same U-M Art Museum pro-Palestine protest that was the subject of the Defendants' prior employment actions against these Plaintiffs. *At that time, Plaintiffs ALI and MACKEEN-SHAPIRO were no longer U-M students.* AC ¶ 332, Page.ID 434.

On July 11, 2025, Defendants filed their initial motion to dismiss. See Motion, ECF No. 21, Page.ID 107, et. seq.

On July 31, 2025 (*ten months after the activity at issue and just over two months after the complaint was filed*), Plaintiffs ALI, EIDY, and MACKEEN-SHAPIRO were notified that new retaliatory employment actions were being initiated against them for attending a march on public walkways on October 7, 2024 that, again, called on U-M to divest its funds from Israel. *On July 31, 2025, none of the Plaintiffs were employees of U-M and all had been previously terminated and banned from employment with U-M.* AC ¶¶ 319-322, Page.ID 432.

Defendants nor U-M have never initiated adverse employment actions against current students, former students, and/or former employees in the same or similar circumstances. AC ¶¶ 72, 96-97, 317-318, & 334, Page.ID 391, 395, 431, & 434.

Plaintiffs' AC provides fair notice of First and Fourteenth Amendment claims

and sufficiently alleges facts to support each claim.

III. DISCUSSION

A. DEFENDANTS' FED. R. CIV. P. 12 (B)(1) ARGUMENTS MUST FAIL

Defendants fail to show grounds for dismissal under Rule 12(b)(1). This Court has jurisdiction over the subject matter of this case pursuant to 28 U.S.C. §1331. Declaratory and injunctive relief is authorized by 28 U.S.C. §§ 2201 and 2202, 42 U.S.C. §§1983 and 1988, and Fed. R. Civ. P. 57.

Defendants misunderstand and misstate an Eleventh Amendment jurisdictional defense. “[S]overeign immunity bars official-capacity suits for damages, but not individual-capacity suits for damages.” *Does v. Whitmer*, 69 F.4th 300, 305 (6th Cir. 2023) (citing *Lewis v. Clark*, 581 U.S. 155 at 161-63 (2017)). Plaintiffs here assert individual-capacity, *not* official-capacity, claims for money damages.

Further, Plaintiffs assert §1983 claims based on allegations that Defendants ONO, CHATAS, HOLCOMB, GRIER, HARMON, WESSEL, and GOLICH themselves participated in “active unconstitutional behavior” that caused violations of Plaintiffs’ rights. *Crawford v. Tilley*, 15 F.4th 752, 761-62 (6th Cir. 2021). Plaintiffs can properly seek injunctive relief against Defendants in their official capacities in a §1983 action because “official-capacity actions for prospective relief are not treated as actions against the State.” *Kentucky v. Graham*, 473 U.S. 159, 167

n. 14 (citing *Ex parte Young*, 209 U.S. 123, 159-160, (1908)).

B. DISMISSAL UNDER FED. R. CIV. P. 12 (B)(6) IS IMPROPER

Dismissal under Rule 12(b)(6) is permitted only if Plaintiffs fail “to state a claim upon which relief can be granted” and the Court must “accept all allegations ... as true and determine whether the allegations plausibly state a claim for relief.” *Roberts v. Hamer*, 655 F.3d 578, 581 (6th Cir. 2011). See *Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit*, 507 U.S. 163, 164 (1993); *Evans-Marshall v. Bd of Ed*, 428 F.3d 223, 226 (6th Cir. 2005) (pleading is not a game, is to aid the court in reaching the merits). See also, *Diei v. Boyd*, 116 F.4th 637, 650-51 (6th Cir. 2024) (dismissal is especially disfavored in a First Amendment claim); *Bird v. Parsons*, 289 F.3d 865, 872 (6th Cir. 2002); and *McGlone v. Bell*, 681 F.3d 718, 722 (6th Cir. 2012) (dismissal is disfavored on civil rights claims).

A complaint need only plead facts sufficient to give “fair notice of what the ... claim is and the grounds upon which it rests.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Plaintiffs’ AC states claims for which relief can be granted and gives Defendants fair notice of the factual grounds upon which claims rest.

Here, Plaintiffs go far beyond “bare allegations” to instead “provide the factual context” of Defendants’ specific acts “that would render them plausible and thus entitle them to a presumption of truth at this stage in the litigation.” *Ctr for Bio-Ethical Reform, Inc. v. Napolitano*, 648 F.3d 365, 374 (6th Cir. 2011) and see AC

¶¶26-334, Page.ID.383-434. As a result, dismissal would be improper.

C. DEFENDANTS IMPROPERLY ARGUE THE FACTS OF THE CASE THROUGH VOLUMINOUS EXHIBITS

Matters outside of the pleadings are not to be considered in ruling on a 12(b)(6) motion to dismiss. See *Amini v. Oberlin Coll.*, 259 F.3d 493, 502 (6th Cir. 2001) and *Hammond v. Baldwin*, 866 F.2d 172, 175 (6th Cir. 1989). In limited circumstances, a court may consider extraneous documents, so long as they are referred to in the Complaint and are central to the claims contained therein. *Amini* 259 F.3d at 502 (EEOC charge attached to complaint in discrimination case). See also, *Venture Assocs. Corp. v. Zenith Data Sys. Corp.*, 987 F.2d. 429, 431 (7th Cir. 1993) (contract documents in contract dispute).

A district court should not consider a defendant's exhibits when they "capture[] only part of the incident and would provide a distorted view of the events at issue" *Jones v. City of Cincinnati*, 521 F.3d 555, 562 (6th Cir. 2008). Where, as here, "the document provides support for both parties' version of events," the court must "view the facts in the light most favorable to the plaintiff." *Nolan v. Detroit Edison Co.*, 991 F.3d 697, 707 (6th Cir. 2021) (citing *Jones*, at 561).

Contrary to Defendants' claims, none of their exhibits establish or are central the Plaintiffs' Constitutional rights claims. See *Fremont Reorganizing Corp. v. Duke*, 811 F.Supp.2d 1323, 1334 (E.D. Mich. 2011). As a result, none of Defendants newly introduced, unauthenticated, and hearsay documents are central to Plaintiffs'

Constitutional claims and none satisfy the Sixth Circuit's standard for consideration at this motion to dismiss stage. If the Court considers these exhibits, Defendants' motion must be converted to a Rule 56 Motion for Summary Judgement and give Plaintiffs a reasonable opportunity to conduct discovery and present pertinent material required by Rule 12(d).

D. PLAINTIFFS STATE A CLAIM UNDER THE FIRST AMENDMENT

"Public employees do not surrender ... their First Amendment rights by reason of their employment." *Garcetti v. Ceballos*, 547 U.S. 417 (2006). Consequently, the Supreme Court firmly rejected the idea that public employees:

[M]ay constitutionally be compelled to relinquish the First Amendment rights they would otherwise enjoy as citizens to comment on matters of public interest in connection with the operation of [their public employer]."

Pickering v. Bd. of Ed., 391 U.S. 563, 568 (1968).

Plaintiffs' speaking out, outside of their work, to support Palestinian human rights and call on U-M officials to divest are quintessential examples of Constitutionally protected speech activities. The function of free speech is to "invite dispute" and speech "may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are or even stirs people to anger." *Terminiello v. City of Chicago*, 337 U.S. 1, 4 (1949). Expressions of pro-Palestine speech are quintessential topics that can "invite dispute," and, by

their nature, are protected under the First Amendment. *Id.* The Constitution takes “special concern with threats to the rights of citizens to participate in political affairs” because “[s]peech concerning public affairs is more than self-expression, it is the essence of self-government.” *Connick v. Myers*, 461 U.S. 138, 145 (1983).

To establish a cognizable claim of retaliatory discharge in violation of the First Amendment, a public employee must demonstrate that (1) they engaged in a constitutionally protected activity; (2) defendant's adverse action caused them to suffer an injury that would likely chill a person of ordinary firmness from continuing to engage in that activity; and (3) the adverse action was motivated at least in part as a response to the exercise of his constitutional rights. *Nair v. Oakland Cnty. Cmty. Mental Health Auth.*, 443 F.3d 469, 477-78 (6th Cir. 2006).

1. Plaintiffs’ Engaged in Constitutionally Protected Activity.

The Sixth Circuit uses a three-prong test to determine if a public employee's speech is constitutionally protected: (1) the employee speaks as a private citizen, not pursuant to his or her official duties; (2) the speech involves matters of public concern; and (3) the employee’s interests, as a citizen, in commenting upon matters of public concern, outweigh the State’s interest, as an employer, in promoting the efficiency of its public services. *Myers v. City of Centerville*, 41 F.4th 746, 760 (6th Cir. 2022). Courts employ the *Pickering-Garcetti* framework to weigh the employee’s constitutional speech interests against the State employer’s interest to

avoid workplace disruption. See *Garcetti*, 547 US at 419; *Pickering* 391 US at 568.

Speech made to a public audience, outside the workplace, and involving content largely unrelated to their public employment indicates that the employee speaks as a citizen (not as an employee) and speaks on a matter of public concern. *Scarborough v. Morgan Cnty. Bd. of Ed.*, 470 F.3d 250, 256 (6th Cir. 2006). All Plaintiffs attended the relevant pro-Palestine protests entirely outside of their work time and beyond the scope of their employment responsibilities. AC ¶¶ 119-121, Page.ID 398-399; ¶¶ 230-236, Page.ID 415-416. All the relevant protests were public events. AC ¶ 99, Page.ID 396; ¶¶ 230-231, Page.ID 415. Therefore, Plaintiffs spoke as citizens, not employees.

Next, Plaintiffs advocated for Palestinian human rights and called on U-M to divest from Israel. Such actions are quintessential public speech relating to issues of “political, social” concerns of their community. *Evans-Marshall* 428 F.3d at 229. Defendants do not contest that Plaintiffs spoke on an issue of public concern. ECF No.31, PageID.512. Therefore, Plaintiffs satisfy prong two.

Turning to the third prong of the analysis, the greater extent to which the speech of a public employee involves public concern, the stronger the showing of disruption necessary by the government. *Bennett v. Metro Gov't of Nashville & Davidson Co.*, 977 F.3d 530, 539 (6th Cir. 2020). Paradigmatic speech requiring greater protection includes “subject[s] of legitimate news interest” and speech

addressing “major state policy decisions.” *Myers*, 41 F.4th at 760-61 (6th Cir. 2022). Plaintiffs’ speech directly sought to address U-M’s financial policy of investing in and profiting from Israel’s violations of Palestinian human rights. AC ¶ 83, Page.ID 392-393. This is plainly a matter of heightened public concern.

The Sixth Circuit considers several factors regarding the interests to be balanced, including whether an employee’s speech (1) meaningfully interfered with the performance of their duties; (2) undermined a legitimate goal or mission of the employer; (3) created disharmony among co-workers; (4) impaired discipline by superiors; or (5) destroyed the relationship of loyalty and trust required of confidential employees. *Josephson v. Ganzel*, 115 F.4th 771, 784 (6th Cir. 2024). Defendants only vaguely suggest that Plaintiffs’ speech incited and/or was violent (without demonstrating a single word that did so).¹ ECF No. 31, Page.ID. 495.

Plaintiffs’ speech and participation in the protests did not interfere with job duties. In fact, Plaintiffs HAKIM, MACKEEN-SHAPIRO, EIDY, and RHOADES were **not even U-M employees at the time that they attended the pro-Palestine protests in question**. AC ¶ 236, Page.ID 416. Plaintiffs’ supervisors took no actions to discipline them nor were Plaintiffs’ workplaces even aware of Defendants’ adverse actions. AC ¶¶ 314-315, Page.ID 430-431. Plaintiffs’ speech, while critical

¹ Questions of fact abound in this litigation, wherein Plaintiffs unequivocally maintain that their speech and conduct was not violent.

of their employer and its ongoing investments in human rights violations, did not undermine a legitimate goal of their employer or create disharmony amongst workers. When an employee “exposes unscrupulous behavior in the workplace,” like U-M’s ongoing investments in genocide, then their “interests are co-extensive with those of the employer” as both want the “organization to function in a proper manner. *Williams v. Kentucky*, 24 F.3d 1526, 1537 (6th Cir. 1994).

Finally, Defendants make no actual argument of any workplace disruption nor in any way explained how Plaintiffs participation in pro-Palestine protests *months before* disrupted their workplaces or U-M’s functioning. See ECF. No. 31, PageID. 512-513. Defendants attempt, months after protests occurred,² to claim that their adverse employment actions were motivated by alleged violent conduct. *Id.*

Had there been any actual concern about violence or disruption of the employer, then surely Defendants would not have waited nine to eleven months to discipline Plaintiffs. Defendants merely created a – flimsy – false pretext of violence

² On May 5, 2025, the Attorney General dismissed all criminal charges against Plaintiff Henry MacKeen-Shapiro. As a result, none of the plaintiffs are charged with any crimes, nor have any been convicted of any crimes. Defendants’ falsely assert that Plaintiffs EIDY, ALI, and MACKKEEN-SHAPIRO had criminal charges related to the UMMA protest that were dropped by the Attorney General. ECF No. 31, PageID.502. None these Plaintiffs had criminal charges against them related to the UMMA protest and Plaintiffs EIDY and ALI were never issued *any* criminal charges. Defendants’ arguments that turn on the alleged criminality of these Plaintiffs are baseless.

in an attempt to mask their actions to deprive Plaintiffs of their Constitutional freedoms. As a result, Defendants fail to show the presence of any of these factors and fail to show a sufficient countervailing interest that would obviate the constitutional protections for Plaintiffs' speech.

Unlike in *Waters v. Churchill*, 511 US 661 (1994), Defendants' actions are not based on predictions of harm that could flow from Plaintiffs' pro-Palestine speech. Instead, Defendants instead waited months and, in fact waited to see that there was ***no actual harm or tangible interference with the University's operations*** caused by Plaintiffs' expressive activity before they took adverse actions. This case is also distinguishable from *Farhat v. Jopke*, 370 F.3d 580, 593 (6th Cir. 2004) because Plaintiffs' spoke about political concerns in their community, not their "own personal beef" with their employer. *Id* at 593.

Defendant bears the burden of demonstrating that legitimate grounds existed justifying the termination. *Rodgers v. Banks*, 344 F.3d 587, 601 (6th Cir. 2003). Defendants have failed to do so. Plaintiffs' expressions of speech were not disruptive to their work, but rather, were highly disfavored by Defendants. Accordingly, Plaintiffs have demonstrated that their speech is protected by the First Amendment.

2. Defendants' Actions Would Deter a Person of Ordinary Firmness

The Sixth Circuit holds an adverse action is one that "would chill or silence a person of ordinary firmness from future First Amendment activities." *Benison v.*

Ross, 765 F.3d 649, 659 (6th Cir. 2014). Adverse action includes discharge and termination. See *Thaddeus-X v. Blatter*, 175 F.3d 378, 396 (6th Cir. 1999). Adverse action also includes refusal to rehire and failure to reinstate. See *Weigel v. Baptist Hosp. of E. Tenn.*, 302 F.3d 367, 379 (6th Cir. 2002); *Dixon v. Gonzales*, 481 F.3d 324, 333 (6th Cir. 2007). Adverse action may also include harassment or publicizing facts damaging to one’s reputation. *Fritz v. Charter Twp. of Comstock*, 592 F.3d 718, 720. Likewise, a “credible threat to the nature and existence of one’s ongoing employment, [such as a permanent rehire ban,] is of a similar character to the other recognized forms of adverse action—termination, refusal to hire, etc.” *Id.* at 728. See also, *Josephson*, 115 F.4th at 777 (actions designed to threaten a person's economic livelihood are likely to deter a person of ordinary firmness).

Defendants’ termination of employment and establishment of a permanent bar to future employment destroys Plaintiffs’ reputation with one of Michigan’s largest employers and are paradigmatic examples of adverse employment actions that would chill a person of ordinary firmness.

3. Defendants Were Motivated by a Desire to Discriminate Against Plaintiffs’ Viewpoints and Silence their Speech.

Finally, Plaintiffs must establish that their protected speech at least partially motivated Defendants’ adverse actions. *Meyers* 41 F.4th at 759; *Blick v. Ann Arbor Pub. Sch. Dist.*, 105 F.4th 868, 878 (6th Cir. 2024)

The Constitution “does not allow the imposition of special prohibitions on those speakers who express views on disfavored subjects.” *Dambrot v. Centl. Mich. Univ.*, 55 F.3d 1184 (6th Cir. 1995). Yet, since October 7, 2023, Defendants have undertaken an unprecedented pattern of actions to repress, retaliate against, and silence pro-Palestine speech at U-M. AC ¶¶ 87-89, PageID 393.

Defendants took unprecedented adverse employment actions against *only* employees who attended pro-Palestine protests on non-work time. AC ¶ 333-334, PageID.434. Defendants informed Plaintiffs that their adverse employment actions were *based entirely and solely* on their participation in pro-Palestine protests and *not a single other reason* was cited. Despite ample evidence that will show otherwise, Defendants attempt to fabricate claims that Plaintiffs were violent or inciting violence at these protests, but this is a blatant lie to weakly justify Defendants’ egregious actions violating Plaintiffs’ constitutional freedoms. AC ¶¶ 134-135, PageID 402. At the pleading stage, these misrepresentations cannot defeat Plaintiffs’ claims.

A district court should “not be weighing the strength of competing inferences,” and “a defendant’s motivation for taking action against a plaintiff is usually a matter best suited for a jury.” *Bright v. Gallia Co.*, 753 F.3d 639, 653 n.144 (6th Cir. 2014). Plaintiffs have thus pled a cognizable claim of First Amendment retaliation.

4. Defendants Violated Plaintiffs Constitutional Freedoms to Petition the Government.

Plaintiffs have plausibly pled that Defendants retaliated against them for their pro-Palestine speech. The Supreme Court has held that courts “should not presume there is always an essential equivalence in the two Clauses or that Speech Clause precedents necessarily ... resolve Petition Clause claims.” *Borough of Duryea v. Guarnieri*, 564 U.S. 379, 388; 131 (2011). The Petition Clause “ensure[s] that citizens may communicate their will through direct petition to the legislature and government officials.” *BPNC, Inc v. Taft*, 147 F.App'x 525, 527 (6th Cir. 2005). Plaintiffs pled cognizable claims showing their exercise of Petition Rights to petition public university officials on a matter of public concern, and then, Defendants took adverse actions in a quintessential violation of Plaintiffs’ rights to petition.

5. Defendants Violated Plaintiffs’ Constitutional Freedoms of Association

The Constitution guarantees a “right to associate for the purpose of engaging in those activities protected by the First Amendment.” *Roberts v. U.S. Jaycees*, 468 U.S. 609, 612 (1984). Plaintiffs associated with other people expressing pro-Palestine beliefs at on-campus demonstrations, and as a result, Defendants took adverse employment actions against them. So, Defendants violated Plaintiffs’ associational rights by discharging workers based on their associations with pro-Palestine advocates to speak assemble for causes that members mutually believe.

6. Defendants’ Retaliated Against Plaintiffs Because Plaintiffs filed a Federal Lawsuit to defend their Constitutional freedoms.

The Sixth Circuit uses a three-prong test to determine the viability of a speech retaliation claim: (1) the plaintiff engaged in protected conduct; (2) an adverse action was taken against the plaintiff that would deter a person of ordinary firmness from continuing to engage in that conduct; and (3) there is a causal connection between elements one and two, that is, plaintiffs’ protected conduct motivated, at least in part, the adverse. See *Thaddeus-X*, 175 F.3d at 394 (6th Cir. 1999).

As to the first prong, “the right of access to courts for redress of wrongs is an aspect of the First Amendment right to petition the government.” *Sure-Tan, Inc. v. NLRB*, 467 U.S. 883, 896-897 (1984). The Sixth Circuit has found that filing of a lawsuit is protected speech. See *e.g., Herron v. Harrison*, 203 F.3d 410, 415(6th Cir. 2000); *Stanton v. Joyner*, No. 3:19-cv-00, 2702021 WL 4480508, *8 (M.D. Tenn, Sep. 30, 2021); *Borough of Duryea v. Guarnieri*, 564 U.S. 379, 379; 131 (2011). Plaintiffs ALI, EIDY, and MACKEEN-SHAPIRO filed a lawsuit in federal court alleging that Defendants violated their Constitutional rights. AC ¶ 319, Page.ID 431-432. Their filing is a form of speech and petition of the government that is protected from retaliation by the Constitution.

As plead for prong two, Defendants’ employment actions – especially *after* being terminated and permanently banned from rehire – are adverse actions that would chill an ordinary person. Defendants’ subjugation of Plaintiffs ALI, EIDY,

and MACKEEN-SHAPIRO to adverse actions after they were *already* unconstitutionally terminated for their speech is an additional and distinct action.

The referral of Plaintiffs EIDY, ALI, and MACKEEN-SHAPIRO to the Office of Student Conduct Resolution (“OSCR”) is an adverse action. See *Speech First, Inc. v. Schlissel*, 939 F3d 756, 765 (6th Cir. 2019) (ability to initiate a referral of students for potential disciplinary proceedings at U-M posed a “real consequence that objectively chills speech”). Initiating additional adverse employment actions after these Plaintiffs were *already* terminated and barred from any employment relationship is purely retaliatory and serves no reasonable function of U-M.

Finally, Plaintiffs have sufficiently plead that Defendants’ retaliation against Plaintiffs was motivated entirely by their pro-Palestine viewpoints. U-M has not previously initiated student disciplinary proceedings after taking employment actions against student workers engaging in similar protests of against student workers who were counterprotesting at the protests where Plaintiffs were present. AC ¶ 334, PageID 434.

7. Defendants Conspired to Repress Plaintiffs’ Speech.

Defendants cite two cases claiming that Plaintiffs’ AC lacks “at least some degree of particularity” and represents only “broad conclusory language” with respect to the § 1985(2) conspiracy. *Toteff v. Vill. of Oxford*, 562 F. Supp. 989, 997 (E.D. Mich. 1983); *Clemens v. Mount Clemens Cmty. Sch. Dist.*, 305 F. Supp. 3d

759, 775 (E.D Mich. 2018). Despite Defendants’ contentions, Plaintiffs easily meet even this heightened pleading standard.

Plaintiffs describe new adverse disciplinary action taken against them 10-14 months after the underlying protests, shortly after their filing of a federal lawsuit. Defendants’ actions include initiating adverse employment actions against graduated alumni who were not employed by U-M and already received lifetime employment bans. Defendants’ actions contravene U-M policy stating that “[a]ll complaints must be submitted...within six months” and that disciplinary proceedings should not be initiated when there is pending litigation on the matter. AC ¶¶ 319-333, Page.ID 431-434. Plaintiffs plead with particularity that these adverse actions were carried out via coordinated actions and agreement by the Defendants.

Defendants rely on the intra-corporate conspiracy doctrine to claim there are no “two persons” for purposes of § 1985(2). The plain text of § 1985(2) does not require separate corporate entities and the intra-corporate conspiracy doctrine is a relic of anti-trust law that is insufficient in a civil rights context.

U-M and the Regents, however, represent separate corporations. The Regents were, unlike other corporate entities, created by the Michigan Constitution. As the Michigan Constitution lays out, the Regents “**shall constitute a body corporate** known as the Regents of the University of Michigan.” Mich. Const. art. VIII, § 5 (emphasis added). The Regents is a separate corporate body, not a subset of the

University. The intra-corporate conspiracy doctrine, as Defendants' citation states, applies only to actors within "the same legal entity" and is, as such, inapplicable to Plaintiffs' claims. *Barrow v. City of Hillview*, 775 F. App'x 801, 806-07 (6th Cir. 2019) (quoting *Ziglar v. Abbasi*, 582 U.S. 120, 152 (2017)) ("nothing in this opinion should be interpreted as either approving or disapproving the intercorporate-conspiracy doctrine's application in the context of an alleged §1985(3) violation)).

Further, *Barrow* concerns municipal liability under § 1985(2), and so, its application is limited to the present case. U-M is "a department of the state government created by the state constitution to carry out state functions," and therefore, entirely different from a municipality. *Estate of Ritter v. Univ. of Mich.*, 851 F.2d 846, 850 (6th Cir. 1988). As U-M's Regents, OSCR, and Human Resources departments operate distinctly, the university context is much more akin to the officers of different state agencies cooperating, rather than different factions of a municipality.

Additionally, Defendants fabricate a heightened standard of pleading for conspiracy but fail to mention that "rarely in a conspiracy case will there be direct evidence of an express agreement among all the conspirators to conspire" and so "a plaintiff may rely on circumstantial evidence to prove the existence of the conspiracy." *Spadafore v. Gardner*, 330 F.3d 849, 854 (6th Cir. 2003) (citing *Weberg v. Franks*, 229 F.3d 514, 528 (6th Cir. 2000)). Circumstances make clear

there are “facts that are suggestive enough to render a ... conspiracy plausible.”

Twombly, 550 U.S. at 556. The conspiracy claim is thus properly pled.

E. PLAINTIFFS STATE A DUE PROCESS CLAIM UNDER THE FOURTEENTH AMENDMENT

Due process guarantees the right to adequate procedures when the government seeks to deprive a protected interest. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). A procedural due process claim requires a showing of: (1) deprivation of a protected life, liberty, or property interest; and (2) inadequate procedural rights when the state deprived the plaintiff of the protected interest. *Peterson v. Johnson*, 87 F.4th 833, 836 (6th Cir. 2023). See also, *Bowles v. Macomb Community College*, 558 F.Supp.3d 539, 546 (E.D. Mich 2021) (due process in public employment proceedings).

Procedural due process guarantees adequate notice and a meaningful opportunity to be heard. *Mathews*, 424 U.S. at 348-49. Core to that meaningful opportunity to be heard is the ability to present exculpatory evidence and rebut inculpatory evidence. *Goldberg v. Kelly*, 397 U.S. 254, 267-68 (1970). Due process also requires an impartial decisionmaker. *Withrow v. Larkin*, 421 U.S. 35, 46 (1975).

1. Plaintiffs Were Deprived of Property and Liberty Interests

i. Plaintiffs Have a Property Interest in Their Continued Public Employment.

A public employee can show a property interest in continued employment

with evidence of a “legitimate claim of entitlement” arising from a contract implied by the public employer’s customs and practices. *Crosby v. Univ. of Ky.*, 863 F.3d 545, 552 (6th Cir. 2017). See also *Christian v. Belcher*, 888 F.2d 410, 416-17 (6th Cir. 1989).

Defendants argue that Standard Practice Guide (“SPG”) 201.12 proves Plaintiffs are at-will employees, with no legitimate expectation of continued employment. An at-will employee clause does not waive an employee’s due process rights. The Sixth Circuit recognized that the existence of a property interest in public employment “does not turn on the language of the [employer’s] regulations” and the employer’s policies, custom, and practices can imply a legitimate expectation of job retention, especially when the plaintiff is seriously sanctioned in an unprecedented way. *Gunasekera v. Irwin*, 551 F.3d 461, 467-68 (6th Cir. 2009).

Before the actions taken against Plaintiffs, U-M had never discharged or barred future employment of students or alumni for their lawful, off-the-clock speech on issues of public concern. AC ¶ 317, PageID.431. Student workers reasonably believed, as is the custom of U-M, that their employment would continue *alongside their student status*. U-M’s stated policy and custom in practice is that no one is terminated without participation of their supervisor in the determination. See SPG 201.12. Plaintiffs’ supervisors or departments’ co-staff were unaware of the discharges until after the terminations. AC ¶¶ 314-315, PageID.430-31. Further, U-

M has a well-promulgated policy and practices that good faith consideration of alternative resolutions will precede termination. See SPG 201.08 (II)(B). Plaintiffs received no such considerations. As a result, there are genuine issues of material fact whether there were policies, customs, and practices instilled full-time and student workers with a legitimate expectation in continued employment. *Gunasekera*, 551 F.3d at 467.

Further, U-M has a policy and practice of recognizing majority-supported union bargaining units and bargaining in good faith over union-member discipline *even prior to a formal collective bargaining agreement*.³ Yet, here, Defendants terminated and barred from all future employment Plaintiff HAKIM whose union had issued a bargaining demanded for her under Michigan's Public Employment Relations Act of 1947. AC ¶ 224, PageID.418. In sum, Plaintiffs have a property interest in their jobs conferred via U-M's policies, customs, and practices.

ii. Plaintiffs Have a Liberty Interest in Their Continued Public Employment

The Supreme Court states that the discharge of a public employee may implicate protected liberty interests. See *Bd. of Regents v. Roth*, 408 U.S. 564, 572-73 (1972) (liberty interests include the right to engage in occupations and to acquire useful knowledge). The Sixth Circuit also holds that a protected liberty interest is

³ See record.umich.edu/articles/regents-approve-framework-for-union-recognition/.

implicated where an employee is stigmatized by the “employer’s voluntary, public dissemination of false information in the course of a decision to terminate his employment.” *Christian*, 888 F.2d at 416.

A “liberty interest in reputation” claim has five elements:

“First, the stigmatizing statements must be made in conjunction with the plaintiff’s termination ... Second, a plaintiff is not deprived of his liberty interest when the employer has alleged merely improper or inadequate performance, incompetence ... Third, the stigmatizing statements ... must be made public. Fourth, the plaintiff must claim that the charges made against him were false.”

Quinn v. Shirey, 293 F.3d 315, 320 (6th Cir. 2002). Plaintiffs’ AC meets these elements.

First, Defendants falsely stated that the Plaintiffs committed violent acts. AC ¶ 5, PageID.377. The baseless allegations of putative criminal violence clearly rise above the second *Quinn* factor and are more than mere negligence. In *Crosby*, the third factor was met where the employer voluntarily shared with the plaintiff’s coworkers the stigmatizing basis of the discharge, which the plaintiff contested as false. 863 F.3d at 555. Here, Defendants voluntarily disseminated false claims of violent conduct to Plaintiffs’ supervisors, university staff, coworkers, and other students. AC ¶ 155, PageID.405; ¶¶314-315 PageID.430; and ¶ 320, PageID.432.

iii. Plaintiffs Have a Liberty Interest in Their Right to Free Speech, Assembly, and Petition

The Supreme Court holds that speech “is within the liberty safeguarded by the

due process clause of the Fourteenth Amendment from invasion by state action.” *Near v. Minn.*, 283 U.S. 697, 707 (1931). As noted above, Plaintiffs sufficiently pled that Defendants violated their Freedom of Speech, Assembly, and Petition rights, giving rise to protected liberty interests.

Defendants’ argument that Plaintiffs due process claim is duplicative of the First Amendment claims misunderstands the pleadings and misapplies the law. ECF No.31, PageID.524. Plaintiffs do not assert a Substantive Due Process claim. Rather, Plaintiffs raise a Procedural Due Process claim that they were deprived of their liberty interest in their First Amendment Rights without proper notice, a meaningful hearing, and an impartial decisionmaker. AC ¶¶ 401-403, PageID.444.

2. Plaintiffs Did Not Receive Proper Notice; A Fair Opportunity To Be Heard; Or An Impartial Decision-Maker

The Supreme Court holds that “[d]ue process is flexible and calls for such procedural protections as the particular situation demands.” *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). To “be deprived not only of present government employment but of future opportunity [is serious and] certainly is no small injury.” *Roth*, 408 U.S. at 574. See also, *Doe v. Univ. of Cincinnati*, 72 F.3d 393, 400 (6th Cir. 2017) (“the more serious the deprivation, the more demanding the process”).

Due process requires that deprivation of liberty or property be preceded by notice, and notice must “apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Cent. Hanover*

Bank & Trust Co., 339 U.S. 306, 313-14 (1950). See also, *Flaim v. Medical College of Ohio*, 418 F.3d 629, 635 (6th Cir. 2005) (the stronger the protected interest, the more notice is constitutionally required).

Given the strong interest (termination and permanent employment ban) and the severity of the allegation (criminal violence), due process requires heightened notice. Defendants fell far short and failed to give Plaintiff HASSABALLA and ELKOLALY *any* notice until after depriving them of their employment and ability to be rehired. AC ¶¶ 127-128 & 202-203, PageID.401 & 411.

Plaintiffs CHAPPELL, HAKIM, EIDY, ALI, MACKEEN-SHAPRIO and RHOADES were given just a few days' notice before being told of their termination and employment ban at a meeting with Defendant GRIER. They were provided almost no advance information as to Defendants' process for the meeting, their rights at the meeting, and what would occur at it. AC ¶¶ 214-313, PageID.416-430. Additionally, any notice provided, if at all, was deficient for not listing possible penalties and only noted that Plaintiffs' employment status was "under review." AC ¶¶ 133-135, 164-174, & 202-203, PageID.401, 406 & 411.

Prior to deprivation of their property and liberty interests, a public employee is entitled to "an explanation of the employer's evidence and an opportunity to [rebut and] present his side of the story." *Cleveland Bd. of Ed. v. Loudermill*, 470 U.S. 532, 546 (1985). Here, Defendants failed to give Plaintiffs sufficient explanation of the

evidence or the facts on which the Defendants allegations were based and Defendants did not provide a hearing until after a final decisions against the Plaintiffs were made. AC ¶¶ 127-128, PageID.401; ¶¶ 202-203, PageID.411.

Post-deprivation, Plaintiffs were not provided a meaningful opportunity to be heard. Neither Plaintiffs HASSABALLA, CHAPPEL or ELKOLALY, nor their hearing panel members were given the allegedly inculpatory video evidence before or during the hearing. AC ¶¶ 136-51, 183-195, & 212-224, PageID.402-404, 408-10, & 413-15. These Plaintiffs were, in fact, not even given the video showing their conduct, until *after* their hearings and *after* all appeals were finished and these videos did not show *any* violent conduct. AC ¶ 140, PageID.403; ¶183, PageID.409; ¶ 212, PageID.413. The videos received by Plaintiffs HAKIM, MACKKEEN-SHAPIRO, EIDY, and RHOADES do not show any act of violence, but instead show them engaged in First Amendment speech activity. AC ¶¶ 216-302, Page.ID 417-29. None of the Plaintiffs had an opportunity to know who created the videos, exam witnesses, or rebut the evidence against them. All of this violated due process by preventing Plaintiffs from adequately understanding and rebutting the evidence used by Defendants to uphold the deprivation. Notably, the video evidence does not, in any way, support an allegation of violence against any Plaintiff.

Despite university policy requiring a supervisor or their designee be present at disciplinary hearings, supervisors were excluded, suggesting Defendants' motive

was to avoid accountability. SGP 201.12 (III)(I), AC ¶¶ 226-227, PageID.418.

The Sixth Circuit holds that when a “case [resolves] itself into a problem of credibility,” the opportunity for cross-examination of witnesses may be essential to a fair hearing. *Flaim*, 418 F.3d at 641. Given the allegations against Plaintiffs of criminal-level severity and the great deprivation to their reputation and future employment, due process demands that Plaintiffs had the opportunity to test the credibility of individuals who prepared, took, and withheld the videos and introduced evidence against them. They had none of these.

An impartial decisionmaker is a basic requirement of due process, regardless of the forum. *Withrow v. Larkin*, 421 U.S. 46 (1975). Defendants served as both the complainants and decisionmakers in the actions against Plaintiffs in a manner that is “constitutionally unacceptable.” *Id.*; AC ¶ 137, PageID.402.

F. DEFENDANTS ARE NOT ENTITLED TO ANY IMMUNITY

1. Sovereign Immunity is Not Available to the Defendants

Plaintiffs have clearly pled claims to seek monetary damages against the individual Defendants in *only* their individual/personal capacities and seek *only* declaratory and equitable relief in their official capacities. AC ¶ 351, PageID.436-437; ¶ 367, PageID.439; ¶ 383, PageID.441; ¶ 397, PageID.443; ¶ 410, PageID.446; ¶ 423, PageID.448; ¶ 433, PageID.449-450; ¶ 435, PageID.450-451.

Well-settled law holds that, under 42 USC §1983, Defendant state officials

can be sued for monetary damages when the Plaintiffs AC affirmatively states that these individuals are being sued in their individual or personal capacities. See *Rodgers v. Banks*, 344 F.3d 587, 594 (6th Cir. 2003); *Wells v. Brown*, 891 F.2d 591, 592 (6th Cir. 1989). Plaintiffs damage claims against Defendants ONO, CHATAS, HOLCOMB, GRIER, HARMON, WESSEL, and GOLICH exclusively in their personal capacities. See AC ¶ 351; PageID.436-37; ¶367, PageID.439; ¶383, PageID.443; ¶397, PageID.443; ¶410,PageID.446; ¶423,PageID.448; ¶433,PageID.449 & ¶435,PageID.450.

Defendants misread *McCormick v. Miami Univ* in a futile attempt to bar *all* suits against the state. The Eleventh Amendment is not a bar to liability under §1983. *Monell v. Dept. of Social Servs.*, 436 U.S. 658, 692 (1978). *Ex Parte Young* establishes that “a suit against individuals for the purpose of preventing them as officers of a state from enforcing an unconstitutional enactment to the injury of the rights of the plaintiff, is not a suit against the state within the meaning of the Eleventh Amendment.” *Ex parte Young*, 209 US 123, 154 (1908). To fall within the *Ex parte Young* exception, a “claim must seek prospective relief to end a continuing violation of federal law.” *Diaz v. Mich. depot. of Corr.*, 703 F.3d 956, 958 (6th Cir. 2013). Therefore, it is well established law that sovereign immunity “permits claims for prospective relief when brought against state officers in their official capacities. *Ashford v. Univ of Mich*, 89 F.4th 960, 969 (6th Cir. 2024). The Sixth Circuit has

held that claims for reinstatement and expunging disciplinary records are both prospective relief. *Josephson v. Ganzel*, 115 F.4th 771, 777 (6th Cir. 2024). Plaintiffs seek only prospective injunctive relief against Defendants in their official capacities and thus, sovereign immunity is not available to Defendants.

Plaintiffs go well beyond “vague conclusory group pleading statements” to allege that Defendants ONO, CHATAS, HOLCOMB, and GRIER personally and together created, implemented, and approved a policy and practice of targeting workers expressing pro-Palestine viewpoints.⁴ ECF. No.31, PageID.510. Defendant GRIER personally undertook significant actions to terminate all Plaintiffs based on their participation in pro-Palestine protests.

Further, Defendant CHATAS himself is alleged to have actual involvement in upholding and enacting the permanent employment ban and termination of Plaintiffs HASSABALLA, CHAPPELL, and ELKOLALY. AC ¶ 145, PageID.403; ¶ 189, PageID.409; ¶ 317, PageID.413.

Finally, Plaintiffs have sufficiently alleged that Defendants HARMON, WESSEL, and GOLICH, along with Defendants REGENTS, ONO, CHATAS,

⁴ AC ¶ 127, PageID.401; AC ¶ 158-161, PageID.405; AC ¶ 163, PageID.406; AC ¶ 197-199, PageID.411; AC ¶ 127, PageID.401; AC ¶ 226-228, PageID.415; AC ¶ 214, PageID.417; AC ¶ 232-234, PageID.419; AC ¶ 236, PageID.420; AC ¶ 253-255, 257, PageID.422; AC ¶ 273-275, PageID.425; AC ¶ 291-293, PageID.427; AC ¶ 295, PageID.428; AC ¶ 310-312, PageID.430.

HOLCOMB, and GRIER took personal actions to retaliate against Plaintiffs ALI, EIDY, and MACKEEN-SHAPIRO for their filing of a lawsuit to defend their constitutional rights. AC ¶ 321, PageID.432.

2. Qualified Immunity Is Not Available to the Defendants

Qualified immunity requires a “two-step inquiry applies, asking [1] whether the facts, when taken in the light most favorable to the party asserting the injury, show the officer’s conduct violated a constitutional right, and [2] whether the right was clearly established such that a reasonable official would understand that what he is doing violates that right.” *Raimey v. City of Niles*, 77 F.4th 441, 448 (6th Cir. 2023). Due to the fact-intensive nature of the inquiry, the Sixth Circuit has repeatedly cautioned that “it is generally inappropriate for a district court to grant a 12(b)(6) motion to dismiss on the basis of qualified immunity.” *Wesley v. Campbell*, 779 F.3d 421, 433-34 (6th Cir. 2015); *see Guertin v. Michigan*, 912 F.3d 907, 917 (6th Cir. 2019); *Courtright v. City of Battle Creek*, 839 F.3d 513, 518 (6th Cir. 2016). Such considerations are better suited for “summary judgment and not dismissal under Rule 12”. *Buddenberg v. Weisdack*, 939 F.3d 732, 735 (6th Cir. 2019).

The law was clearly established at the time of Defendants actions “that an act of retaliation against a citizen who had exercised his fundamental right of free speech constituted a constitutional violation which in turn could serve as the basis for a § 1983 action”. *Shand v. Martin*, F.Supp 2d; 2008 U.S. Dist. 108244, at *21-22 (E.D.

Mich., May 28, 2008); *See generally, Bloch v. Ribar*, 156 F.3d 673, 683 (6th Cir. 1998); *Livingston v. Luken*, 151 F.App'x 470, 478 (6th Cir. 2005)

Furthermore, it is clearly established law that, where punitive sanctions are predicated on a public gathering's "subject matter or by its function or purpose," the underlying policies are "presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests." *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015). Accordingly, Defendants were fully on notice that even facially neutral policies are nonetheless presumptively unconstitutional when "adopted by the government because of disagreement with the message conveyed." *Reed*, 576 U.S. at 164. Defendants were correspondingly on notice of the liberty and property interests at issue in this case. *Withrow*, 421 U.S. at 46. Therefore, Defendants cannot claim ignorance of their duties not to violate the well-established First and Fourteenth Amendment rights.

Defendants contend that Plaintiffs' claims against Defendants ONO, CHATAS, and HOLCOMB are based on "conclusory statements" and respondeat superior, failure-to-act, or a similar theory. ECF No. 31, PageID.540. That is incorrect. Plaintiffs well establish that Defendants ONO, CHATAS, and HOLCOMB, as supervisory officials with the power to direct, authorize, and approve conduct taken by U-M Human Resources Department, are liable for their own conduct that "encouraged or condoned the actions of [their] inferiors." *Gregory*

v. City of Louisville, 444 F.3d 751 (6th Cir. 2006). To incur individual supervisory liability under § 1983, a public official must have at least “implicitly authorized, approved or knowingly acquiesced in the unconstitutional conduct,” *King v. Zamiara*, 680 F.3d 686, 706 (6th Cir. 2012), and cannot “escape liability for setting in motion a punitive act ultimately executed by someone else.” *Id.* at 696. See also *Sova v. City of Mt. Pleasant*, 142 F.3d 898, 904 (6th Cir. 1998); *Bellamy v. Bradley*, 729 F.2d 416, 421 (6th Cir. 1984); and *Hays v. Jefferson County, Kentucky*, 668 F.2d 869, 874 (6th Cir. 1982). Further, “the establishment or utilization of an unconstitutional policy or custom can serve as the supervisor's ‘affirmative link’ to the constitutional violation.” *Dodds v. Richardson*, 614 F.3d 1185, 1199 (10th Cir. 2010); see *Cronn v. Buffington*, 150 F.3d 538, 544 (5th Cir. 1998) (finding that supervisory official may be held liable if he implements a policy so deficient that the policy itself acts as a deprivation of constitutional rights). Therefore, neither qualified nor supervisory immunity are available to Defendants.

G. ALL OF PLAINTIFFS CLAIMS ARE RIPE

Three factors guide the ripeness inquiry: (1) the likelihood that the harm alleged by the plaintiffs will ever come to pass; (2) whether the factual record is sufficiently developed to produce a fair adjudication of the merits; and (3) the hardship to the parties if judicial relief is denied at this stage in the proceedings. *Berry v. Schmitt*, 688 F.3d 290, 294 (6th Cir. 2012) (finding also that the Supreme

Court has long found claims to be cognizable when speech has been chilled by the threat of future enforcement). Further, “the ripeness requirement is somewhat relaxed in the First Amendment context,” provided that there is “credible fear of enforcement. *Norton v. Ashcroft*, 298 F.3d 547, 554 (6th Cir. 2002).

There is no issue of ripeness in this case as Defendants have *already* taken action to terminate Plaintiffs employment; to end volunteer opportunities; to place a permanent hiring ban on them; and to cause reputational harm to them. See AC ¶316, Page.ID 431. Accordingly, the harm alleged by Plaintiffs has already come to pass.

H. PLAINTIFFS CLAIMS ARE NOT BARRED BY CLAIM SPLITTING

The Sixth Circuit test “claim splitting is not whether there is finality of judgment, but whether the first suit, assuming it were final, would preclude the second suit . . . The proper question is whether, assuming the first suit was already final, the second suit would be precluded under res judicata analysis.” *Waad v. Farmers Ins Exch*, 762 F.App'x 256, 256 (6th Cir. 2019)

Defendants attempt to reference an unrelated case brought by Plaintiffs HASSABALLA, ELKOLALY, and CHAPPELL, *Hilgart-Griff v. Regents*, which arises from an entirely different set of facts regarding the U-M’s weaponization of student discipline against *other persons* for their participation in the sit-in Ruthven Building. While are premised on the same protest, Defendants’ retaliatory actions are against different Plaintiffs and on an entirely different basis.

Here, unlike in *Hilgart-Griff v. Regents*, Defendants retaliated against Plaintiffs HASSABALLA, ELKOLALY, and CHAPPELL on the basis of their public employment, not on their status as students. Accordingly, the present suit would not be precluded by *Hilgart-Griff v. Regents*.

IV. CONCLUSION

WHEREFORE, Plaintiffs pray that this Honorable Court enter an order denying Defendants' *Motion to Dismiss the Amended Complaint with Prejudice*, and grant Plaintiffs cost and attorney fees for having to defend this Motion.

Respectfully submitted,

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Date: September 19, 2025

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

Zainab Hakim; et. al.;

Plaintiffs,

v.

Regents of the University of Michigan;
et. al.

Defendants.

Case No. 2:25-cv-11265-SJM-EAS

Hon. Stephen J. Murphy, III

Hon. Mag. Elizabeth A. Stafford

CERTIFICATE OF SERVICE

I hereby certify that on September 19, 2025, I electronically filed the *Brief in Support of Plaintiffs' Response to Defendants' Motion to Dismiss* with the Clerk of the Court using the ECF system which will send notification of such filing to all attorneys of record.

Respectfully Submitted,

By: /s/ John C. Philo

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