IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Michael Balow,

Plaintiff,

v.

Brianna Scott, in her official capacity as Chair of the Michigan State University Board of Trustees; and Stefan Fletcher, in his official capacity as Secretary and Chief of Staff to the Michigan State University Board of Trustees,

Defendants.

Case No. 1:26-cv-03081

Hon. Paul L. Maloney

PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

ORAL ARGUMENT REQUESTED

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Plaintiff Michael Balow, an elected member of the Michigan State University Board of Trustees, moves under Federal Rule of Civil Procedure 65(a) for a preliminary injunction. As set forth in the Verified Complaint and the accompanying Brief, Defendants Brianna Scott and Stefan Fletcher, in their official capacities, are violating Balow's First and Fourteenth Amendment rights by enforcing provisions in the Michigan State University Board of Trustees' Code of Ethics and Conduct that discriminate based on viewpoint and are unconstitutionally vague (collectively, the "Trustee-Speech Restrictions"). Defendants are causing irreparable harm to Balow by chilling his protected speech and withholding his official resources, privileges, and opportunities unless he signs a Statement of Acknowledgment agreeing to abide by the Trustee-Speech Restrictions.

Balow respectfully requests that the Court enjoin Defendants from enforcing the Trustee-Speech Restrictions against him and from withholding or conditioning any of his official resources, privileges, and opportunities on his signing the Statement of Acknowledgment. He also asks the Court to waive security under Rule 65(c).

Pursuant to Local Rule 7.1(d), Plaintiff's counsel sought concurrence from Defendants' counsel for this motion on November 2, 2026. Defendants did not concur.

DATED: November 4, 2026

Respectfully submitted,

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BRIEF IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

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INTRODUCTION

The First Amendment mandates that elected policymakers enjoy "the widest latitude to express their views on issues of policy," *Bond v. Floyd*, 385 U.S. 116, 135–36 (1966), yet Michigan State University, through a majority of its Board of Trustees, has defied that constitutional mandate. The Board majority decreed that Plaintiff Michael Balow, a popularly elected member of the Board, and his fellow trustees must not criticize University actions or leadership, on pain of significant penalties. That is blatant viewpoint discrimination, repugnant to our political tradition. Because the Board has imposed those penalties on Balow to severely hinder his ability to perform the duties of his office, he seeks injunctive relief to restore his First Amendment freedoms.

Michigan voters elected Balow to MSU's Board after he ran on a platform of transparency, oversight, and institutional accountability. Once elected, Balow has pressed for greater openness in Board governance and has shared his views through op-eds and podcasts. He has not shied away from hot-button issues, such as demanding a fuller public accounting of the University's handling of sexual misconduct, and questioning multimillion-dollar private equity investments into MSU athletics.

Board Chair Brianna Scott did not take kindly to Balow's criticism. Rather than counter with her own speech, she urged the Board to impose a vague and viewpoint-discriminatory speech code on dissenting trustees. In a hastily called special session one Sunday evening, the Board revised its Code of Ethics and Conduct (the "Ethics Code") to restrict trustees' ability to publicly criticize Board decisions and University leadership—and punish them if they failed to obey. The revised Ethics Code demands that Balow and his fellow trustees "uphold the university's reputation," prohibits sharing "inaccurate, misleading, or false information concerning the university," directs trustees to "support" and not "undermine" majority Board decisions, and

mandates that "loyal opposition" be raised in "appropriate settings" (collectively, the "Trustee-Speech Restrictions").

The Ethics Code not only discriminates based on viewpoint, but also conditions receipt of a host of resources essential for Balow to perform his duties upon his signing a Statement of Acknowledgment agreeing to abide by the Trustee-Speech Restrictions. That is an unconstitutional condition that hampers Balow's ability to perform the duties of his office. *See Perry v. Sindermann*, 408 U.S. 593, 597 (1972). Balow has refused to sign and surrender his First Amendment rights. Defendants have responded by enforcing penalties for noncompliance, excluding Balow from University events and withholding funds intended to support his work as an elected trustee, thereby irreparably harming his ability to carry out his official duties.

An elected official sharing his opinions with voters is "precisely one of the types of activity envisioned by the Founders in presenting the First Amendment for ratification." *Wood v. Georgia*, 370 U.S. 375, 388 (1962). Yet the Ethics Code violates that core constitutional principle twice over, directly restricting Balow's freedom to share his opinions and conditioning receipt of his official resources on agreement not to criticize the MSU President and Board majority. Under the First Amendment, elected officials like those on the MSU Board are prohibited from punishing their critics. Instead, they are expected "to shoulder a degree of criticism about their public service from their constituents and their peers—and to continue exercising their free speech rights when the criticism comes." *Houston Cmty. Coll. Sys. v. Wilson*, 595 U.S. 468, 478 (2022).

Balow is therefore entitled to a preliminary injunction enjoining Defendants from enforcing the Trustee-Speech Restrictions against him and from withholding or conditioning receipt of any of his official resources, privileges, and opportunities on signing the Statement of Acknowledgment in the Ethics Code.

STATEMENT OF FACTS

Michigan Voters Elect Balow on a Platform of Transparency.

Michigan voters elected Plaintiff Michael Balow in November 2024 to an eight-year term on the MSU Board of Trustees. Compl. ¶ 14, PageID.4. The Michigan Constitution creates this eight-member Board and vests it with general supervisory authority over MSU. *Id.* ¶ 22, PageID.5. Trustees are ultimately accountable to the voters who elect them, not to the University's administration. *Id.* ¶ 23, PageID.5. Balow persuaded voters to elect him on a platform that emphasized transparency, oversight, and institutional accountability, declaring that there should be "[n]o more boardroom secrets at MSU." *Id.* ¶¶ 41–43, PageID.9.

Since taking office, Balow has used op-eds, interviews, and other remarks to inform the public about his perspective on MSU's leadership. *Id.* ¶ 3, PageID.2. In these statements, he has questioned whether MSU's administration prevented the Board from fully vetting a major athletics deal and criticized the institution's handling of sexual misconduct investigations. *Id.*

Specifically, in April 2026, Balow sent a memorandum to other trustees criticizing General Counsel Brian Quinn's handling of the Larry Nassar sexual abuse scandal and Quinn's office's interference in independent Title IX investigations, among other issues, which *The State News* reported on. *Id.* ¶¶ 45, 47, PageID.9–10. Twelve days later, Balow and Trustee Dennis Denno published an op-ed in *The Detroit News* entitled "To maintain trust, proper oversight at MSU is required." *Id.* ¶ 48, PageID.10. They wrote that when the Board was asked to approve an athletic affiliation agreement, trustees were improperly denied access to the legal documentation they needed to examine the effects of a $100 million private equity investment, which they cautioned could dilute MSU's ownership of the Athletics Department's lucrative revenue stream. *Id.* ¶ 49,

PageID.10. Balow and Denno discussed the same issue in a podcast interview released on May 10, 2026. *Id.* ¶ 51, PageID.11.

The Board Rewrites Its Ethics Code to Punish Criticism.

One week later, on the evening of Sunday, May 17, the Board held a special meeting to revise its Ethics Code. *Id.* ¶¶ 52–53, PageID.11. To hold this special meeting, the Board bypassed its ordinary committee process. *Id.* ¶ 61, PageID.12. These would be the first revisions to the Ethics Code since its adoption six years earlier. *Id.* ¶ 64, PageID.12.

Board Chair Brianna Scott was candid about what prompted this extraordinary meeting: She said some trustees had been "undermining the president, the administration, and decisions made by this board" and "spreading misinformation," via "podcasts, op-eds, [and] inappropriate email messages." *Id.* ¶ 54, PageID.11. That type of speech, Scott declared, "has got to stop." *Id.* Scott claimed that MSU President Guskiewicz "is frustrated" and the revisions would "foster an environment where [he] can be successful in his leadership and his vision for Michigan State University." *Id.* ¶¶ 56–57, PageID.11–12.

The revisions added the Trustee-Speech Restrictions to the Ethics Code. *Id.* ¶ 66, PageID.13. As detailed below, those Restrictions limit trustees' ability to publicly criticize Board decisions and University leadership. Balow objected immediately, calling the resolution to revise the Ethics Code "absolutely an assault on the First Amendment rights of any person who's serving in any sort of elected capacity." *Id.* ¶ 62, PageID.12. He warned the resolution "leaves wide latitude to the majority of the Board to silence the minority at any given time." *Id.* ¶ 63, PageID.12. The Board nevertheless approved it on a 5-3 vote, with Balow in the minority. *Id.* ¶¶ 59–60, PageID.12.

The Board's efforts to appease President Guskiewicz did not stop there. At the same Sunday-night meeting, it approved a nearly $1 million salary increase for Guskiewicz, who was

considering offers from other universities. *Id.* ¶¶ 79–80, PageID.16. But within ten days, Guskiewicz announced that he was nonetheless leaving MSU, citing "differing perspectives within the Board of Trustees," but expressing appreciation for "the five trustees who recently voted to strengthen their code of ethics and conduct." *Id.* ¶¶ 81–82, PageID.16. Less than six weeks later, however, the Board announced Guskiewicz would stay on after all. *Id.* ¶ 83, PageID.16–17.

Trustee-Speech Restrictions and Unconstitutional Conditions.

The May 17 revisions introduced vague, viewpoint-based Trustee-Speech Restrictions in paragraphs 9–11 of the Ethics Code. *See id.* ¶¶ 67–71, PageID.13. The Trustee-Speech Restrictions require trustees to "uphold the university's reputation" and prohibit them from sharing "inaccurate, misleading, or false information concerning the university." Ex. D ¶¶ 9–10, ECF No. 1-4, PageID.83; Compl. ¶ 67, PageID.13. These Restrictions command that "when the Board speaks through majority action, [trustees] will not undermine and will support the majority decision of the Board," and instruct trustees to "embrace the principle of loyal opposition and raise issues of concern[] in appropriate settings, in advance of Board action, and protective of the integrity of the Board's deliberations and processes." Ex. D ¶¶ 10–11, PageID.83–84; Compl. ¶¶ 68–69, PageID.13.

As Board Chair Scott explained during the Sunday-night meeting, the Trustee-Speech Restrictions are designed to, and do, prohibit trustees from publicly criticizing MSU's President and any actions he or the Board takes. Compl. ¶ 70, PageID.13. These Restrictions allow the Board to sanction Balow for, *e.g.*, publicly criticizing a decision increasing the President's salary, dissenting publicly from a decision to sell revenues from MSU's athletics program to private equity firms, or criticizing the Office of General Counsel's response to sexual abuse allegations.

Id. ¶ 87, PageID.17. The sanctions available for such speech include referral to Michigan's Governor or Legislature for removal from duly elected office. *Id.* ¶ 77, PageID.15.

The Ethics Code also requires each trustee to sign an unaltered Statement of Acknowledgment, which includes an agreement to be bound by the Ethics Code. Ex. D ¶ 15, PageID.84. The Ethics Code required each trustee to sign the Statement within seven days of the Sunday-night meeting, and it requires them to sign again each year. *Id.*

Trustees who refuse to sign face formal public censure and removal of specified resources and opportunities, cutting them off from the constituencies they are elected to represent. Compl. ¶ 74, PageID.14–15. For example, a trustee who refuses to sign may not attend, in a trustee's representative capacity, University-sponsored events unless the event involves "formal Board action or the presence of a Board quorum." *Id.* (quoting Ex. D, Sanctions for Failure to Comply with Statement of Acknowledgment Provision, PageID.84–86). The trustee may obtain travel expense reimbursement only if travel is "absolutely necessary to attend in-person official, voting Board meetings or work sessions" and otherwise loses "all discretionary travel budgets, including funding for professional development, seminars, or non-essential conferences." *Id.* The trustee also loses complimentary tickets to athletic events, including "all suite access privileges." *Id.* These sanctions remain in effect "until the non-compliant Trustee executes the unaltered and unedited document." *Id.* ¶ 75, PageID.15.

While the Ethics Code labels these revocable resources "non-essential," they are not mere perks. *Id.* ¶ 78, PageID.15. MSU provides trustees these resources precisely because they are necessary to fulfill their official responsibilities. *Id.* To do their jobs, trustees must hear from and speak with their constituents in Michigan. *Id.* ¶ 29, PageID.6. Indeed, Michigan law provides that trustees "shall receive the actual and necessary expenses incurred by them in the performance of

the duties of their office." Mich. Comp. Laws § 390.103. The Board's Bylaws likewise provide that trustees "shall receive the actual and necessary expenses incurred by them in the performance of the duties of their office." Compl. ¶ 25, PageID.6. Those expenses include activities where trustees advocate for the University's interests, hear from stakeholders, and develop expertise in governance. *Id.* ¶ 26, PageID.6.

For example, the Board normally supports trustees' attendance at leadership events and professional-development programs and pays for trustees to attend MSU-sponsored events to engage with the University community, including athletic competitions, school ceremonies, and social events. *Id.* ¶¶ 27, 32, PageID.6–7. MSU's Trustee Taxation Guidelines for Tickets and Travel confirms this point, explaining that "the University benefits when Trustees function as its advocates with government officials, business and labor leaders, alumni, donors, members of the media, and Michigan's citizens. Trustees attend many University events, both on and off campus, to engage in such advocacy and to *fulfill their other duties as Board members*." *Id.* ¶ 34, PageID.7 (quoting Ex. A, ECF No. 1-1, PageID.38) (emphasis added).

Balow Refuses to Sign, and Defendants Punish Him.

Balow has refused to sign the Statement of Acknowledgment because he objects to the Trustee-Speech Restrictions. Compl. ¶ 85, PageID.17. Because Balow did not sign by the first deadline, May 24, 2026, *id.* ¶¶ 89–90, PageID.18, Defendants Brianna Scott and Stefan Fletcher enforced the prescribed penalties against him, *id.* ¶ 90, PageID.18.

They began by revoking Balow's credentials to the Mackinac Policy Conference, a three-day gathering that convenes Michigan policymakers, national political figures, business executives, and philanthropists. *Id.* ¶ 91, PageID.18. Defendants had obtained credentials for

Balow to attend in 2026 but revoked them because he refused to sign the Statement. *Id.* ¶ 93, PageID.18.

Next, on June 12, 2026, the MSU Board issued a formal, public censure of Balow for refusing to sign the Statement. *Id.* ¶ 95, PageID.18. On July 25, Fletcher told Balow his 2026 home football suite allocation would be fulfilled only if the Board office received his signed Statement by noon on August 2. *Id.* ¶ 97, PageID.19. In the past, Balow attended MSU sports events as a trustee to connect with University administrators, alumni, donors, faculty, and students. *Id.* ¶¶ 101–02, PageID.19. But after Balow refused to sign, Fletcher explained that his tickets would be redistributed among trustees who signed the Statement "to ensure that [the tickets] are used to best fulfill the ambassadorial and engagement purposes under which those tickets are granted to board members," *id.* ¶ 98, PageID.19, and informed Balow he would not receive tickets or suite access to *any* sporting events until he signed, *id.* ¶ 99, PageID.19.

Defendant Fletcher also told Balow MSU would not support his attendance at conferences hosted by the Association of Governing Boards of Universities and Colleges (the "Association of Governing Boards"), a leading source of professional development for university trustees, including an event entitled "The Governance Challenge in College Athletics: Mission, Finance, and Board Oversight." *Id.* ¶¶ 106–08, PageID.20. The Association of Governing Boards advertised the event to trustees by saying: "If athletics is on your institution's budget, risk register, or board agenda, you need to be in the room." *Id.* ¶ 107, PageID.20. By refusing to support Balow's attendance, Fletcher is withholding access to experts and information that are highly relevant to Balow's responsibilities as a trustee. *Id.* ¶ 109, PageID.20–21. The event will cover issues Balow addressed in his op-ed and podcast appearance—the same public speech that apparently motivated the Board to adopt the Trustee-Speech Restrictions. *Id.* ¶¶ 48–54, 106–07, PageID.10–11, 20.

Defendants have also excluded Balow from several ceremonial events to which they invited trustees who signed the Statement. For example, they prohibited Balow from attending the September 29 "State of the University & Investiture for Endowed Faculty," modeled in part on the State of the Union, at which attending trustees sit in a prominent location. *Id.* ¶¶ 111–12, PageID.21.

In sum, these exclusions prevent Balow from attending any activities other than Board meetings that require a quorum, effectively cutting Balow off from the campus community and preventing him from interacting with students, faculty, staff, alumni, donors, and other University leaders. *Id.* ¶ 116, PageID.21–22. Balow's refusal to sign the Statement is the sole reason Defendants have imposed these punishments. *Id.* ¶¶ 93, 100, 110, 114, PageID.18–19, 21. Defendants intend to continue imposing these and other sanctions against Balow unless and until he signs. *Id.* ¶ 117, PageID.22.

The Sanctions Are Restricting Balow's Speech and Causing Ongoing Irreparable Harm.

The Trustee-Speech Restrictions and Defendants' revocation of Balow's resources for not signing the Statement of Acknowledgment are restricting Balow's speech. Balow wishes to continue speaking publicly about the Board's governance, the University's leadership, and the oversight of MSU athletics, as he did in his April 2026 op-ed and May 2026 podcast appearance. *Id.* ¶ 118, PageID.22. But the Board could easily deem Balow's criticisms an Ethics Code violation and subject him to investigation and further sanctions, including additional losses of resources and referral for removal from office. *Id.* ¶ 121, PageID.22. Defendants have demonstrated their willingness to punish Balow under the Ethics Code. *Id.* ¶¶ 89–123, PageID.18–23. He has stopped sharing some of his views because he reasonably fears further punishment. *Id.* ¶¶ 118, 121, PageID.22.

Because Balow has refused to sign the Statement, Defendants have cut him off from the conferences, sporting events, ceremonial gatherings, and other occasions at which trustees ordinarily interact with students, faculty, alumni, donors, and members of the public. Each day these restrictions remain in place, Balow loses opportunities to interact with the individuals he was elected to represent—opportunities Balow cannot recover after the fact. *Id.* ¶ 122, PageID.23.

ARGUMENT

Balow is entitled to a preliminary injunction under Fed. R. Civ. P. 65 because he is likely to succeed on the merits of his claim that the Trustee-Speech Restrictions discriminate based on viewpoint by permitting praise of the University or Board decisions but forbidding criticism. He is also likely to succeed on his claim that the Restrictions are unconstitutionally vague because they fail to provide sufficient notice of the speech they proscribe and they invite selective enforcement. That vagueness not only violates due process, but it also reinforces the viewpoint-discriminatory nature of the speech restrictions. And because the Ethics Code conditions Balow's access to various resources on his signing the Statement agreeing to the restrictions, it operates as an unconstitutional condition on Balow, who must either sign away First Amendment rights or forfeit the official privileges necessary to fulfill his duties. He is therefore likely to succeed on his unconstitutional-conditions claim and his as-applied claim.

Defendants' ongoing violation of Balow's First Amendment rights presumptively constitutes irreparable harm. *See Boddy v. Grech*, 178 F.4th 264, 277 (6th Cir. 2026). This presumed harm is ongoing because Defendants continue to deny Balow normal access to MSU events and resources, impeding his ability to carry out his responsibilities as an elected trustee. Balow also suffers an ongoing chill of his protected speech due to the threat of further sanctions under the Ethics Code. And because the Ethics Code amendments are likely unconstitutional,

Defendants suffer no cognizable harm from an injunction, while the public interest—including that of the voters who elected Balow—favors restoring his voice. *See, e.g.*, *ACLU Fund of Mich. v. Livingston Cnty.*, 796 F.3d 636, 649 (6th Cir. 2015); *Chabad of S. Ohio & Congregation Lubavitch v. City of Cincinnati*, 363 F.3d 427, 436 (6th Cir. 2004).

I. Balow Is Likely to Succeed on the Merits Because the Ethics Code Imposes Viewpoint-Based, Vague Restrictions on His Speech and Unconstitutionally Conditions Official Resources on Attesting to Compliance Through a Statement of Acknowledgment.

A. The First Amendment protects Balow's speech as an elected official.

As an elected official, Balow has a First Amendment right to express unpopular or dissenting views. *See, e.g.*, *Bond*, 385 U.S. at 132–37. That right is broad because, outside a few narrow, historically recognized categories such as obscenity, defamation, and fighting words, "the First Amendment protects a person's speech." *Boddy*, 178 F.4th at 272. And it guards in particular against "a majority" that could "silence dissidents" and a government that could "ban 'the expression of unpopular views.'" *Id.* at 273 (quoting *Cohen v. California*, 403 U.S. 15, 21, 26 (1971)). The Sixth Circuit has therefore consistently upheld the "[f]reedom to criticize public officials." *Barrett v. Harrington*, 130 F.3d 246, 263 (6th Cir. 1997). For example, the Sixth Circuit held that a School Board prohibition on "antagonistic" comments at public meetings violated the First Amendment on its face, because such a prohibition "by definition, prohibits speech opposing the Board." *Ison v. Madison Loc. Sch. Dist. Bd. of Educ.*, 3 F.4th 887, 893–94 (6th Cir. 2021). And it held that a School Board's decorum rule violated the First Amendment in part because "speech critical of the Board would violate the decorum rule, but speech praising the Board would not." *Boddy*, 178 F.4th at 275. As explained below, Defendants are impeding Balow's exercise of these fundamental First Amendment rights.

B. The Trustee-Speech Restrictions unconstitutionally discriminate based on viewpoint.

The Trustee-Speech Restrictions are viewpoint-based restrictions on speech, which the First Amendment forbids. *Defending Educ. v. Olentangy Loc. Sch. Dist. Bd. of Educ.*, 158 F.4th 732, 755 (6th Cir. 2025) (en banc). Government officials discriminate based on viewpoint when, even if they do not put "an entire topic off limits," they "allow[] certain speech on the topic" but "silence[] other points of view." *Id.* The Supreme Court has been clear that the government "may not discriminate against speech based on the ideas or opinions it conveys." *Iancu v. Brunetti*, 588 U.S. 388, 393 (2019) (citing *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829–30 (1995)). When the government targets "particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant," because viewpoint discrimination is "an egregious form of content discrimination." *Rosenberger*, 515 U.S. at 829; *see also Brunetti*, 588 U.S. at 399 (Alito, J., concurring) ("Viewpoint discrimination is poison to a free society."). Yet that is exactly what the Trustee-Speech Restrictions do, prohibiting dissent on pain of sanctions.

For instance, a trustee who says publicly that a Board decision was correct complies with the Trustee-Speech Restrictions. But a trustee who says the same decision was wrong violates the Ethics Code, as he has failed to "support" the Board's decision and has "undermine[d]" it. Ex. D ¶ 10, PageID.83. Likewise, a trustee's speech praising the University cannot violate the mandate to "uphold the university's reputation," but criticism of it does. *Id.*

After a Board decision, these requirements leave a trustee two options: Endorse the decision or say nothing. By prohibiting dissent, the Trustee-Speech Restrictions threaten to "silence[] a viewpoint that could have catalyzed a robust and insightful" public discussion. *Meriwether v. Hartop*, 992 F.3d 492, 506 (6th Cir. 2021). The government may not "skew[] the marketplace of ideas by putting a thumb on the scale in favor of certain perspectives" in this way,

Defending Educ., 158 F.4th at 755 (citing *NRA v. Vullo*, 602 U.S. 175, 187 (2024)), especially when it does so to silence critical voices, *see Rudd v. City of Norton Shores*, 977 F.3d 503, 513–14 (6th Cir. 2020). Because the Trustee-Speech Restrictions discriminate based on viewpoint, this "suffices—without more—to hold [this] government action unconstitutional," and this Court need not go any further. *Defending Educ.*, 158 F.4th at 756.

But the result would be no different if this Court applied strict scrutiny, which the Trustee-Speech Restrictions fail. As the Sixth Circuit recently observed, "no 'viewpoint-discriminatory restriction' on speech has *ever* survived strict scrutiny." *Welty v. Dunaway*, ___ F.4th ___, 2026 WL 2874671, at *12 (6th Cir. Sept. 24, 2026) (quoting *Cath. Charities of Jackson, Lenawee, & Hillsdale Cntys. v. Whitmer*, 162 F.4th 686, 696 (6th Cir. 2025)). So too here. Under strict scrutiny, Defendants would need to prove the Trustee-Speech Restrictions are "narrowly tailored to serve compelling state interests." *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015). They cannot carry this burden.

To start, shielding government bodies from public criticism is not a legitimate government interest, let alone a compelling one. "The State may not burden the speech of others in order to tilt public debate in a preferred direction." *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 578–79 (2011); *see also Moody v. NetChoice, LLC*, 603 U.S. 707, 741 (2024) (when a state's asserted interest is "very much related to the suppression of free expression," it "is not valid, let alone substantial"). Indeed, government-protective censorship is repugnant to our traditions of free expression and has been at least since the "great public outcry" against the Sedition Act of 1798. *See Rudd*, 977 F.3d at 513–14; *see also N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964) (explaining that public debate "may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials"). Even within a category of speech that the government may

regulate, it may not single out speech that contains "criticism of the [] government" for disfavored treatment. *R.A.V. v. City of St. Paul*, 505 U.S. 377, 384 (1992).

There is little doubt the Board adopted the Trustee-Speech Restrictions to stifle public criticism of government officials and institutions. As Defendant and Board Chair Scott explained when advocating for the Restrictions, she believed trustees had been "undermining the president, the administration, and decisions made by this board," and asserted that their public dissent "has got to stop." Compl. ¶ 54, PageID.11. The Trustee-Speech Restrictions put that goal into practice: Balow may praise the President and the Board as often as he likes, but if he publicly questions their decisions, he faces sanctions. *See* Ex. D ¶¶ 10–11, 14, PageID.83–84. Making this the Trustee-Speech Restrictions' *raison d'être* renders them unconstitutional without need for further analysis.

But even if that could be a legitimate basis for the Restrictions (it cannot), they are not the least restrictive means of achieving that interest. *United States v. Playboy Ent. Grp., Inc.*, 529 U.S. 803, 813 (2000) ("If a less restrictive alternative would serve the Government's purpose, the legislature must use that alternative."). If Board members disapprove of a trustee's criticism or believe it is mistaken, they can publicly say so. *See Wilson*, 595 U.S. at 478–80; *see also United States v. Alvarez*, 567 U.S. 709, 727 (2012) (plurality opinion) ("The remedy for speech that is false is speech that is true."). A blanket ban on dissent is not the least restrictive means of advancing any government interest—it is a sweeping infringement on a trustee's "wide[] latitude" to speak on policy matters. *Bond*, 385 U.S. at 135–36. The same goes for the ban on trustees sharing "misleading" or "inaccurate" information. Ex. D ¶ 9, PageID.83. Indeed, the Sixth Circuit struck down a ban on misleading statements by judicial candidates—where the State's interest in maintaining public trust is at its zenith—because "only a ban on conscious falsehoods satisfies

strict scrutiny . . . [a]nd the ability of an opponent to correct a misstatement 'more than offsets the danger of a misinformed electorate.'" *Winter v. Wolnitzek*, 834 F.3d 681, 694 (6th Cir. 2016) (quoting *Weaver v. Bonner*, 309 F.3d 1312, 1320 (11th Cir. 2002)). If that ban could not survive where public confidence in the judiciary was at stake, the Board's ban fails as well.

Because the Trustee-Speech Restrictions permit praise of the Board and its leadership while punishing criticism, they are viewpoint-discriminatory and cannot survive any level of scrutiny. Balow is therefore likely to succeed on the merits on this ground alone, which suffices to warrant a preliminary injunction without even reaching the Ethics Code's vagueness and unconstitutional-conditions failings.

C. The Trustee-Speech Restrictions are unconstitutionally vague because they leave trustees guessing what speech is forbidden and give the Board unchecked discretion to punish dissent.

The Trustee-Speech Restrictions are also void for vagueness because they fail to inform regulated parties "what is required of them so they may act accordingly" and lack the precision and guidance "necessary so that those enforcing the law do not act in an arbitrary or discriminatory way." *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012). The Trustee-Speech Restrictions suffer both defects, either of which alone suffices to invalidate them.

First, the Trustee-Speech Restrictions are impermissibly vague because trustees must make "subjective reference[s]" to infer whether their speech would be sanctionable. *Dambrot v. Cent. Mich. Univ.*, 55 F.3d 1177, 1184 (6th Cir. 1995). For example, the Trustee-Speech Restrictions' ban on "inaccurate, misleading, or false information concerning the university" fails to provide notice, either to individual trustees or to the Board as the enforcer, of what speech is actionable. That language could encompass anything from knowingly false factual assertions to speech that purportedly omits context, presents one-sided framing, or employs rhetorical hyperbole. Ex. D ¶ 9,

PageID.83; *see* Compl. ¶ 71, PageID.13. Recognizing this concern, one federal court granted a temporary restraining order rescinding a censure imposed under a judicial-conduct rule barring any "false or misleading statement," holding the rule "unconstitutionally vague as to the term 'misleading'" because a speaker "cannot objectively ascertain what additional facts must be included to avoid a 'materially misleading statement.'" *Kishner v. Nev. Standing Comm. on Jud. Ethics & Election Pracs.*, No. 2:10-cv-01858-RLH-RJJ, 2010 WL 4365951, at *6, *8 (D. Nev. Oct. 28, 2010). The Trustee-Speech Restrictions suffer from the same defect and leave trustees like Balow unsure when their speech could be misconstrued as "false" or "misleading."

Defendant Scott's remarks show this problem. As an example of speech the Ethics Code could reach, she cited a leaked version of the resolution to amend the code, which she called "inaccurate" and "a very false narrative." Compl. ¶ 55, PageID.11. Whether a trustee's account of a pending measure is "inaccurate" or "misleading" turns on the Chair's opinion, not any standard found in the Ethics Code. *See Kishner*, 2010 WL 4365951, at *6. Similarly, the Trustee-Speech Restrictions' commands to "embrace the principle of loyal opposition" and "raise issues of concern[] in appropriate settings" force trustees to guess when public discussion on contested issues might later be deemed sanctionable. Ex. D ¶ 11, PageID.84.

The Trustee-Speech Restrictions also fail "to provide a clear standard for enforcement." *McGlone v. Cheek*, 534 F. App'x 293, 298 (6th Cir. 2013). They do not precisely define what it means to "undermine" Board decisions, "uphold the university's reputation," or raise concerns in a manner sufficiently "protective of the integrity of the Board's deliberations and processes." Ex. D ¶¶ 10–11, PageID.83–84. Rather, those malleable provisions lack any "terms susceptible of objective measurement." *Cramp v. Bd. of Pub. Instruction of Orange Cnty., Fla.*, 368 U.S. 278, 286 (1961). Applying *Cramp*, the Eastern District of Michigan struck down a University of

Michigan speech policy because its operative terms, "stigmatize" and "victimize," were "general and elude[d] precise definition," leaving students "necessarily forced to guess at whether a comment about a controversial issue would later be found to be sanctionable." *Doe v. Univ. of Mich.*, 721 F. Supp. 852, 867 (E.D. Mich. 1989). Like the university in *Doe*, which "never articulated any principled way to distinguish sanctionable from protected speech," *id.*, the Board offers no standard beyond the Chair's own judgment. The Trustee-Speech Restrictions, therefore, invite "arbitrary, discriminatory and overzealous enforcement," *Dambrot*, 55 F.3d at 1184 (citation omitted), by affording Board majorities wide discretion to determine when a dissenting trustee's speech concerning university governance is sufficiently problematic to warrant sanctions.

Once again, Defendant Scott's explanation for the Trustee-Speech Restrictions shows how elastic their terms are. She accused trustees of "undermining the president, the administration, and decisions made by this board" and "spreading misinformation" through "podcasts, op-eds, [and] inappropriate email messages," and declared that such speech "has got to stop." Compl. ¶ 54, PageID.11. She justified the Trustee-Speech Restrictions as necessary because "our president is frustrated" and as a means "to foster an environment where [the president] can be successful in his leadership and his vision for Michigan State University." *Id.* ¶¶ 56–57, PageID.11–12. On Scott's own account, then, whether a trustee has "undermined" the administration turns on whether the President and the Board Chair object to what the trustee said.

That circular analysis and the unfettered discretion the Trustee-Speech Restrictions accordingly afford Board majorities invite selective application, thereby facilitating viewpoint discrimination. *Id.* ¶ 151, PageID.28. Such vague, content-based restrictions raise "special First Amendment concerns because of [their] obvious chilling effect on free speech," and they therefore violate the Constitution. *Reno v. ACLU*, 521 U.S. 844, 871–72 (1997).

D. Defendants cannot condition Balow's resources on assent to unconstitutional speech restrictions.

The requirement that, before Balow may receive resources necessary to fully function as a trustee, he must agree in writing to abide by vague, viewpoint-based Trustee-Speech Restrictions that violate the First and Fourteenth Amendments imposes an unconstitutional condition. *See Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 612 (2013) ("A predicate for any unconstitutional conditions claim is that the government could not have constitutionally ordered the person asserting the claim to do what it attempted to pressure that person into doing."); *see* Compl. ¶ 160, PageID.29. The Supreme Court has described the doctrine of unconstitutional conditions as "an overarching principle . . . that vindicates the Constitution's enumerated rights by preventing the government from coercing people into giving them up." *Koontz*, 570 U.S. at 604. Courts routinely apply the doctrine to invalidate unconstitutional restrictions on expression, *e.g.*, *Speiser v. Randall*, 357 U.S. 513, 528–29 (1958); *Rutan v. Republican Party of Ill.*, 497 U.S. 62, 74–79 (1990); *Bd. of Cnty. Comm'rs, Wabaunsee Cnty., Kan. v. Umbehr*, 518 U.S. 668, 674–75 (1996), and this Court should do the same.

In *Speiser*, for example, California offered veterans a property-tax exemption on the condition that each claimant sign a declaration stating that he did not advocate for the overthrow of the governments of the United States or California. 357 U.S. at 515. The Supreme Court held that denying the exemption on account of protected expression would penalize that expression and "produce a result which the State could not command directly." *Id.* at 526. The State, in other words, could not use a tax exemption to punish speech it had no power to regulate directly. And the Court has since applied the same principle to officials denying public employees promotions based on political allegiance, *Rutan*, 497 U.S. at 74–79, and to a county board terminating a critic's government contracts, *Umbehr*, 518 U.S. at 685–86.

In each of those cases, the government denied a benefit to penalize protected expression. The same is true here. The Board made Balow's access to resources needed to conduct university business, *see* Compl. ¶¶ 34, 37–38, 94, 98, 103–05, 109, PageID.7–8, 18–21—to which Michigan law and the Board's Bylaws entitle him to reimbursement, Mich. Comp. Laws § 390.103; Compl. ¶ 25, PageID.6—contingent on a signed pledge to abide by the Trustee-Speech Restrictions and then penalized him for refusing to sign.

Courts recognize that stripping an elected official of economic support based on his speech in this way is unconstitutional. In *Olmos v. City of South El Monte*, a city council voted to suspend the mayor's reimbursement for conferences and related travel after accusing her of disclosing closed-session information. No. CV 26-3344 PA (SPx), 2026 WL 2367669, at *1–*2 (C.D. Cal. July 7, 2026). The court held the suspension plausibly constituted a materially adverse action because it hindered the mayor's ability to perform her official duties, including attending conferences and events on the city's behalf. *Id.* at *7 (citing *Boquist v. Courtney*, 32 F.4th 764, 777 (9th Cir. 2022)). *Olmos* rejected the city's argument that the mayor had no right to the reimbursements because the governing statute and ordinance covered only "necessary" expenses. *Id.* And in *Temple v. Lower Elkhorn Natural Resources District*, the court preliminarily enjoined an elected board from suspending a director's out-of-district travel reimbursements as punishment for her statements to a local newspaper, holding that the suspension was materially adverse because a blanket travel ban inherently swept in "necessary" expenses the governing statute required the board to reimburse. No. 4:23-cv-3198, 2023 WL 8934916, at *4–*5, *8 (D. Neb. Dec. 27, 2023).

Even if Balow's expense reimbursement were purely discretionary rather than statutorily mandated, it would be beside the point—Defendants cannot withhold these resources for an *unconstitutional* reason. "[E]ven though a person has no 'right' to a valuable governmental benefit

and even though the government may deny him the benefit for any number of reasons, there are some reasons upon which the government may not rely." *Perry*, 408 U.S. at 597. In *Perry*, the plaintiff's lack of "a contractual or tenure 'right'" was "immaterial to his free speech claim." *Id.* at 597–98. So too here. Whatever the source of Balow's claim to the privileges of his office, the Board may not take them away because he refuses to give up his right to speak candidly to the public that elected him. Conditioning those resources on his silence is a textbook unconstitutional condition that violates the First Amendment. This Court should thus issue a preliminary injunction enjoining Defendants from withholding or conditioning any of Plaintiff's official resources, privileges, and opportunities on his signing the Statement of Acknowledgment.

II. Balow Is Suffering Irreparable Harm Because Defendants' Enforcement of the Ethics Code Chills His Speech and Impedes His Ability to Fulfill His Official Duties.

Balow is suffering irreparable harm because Defendants' enforcement of the Ethics Code infringes his First Amendment rights and impedes his ability to fulfill his official duties. Having shown likely success on the First Amendment claims, Balow is entitled to a preliminary injunction because the "Supreme Court has unequivocally admonished that even minimal infringement upon First Amendment values constitutes irreparable injury sufficient to justify injunctive relief." *Newsom v. Norris*, 888 F.2d 371, 378 (6th Cir. 1989) (citing *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). In the Sixth Circuit, "[w]hen constitutional rights are threatened or impaired, irreparable injury is presumed." *Boddy*, 178 F.4th at 277 (quoting *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012)).

Defendants cannot rebut that presumption on this record. *See Boddy*, 178 F.4th at 277 (defendants "failed to rebut the presumption of irreparable harm"). In cases involving elected officials, courts have not hesitated to find irreparable harm and grant preliminary relief when those

officials are excluded from engaging with constituents or otherwise chilled from speaking. *See Worthley v. Sch. Comm. of Gloucester*, 652 F. Supp. 3d 204, 214–15 (D. Mass. 2023) (granting preliminary injunction where elected official was excluded from school-sponsored events where he would engage with constituents); *see also Temple*, 2023 WL 8934916, at *6–*8 (granting preliminary relief to elected official stripped of reimbursements). This case is no different. Defendants have cut Balow off from events and occasions at which trustees ordinarily interact with students, faculty, alumni, donors, and the public, and each day the restrictions remain, he loses opportunities to interact with the individuals he was elected to represent. Balow cannot recover those opportunities after-the-fact, nor are they compensable through money damages. Compl. ¶ 122, PageID.23.

Without an injunction, the irreparable harm to Balow will only worsen. Defendants' refusal to support Balow's attendance will keep him from the Association of Governing Boards program on athletics governance scheduled for November 10–11, 2026, a program addressing the very issues Balow raised in his op-ed and podcast appearance. *Id.* ¶¶ 106–10, PageID.20–21. And Balow wishes to keep speaking about the President's leadership, the Board's governance, and athletics oversight, but he is deterred by the prospect of investigation and further sanctions, including referral for removal from office. Given Defendants' demonstrated willingness to punish him, Balow's fear of enforcement, *see id.* ¶ 118, PageID.22, is wholly reasonable, *see Speech First, Inc. v. Schlissel*, 939 F.3d 756, 764–65 (6th Cir. 2019) (explaining the threat of punishment objectively chills speech).

III. The Balance of Harms Favors a Preliminary Injunction Protecting Balow's First Amendment Rights.

The balance of harms favors Balow. In a First Amendment injunction analysis, "any potential harm to the parties or others largely depend[s] on the constitutionality of the state action."

ACLU Fund of Mich., 796 F.3d at 642 (citation modified). And "[n]o substantial harm [to the government] can be shown in the enjoinment of an unconstitutional policy." *Chabad of S. Ohio*, 363 F.3d at 436. Because, as explained above, the Ethics Code violates Balow's First Amendment rights, the balance of harms favors him. *See Defending Educ.*, 158 F.4th at 761.

IV. The Public Interest Favors Restoring an Elected Trustee's Voice in Public Debate.

The public interest favors enjoining the enforcement of an unconstitutional policy. "[T]he public interest is served by preventing the violation of constitutional rights." *Chabad of S. Ohio*, 363 F.3d at 436. Thus, "the public's interest . . . largely depend[s] on the constitutionality of the state action." *ACLU Fund of Mich.*, 796 F.3d at 642 (citation modified). "[I]t is always in the public interest to prevent the violation of a party's constitutional rights." *G & V Lounge, Inc. v. Mich. Liquor Control Comm'n*, 23 F.3d 1071, 1079 (6th Cir. 1994); *see also Dahl v. Bd. of Trs. of W. Mich. Univ.*, 15 F.4th 728, 736 (6th Cir. 2021). The public interest favors protecting Balow's core First Amendment right. And that interest extends to the voters who elected him, who are entitled to hear where their trustee stands and to hold him accountable for it. *See Bond*, 385 U.S. at 136–37. The Board cannot override that choice by punishing a trustee for speaking to the public. This Court should grant the requested injunction.

Finally, this Court should exercise its discretion to waive the requirement of a bond under Federal Rule of Civil Procedure 65(c). "[T]he rule in our circuit has long been that the district court possesses discretion over whether to require the posting of security." *Moltan Co. v. Eagle-Picher Indus., Inc.*, 55 F.3d 1171, 1176 (6th Cir. 1995) (affirming district court's decision to waive the security requirement).

CONCLUSION

For these reasons, Balow respectfully requests that this Court grant his motion and issue a preliminary injunction enjoining Defendants from enforcing the Trustee-Speech Restrictions against Balow and from withholding or conditioning any of his official resources, privileges, and opportunities on signing the Statement of Acknowledgment in the Ethics Code. Balow requests oral argument under LCivR 7.2(d).

DATED: November 4, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Local Civil Rule 7.2(b)(i), Counsel for Plaintiff certifies that this brief complies with the applicable word limit because it contains 6,905 words, excluding the portions of the brief exempted from the word count. The word count was generated using Microsoft Word version 16.112.3.

Pursuant to Local Civil Rule 7.1(d), Counsel for Plaintiff certifies that the parties conferred on November 2, 2026, at 10:00 AM EST and discussed the relief Plaintiff seeks. Defendants indicated that they oppose this motion for a preliminary injunction.

DATED: November 4, 2026

/s/ Greg H. Greubel
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