

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

**BRIAN R. CALFANO,**

Plaintiff,

v.

**THE UNIVERSITY OF CINCINNATI ET  
AL.**

Defendants.

Case No.: 1:26-cv-00188-JPH

Judge Jeffrey P. Hopkins

**Plaintiff's Memorandum in Opposition to  
Defendants' Motion to Dismiss**

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## INTRODUCTION

The Sixth Circuit has observed that, when a party “comes to” the court “with nine grounds for reversing the district court, that usually means there are none.” *Fifth Third Mortg. Co. v. Chicago Title Ins. Co.*, 692 F.3d 507, 509 (6th Cir. 2012). Along the same lines, when defendants file a motion to dismiss urging that a plaintiff has failed to plead *any* of the elements of *any* of his claims, that is a good sign the motion’s arguments are weak. Just so here. Defendants urge that Dr. Calfano has failed to plead any elements of his First Amendment retaliation and conspiracy claims, while insisting that he has not pleaded key elements of his Title IX claim. They even go so far as to argue that Dr. Calfano, who alleges that he was subjected to pretextual investigations, demoted, barred from teaching, and targeted at his new place of employment in retaliation for his protected speech and reporting of Title IX violations, sustained no “adverse action” for which any legal remedy is available. That implausible argument suggests something is amiss. And indeed it is: under the standards that govern pleading in federal court, Dr. Calfano has adequately pleaded all three of his claims.

## STATEMENT OF FACTS

This brief begins with a review of the facts alleged, which must be assumed true for purposes of Defendants’ motion to dismiss. *Fitzgerald v. Barnstable School Committee*, 555 U.S. 246, 249 (2009).

Dr. Brian R. Calfano, the plaintiff here, has had an exemplary career. Before the events giving rise to this case, he was a tenured full professor of journalism at the University of Cincinnati, an award-winning broadcast journalist, the author of more than 100 peer-reviewed publications, and a former television news reporter, producer, and show host. Compl. ¶¶1, 8, 18–19. He joined the University of Cincinnati in August 2016 as an assistant Professor. The University promoted him to associate professor with tenure in 2019, and to full professor in 2021. *Id.* ¶¶8, 21. He served as interim head of the University’s journalism department from 2021–2023, and as Department Head beginning in 2023. *Id.* ¶¶22, 44.

But Defendants in this case robbed Dr. Calfano of that career, and severely tarnished his reputation, by promoting unfounded allegations of wrongdoing and by forcing Dr. Calfano to defend himself through procedurally flawed and substantively baseless investigations. They did so in retaliation for Dr. Calfano's protected activities, including his reporting of sexual harassment allegations and his speaking out in opposition to race-based hiring programs. That is illegal. And in this lawsuit, Dr. Calfano seeks both compensation for the harm done and prospective relief capable of forestalling future harm.

1. The events most relevant to this suit began in February 2023, when Dr. Calfano served as the head of the University's journalism department. Dr. Calfano exercised his unilateral hiring authority—authority conferred by the relevant bylaws—to appoint Meghan Goth as faculty advisor to the University's student newspaper, *The News Record*. *Id.* ¶¶23–25. Goth, an alumna of the journalism department with a master's degree from Columbia, was highly qualified: in addition to her impressive educational pedigree, she had worked fifteen years as a news manager at local news outlets. *Id.* ¶26.

Goth's hiring proved unexpectedly controversial on two grounds.

First, in July 2023, *The News Record's* business manager, Robert (Bob) Jonason, became upset that Goth's requested compensation exceeded his stipend. He responded with a sexist, verbal tirade against Goth, suggesting that a woman should not be entitled to so high a level of pay. *Id.* ¶¶28–29. Dr. Calfano advised Goth to contact the College of Arts and Science's human resources office. Goth followed Dr. Calfano's advice and attempted to seek help from College HR for several months, leaving messages and conveying that Dr. Calfano had encouraged her to reach out. *Id.* ¶31. Neither Defendant Whitney Follings (who directed College HR), Defendant Littisha Bates (who oversaw College HR as part of her duties), nor anyone else ever came to Goth's aid. *See id.* And nothing changed when Dr. Calfano inserted himself directly: despite his bringing up Jonason's sexist conduct and supporting Goth's claims while communicating with College HR about processing Goth's hiring paperwork, College HR did nothing to change course. *Id.* ¶33.

Second, other members of the College’s leadership resented the fact that Dr. Calfano hired Goth without regard to her race. Defendant Bates, for example, believed that Goth’s job should have gone to a racial minority (Goth is white), or at least that a non-white candidate should have received preference. *Id.* ¶¶34–40. The issue came to a head in August 2023 when, less than two weeks before fall semester began, Bates objected to Goth’s appointment and insisted on subjecting the appointment to a previously unannounced “DEI hiring requirement” giving preferences to racial minorities. *Id.* ¶¶37–38. Bates “conveyed her objection through University HR Director Scott Page, who reported directly to Defendant Ferme.” *Id.* ¶37. (“University HR,” as its name suggests, was the University-level human resources offices, as distinct from the “College HR,” which was the office for the College of Arts and Sciences.”) Another defendant—Follings—“informed Dr. Calfano that Goth’s employment application would be subject to this newly-asserted DEI hiring requirement.” *Id.* ¶38. Dr. Calfano objected on multiple grounds. *Id.* ¶39. First and foremost, the DEI Requirement hindered his ability to hire Goth—the most qualified candidate—based solely on Goth’s race. *Id.* After Dr. Calfano escalated the matter from College-level HR to University-level HR, Defendants Bates and James Mack (the College Dean) convened a meeting with Dr. Calfano. *See id.* ¶41. At that meeting, Bates accused Dr. Calfano of being “angry” and “emotional.” *Id.* When Dr. Calfano “responded flatly, ‘I’m not the one yelling,’” Bates told him “he needed to ‘check himself.’” *Id.*

In October 2023, Dr. Calfano found a workaround to the objections from the second group. The journalism department’s business manager informed Dr. Calfano that Goth could be hired as an independent or external contractor—thereby circumventing the DEI hiring process—at the same compensation level and with the same responsibilities. *Id.* ¶42. Dr. Calfano pursued this course.

Although this arrangement had the blessing of University HR, it nonetheless “raised eyebrows” in the Dean’s office. *Id.* And this maneuver, along with Dr. Calfano’s opposition to DEI practices, made Dr. Calfano a target.

2. The University and its employees began a campaign of retaliation against Dr. Calfano beginning in early 2024. On March 13—while Dr. Calfano was on spring break in New Jersey with

his family—Dr. Calfano received two emails from Dean Mack’s office. *Id.* ¶44. The first removed Dr. Calfano as head of the journalism department. The second initiated an Article 9 investigation against Dr. Calfano that would run from the Provost’s office. *Id.* (“Article 9” was a subdivision of the Collective Bargaining Agreement (“CBA”) between the University and its faculty that set forth disciplinary standards and investigation procedures for alleged violations of the Agreement.) The same day, the University removed Dr. Calfano from the Media Bureau course he had been teaching that semester. *Id.* ¶46.

The Article 9 allegations were frivolous. They were initiated in retaliation for Dr. Calfano’s opposing the DEI Requirement and for objecting to Jonason’s sex-based discrimination. The allegations employed deliberately vague language to assemble a hodgepodge of disparate, purported grievances without any basis in reality. *See id.* ¶¶47–50. To take just one example, the central conflict-of-interest allegation—that Dr. Calfano had outside employment interfering with his teaching duties—was flatly false: Dr. Calfano had resigned from the alleged outside employment on September 11, 2023, months before the supposed conflict would have begun. *Id.* ¶48. The process was also procedurally deficient. For example, although the CBA generally calls for “progressive discipline” and informal resolution before the initiation of formal proceedings, the University pursued neither. *Id.* ¶51. The University had never contacted Dr. Calfano to discuss the allegations nor offered him an opportunity to explain easily verifiable facts before pursuing the grievance—even though, had it done so, Dr. Calfano could have easily dispelled falsified factual claims like those laid out above in connection with the conflict-of-interest allegation. *Id.* ¶52. What is more, although the CBA required the Dean to notify the journalism faculty before formally removing a department head, the Dean’s office communicated the removal decision to the faculty only *after* it had already been effectuated. *Id.* ¶54.

At a later faculty meeting to discuss Dr. Calfano’s removal, Defendants Jonason and Jenny Wohlfarth admitted that they had complained about Dr. Calfano to Bates. *Id.* ¶57. Bates admitted that she had personally asked the Provost’s office to approve initiating the Article 9 proceedings against Dr. Calfano. *Id.* ¶58. Bates further admitted to having solicited the complaints from Jonason

and Wohlfarth because of Dr. Calfano's support for Goth and his opposition to the DEI Requirement. *Id.* ¶57.

The University's retaliatory acts caused Dr. Calfano to suffer a mental-health crisis. In April 2024, about two weeks after the Article 9 investigation began, Dr. Calfano was admitted to an in-patient mental-health facility. *Id.* ¶59. Dr. Calfano, suffering from severe depression, eventually lost 25 pounds and attempted suicide. *Id.*

Two days after being discharged from the hospital, Dr. Calfano took, at his doctors' recommendation, leave under the Federal Medical Leave Act. *Id.* ¶60. And in light of his taking leave, the University paused the Article 9 proceedings. *See id.*

3. The reprieve proved short-lived, as the University and the other defendants soon furthered their retaliation campaign by orchestrating a Title IX charge against Dr. Calfano. Following Dr. Calfano's removal as Department Head, Defendant Wohlfarth spoke with certain students who would later accuse Dr. Calfano of sexual harassment. *Id.* ¶62. The students then approached journalism professor Leonard Penix. The students spoke with Penix, who believed that it "sounded as if they had spoken with someone before coming to him to figure out what they were going to say and how they should report the allegations." *Id.* ¶63. Penix directed the students to Interim Department Head Jeff Blevins, who discussed the allegations with Defendant Bates. *Id.* Bates told Blevins to immediately report the allegations to the Title IX office, and she later emailed the Title IX office to ensure Blevins had followed through. *Id.* Critically, no student ever filed a Title IX complaint against Dr. Calfano. *Id.* ¶64. Instead, on April 29, 2024, the University's Title IX Coordinator initiated the complaint without any individual complainant. *Id.* The Title IX Coordinator's actions against Dr. Calfano stood in stark contrast to her actions against Jonason; though the University took no action against Jonason despite Goth herself accusing Jonason of sex-based discrimination, the University opened its own Title IX investigation against Dr. Calfano *in the absence* of any formal complaint. One of the students whose allegations the Coordinator relied on in formulating the Title IX complaint later admitted that "there were professors working to get

[Dr. Calfano] out of [the University].” *Id.* ¶73. When pressed for clarification about whether there was a concerted effort to get him out, she responded, “Yes, that’s what I heard.” *Id.*

The Title IX complaint was, like the Article 9 complaint before it, baseless. By way of background, the University’s Title IX Sexual Harassment Policy defined sexual harassment as conduct on the basis of sex satisfying one or more of the following: (1) “[a]n employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual’s participation in unwelcome sexual conduct”; (2) “[u]nwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University’s education program or activity”; and (3) “[s]exual assault, dating violence, domestic violence, or stalking.” *Id.* ¶67. The conduct of which Dr. Calfano was accused did not come close to satisfying this criteria. The purported “evidence” against Dr. Calfano consisted of pedagogical choices inherent to broadcast journalism instruction: asking his students in a practice-based course to share cell-phone numbers, creating group chats with students who volunteered as on-air anchors, discussing professional appearance standards for television broadcasting, and briefly adjusting a lapel microphone on a student during taping—all activities that occur routinely in broadcast programs nationwide. *Id.* ¶66.

Again, the University’s Title IX complaint did not identify a single individual—student or otherwise—as the complainant. *Id.* ¶69. Instead, the Title IX coordinator filed the complaint without an individual complainant, invoking a University policy allowing her to do so where the University deemed the accused as “threatening the safety of the University community.” *Id.* ¶70. But the University *did not* regard Dr. Calfano as a safety threat; its own actions confirm as much. The University did not bar Dr. Calfano from campus, restrict his contact with students, suspend him, or place him on administrative leave. Instead, while both the Article 9 and the Title IX investigations were pending, the University assigned Dr. Calfano to teach the same course in the fall semester that it barred him from teaching in the spring after initiating the Article 9 investigation. *Id.* ¶72. And this time, every student in the class was a woman—the same student population he stood accused of harassing.

Despite providing extensive rebuttal and exculpatory documentation, the University made clear that it was never going to give Dr. Calfano a fair hearing. The Final Investigative Report that the University issued, for example, was strikingly devoid of any conduct typically characterized as sexual harassment. *Id.* ¶76. The University pressed forward anyway. In fact, after receiving the Final Investigative Report, the University investigator advised Dr. Calfano to contact the Title IX Coordinator, Defendant Lyles, about exploring an informal resolution. *Id.* ¶77. But when Dr. Calfano did so, Lyles claimed informal resolutions were not available for faculty accused of violating Title IX. *Id.*

In another contradiction, although the University had paused the Article 9 investigation when he took FMLA leave after his hospitalization, the University refused to pause the Title IX investigation during that same FMLA leave. *Id.* ¶78. It insisted that the investigation would go on and that Dr. Calfano was capable of participating in it. *Id.*

4. Dr. Calfano's mental health continued to deteriorate as he faced two pretextual investigations aimed at ousting him from the University. By late October 2024, Dr. Calfano had transitioned from partial FMLA leave to full-time FMLA leave. *Id.* ¶80.

While all of this remained ongoing, Dr. Calfano learned of a job opportunity in Topeka, Kansas, where Dr. Calfano would be able to serve as a nighttime news anchor covering state politics for Fox 43. *Id.* ¶82. Dr. Calfano took the job. Though he initially hoped to teach remotely while working in Kansas, the University refused to let him do so.

Recognizing that he would never receive fair treatment from the University, Dr. Calfano tendered his resignation on January 5, 2025, ending his nine-year tenure at the institution. A few days later, Defendant Lyles dismissed the Title IX complaint against Dr. Calfano without prejudice. *Id.* ¶84. But in so doing, she expressly reserved the University's right to refile the allegations if Dr. Calfano ever participated again in any University activities. *Id.* The unadjudicated allegations would thus have their intended effect of preventing Dr. Calfano from being affiliated with the University ever again. Dr. Calfano urged the University to move forward with a hearing at which he could clear his name. But Defendant Miller—who had assumed the role of Interim Title IX

Coordinator after Defendant Lyles departed for Stanford—denied Dr. Calfano’s request for a name-clearing hearing while reaffirming the University’s position that the dismissed complaint could be refiled. *Id.* ¶¶126–28.

5. Less than three weeks after Dr. Calfano’s resignation from the University, the Cincinnati Enquirer published an article about his resignation, painting Dr. Calfano in a highly damaging light. *Id.* ¶87. Though the Enquirer apparently obtained the information through a public-records request, circumstantial evidence suggests one or more Defendants leaked information about the proceedings against Dr. Calfano, thereby spurring the public-records request. The first piece of evidence is the fact that the Enquirer first requested Dr. Calfano’s personnel file *in August 2024, id.* ¶89, months before the Enquirer’s later public-records request. MTD Ex. A at PageID#125. The second piece of evidence is the fact that the article’s author, Quinlan Bentley, is a graduate of the University of Cincinnati’s journalism program, where he had a strong relationship with both Defendants Jonason and Wohlfarth during his time as a student. *Id.* ¶88.

The article’s publication had devastating results on Dr. Calfano. For one thing, the article publicized—and lent credence to—frivolous, retaliatory allegations leveled against him. Beyond that, someone sent the article to Dr. Calfano’s new employer *within minutes* of its being published. *Id.* ¶90. Predictably, Fox 43 fired Dr. Calfano just four days later, ending his career in broadcast journalism, fresh off the heels of his ouster from the University of Cincinnati.

6. On February 23, 2026, Dr. Calfano filed the complaint in this case against Defendants, alleging First Amendment retaliation and conspiracy in violation of 42 U.S.C. 1983, as well as retaliation for reporting sexual harassment in violation of Title IX. *See* Compl. at 19–30. Defendants have now moved to dismiss Dr. Calfano’s complaint, contending that he has failed to state a claim for relief. The Court should deny Defendants’ motion for the reasons below.

### LEGAL STANDARD

When reviewing a 12(b)(6) motion, a court must determine whether the factual allegations in a complaint, “accepted as true ... state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*,

556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). This plausibility inquiry “is not akin to a ‘probability requirement.’” *Id.* at 678 (quoting *Twombly*, 550 U.S. at 556). It is satisfied when the complaint’s factual content “allows the court to draw the reasonable inference that,” accepting the allegations as true, “the defendant is liable for the misconduct alleged.” *Id.* at 678. In so doing, the court construes the allegations “in the light most favorable to the plaintiff.” *Bassett v. Nat’l Collegiate Athletic Ass’n*, 528 F.3d 426, 430 (6th Cir. 2008).

## ARGUMENT

### I. Dr. Calfano adequately pleads a claim that Defendants are liable under §1983 for violations of his First Amendment Rights

Dr. Calfano’s first count seeks relief under §1983 against all defendants except the University of Cincinnati. There are eight such defendants, whom this brief sometimes calls the “individual defendants.” Dr. Calfano sued five of these defendants—Bates, Miller, Mack, Follings, and Wohlfarth—in both their official and individual capacities. He sued the remaining three—Ferme, Lyles, and Jonason—in only their individual capacities.

The individual defendants all move to dismiss. Their primary argument is that Dr. Calfano failed to plead a First Amendment violation. But they additionally argue that, *even if* Dr. Calfano adequately pleaded a First Amendment violation redressable under §1983, his *individual*-capacity claims must be dismissed under the qualified-immunity doctrine. This Court should reject both arguments.

#### A. Dr. Calfano alleges that Defendants unconstitutionally retaliated against him based on his protected speech.

To plead First Amendment retaliation, plaintiffs must allege (1) they engaged in constitutionally protected speech; (2) they suffered a non-de-minimis adverse action; and (3) a causal connection between the two. *Josephson v. Ganzel*, 115 F.4th 771, 783 (6th Cir. 2024). Here, Dr. Calfano pleaded each element.

**1. Dr. Calfano’s speech was constitutionally protected on two separate grounds.**

The first question under the just-quoted test is whether Dr. Calfano engaged in protected speech when he objected to the DEI Requirement. He did, for two independent reasons: the speech satisfies the *Garcetti* test, and the speech is protected under doctrines applicable specifically to academic speech.

**a. The facts alleged satisfy the *Garcetti* test.**

Begin with the fact that Dr. Calfano’s speech was constitutionally protected under the test set forth in *Garcetti v. Ceballos*, 547 U.S. 410 (2006). Under that test, the First Amendment generally protects the speech of a “public employee” like Dr. Calfano if: “(1) the speech was on a matter of public concern; (2) the speech was not made pursuant to the employee’s official duties;” and “(3) the employee’s interest in speaking on a matter of public concern outweighs the employer’s interest in promoting the efficiency of the public services it performs through its employees.” *Josephson v. Ganzel*, 115 F.4th 771, 783–84 (6th Cir. 2024) (citations and quotations omitted). Each element is satisfied here.

***Matter of public concern.*** First, Dr. Calfano “spoke on a matter of public concern” when he objected to the DEI Requirement. “Controversial subjects” like “sexual orientation and gender identity” or, as here, DEI mandates, are “sensitive political topics” that “undoubtedly” involve “matters of profound value and concern to the public.” *Id.* (quoting *Janus v. Am Fed’n of State, Cnty. & Mun. Empls. Council* 31, 585 U.S. 878, 913–14 (2018)). And DEI mandates implicate concerns about racial discrimination, which matters here because “speech may involve a matter of public concern when an employee speaks out about ... discrimination ...” *Stanalajczko v. Perry*, — F.4th —, 2026 WL 1209230, \*4 (6th Cir. May 4, 2026).

Dr. Calfano’s opposition to DEI qualifies as speech on a matter of public concern. DEI is undoubtedly a “[c]ontroversial subject[]” of profound political salience. *Josephson*, 115 F.4th at 784. And in objecting to the race preferences baked into DEI, Dr. Calfano “sp[oke] out about ... discrimination.” *Stanalajczko*, 2026 WL 1209230 at \*4. Both the political salience and the

connection to antidiscrimination objections is evident from the public record. Start with the fact that, on the first day of his second term, President Trump issued Executive Order 14151, “Ending Radical and Wasteful Government DEI Programs and Preferencing,” declaring that DEI programs constitute “illegal and immoral discrimination” and directing the termination of “all discriminatory programs, including illegal DEI and ‘diversity, equity, inclusion, and accessibility’ (DEIA) mandates, policies, programs, preferences, and activities in the Federal Government, under whatever name they appear.” Exec. Order No. 14151, 90 Fed. Reg. 8339 (Jan. 20, 2025). Various federal agencies, state attorneys general offices, and private litigants have similarly targeted these programs on the ground that they illegally discriminate, while other groups have vigorously defended their legality and social importance. *Compare, e.g.*, U.S. Equal Employment Opportunity Commission, *What You Should Know About DEI-Related Discrimination at Work* (2026) (condemning DEI practices), <https://perma.cc/VMM2-3DQQ> with The Commonwealth of Massachusetts and the State of Illinois Offices of the Attorney General, *Multi-State Guidance Concerning Diversity, Equity, Inclusion, and Accessibility Employment Initiatives* (Feb. 13, 2025) (defending the use of DEI in hiring), <https://tinyurl.com/MassIllDEI>. All this leaves no doubt that the role of DEI in hiring is a matter of immense public concern.

At the very least, the question of *whether* DEI hiring is a matter of public concern implicates fact questions that cannot be resolved at the motion-to-dismiss stage.

*Second*, Dr. Calfano’s speech was not made pursuant to his official duties. As an initial matter, the “exception to First Amendment protection” for speech undertaken pursuant to official duties “must be read narrowly.” *Barton v. Neeley*, 114 F.4th 581, 590 (6th Cir. 2024) (quoting *Boulton v. Swanson*, 795 F.3d 526, 534 (6th Cir. 2015)). Whether public employees speak pursuant to their official duties is a “practical” question requiring a “fact-specific inquiry into the duties an employee actually is expected to perform.” *Barton*, 114 F.4th at 589 (quoting *Fox v. Traverse City Area Pub. Schs. Bd. Of Educ.*, 605 F.3d 345, 350 (6th Cir. 2010)). Courts examine the “content and context” of the speech, including its “impetus,” “setting,” “audience,” and “general subject matter,” *id.* at 588–89 (quotations omitted); accord *Handy-Clay v. City of Memphis*, 695 F.3d 531, 540 (6th Cir.

2012), as well as whether the speech was made within or outside the “ordinary chain of command,” *Barton*, 114 F.4th at 589 (quoting *Fox*, 605 F.3d at 349–50 (6th Cir. 2010)); see also *Handy-Clay*, 695 F.3d at 540. And critically, “the mere fact that a citizen’s speech concerns information acquired by virtue of his public employment does not transform that speech into employee—rather than citizen—speech.” *Barton*, 114 F.4th at 588 (quoting *Lane v. Franks*, 573 U.S. 228, 240 (2024)). The dispositive question is “whether the speech at issue is itself ordinarily within the scope of an employee’s duties, not whether it merely concerns those duties.” *Id.* (quotation omitted).

Based on the facts alleged in Dr. Calfano’s complaint, these factors compel the conclusion that Dr. Calfano spoke as a private citizen. The impetus for his speech was not any task assigned to him as Department Head, but the University’s sudden imposition of a previously unannounced DEI hiring requirement. Compl. ¶¶37–39. The audience and chain of command likewise cut against Defendants: Dr. Calfano escalated his objections outside the College altogether, taking his concerns to University-level HR. *Id.* ¶41. That escalation outside his ordinary chain of command is a hallmark of citizen speech as opposed to official speech. See *Handy-Clay*, 695 F.3d at 542–43 (plaintiff’s complaints to “individuals both inside and outside her department,” including human resources, supported the inference that she spoke as a citizen rather than pursuant to official duties). Indeed, Dr. Calfano’s objection to a novel, race-based mandate—imposed on him from outside his department and that conflicted with his hiring authority—was “extraordinary rather than everyday communication.” *Id.* at 542 (quoting *Pucci v. Nineteenth Dist. Ct.*, 628 F.3d 752, 768 (6th Cir. 2010)). Dr. Calfano’s opposition to a race-based institutional hiring mandate was not part of his job description; he was not, for example, an HR employee with a duty to guard against violations of antidiscrimination law. And the mere fact that Dr. Calfano learned of the DEI Requirement through his employment is not enough to convert his opposition into employee speech. See *Barton*, 114 F.4th at 589.

*Third*, Dr. Calfano’s interest in opposing the DEI Requirement outweighed any countervailing interest the University had in suppressing his speech—at minimum, the proper balancing of these concerns is a factual question, and Dr. Calfano’s complaint plausibly alleges that the balance comes

out in his favor. “[S]ensitive political topics,” like “sexual orientation and gender identity,” “evolution,” “minority religions,” and DEI, “are undoubtedly matters of profound value and concern to the public.” *Janus*, 585 U.S. at 913–14 (quotation omitted). As a result, the Supreme Court has “often recognized that such speech occupies the highest rung of the hierarchy of First Amendment values and merits special protection.” *Id.* (quotation omitted).

Meanwhile, the University cannot point to any interest on its side of the ledger that would justify suppressing Dr. Calfano’s speech. Nothing in Dr. Calfano’s complaint suggests that his opposition to the DEI Requirement “meaningfully interfere[d] with the performance of his duties.” *Josephson*, 115 F.4th at 784. (alteration in original). Indeed, because objections to racial discrimination are protected under Title VII and other laws, such objections *cannot lawfully* be deemed to interfere with one’s work duties. The University has no “legitimate goal or mission” in chilling speech aimed at opposing racial discrimination. *Id.* Even if Dr. Calfano’s objections to the requirement engendered some “disharmony among co-workers,” *id.*, such “disharmony” paled in comparison to the “profound value” generated from Dr. Calfano’s willingness to raise a “sensitive political topic[.]” *Janus*, 585 U.S. at 914. Nor did Dr. Calfano’s speech impair “discipline by superiors.” *Josephson*, 115 F.4th at 784. In fact, the opposite happened: his superior weaponized the disciplinary process against him in retaliation for his speaking his mind. It was that abuse of power and process—not anything Dr. Calfano said or did—that “destroy[ed] the relationship of loyalty and trust required of confidential employees.” *Id.* (alteration in original).

All told, Dr. Calfano spoke “on a matter of public concern,” his “speech was not made pursuant to [his] official duties,” and his “interest in speaking on a matter of public concern outweigh[ed]” any “interest” the University had in suppressing his speech. *Josephson*, 115 F.4th at 783–84 (quoting *Pickering v. Bd. Of Educ. Of Twp. High Sch. Dist. 205*, 391 U.S. 563, 568 (1968)). Accordingly, Dr. Calfano’s speech was protected by the First Amendment.

**b. Dr. Calfano’s speech was protected under doctrines involving speech unique to the University context.**

Apart from satisfying *Garcetti*’s tripartite test for evaluating government-employee speech, Dr. Calfano speech was protected under the First Amendment for the independent reason that it “involve[ed] speech related to ... teaching.” *Meriwether v. Hartop*, 992 F.3d 492, 504 (6th Cir. 2021) (quoting *Garcetti*, 547 U.S. at 425). The Supreme Court’s decisions have “long recognized that, given the important purpose of public education and the expansive freedoms of speech and thought associated with the university environment, universities occupy a special niche in our constitutional tradition.” *Id.* (quoting *Grutter v. Bollinger*, 539 U.S. 306, 329 (2003)). The Sixth Circuit has likewise recognized that “a professor’s rights to academic freedom and freedom of expression are paramount in the academic setting.” *Id.* at 505 (quoting *Bonnell v. Lorenzo*, 241 F.3d 800, 823 (6th Cir. 2001)). So important is this speech that it receives protection even when a professor is engaged in speech “pursuant to [his or her] official duties[.]” *Id.* (quotation omitted).

Dr. Calfano’s speech falls comfortably within this protection. He spoke out to defend his selection of the most qualified faculty advisor for The News Record—the University’s student newspaper—against a previously unannounced, race-based hiring mandate. Compl. ¶¶23–26, 37–39. And his objections were of a piece with his earlier resistance, on academic grounds, to Defendant Bates’s insistence that Dr. Calfano inject race-focused content into the curriculum of a political-reporting certificate program—content he believed was “not germane to the certificate’s training objectives.” *Id.* ¶36. It is precisely the kind of speech for which “a professor’s rights to academic freedom and freedom of expression are paramount.” *Meriwether*, 992 F.3d at 505 (quotation omitted). And because *Meriwether*’s academic-freedom protection extends even to speech a professor makes “pursuant to” his official duties, *id.*, it protects Dr. Calfano’s speech here, which relates directly to academic hiring and thus pedagogical concerns. *See, e.g.*, ¶99. *Meriwether* thus furnishes a fully independent ground for holding that Dr. Calfano’s speech was protected by the First Amendment.

## 2. Dr. Calfano suffered a materially adverse action.

Turn from *Josephson*'s first element to its second: whether Dr. Calfano suffered a materially adverse action. He suffered many. In the Sixth Circuit, an “adverse action” is that which “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) (quoting *Ctr. for Bio-Ethical Reform, Inc. v. City of Springboro*, 477 F.3d 807, 822 (6th Cir. 2007)). “Whether an alleged adverse action is sufficient to deter a person of ordinary firmness is generally a question of fact.” *Wurzelbacher v. Jones-Kelley*, 675 F.3d 580, 583–84 (6th Cir. 2012). And “[c]ontext matters.” *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 69 (2006). “The real social impact of workplace behavior often depends on a constellation of surrounding circumstances, expectations, and relationships which are not fully captured by a simple recitation of the words used or the physical acts performed.” *Id.* (quoting *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 81–82 (1998)).

Dr. Calfano pleaded at least seven discrete materially adverse actions, each independently sufficient and, cumulatively, overwhelming. *First*, the initiation of a pretextual Article 9 disciplinary investigation against Dr. Calfano. *See* Compl. ¶¶47–55. *Second*, Dr. Calfano was removed from the department headship he had held since 2021. *Id.* ¶44. *Third*, he was stripped of his teaching responsibilities mid-semester. *Id.* ¶46. *Fourth*, about six weeks later, the University’s Title IX Coordinator, Defendant Lyles, initiated an equally pretextual Title IX investigation against Dr. Calfano, disingenuously claiming that he “threaten[ed] the safety of the University community”—a claim belied by the University’s own post-complaint actions. *Id.* ¶¶64, 70, 72. *Fifth*, after Dr. Calfano was effectively ousted from the University, the Title IX charges were dismissed without being resolved—a structural choice ensuring the cloud of unresolved allegations would follow Dr. Calfano indefinitely. *Id.* ¶84. *Sixth*, individuals within the University tipped off a Cincinnati Enquirer reporter to the ongoing investigations, thereby encouraging publication of a story that would tarnish Dr. Calfano’s reputation. *Id.* ¶88. *Seventh*, the evidence also strongly suggests that, to further ruin Dr. Calfano’s career, University personnel emailed the Enquirer article to Dr. Calfano’s new employer, Fox 43, within minutes of the story’s publication. *Id.* ¶90.

These are not the “petty slights” or “minor annoyances” of ordinary workplace life. *Burlington N.*, 548 U.S. at 68. They are the institutional levers by which a tenured full professor’s nine-year career was systematically destroyed. Each action is more than sufficient to chill the speech of an ordinary person.

**3. Dr. Calfano pleaded a causal connection between his speech and the adverse actions.**

Moving to *Josephson*’s third element, Dr. Calfano plausibly alleges a causal connection between his protected speech and the adverse actions Defendants took against him. The Sixth Circuit has repeatedly stated that there’s “no doubt that th[e] causation element ... presents a pure fact question about the reason(s) for the adverse action.” *DeVooght v. City of Warren*, 157 F.4th 893, 902 (6th Cir. 2025) (quoting *DeCrane v. Eckart*, 12 F.4th 586, 602 (6th Cir. 2021) (alterations in original)). Thus, a plaintiff’s allegations of causation should generally be tested through discovery rather than at the pleading stage. *See id.* In any event, a plaintiff in the Sixth Circuit establishes a prima facie case of causation where the plaintiff shows that the defendant’s action was “motivated” at least “in part by” the plaintiff’s “protected speech,” “even when an employee has other [alleged] misconduct on the record.” *Id.* at 903. *Dr. Calfano* has plausibly pleaded that here.

As an initial matter, Dr. Calfano alleges that various defendants *admitted* to taking adverse actions in retaliation for his protected speech. Dr. Calfano alleges that Defendants Jonason and Wohlfarth admitted at a faculty meeting that they had complained about him to Defendant Bates—and that Bates, in turn, solicited those very complaints because of Dr. Calfano’s opposition to the DEI Requirement. Compl. ¶57. Bates further admitted at the same meeting that she had personally asked the Provost’s office to approve the Article 9 proceedings against Dr. Calfano. *Id.* ¶58. And those actions set in motion the process that led to every one of the adverse actions set forth above. In acting as she did, Bates bypassed the full-time faculty members thought likely to defend Dr. Calfano. *Id.* And Bates did not act alone. Indeed, one of the students whose allegations purportedly supported the Title IX complaint later confirmed that “there were professors working to get [Dr. Calfano] out of [the University],” and that there was a “concerted effort” to do so. *Id.* ¶73

(alterations original). These allegations by themselves—admissions by the very actors who set the disciplinary machinery in motion—plausibly establish that Dr. Calfano’s protected speech was at least “in part” the reason Defendants took their adverse actions against him. *DeVooght*, 157 F.4th at 903.

The surrounding circumstantial evidence reinforces the inference, as demonstrated by the temporal proximity of Dr. Calfano’s protected speech and the adverse actions: Dr. Calfano’s September 2023 escalation of his objections to University-level HR, *see* Compl. ¶41, and his October 2023 workaround that circumvented the DEI Requirement, *id.* ¶42, were followed within just a few months by Dr. Calfano’s removal as Department Head, his removal from the Media Bureau course, and the initiation of the Article 9 investigation, *id.* ¶¶44, 46. Just seven days later, Defendant Wohlfarth played a critical role in the University eventually initiating a second pretextual proceeding against Dr. Calfano—the Title IX proceeding. *See id.* ¶62. And yet again, Defendant Bates was in the middle of events, this time in an effort to route the most pretextual allegations against Dr. Calfano to the Title IX office. *Id.* ¶63.

A causal connection can also be inferred from the following well-pleaded facts: (1) the core Article 9 allegations against Dr. Calfano were demonstrably baseless and could have been refuted with minimal inquiry that the University and its employees deliberately declined to undertake, *id.* ¶¶48–50; (2) the University and its employees bypassed the CBA’s progressive-discipline and pre-removal notification rules, *id.* ¶¶51–54; (3) the Title IX complaint had no individual complainant and described conduct that did not satisfy the University’s own definition of sexual harassment, *id.* ¶¶64, 67–68; and (4) the University’s actions—assigning Dr. Calfano to teach an all-female section of the same course it had just stripped from him—gave the lie to its claim that he “threatene[d] the safety” of the University community. *Id.* ¶¶71–72. All of these circumstances suggest that the investigation was pretextual. Meanwhile, Jonason, the faculty member credibly and repeatedly accused of sexist conduct over the preceding months faced no investigation and no discipline at all. *Id.* ¶¶3, 65. That kind of disparate treatment is itself probative of retaliatory motive.

All of that is more than enough at the pleading stage. Causation “presents a pure fact question about the reason(s) for the adverse action,” *DeVooght*, 157 F.4th at 902 (quotations omitted) (alterations in original), and, thus, should generally be tested through discovery, not on a Rule 12(b)(6) motion. *See id.* Construing the allegations “in the light most favorable to the plaintiff,” *Bassett*, 528 F.3d at 430 (quotations omitted), Dr. Calfano has plausibly alleged that Defendants’ adverse actions were “motivated” at least “in part by” his “protected speech.” *DeVooght*, 157 F.4th at 903. Nothing more is required.

**B. Defendants’ arguments for dismissal all fail.**

In opposing all this, Defendants first argue that Dr. Calfano has not pleaded an adequate claim for First Amendment retaliation. And as a fallback, they insist that the qualified-immunity doctrine requires dismissing *at least* the individual-capacity claims. Wrong and wrong again.

**1. Defendants fail to show that Dr. Calfano failed to plead a valid claim for First Amendment retaliation under §1983.**

Consider first Defendants’ argument that Dr. Calfano did not adequately plead facts establishing *any* of the elements of a First Amendment retaliation claim.

**a. Defendants’ arguments regarding the *Garcetti* test misunderstand the law and the facts alleged**

Recall that Dr. Calfano’s speech is protected on two separate grounds. First, his speech is protected under the *Garcetti* test. Second, his speech is protected under cases recognizing that free-speech protections attach to academic speech like that at issue here. Defendants’ motion does not seriously engage with the second point. But it does argue that Dr. Calfano failed to allege facts sufficient to support any argument that his speech is protected under *Garcetti*. The Court should reject these arguments.

**Official duties.** Defendants first argue that Dr. Calfano spoke pursuant to his “official duties” when he opposed the DEI Requirement. Essentially, Defendants argue that, because Dr. Calfano’s hiring authority over The News Record’s faculty advisor was an aspect of his Department Head

role, his opposition to the DEI Requirement “owes its existence” to that role and therefore cannot constitute protected speech. MTD at 8 (quoting *Garcetti*, 547 U.S. at 421).

Defendants’ argument fails because it collapses two distinct issues that the Supreme Court and the Sixth Circuit have been at pains to keep separate: a speaker’s position and the speech’s content. “The critical question under *Garcetti* is whether the speech at issue is itself ordinarily within the scope of an employee’s duties, not whether it merely concerns those duties.” *Lane v. Franks*, 573 U.S. 228, 240 (2014); accord *Barton v. Neeley*, 114 F.4th 581, 588–89 (6th Cir. 2024). And even with that understanding, the *Garcetti* exception “must be read narrowly.” *Boulton*, 795 F.3d at 534; see *Barton*, 114 F.4th at 588 (collecting cases). Dr. Calfano was hired and paid to lead the journalism department: to teach, to recruit faculty, and to manage curriculum. Compl. ¶¶21–23. He was not assigned the task of formulating, contesting, or challenging University-level DEI policy, nor does he allege anything of the sort. The DEI Requirement improperly *burdened* his hiring authority, see Compl. ¶¶37–39. His speech, therefore, was not the product of performing the tasks he “was paid to perform.” *Lane*, 573 U.S. at 239 (quotations omitted).

Defendants’ lead authority, *Sullivan v. Unified Sch. Dist. No. 512*, No. 24-2491-DDC-BGS, 2025 WL 2732589 (D. Kan. Sept. 25, 2025), confirms rather than refutes the point. *Sullivan* expressly declined to extend its analysis to the public-university context governed by the Sixth Circuit’s *Meriwether* decision. *Sullivan* acknowledged that “the Sixth Circuit reached a different conclusion” and explained that *Meriwether* did so because “universities occupy a special niche in our constitutional tradition.” *Sullivan*, 2025 WL 2732589, at \*14 (quoting *Meriwether*, 992 F.3d at 504, at \*14). Thus, the very case Defendants advance as their closest analogue expressly contemplates that speech like that at issue here *is* constitutionally protected.

***Matter of public concern.*** Defendants’ argument that Dr. Calfano did not speak on a matter of public concern is equally unavailing. According to Defendants, Dr. Calfano’s speech did not address a matter of public concern because, in their view, Dr. Calfano’s speech “owe[d] its existence to his role as Department Head” and “any objection [Dr. Calfano] raised was raised internally and through administrative channels only. MTD at 8.

This argument improperly collapses the official-duty and public-concern issues: whether Dr. Calfano made his arguments pursuant to an official duty is distinct from the question whether the DEI objections he raised were matters of public concern. In any event, Defendants' arguments regarding the nature of Dr. Calfano's duties fail. Defendants seem to believe the speech did not relate to a matter of public concern because it "concerne[d]" Dr. Calfano's "duties." *Lane*, 573 U.S. at 240. But the question is not whether his speech "concerne[d] those duties" but "whether the speech at issue" was "itself ordinarily within the scope of [his] duties." *Id.* The Sixth Circuit just confirmed as much when it noted that "speech may involve a matter of public concern when an employee speaks out about public corruption, discrimination, or failure to follow state law." *Stanalajczko*, 2026 WL 1209230 at \*4. As all of these matters *concern* work duties but are nonetheless *outside the scope* of those duties, the Sixth Circuit's decisions remove any doubt that employees may discuss matters of public concern in work-related speech. And opposing a novel and divisive racial mandate was no part of Dr. Calfano's ordinary job duties. *See* Compl. ¶¶37–39.

Nor does Dr. Calfano's speech lose its protection merely because he primarily voiced his opposition "internally" within the University. MTD at 8. It is the "content, form, and context of a given statement, as revealed by the whole record," that matters. *Connick v. Myers*, 461 U.S. 138, 147–48 (1983). And Dr. Calfano's objection to the DEI Requirement is exactly the type of "sensitive political topic" that "occup[ies] the highest rung of the hierarchy of First Amendment values and merits special protection." *Janus*, 585 U.S. 878 at 914; *accord Josephson*, 115 F.4th at 784.

Defendants' authorities do not support the conclusion the workplace setting in which Dr. Calfano expressed its concerns deprives him of First Amendment protections. *Rodgers v. Banks*, 344 F.3d 587 (6th Cir. 2003), draws a line between "internal personnel disputes," such as, "complaints about an employer's performance," which are not protected, and speech "relat[ing] to any matter of political, social, or other concern to the community." which is. *Id.* at 596 (quoting *Connick*, 461 U.S. at 146). Dr. Calfano's speech is on the protected side of that line: he was not complaining that he had been overlooked, denied a raise, or the like; he was opposing a racial mandate that the University was attempting to impose on his department.

*Garvie v. Jackson*, 845 F.2d 647 (6th Cir. 1988) does not help Defendants either. Even setting aside that it was decided decades before the Supreme Court’s and Sixth Circuit’s pivotal decisions in this area—decisions like *Garcetti*, *Lane*, *Meriwether*, *Janus*, *Handy-Clay* and *Pucci*—*Garvie*’s reasoning employed a comparative test rather than, as Defendants suggest, a categorical bar: speech “more closely resembl[ing] an employee’s complaints regarding his superior’s actions and his own responsibilities ... than a citizen’s speaking out on a matter of public decisionmaking” is not protected. *Id.* at 651. Running that comparison here only helps make Dr. Calfano’s point. The gravamen of Dr. Calfano’s complaint was not about matters like his own compensation, leave, a parking spot, or some other purely work-related matter. It involved a citizen’s public-spirited objection to a divisive racial mandate adopted by a public institution. *See* Compl. ¶¶37–41, 99. *Garvie*’s reasoning cannot do the work Defendants ask of it; if anything, it counsels the opposite result.

***Pickering balancing.*** As for *Pickering* balancing, Defendants’ argument falters under both the applicable pleading standard here and the substantive law. They argue that the *Pickering* factors tip against Dr. Calfano because, as they see it, his speech “caused disruption among his co-workers, interfered with close working relationships, and interfered with the University’s regular hiring process and operations.” MTD at 10.

Defendants cite paragraphs forty-one and forty-two of the complaint, *see id.*, as if those are tantamount admissions of disruptions by Dr. Calfano. They are not. Paragraph forty-one alleges that Defendant Bates yelled at Dr. Calfano during a September 2023 meeting. But the government has no valid interest in suppressing speech simply because another employee loses her cool in response to such speech. Compl. ¶41. As for paragraph forty-two, it alleges that Dr. Calfano resolved the DEI issue by working with a department business manager on a workaround that received the endorsement of University-level HR. Hardly a disruption.

What’s more, Defendants’ *Pickering* authorities defeat the very argument they are cited to support. *Rankin v. McPherson*, 483 U.S. 378 (1987), established that the government’s burden to show actionable disruption is not easily satisfied. *See id.* at 388–92. In *Rankin*, for example, the

government failed to meet its burden in showing an employee in a law-enforcement agency made a sufficiently disruptive comment when, while referencing a recent assassination attempt on the President of the United States, she stated: “If they go for him again, I hope they get him.” *Id.* at 380. If inflammatory speech like that in an operationally sensitive setting was protected, Dr. Calfano’s policy-objection escalated to University HR plainly is too. It’s also worth noting that *Rankin* was decided on summary judgment—not the pleadings.

The *Pickering* issue in *Walters v. Churchill*, 511 U.S. 661 (1994) (plurality), likewise arose on summary judgment rather than on the pleadings. And there, the Court’s controlling, plurality opinion requires the employer to articulate an objectively reasonable belief about actual disruption, not speculation regarding the manner in which the speech *might* have led to disruption. *Id.* at 679–82.

Defendants also cite *Farhat v. Jopke*, 370 F.3d 580 (6th Cir. 2004), yet another summary-judgment decision inapposite to Dr. Calfano’s case. In *Farhat*, the employee’s speech “was highly disruptive to the point that it interfered with the effective operation of the school district’s custodial staff;” so much so that, at times, staff members “feared for their physical safety in the workplace due to Appellant’s behavior.” *Id.* at 594. Nothing in Dr. Calfano’s complaint even remotely suggests that Dr. Calfano’s speech had the same effect at the University. Indeed, Dr. Calfano has specifically pleaded that the University and its employees falsely designated him a threat to the safety of the University community as part of a coordinated campaign to retaliate against him for exercising his free speech rights and supporting a colleague’s claims of sex discrimination. *See* Compl. ¶71.

At bottom, Dr. Calfano spoke as a citizen on a matter of public concern, and his speech interest decisively outweighs any operational interest the University could plausibly assert at this stage. If nothing else, any question about whether Dr. Calfano’s speech caused legitimate disruption is a fact question to be resolved later. Defendants’ contrary arguments require this Court to misread Supreme Court and Sixth Circuit precedent.

**b. Adverse action and causation**

Defendants fare no better when turning their sights to the second and third elements of Dr. Calfano's claim, when they argue that Dr. Calfano failed to allege any adverse action carried out in response to his protected speech. The Court should reject this argument, too.

To start, Defendants suggest that Dr. Calfano pleads at most four adverse actions. *See* MTD at 11. Not so. As explained above, Dr. Calfano pleads at least seven materially adverse actions: (1) the baseless Article 9 investigation, (2) Dr. Calfano's removal from his headship; (3) Dr. Calfano's removal from the Media Bureau course he had been teaching that semester; (4) the pretextual Title IX investigation initiated in the absence of an individual complainant; (5) the without-prejudice dismissal of the Title IX charges against Dr. Calfano, coupled with the University's express reservation of right to refile those charges in the future; (6) the 2024 leak regarding the then-pending Title IX investigation against Dr. Calfano to the Cincinnati Enquirer; and (7) the dissemination of that article to Dr. Calfano's Fox 43 employer within minutes of its publication, leading to Dr. Calfano's firing from that job four days later. *See Compl.* ¶¶44–55, 64–71, 73, 84, 87–91.

In a footnote, Defendants argue that the Court should not view Dr. Calfano's allegations about University officials leaking information about his then-pending Title IX investigation as adverse action because, according to Defendants, The Cincinnati Enquirer obtained the Title IX report through a public records request, which they claim the University was legally obligated to comply with. *See* MTD at 11 n.2. Defendants attempt to support their argument by attaching both the public records request and the redacted Title IX report that they purportedly released in response to the request. *See* Compl. Ex. A–B.

The Court should reject this argument. Even if it were true that providing the redacted Title IX file in response to the Enquirer's public records request could not be considered a retaliatory act, it is beside the point. As set forth in the complaint, the leaks to the Enquirer that Dr. Calfano's claims are primarily concerned with are those that *preceded* and *spurred* the public-records request. Dr. Calfano's complaint alleges that the Enquirer reporter was an alumnus of the University's

journalism program with documented relationships with Defendant Jonason and Wohlfarth, Compl. ¶88. The complaint further pleads that that the Enquirer reporter requested Dr. Calfano’s personnel file in August 2024—*months before* the Enquirer reporter made the public record request on November 29, 2024. *See* MTD Ex. 1, PageID #125. Defendants do not argue (because they cannot argue) that leaking the story about the then-pending Title IX investigation to the Enquirer—*before* the outlet was aware of the story—fails to qualify as an adverse action.

As for the conduct Defendants do address, each of them constitutes a material, adverse action. Defendants argue that the Article 9 and Title IX investigations do not count because, they contend, “employer investigations into suspected wrongdoing by employees, standing alone, generally do not constitute adverse actions.” MTD at 11–12 (collecting cases). The problem with this argument is that it collapses under the weight of its “standing alone” qualifier. That qualifier is exactly what distinguishes Dr. Calfano’s case from cases Defendants cite. None of those cases involved allegations of *two* bad-faith, pretextual investigations coupled with the simultaneous loss of leadership and teaching, as well as public-facing dissemination that destroyed the plaintiff’s next employment opportunity. Dr. Calfano has no quarrel with the proposition that “employer investigations into suspected wrongdoing by employees, *standing alone*, generally do not constitute adverse actions.” MTD at 11–12 (emphasis added). But the proposition does no work under the facts pleaded in Dr. Calfano’s complaint, which establish far more than an investigation standing alone.

Defendants concede that “Plaintiff’s removal from the Department Head position could constitute an adverse action,” MTD at 12, and ask the Court to dismiss anyway. But the case Defendants cite, *Thaddeus-X*, itself recognizes that “demotions” count as adverse actions. *Thaddeus-X v. Blatter*, 175 F.3d 378, 396 (6th Cir. 1999); *see also Eckerman v. Tenn. Dep’t of Safety*, 636 F.3d 202, 208 (6th Cir. 2010) (“[T]he demotion from lieutenant to sergeant alone constitutes sufficient adverse action to satisfy this element of plaintiff’s retaliation claim.”); *accord Dye v. Office of the Racing Comm’n*, 702 F.3d 286, 303 (6th Cir. 2012). A demotion is exactly what Dr. Calfano

alleged he experienced when, among other things, Defendant Mack removed him as head of the University's journalism department. Compl. ¶44.

Defendants go even further astray when they argue that, even if Dr. Calfano experienced an adverse effect, he has not alleged *the individual defendants* bore responsibility for those adverse actions. The problem with this argument is that Defendants conflate respondeat superior, which the complaint never invokes, with direct participation, which the complaint pleads in detail. It is true, as Defendants note, that Section 1983 defendants cannot be held liable under a respondeat superior theory. MTD at 13–14. But they can certainly be held responsible for their own actions, and the complaint identifies precisely the adverse action that each defendant took in retaliation for Dr. Calfano's protected speech.

By way of background, the Sixth Circuit requires that plaintiffs plead “with particularity, facts that demonstrate what *each* defendant did to violate the asserted constitutional right.” *Heyne v. Metro. Nashville Pub. Sch.*, 655 F.3d 556, 564 (6th Cir. 2011) (quoting *Lanman v. Hinson*, 529 F.3d 673, 684 (6th Cir. 2008)). Liability lies against any official who “‘encouraged the specific incident of misconduct or in some other way directly participated in it,’” even if not “physically ... present at the time of the constitutional violation.” *Peatross v. City of Memphis*, 818 F.3d 233, 242 (6th Cir. 2016) (quoting *Shehee v. Luttrell*, 199 F.3d 295, 300 (6th Cir. 1999)). The complaint clears that bar for each named Defendant.

**Ferme.** Begin with Ferme. As Provost, Ferme personally authorized the Article 9 action that Bates “brought to his office for approval.” Compl. ¶106. Ferme and his office were also directly involved in the Title IX charges initiated on equally spurious allegations, as indicated by the fact that he was copied on the email informing Dr. Calfano of the Title IX complaint against him. *See id.* That is direct authorization of two retaliatory acts. *See, e.g., Rideout v. Shelby Township*, 691 F. Supp. 3d 816, 825–26 (E.D. Mich. 2023) (plaintiff plausibly alleged that a police chief was personally involved in retaliation orchestrated through his chain of command).

**Mack.** Defendants acknowledge Dr. Calfano's allegations that Defendant Dean Mack “signed the letter authorizing the Article 9 proceedings” and “‘formally approved’ removing Plaintiff as

head of the Journalism Department.” MTD at 14. That is the substance of two adverse actions: initiating the disciplinary investigation, and the demotion from a departmental headship effected in violation of the CBA’s faculty-consultation requirement. Compl. ¶¶54, 105; *see also Heyne*, 655 F.3d at 566–67 (sustaining a Section 1983 claim against a principal who had “allegedly played a role in the decision to suspend [the student]”). Mack “had the authority to prevent the retaliatory action; instead, he facilitated it in retaliation for Dr. Calfano’s protected speech,” including speech Mack heard Dr. Calfano voice at the September 2023 meeting in which Defendant Bates yelled at Dr. Calfano. Compl. ¶¶41, 105.

**Bates.** Turning to Bates, the complaint alleges she “solicited and received” the false complaints from Jonason and Wohlfarth in retaliation for Dr. Calfano’s speech; that she “sought and obtained approval from Defendant Ferme’s office” to initiate Article 9; that she coordinated with Defendant Dean Mack to obtain Vice Provost approval to remove Dr. Calfano without first informing the journalism faculty; and that she personally directed and confirmed the Title IX referral. Compl. ¶¶103–104.

Citing *Thompson v. Ohio State Univ.*, 92 F. Supp. 3d 719, 735 (S.D. Ohio 2015), Defendants contend that, absent injury, initiating proceedings is not adverse action. *See* MTD at 14. But the argument fails on inspection. *Thompson* was decided on summary judgment in a materially different setting. There, the initial academic-misconduct referral of a graduate student accused of plagiarism produced no discipline. 92 F. Supp. 3d at 734. Here, by contrast, Dr. Calfano pleads that Bates orchestrated false complaints, formally initiated a pretextual investigation, forced Dr. Calfano to participate in the investigation during his FMLA leave, and thus set off the chain of events that resulted in the tangible employment loss Dr. Calfano sustained. That establishes individual participation, not mere respondeat superior liability.

**Follings.** Turning to Defendant Follings, the complaint pleads that Follings, as College HR Director reporting directly to Bates, imposed the unannounced DEI hiring requirement, “never responded to any of Goth’s messages” reporting Jonason’s harassment, and served as the institutional choke point through which the retaliatory scheme operated. *See* Compl. ¶¶13, 109.

The complaint expressly pleads that “the HR freeze on Goth’s onboarding ... cannot plausibly be characterized as an isolated administrative act independent of the broader retaliatory scheme.” *Id.* Whether these acts are tied to a continuing course of retaliation that culminated within the limitations window in the actions of her co-defendants is a fact-bound question that cannot be resolved on the pleadings. *See Iqbal*, 556 U.S. at 678.

***Jonason and Wohlfarth.*** With respect to Jonason and Wohlfarth, Defendants raise statute-of-limitation and substantive arguments. Taking those arguments in order, Defendants’ equivocal assertion that Dr. Calfano’s claims against Defendants Jonason and Wohlfarth “may also be time-barred” is wrong. MTD at 15. Defendants’ equivocation concedes the issue cannot be resolved on the pleadings. Under *Snyder-Hill v. Ohio State University*, 48 F.4th 686 (6th Cir. 2022), dismissal on limitations is proper only when “the allegations in the complaint affirmatively show that the claim is time-barred.” *Id.* at 698 (quoting *Lutz v. Chesapeake Appalachia, L.L.C.*, 717 F.3d 459, 464 (6th Cir. 2013)). The complaint shows the opposite. Defendant Jonason and Wohlfarth were the admitted sources of the Article 9 complaint initiated March 13, 2024, and both played critical roles in the events culminating in the Title IX investigation opened April 29, 2024, *see* Compl. ¶¶120—all within the two-year limitations window of when Dr. Calfano’s lawsuit was filed. And the pleaded circumstances indicate that one or both of them were involved in The Cincinnati Enquirer publication that triggered Dr. Calfano’s termination from his successor position. *Id.* ¶88. Under the discovery rule, knowledge triggering accrual of the limitations period was unavailable until those acts surfaced. *Snyder-Hill*, 48 F.4th at 700, 702. And in any event, such timeliness questions are ill-suited for determination at the motion-to-dismiss stage. *See id.* at 698.

As to substance, Jonason “admitted that he was the source of the Article 9 complaints”; Wohlfarth “coordinat[ed] with Defendant Bates and others to encourage the students to bring [Title IX] allegations against Dr. Calfano”; and Jonason “facilitated the retaliation by informing a journalist ... about the Title IX investigation.” *Id.* ¶¶88, 102. That is direct participation in fabricating the retaliatory predicate, not “sharing information.” MTD at 15.

*Lyles and Miller.* That leaves only Lyles and Miller, and Dr. Calfano pleaded more than enough to establish their individual participation.

Defendant Lyles personally signed the Title IX complaint without any complainant, invoking a University policy reserved only for cases in which the Coordinator deemed the accused “threatening the safety of the University community.” Compl. ¶¶70, 107. The complaint alleges the action was orchestrated once the Article 9 process was paused during Calfano’s FMLA leave, *id.* ¶106, supporting the reasonable inference that Defendant Lyles signed the Title IX complaint knowing it was designed to punish Dr. Calfano’s protected conduct. *Allen v. Iranon*, the case Defendants cite, *affirmed* Section 1983 liability where awareness was inferable from circumstantial evidence including “proximity in time between the protected speech and the alleged retaliation.” 283 F.3d 1070, 1077 (9th Cir. 2002).

As for Defendant Miller, the complaint alleges she co-authored the 72-page report so “lack[ing] in “sexual content” that the deficiency caught the attention of even the University’s outside hearing counsel. Compl. ¶76. It further alleges that, as Interim Coordinator, Miller “denied Dr. Calfano’s request for a name-clearing hearing” in March 2024 while reaffirming the University’s right to refile the dismissed complaint. *Id.* ¶12. That is a discrete retaliatory step, clearly within the limitations period, occurring after Miller was on notice of the broader retaliatory campaign against Dr. Calfano. It can be plausibly inferred that Miller acted in furtherance of that campaign.

\*

The complaint identifies, “with particularity, facts that demonstrate what *each* defendant did,” *Heyne*, 655 F.3d at 564 (quotations omitted). None of it is respondeat superior. All of it is direct participation in the retaliatory scheme Dr. Calfano pleads.

## **2. The individual defendants are not entitled to qualified immunity.**

Defendants’ qualified-immunity argument fares no better.

First, some background. “Qualified immunity protects public officials and those serving the public from the time, expense and risk of money-damages actions if they did not violate the

claimant’s clearly established federal constitutional rights.” *DeLanis v. Metropolitan Govt. of Nashville & Davidson Cnty.*, 160 F.4th 732, 737 (6th Cir. 2025) (quotation marks omitted). Critically, however, the qualified-immunity defense is “available only to individual government officials sued in their personal capacity.” *United Pet Supply, Inc. v. City of Chattanooga, Tenn.*, 768 F.3d 464, 484 (6th Cir. 2014). Thus, the qualified-immunity defense applies *only* to the individual-capacity claims in this case—it has no bearing on Dr. Calfano’s official-capacity claims against five of the individual defendants.

In this case, the qualified-immunity argument fails for two reasons, one procedural and one substantive.

Procedurally, the Sixth Circuit has held 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 (6th Cir. 2015). “Although an [official’s] ‘entitle[ment] to qualified immunity is a threshold question to be resolved at the earliest possible point, that point is usually summary judgment and not dismissal under Rule 12.” *Id.* at 433–34 (second alteration in original) (citations omitted). Here, as explained momentarily, there is no doubt that the defendants violated Dr. Calfano’s clearly established rights *if* they retaliated against him for protected speech. Insofar as the question whether his speech is protected turns on factual questions relating to his job duties or *Pickering* balancing, the qualified-immunity question cannot be resolved at this stage.

Substantively, the right at issue—the right of a public-university faculty member to be free from retaliation for speech on matters of academic governance and public concern—has been “clearly established” for decades, and was recently reaffirmed in a binding decision Defendants do not engage with. *See Josephson*, 115 F.4th at 789–90. For decades, it has been “beyond debate” that “the First Amendment bar[s] retaliation for protected speech.” *Id.* (quoting *Crawford-El v. Britton*, 523 U.S. 574, 592 (1998)). Thus, the Sixth Circuit had no trouble in recently holding that, “[b]y the fall of 2017, both the Supreme Court and [the Sixth Circuit] had held that, absent a disruption of government operations, a public university may not retaliate against a professor for speaking on issues of social or political concern.” *Josephson*, 115 F.4th at 789 (affirming denial of summary

judgment to university defendants on plaintiff professor's First-Amendment retaliation claim) (citing *Pickering*, 391 U.S. at 574 and *Hardy v. Jefferson Cmty. Coll.*, 260 F.3d 671, 682 (6th Cir. 2001)). Put another way: “[i]t is, and has been, *clearly established* that public employees have a right to speak ‘on a matter of public concern regarding issues outside of one’s day-to-day job responsibilities, absent a showing that *Pickering* balancing favors the government’s particular interest in promoting efficiency or public safety.’” *Josephson*, 115 F.4th at 790 (emphasis added) (citing *Ashford v. Univ. of Mich.*, 89 F.4th 960, 975 (6th Cir. 2024), *Buddenberg v. Weisdack*, 939 F.3d 732, 739–40 (6th Cir. 2019), and *Westmoreland v. Sutherland*, 662 F.3d 714, 718–19 (6th Cir. 2011)); *see also Handy-Clay*, 695 F.3d at 542–43 (holding that a public employee stated a claim for First-Amendment where her speech consisted of “extraordinary rather than everyday communication” and she “spoke about her concerns to a number of individuals both inside and outside her department,” including “a human resources employee”).

*Josephson*'s holding is dispositive on the qualified-immunity issue at this stage, because, as already explained, Dr. Calfano's complaint provides a detailed narrative of how the University of Cincinnati retaliated against him, without any justification, for speaking “on a matter of public concern regarding issues outside of [his] day-to-day job responsibilities.” *Id.* Even if the Court were to credit Defendants' characterization that Dr. Calfano spoke pursuant to his official duties—a characterization the complaint flatly contradicts—the qualified-immunity outcome is the same: *Josephson* expressly held that “even if” the speech is “a part of [the plaintiff's] official duties ... it [is] clearly established that such speech is protected” when it concerns matters of “academic freedom and freedom of expression ... in the academic setting.” 115 F.4th at 790 (citing *Meriwether*, 992 F.3d at 505, *Hardy*, 260 F.3d at 680, and *Bonnell v. Lorenzo*, 241 F.3d 800, 823 (6th Cir. 2001) (“[A] professor's rights to academic freedom and freedom of expression are paramount in the academic setting.”)).

In sum, the doctrine of qualified immunity supplies no basis to dismiss Dr. Calfano's First Amendment retaliation claim.

## II. Dr. Calfano adequately pleaded a Title IX retaliation claim.

The Court should reject the University's attempt to dismiss Dr. Calfano's Title IX claim, too.

### A. Dr. Calfano pleaded facts supporting each element of a Title IX claim.

“[W]hen a funding recipient retaliates against a person because he complains of sex discrimination, this constitutes intentional ‘discrimination’ ‘on the basis of sex,’ in violation of Title IX.” *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 174 (2005). That protection runs not only to direct victims of sex discrimination, but also to those who advocate on others' behalf. *See id.* at 171–74, 179–80 (holding that Title IX barred retaliation against girls' basketball coach who received negative evaluation and was removed as coach after he complained that the girls' basketball team received unequal funding, equipment and facilities).

The Sixth Circuit operationalizes this cause of action through a four-element pleading test. A Title IX retaliation plaintiff must allege “that (1) [the plaintiff] engaged in protected activity, (2) [the funding recipient] knew of the protected activity, (3) [the plaintiff] suffered an adverse school-related action, and (4) a causal connection exists between the protected activity and the adverse action.” *Bose v. Bea*, 947 F.3d 983, 988 (6th Cir. 2020) (second alteration original); *accord Roe v. Univ. of Cincinnati*, No. 1:22-CV-376, 2025 WL 961731, at \*6 (S.D. Ohio Mar. 31, 2025) (applying the *Bose* four-element test to plaintiffs' Title IX retaliation claim and denying the University of Cincinnati's Rule 12(b)(6) motion in its entirety), *opinion clarified on unrelated grounds*, 2025 WL 1696974 (S.D. Ohio June 17, 2025).

Each of the four *Bose* elements is plausibly pleaded in Dr. Calfano's complaint.

*First*, Dr. Calfano plausibly alleges that he engaged in protected activity. Again, Title IX protects *both* the victims of sex discrimination and also those who oppose sex discrimination on another's behalf. *See Jackson*, 544 U.S. at 180 (2005) (“[R]etaliatio[n] claims extend to those who oppose discrimination against others”). Dr. Calfano opposed sex discrimination on Meghan Goth's behalf, and that constitutes protected activity. Recall what happened. Dr. Calfano selected Meghan Goth to be the faculty advisor to The News Record in February 2023. Compl. ¶¶22–25. After Defendant Jonason berated Goth in a sexist July 2023 telephone tirade, Goth reported the incident

to Dr. Calfano, who advised her to report the incident to College HR. *Id.* ¶30. Throughout the summer and fall of 2023, Dr. Calfano raised and backed up Goth’s complaints of sex discrimination against Jonason *while communicating with College HR* about processing her hiring paperwork. *Id.* ¶33. Bates and others at the University were aware that Dr. Calfano supported Goth’s complaints of sex discrimination against Jonason. *Id.* ¶117–18. On top of all that, Dr. Calfano advised Goth to contact the Title IX office, thus directing her to specific, institutional office designated to receive and act on sex-discrimination complaints. *Id.* ¶117(c). By the time Goth submitted her formal Title IX complaint about Jonason on April 22, 2024, the University’s Title IX office was aware of Dr. Calfano’s role in supporting her complaints of sex discrimination. *See id.* ¶118.

Dr. Calfano’s conduct sits at the heart of *Jackson*’s holding. Title IX is intended to encourage faculty members to advocate for colleagues (or students) subjected to sex-based mistreatment and to channel such complaints into the institution’s corrective machinery; if it were not, “individuals who witness discrimination would be loath to report it, and all manner of Title IX violations might go unremedied as a result.” *Jackson*, 544 U.S. at 180. Dr. Calfano’s pleaded support for an identified woman against an identified man accusing him of specific sex-based mistreatment, channeled through HR and steered toward the Title IX office, with the contemporaneous knowledge of the University’s senior administration, is the very conduct *Jackson* protects. *See id.*; *see also Roe v. Univ. of Cincinnati*, 2025 WL 961731, at \*6 (“report[ing] [of] sexual harassment to [the University] and participat[ion] in the investigations and proceedings stemming from their reports” pleaded protected activity sufficient to defeat dismissal).

*Second*, Dr. Calfano plausibly pleaded that the University knew of his protected activity. A school has knowledge of Title IX protected activity when “an ‘appropriate person’ at [the] school knows” of it. *Kesterson v. Kent State Univ.*, 967 F.3d 519, 527 (6th Cir. 2020) (collecting cases). An “appropriate person is someone ‘high enough up the chain-of-command’ that her decision constitutes the school’s decision.” *Id.* at 529 (quoting *Hill v. Cundiff*, 797 F.3d 948, 971 (11th Cir. 2015)). The complaint pleads institutional knowledge by exactly such persons. It alleges directly that multiple University officials who had authority to take corrective action to address the

retaliation against Calfano and to institute corrective measures had actual knowledge of the retaliation, specifically identifying Defendant Mack (Dean of the College of Arts and Sciences and Defendant Bates’s direct supervisor); Defendant Bates (Associate Dean and, later, Senior Associate Dean for Inclusive Excellence and Community Partnerships); Defendant Ferme (Provost of the University); and Defendant Lyles (the University’s Title IX Coordinator). Compl. ¶¶118, 128–29. Each of those officials is a paradigmatic “appropriate person”: a Dean, an Associate Dean overseeing Inclusive Excellence, a Provost, and a Title IX Coordinator. They are administrators whose decisions are, in the ordinary course, the University’s decisionmakers, and each is institutionally vested with “authority to take corrective action” on the University’s behalf. *Id.* ¶129.

*Third*, Dr. Calfano plausibly alleges that he “suffered an adverse school-related action.” *Bose*, 947 F.3d at 988. As in the First Amendment retaliation context, an adverse action in the Title IX retaliation context is one that “would dissuade a reasonable person from engaging in protected activity.” *Doe v. University of Kentucky*, 111 F.4th 705, 716 (6th Cir. 2024)). Again, this inquiry, which is the same as it is in the Title VII context, *see id.*, is contextual rather than atomistic: “the real social impact of workplace behavior often depends on a constellation of surrounding circumstances ... not fully captured by a simple recitation of the words used or the physical acts performed.” *Burlington N.*, 548 U.S. at 69. The complaint pleads adverse action in detail. The same array of conduct that supports the materially-adverse-action element of Dr. Calfano’s First Amendment claim supports the adverse-school-related-action element of Dr. Calfano’s Title IX claim. That conduct includes the March 2024 initiation of a baseless Article 9 disciplinary investigation; Dr. Calfano’s removal from the department headship he had held since 2021; the stripping of his teaching responsibilities in March 2024; the initiation of a pretextual Title IX investigation against him the following month; the leak of the Title IX investigation to the Cincinnati Enquirer; the without-prejudice dismissal, preserving the institutional sword over his head indefinitely; and the destruction of his subsequent broadcast-journalism career. Compl. ¶¶44, 46, 66–69, 84, 89, 91. All of this supports the adverse-school-related-action element of Dr. Calfano’s Title IX claim.

Indeed, in *Roe v. University of Cincinnati*, this Court ruled against the same defendant in the same Rule 12(b)(6) posture that adverse school-related actions were plausibly pleaded where the plaintiff’s “casting prospects and performance opportunities [had] deteriorated.” 2025 WL 961731, \*6 (S.D. Ohio Mar. 31, 2025). If deteriorated casting prospects and performance opportunities are enough to plead adverse action, then the sweeping, career-destroying institutional conduct that Dr. Calfano alleges the University is overwhelmingly so.

*Finally*, turning to the fourth prong of Dr. Calfano’s Title IX claim, Dr. Calfano plausibly alleges a causal connection between Defendants’ adverse actions and his advocacy supporting Goth’s Title IX complaints. The Sixth Circuit “generally evaluate[s] Title IX retaliation claims analogously to Title VII retaliation claims,” *Doe v. Univ. of Kentucky*, 111 F.4th 705, 715 (6th Cir. 2024).

“Where an adverse employment action occurs very close in time after an employer learns of a protected activity, such temporal proximity between the events is significant enough to constitute evidence of a causal connection.” *Mickey v. Zeidler Tool & Die Co.*, 516 F.3d 516, 525 (6th Cir. 2008) (analyzing causation under identical framework in the ADEA context); *see also Roe*, 2025 WL 961731 at \*6 (denying the University’s motion to dismiss where plaintiffs alleged that “the timing of [the adverse action] closely aligned to the timing of the protected activity”).

Here, those principles are dispositive. Goth’s formal Title IX complaint about Defendant Jonason reached the University’s Title IX office on or about April 22, 2024, at which point the office was contemporaneously “aware of Dr. Calfano’s role in supporting her complaints.” Compl. ¶¶65, 118. Just seven days later, on April 29, 2024, Title IX Coordinator Lyles, on behalf of the University, initiated a Title IX investigation against Dr. Calfano without an individual Complainant in “a striking deviation from general Title IX practice.” *Id.* ¶64. By any measure, that is “very close in time” to protected activity. *Mickey*, 516 F.3d at 525.

Dr. Calfano also alleges what *Doe v. University of Kentucky* identified as a particularly telling form of causal evidence: a “before-and-after” comparison in which the very institutional actors who knew of the protected activity engineered a cascade of adverse actions that followed the protected activity. 111 F.4th at 723. Recall, it was Defendant Bates—the architect of the Article 9

investigation— who solicited Jonason and Wohlfarth complaints that became the pretextual vehicle for Dr. Calfano’s removal “because of Dr. Calfano’s support for Goth in the face of the DEI requirement and Jonason’s sexist conduct.” Compl. ¶57. And the same Defendant Wohlfarth who solicited the Article 9 material against Dr. Calfano then “discuss[ed] Title IX-related concerns with certain students before those students approached the Interim Department Head, coordinating with Defendant Bates and others to encourage the students to bring [Title IX] allegations against Dr. Calfano rather than reporting the concerns through proper University channels.” *Id.* ¶120. Following that, Bates “told [Interim Department Head] Blevins to immediately report the [student] allegations to the Title IX office” and personally followed up by email to ensure compliance, *id.* ¶63. Then, within seven days of Goth’s formal Title IX filing, Defendant Lyles, who knew at the time that Dr. Calfano was supporting Goth’s Title IX complaints against Defendant Jonason, filed a bad-faith Title IX complaint on behalf of the University against Dr. Calfano. *id.* ¶64,

Causation may also be inferred through Dr. Calfano’s allegations of pretext. *See Mickey*, 516 F.3d at 526 (holding that a plaintiff can establish pretext where the defendant’s proffered reason for undertaking the adverse action “(1) has no basis in fact, (2) did not actually motivate the [defendant’s] challenged conduct, or (3) was insufficient to warrant the challenged conduct”).

Consider, for example, the University’s asymmetric treatment of Defendant Jonason and Dr. Calfano. The University took no action against Defendant Jonason on Goth’s formal Title IX complaint of sex discrimination—even after Goth, “with the assistance of Jeff Blevins, complained directly to the University’s Title IX office” about Jonason’s continued hostile conduct, including locking her out of The News Record’s offices “on a near weekly basis.” Compl. ¶65.

Within seven days of that protected reporting, however, the same Title IX office initiated a Title IX investigation, in the absence of any individual complainants, against the very faculty member who had supported and directly reported Goth’s complaints. *Id.* ¶64. In other words, Dr. Calfano’s complaint pleads that the University declined to enforce its sex-discrimination prohibitions against the only credibly accused actor, while pursuing, through an extraordinary procedural workaround,

the person who supported that accusation. That staggering discrepancy is enough to plausibly allege causation at this stage.

In another inconsistency, when Dr. Calfano took partial FMLA leave in April 2024 following his hospitalization, the University paused the Article 9 disciplinary investigation on the ground that he could not meaningfully participate while on medical leave. Yet Lyles “insisted the [Title IX] investigation would continue and that Dr. Calfano was capable of participating.” *Id.* ¶78; *see also id.* ¶124.

Dr. Calfano also plausibly pleads pretext (and, thus, causation) in alleging that the University inexplicably deviated from its own Title IX policy. That policy reserves the coordinator’s authority to file a Title IX complaint without an individual complainant in cases where the respondent “threaten[s] the safety of the University community.” Compl. ¶¶64, 70. But again, the University’s later actions, including assigning Dr. Calfano to teach the same course that the University had earlier removed him from—this time, in a class of all women—belie any notion that the University genuinely viewed Dr. Calfano as a “threat [to] the safety of the University community.” *Id.* ¶70.

Construing the complaint’s allegations as true and drawing all reasonable inferences in Dr. Calfano’s favor, *Iqbal*, 556 U.S. at 678, the fourth element of Dr. Calfano’s Title IX retaliation is satisfied. Each of the elements being plausibly pleaded, the University’s motion to dismiss the Title IX retaliation claim should be denied.

#### **B. Defendants identify no plausible basis for dismissing the Title IX claim.**

Defendants’ entire counterargument is just three pages long and identifies no sound basis for dismissal.

Initially, Defendants falsely contend that Dr. Calfano’s “Title IX retaliation claim fails at the threshold because the complaint does not plausibly allege that Plaintiff engaged in any activity protected by Title IX.” MTD at 19–20. On Defendants’ telling, Dr. Calfano merely offered informal support to Goth without raising any concerns. But the complaint does not allege mere passive support. Instead, it alleges that Dr. Calfano strenuously backed Goth. And, in a paragraph the

substance of which Defendants ignore, the complaint makes clear that Dr. Calfano *directly* pressed his concerns with University officials. Specifically, paragraph 33 alleges that, “[i]n the summer and fall of 2023, Dr. Calfano supported Goth’s claims while communicating with College HR about processing Goth’s hiring paperwork.” Defendants do not, and could not conceivably, deny that direct reports of sex discrimination fail to qualify as protected activity. That standing alone would constitute protected activity. The many other steps Dr. Calfano took in support of Goth gild the lily.

The rest of Defendants’ argument consists of a single paragraph, which asserts without explanation that Dr. Calfano “points to no adverse actions, casual connection, or how or when any University decisionmakers knew of his purported Title IX activity.” MTD at 21. Dr. Calfano explained above why all of that is wrong.

### **III. Dr. Calfano adequately pleaded a civil conspiracy claim under §1983**

In this third count, Dr. Calfano seeks relief for a civil conspiracy under 42 U.S.C. §1983 against all defendants other than the University of Cincinnati. To adequately plead a civil-conspiracy claim, a §1983 plaintiff must allege “an agreement between two or more persons to injure another by unlawful action.” *Bazzi v. City of Dearborn*, 658 F.3d 598, 602 (6th Cir. 2011) (quotation marks omitted). Thus, Dr. Calfano needed to plead three elements: (1) a “single plan” existed, (2) Defendants “shared in the general conspiratorial objective” to deprive Dr. Calfano of his constitutional (or federal statutory) rights, and (3) “an overt act was committed in furtherance of the conspiracy that caused injury” to Dr. Calfano. *Id.* (quotation marks omitted).

Here, Dr. Calfano alleged all three elements. *First*, he alleges that Defendants acted pursuant to a “single plan.” *Bazzi*, 658 F.3d at 602. After detailing the actions that each defendant took to punish Dr. Calfano for his protected speech—actions discussed above in connection with Count I—Dr. Calfano’s complaint alleges that Defendants acted pursuant to “an agreement, understanding, or meeting of the minds.” Compl. ¶132. This allegation is plausible, not just possible, given the apparently coordinated nature of the acts in question. *Second*, as also discussed

above in connection with Count I, Dr. Calfano alleged that Defendants shared the general objective of punishing him for his speech. *See also* Compl. ¶143. *Finally*, as described above, Defendants took one or more overt actions in furtherance of the conspiracy. Those overt actions included acts taken through internal processes—the initiation of Article 9 and Title IX proceedings, the non-resolution of the baseless investigations, and so on. But the overt actions *also* included overt acts taken to injure Dr. Calfano through other means. For example, Dr. Calfano alleges that “Jonason ... advanced the conspiracy” to injure Dr. Calfano “by tipping off Cincinnati Enquirer reporter Quinlan Bentley ... about the Title IX investigation, leading to the public-records request and the January 2025 article that destroyed Dr. Calfano’s career at Fox 43.” Compl. ¶139. Also in furtherance of the conspiracy, “one or more University officials or employees sent” the article to Dr. Calfano’s bosses “[w]ithin *minutes*” of its being published. *Id.* ¶90. These overt acts suffice to satisfy the third and final civil-conspiracy element.

Against all this, Defendants make four arguments for dismissal. None is persuasive.

**A. The intracorporate-conspiracy doctrine does not apply to the facts alleged.**

Defendants first claim that Dr. Calfano’s third count is barred by the intracorporate-conspiracy doctrine. MTD at 21. That doctrine bars §1983 conspiracy claims “where two or more employees of the same entity are alleged to have been acting within the scope of their employment when they allegedly conspired together to deprive the plaintiff of his rights.” *Jackson v. City of Cleveland*, 925 F.3d 793, 818 (6th Cir. 2019). Relying on this doctrine, Defendants assert that Dr. Calfano’s claim is barred because “[a]ll individual Defendants here were employees or officials of the University at the time of the alleged conduct, *and all the acts Plaintiff challenges were taken as part of the University’s institutional functions.*” MTD at 22 (emphasis added).

Defendants’ argument rests on a false premise: Dr. Calfano alleges that Defendants’ overt acts included acts *not* taken as part of the University’s institutional functions. *Contra id.* Most conspicuously, Dr. Calfano alleges that one conspirator (Jonason) tipped off a Cincinnati Enquirer reporter about the ongoing investigations against Dr. Calfano, thereby instigating a public-records

request that publicized the allegations against Dr. Calfano and dramatically aggravated the harm to Dr. Calfano. Defendants do not, and could not plausibly, argue that Jonason’s alleged conduct in furtherance of the conspiracy was taken as part of any University institutional function. Along the same lines, Dr. Calfano alleges that University officials or employees sent the article in question to Fox 43 after Dr. Calfano had left the University to take a job there. Compl. ¶90. Again, Defendants never argue that this alleged overt action was taken pursuant to internal University functions. As such, the foundation of Defendants’ argument collapses.

The intracorporate-conspiracy doctrine is inapplicable for a second, related reason: the doctrine is subject to a “broad exception” for cases in which “the defendants were alleged to have been acting outside the scope of their employment.” *Marvaso v. Sanchez*, 971 F.3d 599, 607 (6th Cir. 2020) (quotation marks omitted). Defendants do not (and presumably would not) claim that University employees act within the scope of their employment when they bring pretextual Title IX and Article 9 proceedings against other employees in retaliation for protected speech. *See id.* (concluding that falsifying “a fire and origin report would be outside of” fire officials’ official duties); *accord Shaw v. Wozniak*, 2024 WL 1045163, \*2 (S.D. Ohio Mar. 11, 2024) (falsifying a probable-cause affidavit is outside the scope of official duties). Yet Dr. Calfano specifically alleges that Defendants engaged in a conspiracy to do just that. Moreover, the acts discussed above—the tipping off of media members and the communication with Dr. Calfano’s new employer—are unambiguously *outside* the scope of official duties. These acts also show that the purpose of the conspiracy went well beyond the pursuit of institutional objectives: Defendants sought to injure Dr. Calfano inside *and outside* the University as punishment for his exercising constitutional rights. For this second reason, the intracorporate-conspiracy defense is inapplicable on the facts alleged.

**B. Dr. Calfano pleaded his claim with the requisite specificity.**

Defendants next claim that Dr. Calfano “has not plausibly alleged the existence of an agreement or meeting of the minds.” MTD at 22. According to them, Dr. Calfano “pleads no facts showing

when any alleged agreement was formed, who entered into it, or why the participants shared a common conspiratorial objective.” *Id.* at 23.

Defendants cite no case requiring the defendant plead all these facts—including facts related to motive—to plausibly allege a claim for civil conspiracy. None exists. True enough, “conspiracy claims must be pled *with some degree* of specificity,” meaning “that vague and conclusory allegations unsupported by material facts” will not suffice. *Marvaso*, 971 F.3d at 606 (emphasis added, quotations omitted). But at the same time, plaintiffs may rely on “circumstantial evidence.” *Id.* (quotations omitted). Dr. Calfano did more than enough. In addition to expressly alleging an agreement, he alleges that Defendants took steps to punish him for protected speech in a seemingly coordinated fashion: they initiated two baseless investigations in a manner that did not comply with University policy, and then sought to punish him *outside* his place of employment by tipping off journalists and subsequent employers about the allegations against him. The complaint even walks through the various overt acts taken by each defendant. *See* Compl. ¶¶134–41. Beyond that, the complaint alleges that students were aware of the coordinated effort to harm Dr. Calfano. *See id.* ¶142. These are not “vague” or “conclusory” allegations—they are specific allegations of the concrete steps Defendants took in furtherance of their agreement. Dr. Calfano additionally alleges that these acts were part of an “agreement, understanding, or meeting of the minds,” Compl. ¶132, and *that* allegation is supported by the many factual allegations, discussed above in connection with Count I, from which one could plausibly infer coordinated actions by many defendants. As for “why the participants supposedly shared a common conspiratorial objective,” MTD at 23, Dr. Calfano specifically alleged this fact even though he did not have to: Defendants acted as they did to punish Dr. Calfano for exercising his First Amendment rights. Compl. ¶143. That allegation is supported by numerous other allegations showing Defendants’ hostility toward Dr. Calfano’s protected speech. *See above*, Section I.A.1. Defendants’ claim that Dr. Calfano did not allege facts regarding “when any alleged agreement was formed” or “who entered into it” is equally baseless: he specifically alleges that *all* Defendants joined this conspiracy, and that the conspiracy arose in late 2023 or early 2024, when Defendants began taking overt acts against him. Compl. ¶¶43–84.

Defendants cite no case requiring that actionable conspiracies be formed by a written agreement executed on a particular date.

All told, Dr. Calfano pleaded more than “vague and conclusory allegations unsupported by material facts”: he alleged specific acts that Defendants took against him, in coordination with one another, for the specific purpose of retaliating against him. In other words, he plausibly alleged a civil conspiracy.

**C. Dr. Calfano plausibly alleged a violation of his First Amendment rights.**

Defendants next argue that the conspiracy claim must be dismissed because Dr. Calfano has failed to allege “a viable underlying constitutional claim.” MTD at 24. This is just a rehash of the argument that Dr. Calfano failed to allege a violation of his First Amendment rights. As explained above in connection with Count I, that argument fails.

**D. The individual-capacity claims cannot be dismissed on qualified-immunity grounds.**

Finally, Defendants claim that the individual-capacity conspiracy claim fails because Dr. Calfano “cannot point to any case law clearly establishing a violation of a constitutional right.” MTD at 25. This argument is indistinguishable from Defendants’ argument that they are entitled to qualified immunity in connection with Count I. Because the latter argument fails for the reasons set forth above, so too does this one.

\*

One final point. Defendants correctly note that the heading of Count III mistakenly cites 28 U.S.C. §1983 instead of 42 U.S.C. §1983. *See* MTD at 21 n.4. They also correctly note that the claim arises under 42 U.S.C. §1983, as the complaint elsewhere makes clear. *See* Compl. ¶6. Because Defendants do not claim to be confused by the typographical error, and because it is not a basis for dismissal, *see Stark v. Mars, Inc.*, 790 F.Supp.2d 658, 664 (S.D. Ohio 2011); *Gean v. Hattaway*, 330 F.3d 758, 765 (6th Cir. 2003), Dr. Calfano does not wish to delay these proceedings by amending his complaint. But if the Court believes an amended complaint is desirable or

required, Dr. Calfano respectfully moves for leave to amend his complaint to correct the mistaken citation.

**IV. Dr. Calfano adequately pleaded official-capacity suits against the five defendants he sued in their official capacities.**

The five defendants whom Dr. Calfano sued in their official capacities—Bates, Miller, Mack, Follings, and Wohlfarth—argue that Dr. Calfano’s official-capacity claims against them are “barred.” MTD at 25–27. They note, correctly, that §1983 plaintiffs like Dr. Calfano may bring an official-capacity claim *only* for “prospective relief to end a continuing violation of federal law.” MTD at 26 (quoting *Diaz v. Michigan Dep’t of Corr.*, 703 F.3d 956, 964 (6th Cir. 2013)). But they claim, *incorrectly*, that Dr. Calfano has not sought any such relief; according to Defendants, Dr. Calfano “does not allege any ongoing constitutional violation capable of being enjoined.” MTD at 26.

Defendants’ arguments fail. Dr. Calfano specifically alleges that Defendants all retaliated against him (and conspired to do the same) based on his protected speech. *See above* Sections I & III. Their retaliatory acts included the initiation and pursuit of baseless Title IX allegations. Most important here, Dr. Calfano alleges Defendants both initiated *and declined to resolve* the retaliatory Title IX proceedings, leaving Dr. Calfano to live under “the cloud of unresolved allegations [that] would follow him indefinitely.” Compl., ¶84. He further alleges that defendants retaliated against him by sending information about the baseless Title IX allegations to his then-employer, Fox 43, seriously impeding his ability to find work in the news industry. *Id.* ¶90. With this, Dr. Calfano alleged still-ongoing effects from Defendants’ unconstitutional actions. And in his prayer for relief, he specifically seeks purely prospective injunctive relief redressing these still-ongoing injuries. To quote the complaint, he seeks “[i]njunctive relief against Defendants sued in their official capacities and sufficient to protect Dr. Calfano from further injury, including”:

1. An order requiring the University of Cincinnati to expunge all records related to the Article 9 disciplinary proceedings and the Title IX investigation from Dr. Calfano’s personnel file and any similar records maintained by the University,

including any records maintained by the Office of Equal Opportunity, the Provost's Office, and the College of Arts and Sciences Dean's Office;

2. An order requiring the University of Cincinnati to dismiss the Title IX complaint against Dr. Calfano on the merits, with prejudice;

3. An order vacating the without-prejudice dismissal of the Title IX complaint and permanently prohibiting the University from refileing or reinstating the Title IX complaint against Dr. Calfano;

4. A permanent injunction prohibiting Defendants from further disclosing the unresolved allegations or investigative materials from either the Article 9 or Title IX proceedings to any third party.

Compl., Prayer for Relief §G.

In these requests—which Defendants' motion to dismiss never mentions—Dr. Calfano seeks “prospective relief to end a continuing violation of federal law,” *Diaz*, 703 F.3d at 964, because he seeks an injunction prevent continued, ongoing retaliation (and the continued, ongoing effects of retaliation) for protected First Amendment speech. That is precisely the sort of prospective relief that even Defendants concede is appropriate in an official-capacity suit.

Because Dr. Calfano alleged ongoing injuries for which he seeks prospective relief, he adequately pleaded a claim for official-capacity liability. And because the qualified-immunity doctrine does not apply to official-capacity suits, *see Benison v. Ross*, 765 F.3d 649, 665 (6th Cir. 2014), these claims survive *regardless* of whether the Court dismisses the individual-capacity claims on qualified-immunity grounds.

## CONCLUSION

For the foregoing reasons, Defendants' arguments lack merit and the Court should deny their motion to dismiss.

May 15, 2026

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I hereby certify that on May 15, 2026, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record. I also emailed the foregoing to counsel of record for Defendants.

*/s/ Shams H. Hirji*

Shams H. Hirji

Trial Attorney for Plaintiff Brian R. Calfano