UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHGIAN
SOUTHERN DIVISION

CHRISTIAN KLEINJANS,

Plaintiff,

Case No. 1:24-CV-643

Hon. Hala Y. Jarbou

v.

M. SCOTT KORPAK, **MATTHEW SHANE**, and **ERIN MOORE**, in their official and personal capacities,

Defendants.

IMMEDIATE CONSIDERATION AND ORAL ARGUMENT REQUESTED

BRIEF IN SUPPORT OF PLAINTIFF CHRISTIAN KLEINJAN'S MOTION FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION AND EXPEDITED CONSIDERATION

Plaintiff Christian Kleinjans, through his counsel, respectfully requests that this Court enter a Temporary Restraining Order in this matter, pursuant to Federal Rule of Civil Procedure 65. In addition, Plaintiff asks for this matter to be set with an expedited briefing schedule, for a hearing, and for the entry of a Preliminary Injunction extending the same relief, as contemplated by the Rules. Plaintiff asks that this matter be set on an expedited briefing schedule and for a hearing no later than July 31, 2024, because of the irreparable harm from any delay as Plaintiff campaigns in this year's elections.

Plaintiff was elected to the Ottawa County Board of Commissioners (the Commission) as part of a recall election on May 7, 2024, and is currently running for a full term in the November election. Plaintiff ran as a Democrat and defeated a member of the far-right Republican majority on the Commission, affiliated with a group known as Ottawa Impact. When he was elected, Plaintiff worked for Michigan State University Extension (MSU Extension) in Ottawa County. Before he was even sworn in, however, Defendants terminated Plaintiff's employment because of political pressure from the Ottawa Impact majority on the Commission, in violation of Plaintiff's First Amendment rights.

Before Plaintiff won the recall, Defendants assured Plaintiff that his employment would not be affected if he were elected to the Commission. Plaintiff thus believed he would be campaigning for a full term while still employed with his MSU Extension salary and benefits, including health insurance and paid leave. Due to Defendants' unconstitutional actions, Plaintiff will now have to spend the campaign season searching for and possibly beginning a new job. Absent immediate action from this Corut, Plaintiff's ability to fully engage in his campaign will be severely hampered.

Accordingly, Plaintiff respectfully requests a Preliminary Injunction requiring that Defendants reinstate Plaintiff to his position until the resolution of his civil case. Without immediate relief, Plaintiff faces significant harm to his First

Amendment rights which cannot be adequately remedied with typical damages at the conclusion of civil litigation.

BACKGROUND

MSU Extension in Ottawa County

MSU Extension is an arm of Michigan State University (MSU) that partners with counties throughout the state to provide community-based education. (Compl. ¶ 11.) MSU Extension also partners with the Michigan Department of Health and Human Services to administer the Supplemental Nutrition Assistance Program Education (SNAP-Ed), a nutrition education and physical activity promotion program funded by the United States Department of Agriculture. (*Id.*) Before he was terminated, Plaintiff worked as a nutrition educator at MSU Extension in Ottawa County, and his position was funded by SNAP-ed. (*Id.* at ¶ 12.)

MSU Extension also receives funding through contracts with Ottawa County ("the County"). (Compl. ¶ 13.) Those contracts, which were previously approved by the Commission without controversy, have provided office space, utilities, clerical support, and 4-H program funding to Michigan Extension. (*Id.* at ¶¶ 13-14.) In late 2023, however, the Commission held up MSU Extension's contract in an effort to force MSU Extension to punish Plaintiff for his political activity. (*Id.* at ¶ 15.)

The OI Majority

In 2022, a new far-right political action committee, Ottawa Impact (OI), ran a slate of candidates for the Commission in the Republican primary. (Compl. ¶ 16.)

The OI-backed candidates, including Joe Moss and Allison Miedema, won a majority of seats on the Commission in the November 2022 election (the "OI Majority"). (*Id.* at ¶¶ 16-17 .) The new commissioners were sworn in on January 3, 2023, and they elected Moss, who founded OI, to serve as the Commission's Chairperson. (*Id.* at ¶¶ 16, 19.)

At its first meeting, the new OI Majority on the Commission voted to demote the Public Health Officer, Adeline Hambley, to interim health officer, in anticipation of firing her and appointing their political ally instead. (Compl. ¶ 20.) The Michigan Court of Appeals ultimately ruled that the termination was unlawful and that Hambley remained the County's Public Health Officer. (*Id.*) The Commission's attempt to illegally terminate Hambley, as well as other controversial actions, led to a political backlash against the OI Majority. (*Id.* at ¶ 21.)

In July 2023, a group of Ottawa County voters in District 2 began the process to recall Lucy Ebel, a member of the OI Majority and the District 2 Commissioner. (Compl. ¶ 21.) Shortly thereafter, Plaintiff told Defendant Erin Moore, his supervisor at the time, that he intended to run in the recall election against Ebel if the recall was certified for the ballot. (*Id.* at ¶ 24.) A group in District 2 gathered signatures in support of a recall of Ebel during the summer and fall of 2023. (*Id.* at ¶ 24.)

In September 2023, as part of the battle with Hambley, the Commission voted to slash the Public Health budget. (Compl. ¶ 22.) The budget cuts included

funds for the County coordinator for Ottawa Food, a partnership of local public and private entities that aims to provide access to healthy and affordable food. (*Id.*) On November 14, 2023, Ottawa Food issued a press release announcing that it would suspend operations due to the budget cuts. (*Id.* at ¶ 23.) Plaintiff was a member of the Ottawa Food Advisory Board, which voted on the decision to suspend operations, and his name was listed as the media contact on the press release. (*Id.*)

That same day, the group collecting signatures on the petition to recall Ebel announced that it had gathered the required number of signatures to put the recall on the May ballot. (Compl. ¶ 24.) Just prior to that announcement, the Ottawa County Democratic Party selected Plaintiff to run against Ebel in the recall election if it was certified, although they did not announce it publicly because the recall had not yet been certified. (*Id.*) On November 27, 2023, the Ottawa County Clerk certified that there were sufficient valid signatures to place the recall of Ebel on the May ballot. (*Id.* at ¶ 25.) On December 6, 2023, Plaintiff resigned from the Ottawa Food Advisory Board and announced that he would be running against Ebel in the May election as a Democrat. (*Id.* at ¶ 26.)

The OI Majority's effort to punish Plaintiff through his MSU Extension employment

On November 17, 2023—just three days after the announcements about Ottawa Food and the petition signatures—County Administrator John Gibbs told James Kelly, then the interim district director for MSU Extension in Ottawa County, that the contract with the Extension had been pulled from the

Commission's consent agenda for the next meeting, scheduled for November 21, 2024. (Compl. ¶ 27.) The contract had been placed on the consent agenda – typically an indicator that it is expected to pass without discussion – after it passed through the relevant subcommittee unanimously. (*Id.*) Kelly and Defendant Korpak, who was starting his new position as the district director for MSU Extension in Ottawa County, attended the November 21 Commission meeting. (*Id.* at ¶ 28.) Kelly spoke in public comment and stated that he and Defendant Korpak had a meeting scheduled with "commissioners" for December 7, 2023, but did not say which commissioners or provide any further details about the meeting. (*Id.* at ¶ 28.)

On November 27, 2023, Plaintiff met with Defendant Moore, who raised the issue of Plaintiff's candidacy and the effect on MSU Extension's contract with the County. (Compl. ¶ 29.) Moore told Plaintiff that, if it were any other county but Ottawa, there would not be a risk of MSU Extension being defunded because of Plaintiff's political activities. (*Id.* at ¶ 29.) However, Moore said that the OI Majority sought vengeance and would seek to defund anyone it viewed as "against" it. (*Id.*) Moore expressed her view that whoever controlled the Commission "controlled" MSU Extension in Ottawa County. (*Id.*) Moore was clear that Plaintiff running for county office while working for MSU Extension would not have been a problem if "it were any other county" other than Ottawa. (*Id.*)

Moore never told Plaintiff that there was any possibility that he would lose his job if he won the recall election. (Compl. ¶ 30.) On the contrary, Moore seemed

to assume that Plaintiff would continue working for MSU Extension if elected, telling him only the obvious point that would have to abstain on any votes related to MSU Extension if he won the Commission seat. (*Id.*) Moore did express concern, however, that the OI Majority might retaliate against Plaintiff and/or MSU Extension even if Plaintiff abstained from such votes due to conflict of interest. (*Id.*)

On December 7, 2023, Kelly and Defendant Korpak attended the previously scheduled meeting with Commissioners Moss and Miedema. (Compl. ¶ 31.) Defendant Shane, who is the Associate Director of MSU Extension, later described the meeting to Plaintiff. (*Id.* at ¶ 32.) Shane told Plaintiff that Shane understood the intent of the meeting was to provide an overview of MSU Extension's programs to Miedema as the Commission liaison and to discuss the contract between MSU Extension and the County. (*Id.*) As Shane described, however, Moss and Miedema soon pivoted the conversation to Plaintiff's candidacy and his work with MSU Extension. (*Id.*) According to Shane, Kelly and Defendant Korpak explained to Moss and Miedema that MSU Extension's Handbook policies did not prohibit Plaintiff from working there and campaigning for a seat on the Commission, and that Plaintiff had rights as a private citizen to run for office. (*Id.*) Moss and Miedema expressed their dislike and disagreement with those policies. (*Id.*)

As Defendant Shane reported to Plaintiff, Moss and Miedema asked that MSU Extension officials pull Plaintiff out of work in Ottawa County even during his campaign for office in the recall election and said that the MSU Extension contract

would not be approved until that occurred. (Compl. ¶ 33.) Shane told Plaintiff that the contract renewal "…for Ottawa County will be on hold indefinitely, or at least for the foreseeable future, and not make it on a board agenda to have further discussion, which obviously has impact on our 4-H and agriculture programs." (*Id.*) Shane also reported to Plaintiff that Moss and Miedema insinuated that MSU Extension's office space in Ottawa County property would be in jeopardy. (*Id.* at ¶ 34.) As Shane said to Plaintiff, "There was also some mention in that meeting about how highly desirable our Ottawa County MSU Extension space is in that building, and that there are other departments that certainly would benefit from having access to that space as they look at restructuring some of their other departments and forming other departments and offices within the county." (*Id.*)

Defendant Shane assured Plaintiff that – despite the threats from Moss and Miedema – Plaintiff was not at risk of losing his job. (Compl. ¶ 35.) Shane made clear to Plaintiff that he was not in violation of MSU Extension's policies, as Shane said he had confirmed in discussions with MSU's General Counsel and Human Resources. (*Id.* at ¶¶ 32, 35.) Shane told Plaintiff that Moss and Miedema wanted a response from MSU Extension by the following week about what it intended to do regarding Plaintiff's employment, but that MSU Extension was delaying that response. (*Id.* at ¶ 35.) That was the last discussion that Plaintiff had with Defendants about his employment until after the recall election in May 2024. (*Id.* at ¶ 36.)

On May 7, 2024, Plaintiff won the recall election, becoming only the second Democrat ever to win a seat on the Commission. (Compl. ¶ 38.) On May 23, 2024, Defendant Shane initiated a meeting with Plaintiff, at which Defendants Moore and Korpak were also present. (*Id.* at ¶ 39.) Shane told Plaintiff that he was a "valued" employee, but that he could not continue to work for MSU Extension while he was a County Commissioner because it would violate the MSU Extension Handbook – the same Handbook that Shane told Moss and Miedema did not prevent Plaintiff from holding both roles. (*Id.*) Shane also told Plaintiff that being in both roles would violate a state law prohibiting the holding of more than one "incompatible" public offices. (*Id.*) Defendants proposed a plan whereby Plaintiff would be on unpaid leave through December 31, 2024 and would be terminated if he won the November election. (*Id.* at ¶ 40.) Defendants told Plaintiff that he would be permanently fired immediately if he did not agree to that plan. (*Id.*)

When Plaintiff asked why he could not simply take a transfer to another county if MSU Extension was concerned about a conflict of interest with Ottawa County, Defendant Shane told him that he was "oversimplifying" the alleged problem. (Compl. ¶ 41.) Shane said:

> Because Extension is a statewide, county-wide organization that has many partnerships in Ottawa County and connections that you work with that have some connection to Ottawa County government … there's a lot of implications of how Extension does work in the county. It's not necessarily just about one contract and one budget vote. That's not where the university sees the conflict. Inherently, that's part of it, but it's not the whole of it. … Because of the nature of the work that

> we do within the county, it's impossible to separate the work of Extension and the role of county commissioner."

(*Id.*)

After the meeting, Defendant Korpak sent Plaintiff a letter summarizing their new position. (Ex. 1, May 23, 2024 Letter.) The letter stated that Plaintiff's position with MSU Extension conflicted with his position as a County Commissioner, that MSU's General Counsel had determined that Plaintiff was holding incompatible offices in violation of Michigan's Incompatible Public Offices Act, Mich. Comp. Laws § 15.181 *et seq.*, and that Plaintiff could not transfer to another county or recuse himself from votes related to MSU Extension because "the conflict" would still exist due to "numerous connections between MSU Extension and Ottawa County partners." (*Id.*) The letter contained a note at the end stating that "[w]hile not specifically noted in today's meeting, there is a distinct difference between a 'conflict of interest' and how 'incompatible office' is defined and determined." (*Id.*)

By May 23, 2024, the filing deadline for a candidate to run for county office in the August 2024 primary had already passed. (Compl. ¶ 43.) If Plaintiff had withdrawn from the race to maintain his employment, there would have been no Democrat on the ballot in the District 2 Commission election, handing the seat to whoever won the Republican primary, which includes the recalled Ebel. (*Id.*) Plaintiff ultimately refused to agree to remain on unpaid leave, and Defendants permanently terminated Plaintiff's employment effective June 6, 2024. (*Id.* at ¶ 45.)

The same day, June 6, Interim County Administrator Jon Anderson emailed Plaintiff, saying, "Hi Chris – hope all is well and you're settling in. I had a reminder from my notes to check with you about your position with MSU. I do not have any personal knowledge about a potential conflict of interest, but I recall there was a question about a potential conflict of interest when you were elected. If there is anything you need, please reach out." (Compl. ¶ 46.) Anderson, who has no experience in being a county administrator, is the OI-endorsed candidate for County Sheriff in the November 2024 election. (*Id.*) There has been no mention at a public meeting about a conflict of interest with Plaintiff's board service and his job with MSU Extension. (*Id.*) The most likely reason that Anderson would have raised this issue with Plaintiff is because of private direction from the OI Majority related to Plaintiff's job. (*Id.*)

At the time of his termination, Plaintiff had worked for MSU Extension for a decade and accrued over 200 hours of paid leave, which he had planned to use to campaign over the coming months. (Ex. 2, Decl. of Christian Kleinjans, ¶ 2.) Plaintiff's termination not only resulted in the loss of his salary, but also the loss of health insurance for his family. (*Id.* at ¶ 4.) Plaintiff cannot afford to be without a salary and health insurance until November, and thus will have to spend time – which should be used campaigning – searching for new employment. (*Id.* at ¶ 3.) If Plaintiff finds new employment, he will not have accrued paid leave and likely will not be able to take time off to campaign before the November election. (*Id.*)

LEGAL STANDARD

"The purpose of a preliminary injunction is to preserve the status quo until a trial on the merits." *S. Glazer's Distribs. of Ohio, LLC v. Great Lakes Brewing Co.*, 860 F.3d 844, 848 (6th Cir. 2017). "Because they necessarily happen before the parties have had an opportunity to fully develop the record, the movant is not required to prove his case in full at a preliminary injunction hearing." *Id.* (internal quotations omitted). To obtain injunctive relief, Plaintiff must show he is "threatened with a legally cognizable irreparable injury for which there is no adequate legal remedy." *Essroc Cement Corp. v. CPRIN, Inc.*, 593 F. Supp. 2d 962, 967 (W.D. Mich. 2008). In evaluating a motion for preliminary injunction, the Court reviews: (1) whether the movant has a strong likelihood of success on the merits; (2) whether the movant would suffer irreparable injury without the injunction; (3) whether issuance of the injunction would cause substantial harm to others; and (4) whether the public interest would be served by issuance of the injunction. *Planet Aid v. City of St. Johns*, 782 F.3d 318, 323 (6th Cir. 2015).

In cases involving alleged violations of constitution rights, however, "the first factor is typically dispositive." *Vitolo v. Guzman*, 999 F.3d 353, 360 (6th Cir. 2021). Courts focus on the first factor because "irreparable injury is presumed" when a plaintiff's constitutional rights are impaired. *Id.* Moreover, "no cognizable harm results from stopping unconstitutional conduct," and it is "always in the public

interest to prevent violation of a party's constitutional rights." *Id.* (internal quotation marks and citations omitted).

ARGUMENT

Plaintiff will be engaged in a vigorous campaign until the November election as the Democratic candidate for Ottawa County Commissioner in District 2. MSU Extension's decision to bow to political pressure from the OI majority, and to terminate Plaintiff's employment based on his political beliefs and activities, means that Plaintiff cannot campaign for election with the salary and benefits that he previously earned. Without immediate action from this Court, Plaintiff will have to take time off the campaign trail to search for new employment and possibly begin a new job without the benefit of any accrued leave.

Defendants' actions impact far more Plaintiff's political campaign, however. The OI majority has sent a message that has resonated throughout Ottawa County – those who oppose OI will face retaliation, and it will be severe. Unless this Court acts quickly, not only will Plaintiff suffer a loss of his First Amendment rights for which there is no adequate remedy, but there will also continue to be a significant chilling effect on political speech throughout Ottawa County. Accordingly, Plaintiff asks for an immediate TRO, extended to a Preliminary Injunction after an expedited briefing and hearing schedule.

A. Plaintiff has shown likelihood of success on the merits.

A plaintiff asserting a claim for First Amendment retaliation must prove: "(1) the plaintiff engaged in protected conduct; (2) an adverse action was taken against the plaintiff that would deter a person of ordinary firmness from continuing to engage in that conduct; and (3) there is a causal connection between elements one and two – that is, the adverse action was motivated at least in part by the plaintiff's protected conduct." *Thaddeus-X v. Blatter*, 175 F.3d 378, 394 (6th Cir. 1999) (en banc). The causation analysis "focuses on whether the adverse employment action was motivated in substantial part by the plaintiff's constitutionally protected activity." *Sowards v. Loudon Cty.*, 203 F.3d 426, 431 (6th Cir. 2000). Once a plaintiff meets his burden, the burden shifts to the defendants to prove by a preponderance of the evidence that they would have made the same employment decision absent the protected conduct. *Id.*

Plaintiff has clearly satisfied the first two elements of his claim. Political speech, belief, and association are at the core of activities protected by the First Amendment. *See Lichtenstein v. Hargett*, 83 F.4th 575, 583 (6th Cir. 2023); *Sowards v. Loudon Cty.*, 203 F.3d 426, 432 (6th Cir. 2000). Similarly, running for political office is a "paradagmatic example[] of protected speech" and represents the kind of "core political speech" that is the "most jealously guarded form of express under the First Amendment." *Kubala v. Smith*, 984 F.3d 1132, 1139 (6th Cir. 2021) (internal quotation marks and citations omitted). Moreover, Plaintiff's termination

represents "the quintessential example of an adverse employment action." *Ehrlich v. Kovack*, 710 F. App'x 646, 650 (6th Cir. 2017).

There is also ample evidence that Defendants' decision to terminate Plaintiff's employment was motivated by his political activity, namely his decision to oppose OI and run against Ebel as a Democrat. By Defendants' own admission, Plaintiff was a valued employee and was fired for the sole reason that he was successful in his bid to unseat Ebel. Those admissions are sufficient on their own to demonstrate causation.

Defendants' admissions are not the only evidence that their decision was based on Plaintiff's protected conduct. Moss and Miedema pressured Defendants to terminate Plaintiff because he was running against Ebel – even before he won the seat – and threatened to withhold funding and office space from MSU Extension if Plaintiff remained an employee. Defendant Moore was clear in her belief that the OI majority would seek vengeance against its perceived political opponents, and that MSU Extension could suffer political payback from Plaintiff's decision to run for office. Defendant Shane similarly believed that MSU Extension's office space and funding were at risk because of Plaintiff's political activities. Although Defendants initially assured Plaintiff that they would not bow to pressure from his political opponents, there is every reason to believe that the pressure campaign ultimately succeeded. Thus, Plaintiff has satisfied his burden of demonstrating a causal connection between his political activity and termination.

Moreover, Defendants cannot demonstrate that they would have made the same decision absent Plaintiff's protected conduct. On the contrary, the facts make clear that Defendants' purported reasons for terminating Plaintiff were not the actual basis for Defendants' decision. MSU Extension knew of Plaintiff's intent to run for the Commission for the better part of a year before the recall election, yet no one ever told him that he could not continue his employment if he won the seat. On the contrary, Defendants told Plaintiff that there was no issue with him serving in both roles. Defendant Moore told Plaintiff that he would have to abstain from votes related to MSU Extension if he won the recall election, thus assuming he would serve in both roles. Defendant Shane assured Plaintiff that he was not at risk of losing his job – despite pressure from Moss and Miedema – because Plaintiff had the right to run for office and his activities complied with MSU Extension's policies, as confirmed by MSU's general counsel.

Defendants' prompt reversal of its position after Plaintiff defeated Ebel demonstrates that its purported reasons were pretextual. Before Plaintiff was even sworn in as a member of the Commission, Defendants informed him that – contrary to everything they had told him up to that point – he could not serve as both an employee of MSU Extension and a member of the Commission. Defendants' statements in support of that decision contradicted everything they had previously told Plaintiff about his decision to run for office while an employee.

For the first time, Defendants claimed that the MSU Extension Handbook prevented Plaintiff from serving in both roles – though Defendants had previously told Moss, Miedema, and Plaintiff exactly the opposite. Defendants' other stated reasons for its decisions are simply not credible. Defendants told Plaintiff that he could not serve on the Commission and as an MSU Extension employee because these were incompatible offices and that there was an inherent conflict. As Defendants know, however, conflict of interest and incompatible offices are completely different issues that require different solutions – neither of which is immediate termination. Defendants were well aware of a potential conflict from the time Plaintiff revealed his intention to run, and Defendant Moore had correctly informed Plaintiff that issue could be solved by Plaintiff abstaining from votes related to MSU Extension if he won the seat. Moreover, no one had ever previously raised the possibility of incompatible offices, most likely because it is not applicable. Even if the offices were incompatible, however, the solution was not for Defendants to terminate Plaintiff's employment immediately. Defendants' conflation of these two very different issues, combined with the fact that termination is not a solution for either issue, demonstrates that Defendants' stated reasons for terminating Plaintiff were pretextual.

Defendants should have been well aware of the difference between conflict of interest and incompatible offices, as well as the appropriate response for each. As a statewide expert on county government, MSU Extension runs a "school" for

new county commissioners and publishes articles and a textbook on issues related to county government. As one MSU Extension article explained, conflict of interest and incompatible office are "extremely different" and require "unique responses." Ben Neumann, *Incompatible office: what does it mean and how does it differ from a conflict of interest?,* MSU EXTENSION, March 18, 2021, https://www.canr.msu.edu/news/incompatible_office_what_does_it_mean_conflict_of_interest. For that reason, "it is important for officials to recognize the differences between the two." *Id.* A conflict of interest involves a decision by a member of a public body that impacts his personal finances, family, or real property. *Id.* In contrast, an incompatible public office occurs when someone holds two public positions and one is subordinate to the other, one is supervisory of the other, or there is a breach of duty of one public office resulting from the performance of the duties of the other public office.[1] *Id.*

Although conflict of interest and incompatible offices require different responses, neither of those responses is the immediate termination of a public employee. In the case of a conflict of interest, MSU Extension advises that the "[b]est practice" is for a public official to "announce the conflict publicly and leave

[1] It is difficult to conceive of any credible argument that Plaintiff's employment could constitute an incompatible public office. The MSU Extension textbook includes many examples of incompatible "public offices," such as the office of County Commissioner and City Treasurer. John Amrhein, et al., *Guide to Michigan County Government*, 3-24 (5th ed. 2019), excerpt attached as Ex. 3, Plaintiff's position at MSU Extension is not a "public office" like the examples listed; rather, Plaintiff was merely an employee of a public entity.

the meeting room while the issue is discussed and decided." Neumann, *supra*. The MSU Extension textbook, which discusses conflicts of interest in more depth, confirms that conflicts are handled through disclosure to the public body, and does not even mention termination as a possible option. John Amrhein, et al., *Guide to Michigan County Government*, 3-24 (5th ed. 2019), excerpt attached as Ex. 3. In the case of incompatible public offices, if an individual who holds two public offices refuses to give up one of the offices, "the state attorney general or the county prosecutor may file an official complaint with the Circuit Court to get an order to end the dispute." *Id.* at 3-23.

Despite MSU Extension's expertise on the subject, Defendants conflated conflict of interest and incompatible offices in their attempt to justify Plaintiff's termination. The letter summarizing the May 23 meeting acknowledges that fact, stating that "[w]hile not specifically noted in today's meeting, there is a distinct difference between a 'conflict of interest' and how 'incompatible office' is defined and determined." (Ex. 1.) Although acknowledging the problem, Defendants fail to explain why these issues were conflated or how Plaintiff's employment could implicate these two very different issues.

Even more importantly, however, Defendants failed to follow MSU Extension's own prescribed best practices for dealing with either of issues. No one filed an action in circuit court to determine if Michigan's incompatible offices statute applied, nor is there any indication that MSU Extension even suggested

that the County file one. MSU Extension failed to even request an opinion from the Attorney General on the issue, as its own textbook suggested, *Guide to Michigan County Government* at 3-25, probably because the Attorney General would conclude that Plaintiff's employment did not constitute a "public office." Finally, as Defendants were well aware, a conflict of interest should be handled through disclosure to the public body – not by firing an employee of an entity who has a contract that gives rise to the conflict.

All the evidence points to the fact that Defendants terminated Plaintiff because of his political activities and association, and that Defendants' stated reasons for their decision were pretextual. As soon as Plaintiff won the recall election, Defendants contradicted everything they had told him previously about his ability to be a member of the Commission while being employed by MSU Extension. Moreover, Defendants cited two entirely different reasons for this termination – conflicts of interest and incompatible offices – but failed to recognize that termination is not a remedy for either of those issues. Accordingly, Plaintiff has satisfied the elements of his First Amendment claim and demonstrated that he is likely to succeed on the merits.

B. Plaintiff will suffer irreparable harm without immediate relief.

"To be granted an injunction, the plaintiff must demonstrate, by clear and convincing evidence, actual irreparable harm or the existence of an actual threat of such injury." *Apex Tool Grp.*, 119 F. Supp. 3d at 609. "An injury is irreparable if it is

not fully compensable by monetary damages." *S. Glazer's Distribs. of Ohio*, 860 F.3d at 852. Although monetary damages may compensate an individual who is terminated in an ordinary case of discharge, a claim for retaliatory discharge in violation of the First Amendment is different. *Conn v. Bd. of Educ.*, 586 F. Supp. 2d 852, 865 (E.D. Mich. 2008). "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). "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion of Brennan, J.). Thus, "[a]n award of monetary damages and reinstatement this position after a trial on the merits is not an adequate remedy for a deprivation of First Amendment rights." *Milliron v. Louisville & Jefferson Cty. Metro. Sewer Dist.*, 867 F. Supp. 559, 564 (W.D. Ky. 1994). *See also Vitolo v. Guzman*, 999 F.3d at 360 (explaining that "irreparable injury is presumed" when a plaintiff's constitutional rights are impaired).

The Sixth Circuit has made clear that a plaintiff may obtain injunctive relief for reinstatement following a retaliatory termination. *Newsom*, 888 F.2d at 378-79. In *Newsom*, the Sixth Circuit affirmed a district court's injunction ordering reinstatement of prison inmates who asserted that they were not reappointed to their prison jobs because they engaged in protected conduct. *Id.* at 382. The Sixth Circuit rejected an argument that injunctive relief was not available following a

termination, explaining that an individual who has been subject to retaliation for exercising his First Amendment rights "continues to suffer irreparable injury even after termination of some tangible benefit such as employment." *Id.* at 378. Moreover, "stringent protection of First Amendment rights" was necessary because of "the intangible nature or the benefits flowing from the exercise of those rights[,]" as well as "the fear that, if those rights are not jealously safeguarded, persons will be deterred, even if imperceptibly, from exercising those rights in the future." *Id.* (quoting *Cate v. Oldham*, 707 F.2d 1176, 1188-89 (11th Cir. 1983)).

An opinion from the Eastern District of Michigan applying *Newsom* is instructive. *See Conn*, 586 F. Supp. 2d at 865. In *Conn*, a school district terminated two public school teachers for their participation in a protest, but the termination decision was put on hold after the plaintiffs challenged the school board's action in a state administrative body. *Id.* While the administrative process played out, the plaintiffs were placed on paid administrative leave. *Id.* The plaintiff argues that their termination constituted First Amendment retaliation and sought a preliminary injunction ordering reinstatement. *Id.* The court rejected the defendants' argument that there was no irreparable injury because the plaintiffs were receiving their full salary and benefits, explaining that the plaintiffs would suffer an irreparable injury due to the loss of their First Amendment freedoms. *Id.*

Because demonstrated a likelihood of success on the merits of his First Amendment claim, the Court may presume an irreparable injury. Because the loss

of First Amendment freedoms constitutes an irreparable injury that may not be compensated by money damages, this factor weighs heavily in favor of granting a preliminary injunction.

C. The balance of harms weights in favor of granting immediate relief.

This factor is presumed to weigh in favor of Plaintiff because he has demonstrated a likelihood of success on the merits. As the Sixth Circuit has recognized, "no cognizable harm results from stopping unconstitutional conduct." *Vitolo*, 999 F.3d at 360. While Defendants will not suffer harm from an injunction, Plaintiff will suffer significant harm if he is forced to wait until litigation concludes to obtain relief. Not only will Plaintiff continue to have his constitutional rights impaired, but his campaign for office will suffer as a result. Unless he is granted immediate relief, Plaintiff will be forced to take time away from his campaign to focus on finding employment.

D. The public interest lies in granting a preliminary injunction.

Because Plaintiff has demonstrated a likelihood of success on the merits, this factor is also presumed in Plaintiff's favor. *Vitolo*, 999 F.3d at 360. As the Sixth Circuit has explained, it is "always in the public interest to prevent violation of a party's constitutional rights." *Id.* The public interest is particularly pronounced in the case of First Amendment violations. First Amendment rights must be stringently protected because of the possibility that, if not "jealously safeguarded," people may be deterred from exercising those rights in the future. *Newsom*, 888

F.2d at 379. Thus, the public interest clearly weighs in favor of granting preliminary relief in the form of a TRO and PI, and preventing a chilling of political speech and opposition to the OI majority.

CONCLUSION

Accordingly, Plaintiff respectfully requests the Court enter a TRO, set an expedited briefing schedule, and schedule the matter for hearing on his motion for Preliminary Injunction at the earliest possible opportunity so that he can focus on his campaign for the Commission. Plaintiff asks that the TRO and Preliminary Injunction require that Defendants reinstate Plaintiff's employment until the resolution of his civil case.

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Dated: July 3, 2024

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