

No. 26-50179

**In the United States Court of Appeals
for the Fifth Circuit**

ARWYN HEILRAYNE; CITLALLI SOTO-FERATE; ILIANA MEDRANO; MIA CISCO,

Plaintiffs-Appellees,

V.

JAMES E. DAVIS; KEVIN ELTIFE,

Defendants-Appellants.

On Appeal from the United States District Court
for the Western District of Texas, Austin Division

BRIEF FOR APPELLEES

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Fifth Circuit Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

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STATEMENT REGARDING ORAL ARGUMENT

Appellees agree that oral argument may assist the Court. Although this interlocutory appeal presents narrow questions of state sovereign immunity and Article III standing that the district court correctly resolved under controlling Fifth Circuit precedent and the well-pleaded allegations of the complaint, Appellees are prepared to address any questions the Court may have and believe argument would aid its resolution of the issues Appellants raise.

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STATEMENT OF THE ISSUES

Appellees restate the issues as follows:

1. Whether the district court correctly held that President Davis and Chairman Eltife are proper defendants under *Ex parte Young*.
2. Whether the district court correctly held that Plaintiffs' injuries satisfy Article III's traceability and redressability requirements as to Davis and Eltife.
3. Whether the district court correctly held that Plaintiffs seek prospective relief within the meaning of *Ex parte Young*.
4. Whether the district court correctly held that Plaintiffs have standing to seek the requested relief.

INTRODUCTION

This interlocutory appeal presents two narrow, threshold questions, both of which district court resolved correctly. Davis and Eltife do not challenge the merits of Plaintiffs’ First Amendment retaliation claim. They ask only whether that claim may proceed against them under *Ex parte Young*, 209 U.S. 123 (1908), and whether Plaintiffs have Article III standing to pursue the single form of prospective relief the claim seeks. On the well-pleaded allegations of the Complaint, taken as true, the answer to both questions is “yes.”

Plaintiffs are four current and former University of Texas at Austin students and demonstrators who were disciplined for participating in a Palestine solidarity protest on April 24, 2024. ROA.447-48. After the protest, the University charged each of them with student-conduct violations and imposed sanctions: deferred suspension on Heilrayne, Soto-Ferate, and Medrano, and a year of academic probation on Cisco. ROA.480. Those sanctions remain on every Plaintiffs’ academic record today: Heilrayne remains enrolled and subject to potential consequences pursuant to her deferred suspension, and Cisco likewise remains an enrolled student subject to the University’s disciplinary regime. ROA.448, 498. Plaintiffs seek a single, forward-looking remedy: an order requiring the University to reverse and expunge the disciplinary sanctions imposed for the protest. ROA.499, 512.

Because Defendants mounted a facial attack under Rule 12(b)(1), the only question at this stage is whether the Complaint’s allegations satisfy Article III—not whether Plaintiffs will ultimately prove that Davis and Eltife wielded the authority they allege. Appellants’ Brief inverts that framework. It devotes most of its pages to a fact-bound argument that UT’s Regents’ Rules and Institutional Rules gave Davis and Eltife no operative role in Plaintiffs’ discipline. Appellants’ Br. 15-31. But whether those officials in fact possess the authority Plaintiffs allege is a merits question about the operation of state law that cannot be resolved on the pleadings. At this stage, Plaintiffs need only allege facts showing the requisite enforcement connection, and they have. ROA.497-500.

The district court’s ruling tracks this Court’s precedent. Under *Jackson v. Wright*, 82 F.4th 362 (5th Cir. 2023), members of a university system’s board of regents are proper *Ex parte Young* defendants because their governing authority over subordinate officials supplies the required “scintilla of enforcement,” and the University of Texas Board possesses the same authority by statute. Heilrayne’s ongoing subjection to a live sanction independently establishes standing; Cisco’s ongoing subjection to the University disciplinary regime that was previously used in retaliation against her likewise confers standing; and all Plaintiffs carry a present disciplinary record that this Court has recognized as a concrete, continuing injury. The expungement Plaintiffs seek is the paradigmatic prospective remedy *Young*

authorizes: it ends a continuing violation of federal law and runs against the officials, not the state treasury. The order denying Defendants' motion to dismiss should be affirmed.

STATEMENT OF THE CASE

I. Factual Background

The four Plaintiffs are current and former University of Texas at Austin students and demonstrators. At the time of filing of the operative complaint, Arwyn Heilrayne was a second-year student and Mia Cisco a third-year student; Citlali Soto-Ferate and Iliana Medrano had recently graduated. ROA.447-48. On April 24, 2024, Plaintiffs participated in a Palestine solidarity protest on the UT Austin campus. ROA.523. During the protest, all four were arrested, and the local district attorney later dropped every charge against them. ROA.475.

After the protest, the Office of the Dean of Students notified each Plaintiff that she faced academic discipline for her participation, charging each with two student-conduct violations: "Failure to Comply" and "Disruptive Conduct." ROA.477, 516. The University then imposed sanctions. Heilrayne, Soto-Ferate, and Medrano each received a deferred suspension; Cisco received one year of academic probation. ROA.480. As a condition of her continued enrollment, Heilrayne was required to agree that any future violation of University rules would result in suspension. *Id.*

Those sanctions continue to burden Plaintiffs. The disciplinary actions remain on every Plaintiff's academic record. ROA.498. Heilrayne is still enrolled at UT Austin and continues to be subject to the deferred suspension imposed for the protest, which poses the risk of tangible consequences. *Id.* Cisco likewise remains enrolled. Although her one-year probation has ended, she remains subject to the University's disciplinary rules and alleges that she intends to continue her activism but fears further retaliation. ROA.448, 498. Soto-Ferate and Medrano have graduated, but their disciplinary records persist and must be disclosed and explained when they apply to graduate programs or to jobs that request their academic records. ROA.498-99. Plaintiffs allege that Davis and Eltife possess the authority to expunge those records. ROA.499.

II. Procedural History

Plaintiffs sued UT Austin, the UT System's Board of Regents and its members, former UT Austin President Jay Hartzell, current President Jim Davis, Governor Greg Abbott, and several police officers involved in the protest. ROA.444-514. They asserted four claims against various groupings of defendants: (1) that the decision to cancel the protest and to arrest them constituted unlawful viewpoint discrimination that violated the First Amendment, ROA.489-90; (2) that various defendants retaliated against them in violation of the First Amendment by arresting them and subjecting them to student discipline for participating in the protest,

ROA.497-98; (3) that certain officers falsely arrested them in violation of the Fourth Amendment, ROA.505; and (4) that UT Austin and the Board of Regents discriminated against them in violation of Title VI, ROA.510.

Defendants moved to dismiss all claims. ROA.578, 617. The district court granted the motions in large part, dismissing every claim except the First Amendment retaliation claim against President Davis and Board of Regents Chairman Kevin Eltife in their official capacities. ROA.863. That single claim is the only matter on this appeal.

Defendants now contest the district court's ruling on sovereign immunity and standing with respect to that claim. That ruling held that the members of the UT System Board of Regents, including Chairman Eltife, have the enforcement connection required by *Ex parte Young*, and it rejected Defendants' contention that the Dean of Students was the only proper official to sue. ROA.840. It further held that President Davis, as UT Austin's chief executive officer with oversight of the student disciplinary process, likewise has a sufficient connection to be a proper defendant. *Id.* Second, the court held that Plaintiffs' requests to amend their disciplinary records constitute prospective relief under *Ex parte Young*, finding that the retaliatory records' continued existence generated ongoing harm—including continued reputational harm—notwithstanding that two Plaintiffs had graduated and Cisco's probation had ended. ROA.840-42. The court separately dismissed the

remaining Board members for lack of personal involvement, leaving Eltife as the sole regent defendant. ROA.850. Finally, the court held that Plaintiffs had stated a First Amendment retaliation claim sufficient to survive Rule 12(b)(6). ROA.856-59.

The district court entered its order granting in part and denying in part the motions to dismiss on January 27, 2026. ROA.863. Davis and Eltife timely appealed on February 23, 2026, invoking this Court’s jurisdiction over the interlocutory denial of sovereign immunity under the collateral-order doctrine. ROA.837, 863, 885-86.

SUMMARY OF THE ARGUMENT

The district court’s order denying in part Defendants’ motion to dismiss should be affirmed. The appeal arises from a facial motion to dismiss, so the sole question is whether the Complaint’s well-pleaded allegations, presumed true, bring Plaintiffs’ retaliation claim within *Ex parte Young* and satisfy Article III. They do, for three independent reasons.

First, Plaintiffs have Article III standing. Standing is assessed claim-by-claim and remedy-by-remedy, and the presence of a single Plaintiff with standing satisfies the case-or-controversy requirement. Heilrayne’s standing is clear: she remains an enrolled student subject to the very deferred suspension this suit challenged, a present and continuing injury that is fairly traceable to Davis and Eltife—who, as alleged, have authority to expunge her record—and redressable by the injunction Plaintiffs seek. The remaining Plaintiffs independently satisfy Article III because

each carries a present disciplinary record that this Court has recognized in *Esfeller* and *Overdam* as a concrete, continuing injury, and Cisco, who remains enrolled, satisfies the injury requirement on the same footing as Heilrayne. Defendants' contrary position depends on recharacterizing these present injuries as speculative future harms, but the injuries exist now.

Second, Davis and Eltife are proper *Ex parte Young* defendants, and sovereign immunity does not bar the claim. At the pleading stage, Plaintiffs need only allege—not prove—a connection to enforcement, and a mere scintilla suffices. Under *Jackson v. Wright*, members of a university system's board of regents have that connection by virtue of their governing authority over subordinate officials, including the ability to countermand their decisions. In fact, the Texas Education Code vests the UT Board with materially identical authority. Davis, as UT Austin's chief executive officer with oversight of the disciplinary process, likewise qualifies. Defendants' lengthy argument that UT's rules gave them no operative role raises merits questions about the operation of state law that cannot be resolved on a facial motion to dismiss. And the district court's inadvertent citation to the statute governing a different Texas university system was harmless, because the correct UT statute confers the same authority and this Court may affirm on that basis.

Third, the relief Plaintiffs seek is prospective within the meaning of *Ex parte Young*. An order reversing and expunging the disciplinary sanctions would end a

continuing violation of federal law rather than compensate a past one, and it would operate against the officials rather than the state treasury. Plaintiffs allege an ongoing violation: Heilrayne remains subject to a live sanction, Cisco's speech remains chilled, and the retaliatory disciplinary measures remain on every Plaintiffs' academic record, carrying present disclosure and reputational consequences. Defendants' lead authority confirms that expungement tied to an ongoing violation is prospective—and Plaintiffs allege exactly such a violation.

STANDARD OF REVIEW

Orders denying state sovereign immunity are immediately appealable under the collateral-order doctrine. *James v. Hegar*, 86 F.4th 1076, 1080 (5th Cir. 2023). Because this Court's "Article III standing analysis and *Ex parte Young* analysis significantly overlap," where the Court has interlocutory jurisdiction to review the denial of Eleventh Amendment immunity it may also determine whether Article III standing exists over the underlying claim. *Id.* at 1081 (internal quotation marks and citation omitted). This Court reviews a district court's sovereign-immunity and standing rulings *de novo*. *Jackson*, 82 F.4th at 366. On a facial challenge, the Court looks only to the sufficiency of the Complaint's allegations, which are presumed true. *Lee v. Verizon Commc'ns., Inc.*, 837 F.3d 523, 533 (5th Cir. 2016). And this Court may affirm the denial of sovereign immunity "on any ground supported by the

record, including one not reached by the district court.” *Texas v. Travis Cnty.*, 910 F.3d 809, 811 (5th Cir. 2018) (internal quotation marks and citation omitted).

ARGUMENT

State sovereign immunity generally precludes official-capacity suits against state officials, but *Ex parte Young* supplies an exception for suits seeking prospective relief against officials connected to the enforcement of challenged conduct. Because this Court’s standing and *Ex parte Young* inquiries significantly overlap—principally in their shared traceability and redressability components, *Jackson*, 82 F.4th at 367—the two doctrines Defendants invoked rise and fall on the same well-pleaded allegations. This brief addresses each requirement in turn. Section I explains that Plaintiffs have Article III standing, with each Plaintiff satisfying the requirement in her own right. Section II explains that Davis and Eltife are proper *Ex parte Young* defendants and that sovereign immunity therefore does not bar the claim. Section III explains that the relief Plaintiffs seek is properly characterize as prospective. Because the Complaint’s allegations, taken as true, satisfy each requirement, the district court’s order should be affirmed.

I. Plaintiffs Have Article III Standing.

Article III requires an injury-in-fact fairly traceable to the challenged conduct and likely to be redressed by the requested relief. *Reule v. Jackson*, 114 F.4th 360, 366-67 (5th Cir. 2024). On a facial Rule 12(b)(1) challenge based solely on the

allegations in the Complaint, the Court considers the sufficiency of those allegations, which are presumed to be true. *Lee v. Verizon Commc'ns, Inc.*, 837 F.3d 523, 533 (5th Cir. 2016). At the pleading stage, “general factual allegations of injury resulting from the defendant’s conduct may suffice.” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992). And because standing is assessed for “each claim” and “each form of relief,” *Reule*, 114 F.4th at 367, the question presented is whether Plaintiffs have standing to seek prospective relief from the student-discipline that this suit alleges. Each Plaintiff does.

The retaliation claim on appeal is brought on behalf of all four Plaintiffs against Davis and Eltife in their official capacities, and it seeks a single form of prospective relief: an order reversing and expunging the disciplinary actions the University imposed for Plaintiffs’ participation in the April 24 protest. ROA.498-99, 512. Heilrayne remains subject to that discipline today, and the disciplinary actions remain on every Plaintiff’s academic record. ROA.498. Thus, all Plaintiffs have demonstrated Article III standing.

A. Heilrayne’s standing.

Defendants acknowledge that Heilrayne has established an injury-in-fact because she remains a student and therefore continues to suffer the effects of the disciplinary action against her but claim she cannot show traceability and redressability. But Defendants are wrong: Heilrayne has pled facts establishing all

three elements of Article III standing. Furthermore, Defendants are attempting to set the claim for a standing argument when she graduates in the spring. Not only does their argument conflate standing with mootness, but it fails to acknowledge the continuing effects of her disciplinary record after graduation.

1. Heilrayne has established an injury-in-fact because she is presently subject to the disciplinary sanctions she challenges.

Unlike the some of the other Plaintiffs, as alleged in the First Amended Complaint, Heilrayne remains a UT Austin student and subject to the deferred suspension imposed because of her participation in the April 24 protest. ROA.498. That sanction places conditions on her that are effective now: as part of the settlement governing her continued enrollment, Heilrayne was required to agree that a future violation of university rules would result in suspension. ROA.480.

An injury-in-fact is an “‘invasion of a legally protected interest’ that is ‘concrete and particularized’ and ‘actual or imminent, not conjectural or hypothetical.’” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016) (quoting *Lujan*, 504 U.S. at 560). “For a threatened future injury to satisfy the imminence requirement, there must be at least a ‘substantial risk’ that the injury will occur.” *Crawford v. Hinds Cnty. Bd. of Supervisors*, 1 F.4th 371, 375 (5th Cir. 2021) (quoting *Stringer v. Whitley*, 942 F.3d 715, 721 (5th Cir. 2019)). Past harm can constitute an injury-in-fact for purposes of pursuing injunctive relief it is causes “continuing, present

adverse effects.” *City of Los Angeles v. Lyons*, 461 U.S. 95, 102 (1983) (quoting *O’Shea v. Littleton*, 414 U.S. 488, 495-96 (1974)).

Supreme Court and Fifth Circuit precedent confirm that a plaintiff need not await further punishment before challenging government action that credibly threatens protected First Amendment activity. See *Babbitt v. United Farm Workers Nat’l Union*, 422 U.S. 289, 298 (1979) (explaining that plaintiffs need not “await the consummation of threatened injury to obtain preventative relief”); *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158-59 (2014) (“[W]here threatened action by government is concerned, we do not require a plaintiff to expose himself to liability before bringing suit to challenge the basis for the threat.”) (quoting *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 128-29 (2007)). And past enforcement makes the prospect of further enforcement particularly concrete: “Past enforcement against the same conduct is good evidence that the threat of enforcement is not ‘chimerical.’” *Id.* at 164. This Court applied the same principle in the university context in *Speech First, Inc. v. Fenves*, holding that students who had not yet been disciplined nevertheless adequately alleged injury because the prospect of enforcement chilled their intended speech. 979 F.3d 319, 330-31 (5th Cir. 2020). Heilrayne’s injury is more concrete still: UT Austin has already disciplined her, and the resulting deferred suspension remains in effect. ROA.480, 498.

Clapper v. Amnesty Int’l USA, 568 U.S. 398 (2013), cited by Defendants, concerned an injury that depended upon a speculative chain of future events. *Id.* at 410-14. In *Speech First*, this Court distinguished *Clapper*, explaining that there the Supreme Court “imposes no obstacle” to finding a substantial threat of enforcement where the plaintiffs were themselves subject to the challenged university policies. *Speech First*, 979 F.3d at 336. The Court reasoned that the plaintiffs belonged to a class that could not be targeted under the challenged statute and emphasized that *Clapper* “did not suggest” that additional evidence of enforcement would have been necessary had the plaintiffs themselves been subject to the challenged policies. *Id.*

Heilrayne’s injury is not merely a possible or likely future risk. Quite the contrary: UT Austin has already imposed the challenged discipline, and the resulting deferred suspension, as the Complaint alleges, remains operative today. ROA.498. *See Laird v. Tatum*, 408 U.S. 1, 11 (1972) (distinguishing allegations of a subjective chill from cases in which a plaintiff is “presently or prospectively subject to the regulations, proscriptions, or compulsions” challenged); *Speech First*, 979 F.3d at 336 (quoting *Laird* and applying the distinction in the university context).

Defendants implicitly acknowledge that distinction. Their brief states that “all Plaintiffs except Heilrayne are no longer subject to disciplinary sanctions from the protest,” Appellants’ Br. 12, and that “[a]ll Plaintiffs except Heilrayne lack standing to seek prospective relief because they are no longer subject to an academic

sanction[.]” *Id.* at 39. Their own argument thus confirms the dispositive point: Heilrayne remains subject to the sanction this suit challenges.

Nor does Defendants’ speculation that Heilrayne “may graduate before this Court decides this appeal” alter the analysis. *Id.* at 34 n.6. Standing is determined “as of the commencement of the suit.” *Kitty Hawk Aircargo, Inc. v. Chao*, 418 F.3d, 458 (5th Cir. 2005); *see also Friends of the Earth, Inc. v. Laidlaw Environmental Servs (TOC), Inc.*, 528 U.S. 167, 189 (2000) (explaining that the requisite personal interest “must exist at the commencement of the litigation (standing)” and “continue throughout its existence (mootness)”). Thus, whether a subsequent event eliminates a controversy that was live when the lawsuit was filed ordinarily presents a question of mootness, not whether standing existed at the outset. *See Esfeller v. O’Keefe*, 391 F. App’x 337, 339-40 (5th Cir. 2010) (addressing a former student’s departure from a university as a mootness question and concluding that continuing consequences of university discipline preserve a live controversy). Here, the hypothesized subsequent event has not even occurred: Heilrayne has not graduated but remains enrolled and presently subject to deferred suspension. ROA.498. Defendants cannot defeat her present standing by speculating that her claim might become moot at some future date. *See Laidlaw*, 528 U.S. at 189.

2. Heilrayne's injury is fairly traceable to Defendants.

Heilrayne's injury is also fairly traceable to Defendants. Traceability does not demand proximate causation; the injury need only be fairly traceable to the challenged conduct rather than attributable solely to the independent action of a third party. *Reule*, 114 F.4th at 366-67. Even where another actor participates in producing the injury, causation exists where the defendant exercises a “determinative or coercive effect” upon that actor’s conduct. *Id.* at 367. *See also Dep’t of Commerce v. New York*, 588 U.S. 752, 768 (2019) (holding that plaintiffs possessed standing where their theory “relies . . . on the predictable effect of Government action on the decisions of third parties”).

The Complaint alleges precisely the connection necessary here. Plaintiffs provided facts in the Complaint establishing that Heilrayne remains subject to deferred suspension and that “Davis and Members of the UT System Board of Regents have the authority to expunge Plaintiffs’ disciplinary records.” ROA.498-99.

The Dean of Students’ involvement therefore does not break the causal chain. The Court in *Book People, Inc. v. Wong* found traceability although the challenged restrictions operated through school districts because the defendant “over[saw] the [challenged] process” and was “among those [that] would contribute to Plaintiffs’ harm.” 91 F.4th 318, 332-33 (5th Cir. 2024). *See also Massachusetts v. EPA*, 549

U.S. 497, 526 (2007) (finding Plaintiffs had standing to sue the EPA over greenhouse-gas emissions from numerous third-party sources because the requested regulation would meaningfully reduce plaintiffs’ injury).

And in the university-governance context, *Jackson v. Wright* recognized the requisite connection where university regents possessed “direct governing authority” over subordinate officials, including “authority to countermand the decisions of the subordinate UNT officials.” 82 F.4th 362, 368 (5th Cir. 2023). Plaintiffs do not rely merely on Defendants’ titles or generalized supervisory authority but on the specific factual allegations, taken as true, tracing their injury to Defendants’ conduct. ROA.499.

3. Prospective relief would redress Heilrayne’s ongoing injury.

Plaintiffs have alleged facts demonstrating redressability for similar reasons. Heilrayne seeks prospective relief from the disciplinary sanction that presently burdens her, including an order reversing the challenged disciplinary sanction. ROA.499, 512. The requested relief need only “at least lessen the injury” and “need not completely resolve it.” *Reule*, 114 F.4th at 369. Here, the requested injunction would do more than merely lessen her injury. Rather, it would end the challenged disciplinary sanction. *See Larson v. Valente*, 456 U.S. 228, 243 n.15 (1982) (“[A] plaintiff satisfies the redressability requirement when he shows that a favorable

decision will relieve a discrete injury to himself. He need not show that a favorable decision will relieve his every injury.”).

Reule illustrates the distinction. This Court held that the plaintiff did not set forth facts adequate to establish redressability because the prefiling orders producing the plaintiffs’ injuries would remain operative regardless of the defendants’ conduct; altering the defendants’ conduct therefore would “do nothing to redress” the injury. *Reule*, 114 F.4th at 369. Here, the Complaint alleges that Davis and Eltife possess authority to expunge Plaintiffs’ disciplinary records, ROA.499, and Plaintiffs expressly requested an order reversing the disciplinary action. ROA.512. The governing-law basis for that authority is addressed below. *See infra* Section II. That relief would, at minimum, substantially alleviate Heilrayne’s ongoing disciplinary injury—and Article III requires no more. *See Larson*, 456 U.S. at 243 n.15.

In short, Heilrayne has set forth facts satisfying the Article III standing inquiry—especially at the pleading stage. That conclusion also independently establishes a justiciable controversy with respect to the First Amendment retaliation claim and prospective relief Plaintiffs jointly pursue. The presence of one party with standing is sufficient to satisfy Article III’s case-or-controversy requirement. *Rumsfeld v. Forum for Academic & Institutional Rights, Inc.*, 547 U.S. 47, 52 n.2 (2006) (citing *Bowsher v. Synar*, 478 U.S. 714, 721 (1986)). In any event, the remaining Plaintiffs independently satisfy Article III for the reasons that follow.

B. Soto-Ferate, Medrano, and Cisco also have standing.

Defendants argue that “all Plaintiffs except Heilrayne” lack standing because they “are no longer subject to disciplinary sanctions from the protest” and their alleged future harm is “speculative.” Appellants’ Br. 12. That is wrong. Each remaining Plaintiff carries a disciplinary record that “remain[s] on [her] academic record[]” as a present, continuing consequence of the challenged discipline. ROA.498. That injury alone supports standing for all three, and the same analysis will apply to Heilrayne after she graduates. And Cisco has an additional and independent basis that the graduated Plaintiffs do not: she remains enrolled at UT Austin, so, like Heilrayne, she continues to be subject to the very disciplinary regime and its chilling effects that this suit challenges.

1. The remaining Plaintiffs have demonstrated an injury-in-fact because their disciplinary records continue to burden them.

The relevant injury is not the possibility that Soto-Ferate, Medrano, or Cisco will someday be disciplined again. It is the disciplinary records that burdens each of them right now. As alleged, the sanctions “remain on their academic records,” and when Plaintiffs “apply to graduate school or jobs that request information about their academic records, they will be obligated to disclose and explain their disciplinary records.” ROA.498-99. A present record carrying reputational and professional consequences is a paradigmatic “continuing, present adverse effect” of past

government action, which is sufficient to support prospective relief. *Lyons*, 461 U.S. at 102.

This Court has squarely recognized that such a record constitutes a cognizable, concrete injury even after the student has left the institution. In *Esfeller v. O’Keefe*, a former student who received a disciplinary sanction reflected on his academic record and sought to prevent the University from enforcing that punishment had established “collateral or future consequences sufficient to satisfy the case or controversy requirement,” because the “sanction is an actual, concrete injury sufficient to satisfy Article III.” 391 F. App’x at 340. So too here: each remaining Plaintiff bears a disciplinary record and seeks its removal. ROA.498-99, 512.

The Court reaffirmed the point in *Overdam v. Texas A&M University*, holding that “[s]o long as a plaintiff alleges a cognizable liberty interest (e.g., continued reputational harm that may impede future employment), courts have regularly entertained” challenges “to university proceedings after the student has graduated,” and that a former student “alleges a cognizable liberty interest in seeking to restore his reputation and clear his student disciplinary record.” 43 F.4th 522, 529 (5th Cir. 2022). Plaintiffs allege exactly that interest: continued reputational harm from disciplinary records that must be disclosed to prospective employers and graduate programs. ROA.498-99. The district court relied *Overdam* for precisely this

conclusion, holding that although Soto-Ferate and Medrano have graduated and Cisco's probation has ended, their requests to amend their disciplinary records rest on ongoing reputational harm. ROA.841-42.

Defendants' reliance on the speculative-injury cases is therefore misplaced. Appellants' Br. 12. Unlike the attenuated "chains of contingencies" in *Clapper*, the remaining Plaintiffs' injuries do not depend on the independent choices of third parties or even events that may never occur. *See Clapper*, 568 U.S. at 410-14. The disciplinary records exist now, on Plaintiffs' academic records, and already carry the disclosure obligation and reputational consequences that *Overdam* and *Esfeller* recognized as cognizable. That the full professional impact will be felt when Plaintiffs apply for jobs or graduate programs does not render the injury conjectural; a plaintiff "need not await the consummation of threatened injury to obtain preventive relief." *Babbitt*, 442 U.S. at 298. The harm is present and concrete.

2. Cisco, who remains enrolled, also satisfies the injury requirement on the same basis as Heilrayne.

Cisco's standing does not depend on the reputational-harm theory alone. Whatever the status of the graduated Plaintiffs, Cisco—like Heilrayne—remains a current UT Austin student. ROA.448. Defendants concede as much: they acknowledge that "Cisco remains a student" and rest her supposed lack of standing solely on the fact that "her academic probation has ended." Appellants' Br. 6. That concession misapprehends the injury. Because Cisco is still enrolled, she remains

“presently or prospectively subject to the regulations, proscriptions, or compulsions” of the University’s disciplinary rules—the same rules under which she was already punished for protected protest activity. *Laird*, 408 U.S. at 11. *See Speech First*, 979 F.3d at 336 (applying that distinction in the university context).

That posture supplies an injury-in-fact independent of her academic record. Cisco alleges that she “intends to continue her activism in the future but is fearful of further retaliation.” ROA.448. As an enrolled student who wishes to keep engaging in the very protest activity that drew discipline, Cisco faces a credible threat that the University will again enforce its rules against her expression—exactly the injury this Court recognized in *Speech First*, where students who had not yet been disciplined were nevertheless found to have adequately alleged injury because the prospect of enforcement chilled their intended speech. 979 F.3d at 330-31. Cisco’s position is stronger because she has already been disciplined once for that expression, and “[p]ast enforcement against the same conduct is good evidence that the threat of enforcement is not ‘chimerical.’” *Driehaus*, 573 U.S. at 164. *See Babbitt*, 422 U.S. at 298. The end of her one-year probation does not dispel that threat; it leaves intact both her ongoing subjection to the disciplinary regime and the record of her prior punishment under it. Cisco’s Article III injury is thus on the same footing as Heilrayne’s, in addition to the records-based injury she shares with Soto-Ferate and Medrano.

3. The remaining Plaintiffs' injuries are traceable to Defendants and redressable by the relief sought.

Traceability and redressability follow directly from Heilrayne's analysis and require little separate discussion. The injury common to Soto-Ferate, Medrano, and Cisco is the same disciplinary record that Davis and Eltife "have the authority to expunge . . . to prevent ongoing harm to Plaintiffs' academic and professional plans." ROA.499. Because the Complaint sufficiently alleges Defendants involvement in the creation of the disciplinary sanctions and that they possess the authority to remove the records themselves, the injury is "fairly traceable" to them and does not turn on "the independent action of a third party." *Reule*, 114 F.4th at 366-67. *See Jackson*, 82 F.4th at 368 (regents' "direct governing authority" over subordinate officials supplies the requisite connection); *Book People*, 91 F.4th at 332-33.

For the same reason, the requested relief would redress each Plaintiff's injury. An order "requiring UT Austin to reverse the disciplinary sanctions against Plaintiffs" and expunging their records would eliminate the very record that produces the ongoing reputational and professional harm. ROA.512. That relief need only "at least lessen the injury"; it "need not completely resolve it." *Reule*, 114 F.4th at 369. *See Larson*, 456 U.S. at 243 n.15. Expunging a disciplinary record that a plaintiff must otherwise disclose does exactly that. *See Esfeller*, 391 F. App'x at 340 (a former student "can seek to . . . enjoin" enforcement of a sanction that "would be removed from his record"). Soto-Ferate, Medrano, and Cisco accordingly satisfy

each element of Article III standing, and the retaliation claim may proceed on behalf of all Plaintiffs.

II. Davis and Eltife Are Proper *Ex parte Young* Defendants, and Sovereign Immunity Does Not Bar Plaintiffs’ Claim.

State sovereign immunity does not shield Davis and Eltife. Under *Ex parte Young*, a suit for prospective relief may proceed against a state official who has a connection to enforcing the challenged conduct. The district court correctly held that Davis and Eltife are such officials, and it did so on the only question properly before it at this stage: whether the Complaint’s allegations bring the claim within the doctrine. They do. Defendants’ contrary position depends on resolving contested questions about the operation of UT’s rules—questions that cannot be decided on a facial motion to dismiss—and on a citation error in the district court’s order that has no bearing on its analysis.

A. At the pleading stage, Plaintiffs need only allege—not prove—facts bringing their claim within *Ex parte Young*.

Whether *Ex parte Young* applies is, at this stage, a question decided on the face of the Complaint. To determine whether the doctrine “avoids an Eleventh Amendment bar to suit, a court need only conduct a ‘straightforward inquiry into whether [the] complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective.’” *Verizon Md., Inc. v. Pub. Serv. Comm’n of Md.*, 535 U.S. 635, 645 (2002) (quoting *Idaho v. Coeur d’Alene Tribe of Idaho*, 521

U.S. 261, 296 (1997) (O'Connor, J., joined by Scalia and Thomas, JJ., concurring in part and concurring in judgment)) (alteration in original). That inquiry does not include an analysis of claim's merits.

Two consequences follow. First, Defendants brought a facial attack under Rule 12(b)(1), so “the trial court is required merely to look to the sufficiency of the allegations in the complaint because they are presumed to be true.” *Lee*, 837 F.3d at 533. Second, sovereign immunity is an affirmative defense, and “plaintiffs are not required to anticipate or plead around affirmative defenses.” *Jackson*, 82 F.4th at 368 (citing *Gomez v. Toledo*, 446 U.S. 635, 640 (1980)). Plaintiffs therefore need not prove an enforcement connection to survive dismissal; a mere “scintilla of enforcement” suffices, and neither a specific statutory grant of enforcement authority nor a history of enforcement is required. *City of Austin v. Paxton*, 943 F.3d 993, 1001-02 (5th Cir. 2019).

Defendants invert that framework. The bulk of their brief marshals UT's Regents' Rules and Institutional Rules to argue that, as a matter of fact, those rules gave Davis and Eltife no operative role in Plaintiffs' discipline. Appellants' Br. 15-31. But whether the rule ultimately vests that authority—and whether Davis and Eltife can in fact expunge Plaintiffs' records—is a merits question about the operation of state law, not a pleading defect. At this stage, Plaintiffs need only allege facts showing the requisite connection, and they have. ROA.499-501.

B. Davis and Eltife are proper *Ex parte Young* Defendants.

The district court correctly held that Davis and Eltife are proper defendants under *Ex parte Young*, 209 U.S. 123 (1908). ROA.839-41. The Fifth Circuit requires a “mere ‘scintilla of enforcement by the relevant state officials with respect to the challenged law’” for the *Ex parte Young* exception to apply. *Jackson*, 82 F.4th at 367 (quoting *City of Austin*, 943 F.3d at 1002). In *Jackson*, this Court held that the eight members of the University of North Texas Board of Regents possessed the requisite “scintilla of enforcement” because the Regents’ Rules gave the board members “ultimate governance authority.” *Id.*

The Court also requires that the official “have more than ‘the general duty to see that the laws of the state are implemented.’” *Id.* (citing *City of Austin*, 943 F.3d at 999-1000). In *Jackson*, the Court held that the defendants, who were members of the University of North Texas board, met this standard because they “have direct governing authority over the UNT officials that are allegedly continuing to violate Jackson’s First Amendment rights, including authority to countermand the decisions of subordinate UNT officials.” *Id.* at 368. Plaintiffs allege sufficient facts to show Eltife and Davis meet these requirements and are therefore proper *Ex parte Young* defendants. ROA.498-500.

Appellants admit that the UT Board of Regents possesses the same “ultimate governance authority” as the defendants in *Jackson*. Appellants’ Br. 33. The fact that

Eltife does not himself possess unilateral authority over the UT System is irrelevant with respect to whether he is a proper *Ex parte Young* defendant. *Id.* The state defendants in *Jackson* were also individual members of a board of multiple regents who had authority to govern as well as to delegate such governance. *Jackson*, 82 F.4th at 365 (noting that the plaintiff only sued eight of the nine members of the UNT board of regents, that the board “serves as the governing body for UNT,” and that the board “has delegated to each constituent institution the obligation to ‘publish policies and procedures specifically related to . . . governance.’”) (internal citations omitted). Yet the Court deemed them all to be appropriate defendants under *Ex Parte Young*.

Here, Eltife is a member of the University of Texas Board of Regents, which “is authorized and directed to govern, operate, support, and maintain each of the component institutions that are now or may hereafter be included as part of The University of Texas System.” Tex. Educ. Code § 65.31(a).¹ The UT Board “has authority to promulgate and enforce such other rules and regulations for the operation, control, and management of the university system” and “may delegate a

¹ The district court’s inadvertent reference to a statute pertaining to a different university does not change the court’s reasoning, as the University of Texas’s analogous statute is essentially the same with respect to the authority granted. *See* ROA.840; *see also* Tex. Educ. Code §§ 65.01 (defining “system” as “The University of Texas System”), 65.11 (“The government of the university system is vested in a board of nine regents appointed by the governor with the advice and consent of the senate.”). This point is further developed below. *See infra* Section II.C.

power or duty of the board to a committee, officer, employee, or other agent of the board.” *Id.* § 65.31(c), (g). Eltife is materially identical to the board defendants in *Jackson* and, therefore, is not immune from suit under *Ex parte Young*.

Defendants argue that Board members delegated student discipline to campuses and reserved no supervisory role. Appellants’ Br. 26, 34. But the Texas Education Code expressly authorizes the Board to “delegate a power or duty of the board” to others. Tex. Educ. Code § 65.31(g). The UT Board may also “remove any officer, member of the faculty, or employee connected with the system when in its judgment the interest of the system requires the removal.” *Id.* § 65.32. The *Jackson* Court considered the UNT Board’s authority to “delegate[] to each constituent institution the obligation to publish [the] policies” as proof that they have more than a general duty to see the laws implemented. *See Jackson*, 82 F.4th at 365, 368 (holding that governing authority over the officials who allegedly continue to violate the plaintiff’s rights, “including the authority to countermand the decisions of the subordinate UNT officials,” sufficed to show an *Ex parte Young* enforcement nexus). *The UT Board’s delegation of their its student discipline authority only proves that the board members possess that authority*, and they therefore also possess the “authority to countermand the decisions” of subordinate officials. *See id.* at 368.

Aside from *Jackson*, multiple district courts in Texas have held that members of a university’s board of regents are proper *Ex parte Young* defendants. *Fellowship*

of Christian Students at the Univ. of Tex. at Dallas v. Eltife, 806 F. Supp. 3d 662, 674-75 (W.D. Tex. 2025) (holding UT at Dallas board of regents had requisite scintilla of enforcement “due to their governing authority over the UT system”) (citation to *Jackson* omitted); *Students for Just. in Palestine, at Univ. of Houston v. Abbott*, 756 F. Supp. 3d 410, 419 (W.D. Tex. 2024) (holding University of Houston and UT board of regents possessed requisite connection to enforcement due to their authority to promulgate rules for the operation, control, management, and government of the university); *Coal. for Indep. Tech. Rsch. v. Abbott*, 706 F. Supp. 3d 673, 683-84 (W.D. Tex. 2023) (holding UNT board of regents possessed requisite connection to enforcement due to their governance authority). Under the Fifth Circuit’s guidelines, Eltife is a proper Defendant who is not entitled to sovereign immunity.

Davis also cannot escape liability under *Ex parte Young*. The district court correctly held that Davis, as President of UT Austin, held “status as the Chief Executive Officer of UT [and] oversight of the Office of Student Affairs, and thus, the disciplinary process at UT,” which “establishes a sufficient connection to make him a proper defendant.” ROA.840. Defendants concede that the President has the authority to “appoint hearing officers, appellate officers, and members of student conduct panels” as well as the authority to “overrule a student disciplinary decision.” Appellants’ Br. 30. This authority, along with the ability to designate personnel who

may “prevent imminently threatened violations, or end ongoing violations” of the speech policy at issue, suffices to “rise above the scintilla of enforcement required of the *Ex parte Young* exception.” *Fellowship of Christian Students at the Univ. of Tex. at Dall.*, 806 F. Supp. 3d at 674 (holding President Davis possessed requisite connection to enforcement to fall under the *Ex parte Young* exception due to general governing authority over students and ability to designate personnel to prevent violations of speech policy); *see also Students for Just. In Palestine*, 756 F. Supp. 3d at 419-20 (holding former UT President Hartzell possessed requisite connection to enforcement to designate personnel to prevent violations of speech policy).

Defendants spend several pages of their brief arguing that they did not participate in the discipline at issue and do not possess the unilateral authority to make student discipline decisions. *See* Appellants’ Br. 24-31. But Plaintiffs are not required to prove they did at the pleading stage. *See Jackson*, 82 F.4th at 368 (rejecting defendants’ counterargument that there was not a connection between the board defendants and any alleged First Amendment retaliation because “state sovereign immunity is an affirmative defense, and plaintiffs are not required to anticipate or plead around affirmative defenses”) (citing *Gomez*, 446 U.S. at 640). Plaintiffs alleged in their Complaint that “Davis and Members of the UT System Board of Regents have the authority to expunge Plaintiffs’ disciplinary records.” ROA.499. Whether Davis and Eltife actually have that authority is a factual question

that cannot be resolved at the pleading stage. But Defendants’ governance, oversight, and designation authority, under Texas law and UT’s own rules and regulations, suffice under this Court’s precedent to render them proper *Ex parte Young* defendants for purposes of surviving a motion to dismiss. *Jackson*, 82 F.4th at 367-68.

C. The district court’s citation to the Texas State University System Statute was harmless.

Defendants attack the district court’s order for resting its *Ex parte Young* analysis of Eltife on a single statute—Tex. Educ. Code. § 95.01—that governs the Texas State University System, not the University of Texas System. Appellants’ Br. 27-28. It is true that § 95.01 provides that “[t]he organization, control, and management of the state university system is vested in the Board of Regents, Texas State University System,” and that this provision addresses a different system. But the miscitation is harmless because the correct University of Texas statutes confer materially identical authority.

This Court reviews the denial of sovereign immunity *de novo* and “may affirm ‘on any ground supported by the record, including one not reached by the district court.’” *Texas v. Travis Cnty.*, 910 F.3d 809, 811 (5th Cir. 2018) (quoting *Ballew v. Cont’l Airlines, Inc.*, 668 F.3d 777, 781 (5th Cir. 2012)). The district court’s reasoning turned on the Board of Regents’ governing authority over the University and its officials. The University of Texas system “is vested in a board of nine regents appointed by the governor with the advice and consent of the senate”—which is

effectively the same authority. Tex. Educ. Code § 65.11. That board “is authorized and directed to govern, operate, support, and maintain each of the component institutions” of the System, *id.* § 65.31(a), and “has authority to promulgate and enforce such other rules and regulations for the operation, control, and management of the university system, *id.* § 65.31(c). Those provisions vest the UT Board with the very “organization, control, and management” authority that the district court identified—the authority that, under *Jackson*, satisfies *Ex parte Young*’s enforcement guideposts. *Jackson*, 82 F.4th at 367-68.

Contrary to Defendants’ pedantic arguments, a citation to the wrong chapter of the same Education Code does not undermine the district court’s conclusion where the correct chapter supplies the identical governing authority, and this Court may affirm on that basis in any event. *Travis Cnty*, 910 F.3d at 811. The error is harmless, and it provides no ground for reversal.

III. The Prospective Relief Plaintiffs Seek Is Available Under *Ex parte Young* and Redresses Their Injury.

Ex parte Young’s third requirement asks whether “the relief sought” is “properly characterized as prospective.” *Green Valley Special Util. Dist. v. City of Schertz*, 969 F.3d 460, 471 (5th Cir. 2020) (en banc) (internal quotation marks and citation omitted). That requirement is satisfied where the redressability question raised in Section I comes to rest: the same injunction that redresses Plaintiffs’ injury is the paradigmatic *Young* remedy because it operates to end an ongoing violation

rather than to compensate a past one. Having established injury, traceability, and redressability in Section I, Plaintiffs address here only the character of the relief—which fits squarely within *Young*.

A. The requested injunction is prospective because it ends an ongoing violation, not a past one.

The line between prospective and retrospective relief turns on function: *Young* reaches “[r]emedies designed to end a continuing violation of federal law,” which “are necessary to vindicate the federal interest in assuring that the supremacy of that law,” but not “compensatory or deterrence” relief for a completed wrong. *Green v. Mansour*, 474 U.S. 64, 68 (1985). The relief Plaintiffs request—an order requiring UT Austin to reverse and expunge the disciplinary sanctions imposed for the April 24 protest—falls in the first category. ROA.512.

As discussed in the standing section, *supra* Section I, the challenged discipline is not a closed chapter. Heilrayne remains subject to the deferred suspension; Cisco’s speech continues to be chilled as a result of the prior sanction and the threat of future enforcement; and the sanctions remain on every Plaintiffs’ academic record, continuing to burden them. ROA.448, 489-99. An injunction directing Davis and Eltife to reverse and expunge those sanctions would halt that ongoing enforcement going forward; it would not award damages or draw on the state treasury. That is precisely the relief *Young* authorizes. *See Green Valley*, 969 F.3d at 473 (relief that “would address an ongoing violation” of the plaintiff’s rights “without requiring any

money to be taken from the state's coffers" satisfies the "straightforward inquiry"). And because Plaintiffs allege that Davis and Eltife possess the authority to expunge the records, ROA.499, the order would eliminate the very condition producing Plaintiffs' injury. The district court correctly held as much, treating Plaintiffs' request to amend their disciplinary records as prospective relief appropriate under *Ex parte Young*. ROA.841-42.

B. Plaintiffs alleged an ongoing violation, so the relief they seek is prospective.

Defendants' improper-relief argument rests on a single premise: that because the disciplinary sanctions "have ended" for every Plaintiff except Heilrayne, those Plaintiffs "are not allegedly experiencing an ongoing violation of federal law," so the relief they seek cannot be prospective. Appellants' Br. 34; *see id.* at 37 (contending that because all Plaintiffs but Heilrayne "are no longer subject to an academic sanction," they "do not allege that they are presently the subject of First Amendment retaliation"). Defendants press the ongoing-violation and prospective-relief requirements as distinct, contending that the district court "addressed only whether Plaintiffs sought prospective relief" without separately analyzing the ongoing-violation requirement. *Id.* at 37. The two requirements are indeed distinct, but the district court addressed, and Plaintiffs satisfy, both.

The district court reached the ongoing violation question when it applied the rule that *Ex parte Young* "only affords prospective relief to stop future harms,"

ROA.841, and expressly rejected Defendants’ contention that only Heilrayne “remains harmed,” finding instead that the injury from the disciplinary records “is ongoing[]” with respect to all plaintiffs. ROA.841-42 & n.3. And in sustaining the retaliation claim on the merits, the court held that the “adverse disciplinary actions on student records, including the deferred suspension and academic probation consequences Plaintiffs faced,” plausibly constitute unconstitutional First Amendment retaliation. ROA.857, 859. The court thus determined—in substance, if not in Defendants’ preferred vocabulary—that Plaintiffs allege an ongoing violation of federal law. In any event, this Court reviews the question *de novo* and may affirm on that basis regardless of how the district court labeled its analysis.

Defendants’ premise fails on the face of the Complaint because Plaintiffs do allege an ongoing violation. Heilrayne “remains a student at UT Austin and subject to deferred suspension” imposed for the protest. ROA.498. The retaliatory sanctions “remain on [all Plaintiffs’] academic records,” *id.*, and Davis and Eltife retain “the authority to expunge Plaintiffs’ disciplinary records to prevent ongoing harm to Plaintiffs’ academic and professional plans,” ROA.499. Plaintiffs allege that Defendants “retaliated against” them by “subjecting them to university disciplinary sanctions based solely on their presence at the protest” and that “UT Austin officials subjected Plaintiffs to disciplinary action because they engaged in a protected act of protest.” ROA.498. Those are allegations that Defendants are enforcing an

unconstitutional, viewpoint-based sanction now, illustrated by examples of the present and predictable reputational and professional harms caused by its continued existence. That is a continuing violation, not a completed one.

Because the violation is ongoing, an injunction ending it would provide prospective relief. This Court has squarely held that “as long as the claim seeks prospective relief for ongoing *harm*, the fact that a current violation can be traced to a past action does not bar relief under . . . Young.” *Green Valley*, 969 F.3d at 471-72 (internal quotation marks and citations omitted). To put a finer point on it, Plaintiffs allege that the retaliatory sanctions were imposed in the past, continue to be enforced by their maintenance in their academic records, and inflict present and future reputational harm illustrated, for example, by Plaintiffs’ obligation to report and explain the sanctions to employers or schools. That the discipline was first imposed in the past does not convert an injunction ending its continued enforcement into a retrospective remedy. The “straightforward inquiry” asks only whether the complaint “alleges an ongoing violation of federal law and seeks relief properly characterized as prospective.” *Verizon Md., Inc.*, 545 U.S. at 645. Plaintiffs’ allegations satisfy both prongs of that inquiry.

C. Defendants’ lead authority confirms that expungement is prospective and is distinguishable.

Defendants rely heavily on *T.W. v. New York State Bd. of Law Examiners*, 110 F.4th 71 (2d Cir. 2024). Appellants’ Br. 35-36. Contrary to Defendants’ claims, that

nonbinding decision actually helps Plaintiffs. The Second Circuit accepted that expungement of negative information from institutional records “may well be prospective in nature,” because such relief “serve[s] the purpose of preventing present and future harm.” *T.W.*, 110 F.4th at 94-95 (discussing *Flint v. Dennison*, 488 F.3d 816, 824-25 (9th Cir. 2007)). The claim in *T.W.* failed for a reason that is absent here: the plaintiff made no allegation that the Board’s maintenance of records constituted an ongoing violation of her rights, so her requested relief was “aimed exclusively at a past violation.” *Id.* at 94. The court was explicit that “if T.W. had alleged that the Board’s maintenance of records violated” federal law, “her claim may well have survived.” *Id.*

That is exactly what Plaintiffs allege. Unlike the plaintiff in *T.W.*, Plaintiffs tie their requested relief to an ongoing violation rather than a bare past act. Heilrayne “remains a student at UT Austin and subject to deferred suspension,” ROA.498, Cisco’s speech remains chilled as result of the prior sanction and the threat of future enforcement, and the retaliatory sanctions “remain on [all Plaintiffs’] academic records,” *id.* Plaintiffs are further obliged to “disclose and explain their disciplinary records” when they apply to graduate school or jobs that request information about their academic records—the very disclosure-and-reputational consequences that Davis and Eltife can end by expunging the records, the existence of which is itself a violation of the First Amendment. ROA.499 Those allegations describe a continuing

violation of federal law that the requested injunction would end. Under *T.W.*'s own reasoning, that allegation of an ongoing violation, paired with the prospective expungement relief, brings the claim within *Ex parte Young*.

In sum, the relief Plaintiffs seek ends a continuing violation of the First Amendment, runs against the officials rather than the treasury, and would redress Plaintiffs' injury. It is prospective relief that *Ex parte Young* authorizes, and sovereign immunity is no bar.

CONCLUSION

For the foregoing reasons, the district court correctly held that Davis and Eltife are proper defendants under *Ex parte Young*; that sovereign immunity does not bar Plaintiffs' First Amendment retaliation claim; and that Plaintiffs have Article III standing to seek the prospective relief they request. This Court should affirm the district court's denial in part of Davis and Eltife's motion to dismiss and allow the retaliation claim to proceed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 8,528 words, excluding the parts of the brief exempted by Rule 32(f) and Fifth Circuit Rule 32.2, according to the word count of Microsoft Word. This brief complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word for Microsoft 365 in 14-point Times New Roman font.

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