IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

LAILA DAMES, EMILY ROGERS, KATHRYN NEWMAN, MATHANGI MOHANARAJAH, and ANSHU SHAH,[1]	)	
Plaintiffs,	)	
v.	)	1:25cv191
LEE ROBERTS, AMY JOHNSON, DESIREE RIECKENBERG, BRIAN JAMES, RASHEEM HOLLAND, LAWRENCE TWIDDY, J. KALA BULLETT, and AVERY COOK, *in their individual and official capacities*, and NICK LYNCH, N.G. BROWN, FNU LEE, and DESTINY WYLIE, *in their individual capacities*,	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

THOMAS D. SCHROEDER, District Judge.

Plaintiffs challenge on constitutional grounds their ban from the University of North Carolina at Chapel Hill ("UNC-CH") campus following arrest for trespass. Before the court is the motion to dismiss filed by Defendants Lee Roberts, Amy Johnson, Desirée Rieckenberg, Brian James, Rasheem Holland, Lawrence Twiddy, J. Kala Bullett, Avery Cook, Nick Lynch, N.G. Brown, "FNU" Lee, and Destiny Wylie.[2] (Doc. 17.) Plaintiffs Laila Dames, Emily Rogers,

[1] Plaintiff Anshu Shah voluntarily dismissed all his claims without prejudice. (Doc. 26.)

[2] For ease of reference, the court adopts the parties' categorization of the Defendants. Thus, Chancellor Lee Roberts, Vice Chancellor Amy Johnson, Dean of Students Desirée Rieckenberg, and Chief Brian James

Kathryn Newman, and Mathangi Mohanarajah allege several violations of the United States Constitution pursuant to 42 U.S.C. § 1983, the North Carolina Constitution, and North Carolina tort law. (Doc. 10.) Defendants seek to dismiss Plaintiffs' claims on grounds of sovereign and qualified immunity and failure to state a claim pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. (Docs. 17, 18.) Plaintiffs responded (Doc. 23), and Defendants replied (Doc. 27). For the reasons that follow, Defendants' motion to dismiss will be granted in part and denied in part.

I. BACKGROUND

The facts, taken as true from Plaintiffs' verified amended complaint and attached exhibits for the purposes of Defendants' motion to dismiss, show the following:

On the morning of Friday, April 26, 2024, a group of protesters erected approximately twenty-five tents of various sizes on Polk Place, an outdoor grassy quad on the UNC-CH campus surrounded by academic and administrative buildings, and engaged in a demonstration "to express solidarity with the nationwide movement across university campuses for Palestinian lives and liberation." (Doc. 10 ¶¶ 1-2, 58.) These protesters eventually

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will be referred to as the "University Defendants." Captain Rasheem Holland, Captain Lawrence Twiddy, Jennifer Spangenberg, J. Kala Bullett, and Avery Cook will be referred to as the "EEAC Defendants." And Officers Nick Lynch, "FNU" Lee, N.G. Brown, and Destiny Wylie will be referred to as the "Officer Defendants."

included Plaintiffs Mohanarajah, a former UNC-CH student on a leave of absence; Rogers, a professor at Duke University; Dames, a student at Duke University; and Newman, a student at Meredith College. (Id. ¶¶ 1, 12-15.) None of Plaintiffs organized the encampment or exercised any authority over the conduct of the other protesters. (Id. ¶¶ 59, 100-01, 129-30, 151-52, 175, 180.)

"As a state institution, outdoor public spaces on [UNC-CH's] campus are open to all regardless of their views, as long as they follow the law and University policies." (Id. ¶ 40 n.5; Doc. 10-1 at 1.) UNC-CH policy permits the assembly and gathering of non-university-affiliated groups at Polk Place without prior approval. (Doc. 10 ¶ 43.) Polk Place and the surrounding buildings have historically served as a favored venue for student protest movements, including the anti-Vietnam War protests, the late 1960s food worker strikes, and the 1986 anti-apartheid protest. (Id. ¶¶ 256-97.)

Nevertheless, UNC-CH's Freedom of Speech and Expression Standard notes that UNC-CH may restrict speech and expression "that materially and substantially disrupts the functioning of the University." (Id. ¶ 39 & n.4.) Section II.D.2 of UNC-CH's Facilities Use Policy prohibits the erection of temporary structures (like tents) on Polk Place unless the structures' "use is approved by the applicable University official in connection with the scheduling process." (See id. ¶ 43 n.8; Doc. 17-1 at 3.)

Further, the Policy on Demonstrative Events provides that UNC-CH students, faculty, staff, and visitors who occupy an outdoor space without a posted closure time (like Polk Place) "will be subject to arrest and trespass if they are asked to leave and fail to do so." (See id. ¶ 45 n.10.) Plaintiffs admit that the protesters were made aware that the tents violated UNC-CH policy, although they contend that nobody ever informed Plaintiffs directly. (Doc. 10 ¶¶ 87-89.)

The protests continued throughout the weekend of April 27 and 28, drawing members of the Students for Justice in Palestine chapters from UNC-CH, Duke University, and Meredith College. (Id. ¶¶ 62-63.) At its largest, the encampment included around two hundred protesters over the weekend; however, only about forty protesters remained during the nighttime hours. (Id. ¶¶ 64-65.)

On April 30, at approximately 5:30 a.m., UNC-CH administrators arrived at the encampment and disseminated copies of a letter to the protesters signed by UNC-CH Chancellor Lee Roberts. (Id. ¶ 81.) The letter referenced the protesters' refusal to comply with UNC-CH policies, including the inappropriate overnight trespass of campus buildings. (Doc. 10-2.) The letter further explained UNC-CH's concerns over the safety of the campus community as well as the potential disruption of UNC-CH's educational environment, particularly considering the upcoming final exams and commencement. (Id.) The letter demanded

that the protesters depart from Polk Place by 6:00 a.m. and warned that failure to comply would result in arrest, suspension from campus, and even expulsion from UNC-CH. (Id.) Plaintiffs had not yet personally received the letter at 6:00 a.m. (Doc. 10 ¶ 90.)

Plaintiffs Rogers, Dames, and Newman awoke to someone conveying that police would begin arresting protesters who did not depart Polk Place by 6:00 a.m. (Id. ¶¶ 109, 138, 160.) Plaintiffs Rogers, Dames, and Newman also witnessed the police tearing down the encampment and arresting protesters. (Id. ¶¶ 110, 139, 161.) Nevertheless, Plaintiffs all remained at Polk Place after the 6:00 a.m. deadline, and Plaintiffs Rogers, Dames, and Newman were arrested and cited for criminal trespass. (Id. ¶¶ 116, 140, 162.) Plaintiff Mohanarajah was detained and subsequently suspended from UNC-CH. (Id. ¶¶ 184-86.) Protesters who departed Polk Place before the 6:00 a.m. deadline, however, were not detained or arrested. (See id. ¶ 213.) Moreover, on April 30 and in the days following the removal of the encampment, UNC-CH continued to permit protesters to gather and "show solidarity with Palestinian lives and liberation." (Id. ¶¶ 120, 146, 169.)

Plaintiffs Rogers, Dames, and Newman each sustained injuries during their arrests. Specifically, after Plaintiff Rogers asked Officer Nick Lynch whether she could keep her cane, Plaintiff Rogers alleges that Officer "FNU" Lee exclaimed, "F*** your cane," before grabbing her cane and throwing her to the ground. (Id.

¶¶ 112-13.) Officer Lee then ordered Officer Lynch to zip-tie her hands, and Plaintiff Rogers suffered a superior labrum tear in her left shoulder and bicep tendonitis. (Id. ¶¶ 113-14.) Because of her injuries, Plaintiff Rogers could not drive for several days and had to attend physical therapy and wear a sling for several weeks. (Id. ¶ 115.) Plaintiff Dames, meanwhile, suffered bruising and lacerations on her wrists during her arrest by Officer Destiny Wylie, and Plaintiff Newman suffered a concussion during her arrest by Officer N.G. Brown. (Id. ¶¶ 141, 162-63.)

That same day, Plaintiffs Dames, Newman, and Mohanarajah were issued a UNC-CH Trespass Notice. (See id. ¶¶ 143, 165.) Plaintiff Rogers, meanwhile, received her Trespass Notice on May 3, 2024. (Id. ¶ 118.) The Trespass Notice, which appears to be a form UNC-CH document, contains an express statement that it had been issued because of each Plaintiff's refusal to leave Polk Place after being ordered to do so. (See, e.g., Doc. 10-7.) As a consequence, the Trespass Notice states that each would be banned from the UNC-CH campus. (Id.; Doc. 10 ¶¶ 143, 165.) More specifically, the Trespass Notice states, each cited individual is "prohibited from entering upon . . . [a]ny and all property owned or controlled by the [UNC-CH]." (Doc. 10-7.) Excepted from the bans are travel on public streets through campus, receiving emergency treatment at UNC-CH Hospital, and, with prior notice, attending the healthcare facilities at UNC-CH. (Id.) Each ban contains a notice of the

recipient's right to submit a written appeal to UNC-CH Chief of Police Brian James within ten days. (Doc. 10 ¶ 218.) Finally, the campus bans are "valid indefinitely unless otherwise modified by the [UNC-CH] Police Department"; however, "[a]fter a period of no less than twenty-four (24) months, [Plaintiffs] may seek relief" from Chief James. (Doc. 10-7.)

Plaintiffs appealed their campus bans, and Chief James convened a meeting with Plaintiffs and their legal counsel on July 5, 2024. (Doc. 10 ¶¶ 219, 221-22.) Chief James listened to the arguments from Plaintiffs' counsel but did not identify any witnesses or other evidence. (Id. ¶ 225.) On August 12, 2024, Chief James issued each Plaintiff an individualized Final Decision letter, declining to lift the campus bans. (Id. ¶¶ 231-32; see Doc. 10-8.) The letters reiterated that Plaintiffs had been ordered to depart Polk Place and ultimately banned from campus because of violations of UNC-CH's Facilities Use Policy along with "other safety and security concerns." (See Doc. 10-8.)

On November 5, 2024, UNC-CH's Emergency Evaluation and Action Committee ("EEAC") lifted Plaintiff Mohanarajah's suspension. (Doc. 10 ¶ 239; see Doc. 10-9.) Chief James then modified her campus ban to allow her return to campus on a case-by-case basis if she notified him beforehand of her specific intended destinations. (Doc. 10 ¶ 240.) In January 2026, Chief James lifted Plaintiff Mohanarajah's ban based upon her re-enrollment at

UNC-CH. (Doc. 29.) The campus bans of Plaintiffs Rogers, Dames, and Newman remain unchanged, although the Orange County District Attorney's Office dismissed all trespass cases related to the April 30 protest encampment. (Doc. 10 ¶ 255.) Plaintiffs contend that they would continue to participate in First Amendment-protected conduct on the open, outdoor spaces of the UNC-CH campus if not for their campus bans. (Id. ¶¶ 125, 147, 170.)

On March 11, 2025, nearly one year after the Trespass Notices were issued, Plaintiffs filed the present action. In their verified amended complaint, Plaintiffs allege nine counts: (1) First Amendment prior restraint; (2) First Amendment viewpoint discrimination; (3) First Amendment retaliation; (4) Fourteenth Amendment due process; (5) Fourth Amendment unlawful arrest; (6) Fourth Amendment excessive force; (7) free speech claims pursuant to Article I, § 14 of the North Carolina Constitution; (8) common law battery; and (9) common law unlawful arrest. (Doc. 10.) In late April 2025, Plaintiffs moved for a preliminary injunction against Defendants' enforcement of Plaintiffs' bans from campus. (Doc. 11.) In June, Defendants filed their motion to dismiss Plaintiffs' claims. (Doc. 17.) The court heard argument on both motions on December 11, 2025, and Defendants' motion to dismiss is now ready for decision.

II. ANALYSIS

A. Standard of Review

Federal Rule of Civil Procedure 8(a)(2) provides that a pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." A Rule 12(b)(6) motion to dismiss is meant to "test[] the sufficiency of a complaint" and not to "resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses." Republican Party of N.C. v. Martin, 980 F.2d 943, 952 (4th Cir. 1992). To survive such a motion, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)).

In considering a Rule 12(b)(6) motion, a court "must accept as true all of the factual allegations contained in the complaint," Erickson v. Pardus, 551 U.S. 89, 94 (2007) (per curiam), and all reasonable inferences must be drawn in the non-moving party's favor, Ibarra v. United States, 120 F.3d 472, 474 (4th Cir. 1997). However, the court "need not accept as true unwarranted inferences, unreasonable conclusions, or arguments." E. Shore Mkts., Inc. v. J.D. Assocs. Ltd. P'ship, 213 F.3d 175, 180 (4th Cir. 2000). Rule 12(b)(6) protects against meritless litigation by requiring sufficient factual allegations "to raise a right to relief above

the speculative level" so as to "nudge[] the[] claims across the line from conceivable to plausible." Twombly, 550 U.S. at 555, 570; see also Iqbal, 556 U.S. at 678. Thus, mere legal conclusions should not be accepted as true, and "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Iqbal, 556 U.S. at 678.

B. First Amendment Claims

Defendants argue that Plaintiffs have not plausibly alleged that they have been subjected to a prior restraint on speech, that they have suffered viewpoint discrimination, or that they faced retaliation because of their engagement in protected speech. (Doc. 18 at 14-25.) Plaintiffs respond that Defendants have restricted Plaintiffs' future political expression indefinitely while giving a single official "unbridled discretion" to lift the restriction. (Doc. 23 at 13.) Further, Plaintiffs assert that they have been subjected to unusually harsh treatment because of their viewpoint (id. at 20), and that they have plausibly alleged a causal connection between their protected speech and Defendants' adverse action (id. at 24).

1. Prior Restraint

"The term prior restraint is used 'to describe administrative and judicial orders forbidding certain communications when issued in advance of the time that such communications are to occur.'" Alexander v. United States, 509 U.S. 544, 550 (1993) (emphasis

omitted) (quoting M. Nimmer, Nimmer on Freedom of Speech § 4.03 (1984)). "Any system of prior restraints of expression comes to th[e] [c]ourt bearing a heavy presumption against its constitutional validity." Bantam Books, Inc. v. Sullivan, 372 U.S. 58, 70 (1963). A lawful prior restraint "must fit within one of the narrowly defined exceptions to the prohibition against prior restraints, and . . . must have been accomplished with procedural safeguards that reduce the danger of suppressing constitutionally protected speech." Se. Promotions, Ltd. v. Conrad, 420 U.S. 546, 559 (1975).

"The doctrine of prior restraint originated in the common law of England, where prior restraints of the press were not permitted, but punishment after publication was." Alexander, 509 U.S. at 553. And while the Supreme Court has more broadly defined "prior restraint" since then, the Court has also "steadfastly preserved the distinction between prior restraints and subsequent punishments." Id. at 553-54. Indeed, a prohibition on conduct "that may incidentally affect expression" is not subject to prior restraint analysis when it is issued because of "prior unlawful conduct." See Madsen v. Women's Health Ctr., Inc., 512 U.S. 753, 764 n.2 (1994); see also Wright v. City of St. Petersburg, 833 F.3d 1291, 1296 n.5 (11th Cir. 2016) (rejecting the plaintiff's prior restraint claim because "the trespass warning was not 'imposed on the basis of an advance determination'" that the

expressive conduct was prohibited and in fact had "nothing to do with any expressive conduct at all" (quoting Arcara v. Cloud Books, Inc., 478 U.S. 697, 705 n.2 (1986))).

In their response, Plaintiffs retreat from their framing of the campus bans as prior restraints and instead argue that the bans cannot satisfy heightened or intermediate scrutiny. (Doc. 23 at 17.) Plaintiffs then cite Huminski v. Corsones, 396 F.3d 53 (2d Cir. 2005), and McTernan v. City of York, 564 F.3d 636 (3d Cir. 2009), for the proposition that courts apply heightened scrutiny to trespass bans from public property. (Doc. 23 at 18.) Notably, neither Huminski nor McTernan addresses whether such bans constitute prior restraints, however. And as Plaintiffs acknowledge, the Fourth Circuit has never decided whether heightened scrutiny applies to orders from law enforcement. (Id. at 18-19 (citing Ross v. Early, 746 F.3d 546, 553 (4th Cir. 2014)).) In fact, Plaintiffs also cite Bernstein v. Sims, 643 F. Supp. 3d 578, 585 (E.D.N.C. 2022), where the court did not apply heightened scrutiny – or the prior restraint analysis – to a trespass ban.

Plaintiffs further contend that whether the campus bans constitute prior restraints "is ultimately a 'labeling dispute' that doesn't determine whether Defendants have complied with the First Amendment." (Doc. 23 at 17 n.2 (quoting McDonough v. Garcia, 90 F.4th 1080, 1093 n.9 (11th Cir.), vacated on other grounds, 116

F.4th 1319 (11th Cir. 2024) (en banc)).) But unlike the plaintiffs in McDonough, 90 F.4th at 1086, who alleged general First Amendment violations, Plaintiffs here specifically bring prior restraint claims as the first count of the verified amended complaint (Doc. 10 ¶¶ 319-36). Plaintiffs cannot now amend this complaint through briefing. See S. Walk at Broadlands Homeowner's Ass'n v. OpenBand at Broadlands, LLC, 713 F.3d 175, 184 (4th Cir. 2013). Thus, whether the campus bans constitute prior restraints is dispositive of Plaintiffs' first count.

Here, Chancellor Roberts issued a letter demanding that the protesters "remove all tents, tables, and other items and depart from [Polk Place]" by 6:00 a.m. on April 30, 2024. (Doc. 10-2.) The letter further noted that the protesters had refused to comply with UNC-CH policies and disrupted campus activities, at least in part because of the protesters' overnight trespass into classroom buildings. (Id.) Notably, Plaintiffs do not dispute that the tents violated UNC-CH policy (see Doc. 10 ¶¶ 87-88); they also acknowledge that UNC-CH's outdoor public spaces remain open to all only "as long as they follow the law and University policies" (id. ¶ 40 n.5). Plaintiffs failed to leave by the 6:00 a.m. deadline and were therefore detained and issued Trespass Notices, which included the challenged campus bans. (E.g., Doc. 10-7.)

The Trespass Notices indicated that Plaintiffs had been cited because of their refusal to comply with UNC-CH orders. (Id.)

Meanwhile, protesters who left by the deadline were neither detained nor otherwise punished. (Doc. 10 ¶ 213.) And even later that same day "and in the days after," Plaintiffs concede, UNC-CH continued to allow protests in "solidarity with Palestinian lives and liberation" after the disbandment of the Polk Place encampment. (Id. ¶ 120.) Thus, Plaintiffs have failed to sufficiently allege that they received their campus bans in anticipation of any future First Amendment activity, rather than because of their past violative conduct. The prior restraint claims will therefore be dismissed.

2. Viewpoint Discrimination

To assess a First Amendment claim alleging an unconstitutional restriction of speech, "the court must begin the inquiry by determining whether the plaintiff had engaged in protected speech." Am. C.L. Union, Student Chapter-Univ. of Md., Coll. Park v. Mote, 423 F.3d 438, 442 (4th Cir. 2005). Then, the court "must identify the nature of the forum, because the extent to which the Government may limit access depends on whether the forum is public or nonpublic." Id. (quoting Goulart v. Meadows, 345 F.3d 239, 246 (4th Cir. 2003)). Last, "the court must determine whether the justifications for the exclusion satisfy the requisite standard for that forum." Id. at 443.

First, to the extent Plaintiffs engaged in expressive conduct or speech of a political nature, it is undoubtedly protected

speech. See id. And for the reasons outlined in the court's memorandum opinion and order on Plaintiffs' motion for preliminary injunction (Doc. 32), the court finds that Polk Place on UNC-CH's campus is a limited public forum. But "[a]fter determining that a limited public forum exists, a court must next determine whether an internal or external standard should apply."[3] Mote, 423 F.3d at 444.

"An internal standard applies and the restriction is subject to strict scrutiny 'if the government excludes a speaker who falls within the class to which a designated [limited] public forum is made generally available.'" Id. (alteration in original) (quoting Warren v. Fairfax County, 196 F.3d 186, 193 (4th Cir. 1999)). "An external standard applies if the person excluded is not a member of the group that the forum was made generally available to." Id.

Polk Place has been made generally available to visiting members of the public. However, Defendants contend that

[3] In recent opinions addressing limited public forums, the Fourth Circuit has applied the external standard without considering the external versus internal distinction. See, e.g., Platt v. Mansfield, 162 F.4th 430, 434 (4th Cir. 2025) ("In a limited public forum, the government may restrict speech so long as the limits are reasonable in light of the forum's purpose and not based on viewpoint." (citing Good News Club v. Milford Cent. Sch., 533 U.S. 98, 106-07 (2001))). Indeed, since Mote, the Supreme Court has applied the external standard to student group plaintiffs that seem clearly within the class to which the limited public forum was made generally available. See Christian Legal Soc'y Chapter of the Univ. of Cal., Hastings Coll. of the L. v. Martinez, 561 U.S. 661, 679-85 (2010). Because the court here finds that the external standard applies, however, it is immaterial whether the two-tiered external/internal distinction survives.

Plaintiffs' failure to comply with UNC-CH's policies removed them from the internal group. (Doc. 18 at 19.) Defendants cite Wood v. Arnold, 321 F. Supp. 3d 565, 583 (D. Md. 2018), aff'd, 915 F.3d 308 (4th Cir. 2019), where the court found that a high school student's father removed himself from the group for which the school had been opened after hours (namely, parents) when his threats "caused school officials to be concerned about safety at the school."

Indeed, Polk Place and other outdoor spaces on UNC-CH's campus are open to all members of the public "as long as they follow the law and University policies." (Doc. 10-1 at 1.) Here, the parties do not dispute that the tents set up by the protesters violated UNC-CH policy against temporary structures. (See Doc. 10 ¶¶ 87-89.) Further, the letter issued on the morning of April 30 by Chancellor Roberts cites that the encampment raised safety concerns for UNC-CH, as protesters "trespassed into classroom buildings overnight," propped doors open, and "made it clear they w[ould] no longer even consider [administration] requests to abide by University policies." (Doc. 10-2.) Plaintiffs then refused to leave Polk Place even after receiving notice to disperse. (Doc. 10 ¶¶ 109-10, 138-39, 160-61, 184.) Accordingly, like the threatening conduct of the student's father in Wood, Plaintiffs' conduct removed them from the group to whom Polk Place was generally made available, and the external standard applies.

"Under the external standard, 'the selection of a class by the government must only be viewpoint neutral and reasonable in light of the objective purposes served by the forum.'" Mote, 423 F.3d at 444 (quoting Warren, 196 F.3d at 194). Public universities primarily serve as "venue[s] for the students, faculty, and staff of the University to obtain an education, not to provide an open meeting place for the unstructured expression of public points of view." ACLU Student Chapter-Univ. of Md. Coll. Park v. Mote, 321 F. Supp. 2d 670, 680 (D. Md. 2004), aff'd, 423 F.3d 438 (4th Cir. 2005). This educational purpose predominates even when a university opens parts of its campus to groups beyond the university community. Id.

Turning first to viewpoint neutrality, "[p]ointing to differential treatment of others who engaged in similar conduct can support a viewpoint-discrimination claim." Platt v. Mansfield, 162 F.4th 430, 443 (4th Cir. 2025). Plaintiffs here allege that past protesters engaged in similar conduct without incurring such harsh punishments. For example, Plaintiffs point to the 1986 anti-apartheid protests, where the UNC-CH chancellor gave permission for protesters to rebuild their encampment after its initial dismantling by UNC-CH police. (Doc. 10 ¶ 287.) Further, Plaintiffs allege that protesters set up a camp during the 2017 Silent Sam protests, and that a graduate student defaced the statue with her own blood. (Id. ¶¶ 309, 312.) And while seven

members of the public were arrested during the Silent Sam protests, none received indefinite campus bans. (Id. ¶¶ 316, 318.) In fact, Plaintiffs allege that no publicly available reports indicate that either students or non-students were issued indefinite campus bans during other major campus protests, including the anti-Vietnam War protests, the late 1960s food worker strikes, or the anti-apartheid protest. (Id. ¶¶ 264, 274, 285, 292, 297, 305.)

Moreover, "viewpoint neutrality requires not just that a government refrain from explicit viewpoint discrimination, but also that it provide adequate safeguards to protect against the improper exclusion of viewpoints." Child Evangelism Fellowship of Md., Inc. v. Montgomery Cnty. Pub. Schs., 457 F.3d 376, 384 (4th Cir. 2006). Indeed, "the dangers posed by unbridled discretion – particularly the ability to hide unconstitutional viewpoint discrimination – are just as present" in limited public forums as in traditional public forums. Id. at 386. Accordingly, "a policy . . . that permits officials to deny access for any reason, or that does not provide sufficient criteria to prevent viewpoint discrimination, generally will not survive constitutional scrutiny."[4] Id. at 387.

Here, the issue is not whether Chief James would fail to act

[4] In their response, Plaintiffs assert the unbridled discretion doctrine as evidence of the bans' unconstitutionality in the context of their prior restraint claims. (Doc. 23 at 14-15.) However, this doctrine also applies to general restrictions on speech in limited public forums. See Child Evangelism Fellowship, 457 F.3d at 386-87.

in good faith in considering whether to lift the bans; rather, it is that Defendants allegedly fail to provide any express standard governing Chief James's decision whether to permit Plaintiffs to return to the UNC-CH campus, and the Trespass Notices themselves do not identify such standards. (See Doc. 10-7.) This "'absence of express standards' renders it difficult to differentiate between a legitimate denial of access and an 'illegitimate abuse of censorial power'" and fails to "ensure the requisite viewpoint neutrality." Child Evangelism Fellowship, 457 F.3d at 386, 389 (quoting City of Lakewood v. Plain Dealer Publ'g Co., 486 U.S. 750, 758 (1988)).

Next, the court turns to whether the campus bans were reasonable in light of the "forum's function and 'all the surrounding circumstances.'" Christian Legal Soc'y, 561 U.S. at 687 (quoting Cornelius v. NAACP Legal Def. & Educ. Fund, Inc., 473 U.S. 788, 809 (1985)). Ultimately, the "decision to restrict access to a limited public forum 'need only be reasonable; it need not be the most reasonable or the only reasonable limitation.'" Goulart, 345 F.3d at 255 (quoting Cornelius, 473 U.S. at 806).

Plaintiffs sufficiently allege that their indefinite campus bans were not reasonable. According to the standard Trespass Notices, the bans remain "valid indefinitely unless otherwise modified by the [UNC-CH] Police Department." (Doc. 10-7.) Moreover, unlike the student's father in Wood, Chief James's Final

Decision letter indicates that Plaintiffs cannot even attempt to seek relief from the bans until the passage of twenty-four months from the date of his denial of their appeals (which is even later than the date the Trespass Notices indicated).[5] (Doc. 10-8); cf. Wood, 321 F. Supp. 3d at 583 n.18 (noting that the no trespass order could be rescinded at any time if the father "calmly met" with the school's principal). As a result, the bans of Plaintiffs Dames, Newman, and Rogers continue to remain in effect nearly two years after the issuance of the Trespass Notices, with no end in sight.

Further, Plaintiffs allege that they did not personally engage in or even witness any of the conduct that led to UNC-CH's decision to disperse the protesters on April 30. (Doc. 10 ¶¶ 69, 107, 136, 159, 182.) Plaintiffs failed to depart Polk Place by the 6:00 a.m. deadline, but other protesters who were initially present when the tent encampment was dismantled but then departed before 6:00 a.m. did not receive any punishment. (See id. ¶¶ 212-13.) All criminal trespass cases against Plaintiffs, moreover, have been dismissed. (Id. ¶ 255.) Accordingly, Plaintiffs have plausibly alleged that their indefinite campus bans were neither viewpoint neutral nor reasonable considering the campus's function

[5] As previously noted, Chief James has lifted Plaintiff Mohanarajah's campus ban on January 14, 2026. (Doc. 29.)

and all surrounding circumstances.

3. Retaliation

"A plaintiff seeking to recover for First Amendment retaliation must allege that (1) she engaged in protected First Amendment activity, (2) the defendants took some action that adversely affected her First Amendment rights, and (3) there was a causal relationship between her protected activity and the defendants' conduct." Constantine v. Rectors & Visitors of George Mason Univ., 411 F.3d 474, 499 (4th Cir. 2005). "However, not every reaction made in response to an individual's exercise of his First Amendment right to free speech is actionable retaliation." Suarez Corp. Indus. v. McGraw, 202 F.3d 676, 685 (4th Cir. 2000).

"A retaliation claim . . . must establish that the government responded to the plaintiff's constitutionally protected activity with conduct or speech that would chill or adversely affect his protected activity." Balt. Sun Co. v. Ehrlich, 437 F.3d 410, 416 (4th Cir. 2006). Further, "[i]t is not enough that the protected expression played a role or was a motivating factor in the retaliation; claimant must show that 'but for' the protected expression the [state actor] would not have taken the alleged retaliatory action." Porter v. Bd. of Trs. of N.C. State Univ., 72 F.4th 573, 583 (4th Cir. 2023) (second alteration in original) (quoting Raub v. Campbell, 785 F.3d 876, 885 (4th Cir. 2015)). "Where a plaintiff rests his case on temporal proximity alone, the

temporal proximity must be very close." Penley v. McDowell Cnty. Bd. of Educ., 876 F.3d 646, 656 (4th Cir. 2017).

Defendants do not dispute that Plaintiffs engaged in some protected First Amendment activity in connection with the protest encampments. (Doc. 18 at 22-23.) And although Defendants argue that Plaintiffs have not alleged any chilling effect or adverse action (id. at 24), Plaintiffs indeed allege that they were either arrested or summarily suspended - and now indefinitely banned from UNC-CH. (Doc. 10 ¶¶ 116, 118, 140, 143, 162, 165, 186, 230; see Docs. 10-7, 10-8). The question is therefore whether Plaintiffs have sufficiently alleged a "but for" causal relationship between the adverse action and the protected conduct.

Defendants cite Porter, 72 F.4th at 584, where the court affirmed a dismissal pursuant to Rule 12(b)(6) because the allegations in the complaint "ma[d]e clear" that the plaintiff's protected First Amendment conduct was not the "but for" cause of the university's adverse action. (Doc. 18 at 24.) Plaintiffs, however, counter that the temporal proximity between their campus bans and expressive conduct, along with UNC-CH's disparate treatment of past protests, sufficiently establishes a causal connection at the pleading stage. (Doc. 23 at 24-25.) Indeed, in Porter, the court noted that "temporal proximity [was] lacking" because ten months had passed between the plaintiff's protected speech and the university's adverse action. Porter, 72 F.4th at

584.

Unlike the adverse action taken by the university in Porter, the campus bans here were effective immediately upon Plaintiffs' arrest having participated in the protest encampment. (Doc. 10 ¶¶ 118, 143, 165.) Moreover, Plaintiffs' allegations of disparate treatment of past protesters plausibly indicates that Defendants have not enforced their policies as harshly in similar situations and that Defendants "singled out these Plaintiffs . . . because of the nature of their protest and advocacy." See Norris v. City of Asheville, 721 F. Supp. 3d 404, 416 (W.D.N.C. 2024) (denying a motion to dismiss because of both temporal proximity and the alleged inconsistent application of a felony littering statute). Accordingly, Plaintiffs here have plausibly alleged their First Amendment retaliation claims.

C. Due Process Claims

Defendants next contend that the Due Process claims must be dismissed because Plaintiffs do not have a liberty or property interest in accessing UNC-CH's campus or, in the case of Mohanarajah, obtaining a public university education. (Doc. 18 at 26.) Moreover, Defendants assert that even if such an interest existed, Plaintiffs received adequate due process. (Id. at 28.) Plaintiffs counter that they possess a liberty interest in accessing Polk Place because it functions as a public park. (Doc. 23 at 26.) Further, Plaintiffs contend that despite Mohanarajah's

leave of absence, she possessed a property interest in her education. (Id. at 28.) Finally, according to Plaintiffs, Defendants failed to provide sufficient due process either because they did not receive prior notice and opportunity to be heard, or because the post-deprivation hearing was inadequate. (Id. at 28-29.)

1. Existence of a Liberty or Property Interest

The Due Process Clause of the Fourteenth Amendment provides that no person shall be deprived of "life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. To state a due process claim, a plaintiff "must identify a cognizable property or liberty interest and a deprivation without due process." Sheppard v. Visitors of Va. State Univ., 993 F.3d 230, 239 (4th Cir. 2021).

In a plurality opinion, the Supreme Court suggested the existence of a general liberty interest in accessing parks and other places open to the public. See City of Chicago v. Morales, 527 U.S. 41, 54 (1999) (plurality opinion) ("[A]n individual's decision to remain in a public place of his choice is as much a part of his liberty as the freedom of movement inside frontiers that is 'a part of our heritage' . . . ." (quoting Kent v. Dulles, 357 U.S. 116, 126 (1958))). However, courts have repeatedly declined to extend such a liberty interest to members of the public seeking access to public university campuses, even when the

campuses have been held open to the public. See Moore v. Ricotta, 29 F. App'x 774, 775 (2d Cir. 2002); Souders v. Lucero, 196 F.3d 1040, 1044-46 (9th Cir. 1999); Holbach v. Jenkins, No. 09-cv-026, 2009 WL 2382756, at *6 (D.N.D. July 30, 2009), aff'd, 366 F. App'x 703 (8th Cir. 2010); Uzoukwu v. Prince George's Cmty. Coll. Bd. of Trs., No. 12-3228, 2013 WL 4442289, at *7 (D. Md. Aug. 15, 2013); Price v. Mount Wachusett Cmty. Coll., No. 11-10922, 2012 WL 3596859, at *6 (D. Mass. Feb. 17, 2012).

As for property interests, "[a] protected property interest cannot be created by the Fourteenth Amendment itself, but rather must be created or defined by an independent source." Equity in Athletics, Inc. v. Dep't of Educ., 639 F.3d 91, 109 (4th Cir. 2011). Thus, the plaintiff must identify "a state created property interest in continued enrollment at a public education institution exists in [North Carolina]." Davis v. George Mason Univ., 395 F. Supp. 2d 331, 336 (E.D. Va. 2005), aff'd, 193 F. App'x 248 (4th Cir. 2006) (per curiam); see also Dillow v. Va. Polytechnic Inst. & State Univ., No. 22cv00280, 2023 WL 2320765, at *10 (W.D. Va. Mar. 2, 2023) ("The case law is very clear that, absent some special pleading or allegation, an individual does not have a per se liberty or property interest in continued enrollment in a college or university.").

"The Supreme Court has [only] assumed, without deciding, that university students possess a 'constitutionally protectible

property right' in their continued enrollment in a university." Sheppard, 993 F.3d at 239 (alteration in original) (emphasis added) (quoting Tigrett v. Rector & Visitors of the Univ. of Va., 290 F.3d 620, 627 (4th Cir. 2002)). The Fourth Circuit "ha[s] followed the same watchful approach." Id.

Here, Plaintiffs, none of whom was even an enrolled student at the time of receiving the campus bans, do not contend that they have a greater liberty interest in accessing the UNC-CH campus than any other member of the public. (Doc. 23 at 26.) Rather, they argue that Polk Place is identical to a public park, thereby providing a liberty interest in the general public's access. (Id.) However, this court has already articulated the differences between an open public university campus and a public park. Moreover, Plaintiffs do not cite a single case finding a liberty interest in the public's access to a college campus. Thus, the court declines to find that Plaintiffs possess a cognizable liberty interest in accessing UNC-CH's outdoor public spaces.

Next, Plaintiff Mohanarajah claims a property interest in accessing campus as a UNC-CH student. (Id. at 27-28.) But assuming that a student's continued enrollment at a public university is a constitutionally protectible property interest, Plaintiffs point to no North Carolina law or contractual provision that would define such an interest in the first place. Moreover, even if Plaintiffs could provide an independent source creating a

property interest in a student's continued enrollment at UNC-CH, Plaintiff Mohanarajah cannot claim a property interest in her continued enrollment because she was not an enrolled student at the time she received her campus ban. (Doc. 10 ¶ 15.) She did not remain an enrolled student merely because she met periodically with her advisor or was subjected to the EEAC suspension procedures. (Cf. Doc. 23 at 28.) And once Plaintiff Mohanarajah again became an enrolled student at UNC-CH in January 2026, Chief James immediately lifted her campus ban. (Doc. 29.)

As a result, Plaintiffs have not sufficiently alleged a cognizable liberty or property interest affected by their campus bans. Thus, their Due Process claims must be dismissed.[6]

2. Provision of Sufficient Due Process

Even if Plaintiffs did have a cognizable liberty or property interest at issue, the procedures UNC-CH employed satisfied constitutional due process requirements. "The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" Mathews v. Eldridge, 424 U.S. 319, 333 (1976) (quoting Armstrong v. Manzo, 380 U.S. 545, 552 (1965)). "[D]ue process is flexible and calls for such

[6] Plaintiffs briefly assert the deprivation of a cognizable property interest in the continued employment of Plaintiffs Rogers and Newman. (Doc. 23 at 28 (citing Doc. 10 ¶¶ 13-14).) Pursuant to Cleveland Board of Education v. Loudermill, 470 U.S. 532, 538-39 (1985), however, only public sector employees possess a property interest in their continued employment. Neither Plaintiff is a public sector employee.

procedural protections as the particular situation demands." Morrissey v. Brewer, 408 U.S. 471, 481 (1972). Indeed, the Supreme Court "has recognized, on many occasions, that where a State must act quickly, or where it would be impractical to provide predeprivation process, postdeprivation process satisfies the requirements of the Due Process Clause." Gilbert v. Homar, 520 U.S. 924, 930 (1997). Courts generally balance three distinct factors to determine what process is constitutionally adequate:

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Mathews, 424 U.S. at 335.

As to the private interest affected by the campus bans, Plaintiffs' interests are limited. Plaintiffs Dames, Rogers, and Newman were never enrolled as students at UNC-CH, and Plaintiff Mohanarajah was already on a leave of absence at the time of her ban. (See Doc. 10 ¶ 15; Doc. 10-8 at 3.) Therefore, all possessed only the private interests that any member of the public would have in accessing UNC-CH's campus.

As to the risk of erroneous deprivation through current procedures and the probable value of additional safeguards, the risk of erroneous deprivation is small. UNC-CH provided advance

notice, orally and in writing, on the morning of April 30, 2024, that failure to disperse the tent encampment would subject those who chose to remain to a trespass citation. (Doc. 10 ¶¶ 109, 138, 160; Doc. 10-2.) Plaintiffs also demonstrate that their Trespass Notices – received in writing either on the same day as or shortly after their arrests at Polk Place – provided notice of the charges against them. (See, e.g., Doc. 10-7.) The Trespass Notices provided Plaintiffs with the name of the issuing officer and informed Plaintiffs of their right to appeal the bans in writing within ten days. (See Doc. 10 ¶ 218; Doc. 10-7.) Chief James heard the appeals of Plaintiffs, who were represented by legal counsel, on July 5, 2024, and he later issued each Plaintiff a letter explaining his decision to uphold her ban. (Doc. 10 ¶¶ 222-24, 232; see Doc. 10-8.) Plaintiffs make no argument as to how an earlier hearing would have provided additional value to safeguard against an erroneous deprivation.

Finally, as to UNC-CH's interest in using the current process, a public university has a significant interest in promptly removing members of the public who disrupt the campus community and flout its rules and policies, including restrictions ensuring the safety and integrity of access to classroom buildings.[7] (See Doc. 10-2.)

[7] While Plaintiffs contend that UNC-CH failed to follow its own disciplinary procedures by not providing advance notice (Doc. 23 at 28-29), the cited procedures apply only to student disciplinary cases (see Doc. 17-2 at 5). As already noted, Plaintiffs Dames, Newman, and Rogers

UNC-CH also does not permit tents or other temporary structures on its campus without prior approval, which Plaintiffs do not dispute that the protesters never sought or received. (See Doc. 10 ¶ 87 n.22.) A requirement that universities hold a pre-deprivation hearing before removing from campus members of the public who violate university rules would impose an untenable burden on the universities' duty to educate its students. See Davison v. Rose, 19 F.4th 626, 642 (4th Cir. 2021) (holding that post-deprivation remedies satisfied due process when an elementary school student's parent received a no-trespass ban in part because the parent "posed an ongoing threat of disruption to the educational process"); see also Goss v. Lopez, 419 U.S. 565, 582 (1975) (holding that "[s]tudents whose presence poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process may be immediately removed from school" without a pre-deprivation hearing).

Plaintiffs further allege that, even if no pre-deprivation hearing was required, the post-deprivation hearing they received did not comport with constitutional requirements of due process. (Doc. 10 ¶¶ 368-71.) However, as Defendants rightly contend, Plaintiffs' argument fails on each ground.

First, Plaintiffs received notice of the nature of the charge,

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were never students, and Plaintiff Mohanarajah was on a leave of absence when she received her Trespass Notice and EEAC suspension.

the date of the alleged misconduct, and the location of the alleged misconduct when they received their Trespass Notices – long before the appeal hearing.[8] (Doc. 10 ¶¶ 118, 143, 165, 186; see Doc. 10-7.) Under the circumstances here, the Trespass Notices therefore were "reasonably calculated . . . to apprise [Plaintiffs] of the pendency of the action and afford them an opportunity to present their objections." Johnson v. Jessup, 381 F. Supp. 3d 619, 645 (M.D.N.C. 2019) (quoting Mullane v. Cent. Hanover Bank & Tr. Co., 339 U.S. 306, 314 (1950)).

Second, the post-deprivation hearing was sufficiently adversarial. Plaintiffs were represented at the appeal hearing by legal counsel, who had the opportunity to argue that UNC-CH's order to disperse violated the First and Fourteenth Amendments.[9] (Doc.

[8] Plaintiffs contend that they did not learn of the allegations against them regarding either the tent policy or the other safety and security concerns until after the post-deprivation hearing. (Doc. 23 at 30.) However, the verified amended complaint alleges that the protesters had been generally informed that the tents violated UNC-CH policy, both by other protesters and by UNC-CH administrators. (Doc. 10 ¶¶ 88-89.) Moreover, UNC-CH disseminated among the protesters a letter outlining the safety and security concerns at approximately 5:30 a.m. on April 30, 2024. (Id. ¶ 81; see Doc. 10-2.) And most importantly, Plaintiffs received their Trespass Notices not because of any tent policy violation or security concerns, but because of their failure to comply with the order to disperse. (See Doc. 10-7.) There is no due process requirement that UNC-CH fully explain to Plaintiffs the reason for this dispersal order.

[9] Plaintiffs cite Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 170 (1951) (Frankfurter, J., concurring), to fault UNC-CH for presiding over a "one-sided determination of facts." (Doc. 23 at 30.) However, this concern arises when the government prevents the accused from presenting its side of the story, not when the accused alleges in essence that the government did not ask enough questions. See Joint

10 ¶¶ 222, 224; see Doc. 10-8.) Plaintiffs cite Doe v. University of North Carolina System, 133 F.4th 305, 317 (4th Cir. 2025), for the proposition that they should have received an opportunity to cross-examine Defendants' witnesses. (Doc. 23 at 30.) However, Doe addressed the procedural protections necessary before permanently expelling a student from the UNC-CH system, with a note in his academic record that the expulsion occurred because of "findings of sexual assault."[10] Doe, 133 F.4th at 317. Here, Plaintiffs have not experienced sanctions nearly as severe.

And third, while Plaintiffs assert that Chief James was not a neutral decisionmaker, Plaintiffs do not allege that Chief James personally arrested any Plaintiff; indeed, even Plaintiff Rogers's Trespass Notice indicates that he did not personally issue it to her. (Doc. 10 ¶¶ 116, 140, 162; see Doc. 10-7.) Further, as a practical matter, it would seem unworkable to constitutionally require that universities bring in an unaffiliated party to adjudicate every alleged rule violation that arises on campus.

Anti-Fascist Refugee Comm., 341 U.S. at 168-70 (Frankfurter, J., concurring).

[10] Importantly, the court in Doe based its due process analysis on the plaintiff's liberty interest in his reputation, not on his property interest in continued enrollment in a university. Doe, 133 F.4th at 318-19. The court reasoned that the plaintiff sufficiently alleged this interest because he asserted that his expulsion would remain part of his permanent educational records and would impair his ability to seek further education and employment. Id. at 319. Plaintiffs make no such allegation here; in fact, Plaintiff Mohanarajah is now re-enrolled as a student at UNC-CH. (Doc. 29.)

Accordingly, Plaintiffs have not plausibly alleged a Due Process violation under the Fourteenth Amendment, and their claims will be dismissed.

D. Sovereign Immunity for University and EEAC Defendants in Their Official Capacities

Defendants next contend that sovereign immunity bars the federal and North Carolina constitutional claims brought against both University and EEAC Defendants in their official capacities. (Doc. 18 at 12.) Defendants further assert that Plaintiffs have failed to plausibly allege any ongoing violation of the United States Constitution or federal law with respect to the Trespass Notices. (Id. at 13.) Plaintiffs counter that they seek injunctive relief from their campus bans, which they contend constitute an ongoing violation of their rights under the First and Fourteenth Amendments. (Doc. 23 at 12.)

"'Eleventh Amendment immunity' is 'a common (though somewhat inaccurate) shorthand for the federal-law doctrine that protects non-consenting States from suit in federal court.'" Doe, 133 F.4th at 313 (quoting Glob. Innovative Concepts, LLC v. Florida, 104 F.4th 139, 144 (4th Cir. 2024)). This sovereign immunity "also 'extends to state agencies and other governmental entities that can be viewed as arms of the state.'" Singleton v. Md. Tech. & Dev. Corp., 103 F.4th 1042, 1047 (4th Cir. 2024) (quoting Md. Stadium Auth. v. Ellerbe Becket Inc., 407 F.3d 255, 260-61 n.8

(4th Cir. 2005)). Although a State may expressly waive its sovereign immunity, the Fourth Circuit has repeatedly held that the UNC institutions have not done so. See Doe, 133 F.4th at 318; Huang v. Bd. of Governors of the Univ. of N.C., 902 F.2d 1134, 1139 (4th Cir. 1990).

"[A] suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official's office." Will v. Mich. Dep't of State Police, 491 U.S. 58, 71 (1989). However, if "the plaintiff is seeking injunctive relief, then the state official acting in an official capacity is a person under 42 U.S.C. § 1983, and 'official-capacity actions for prospective relief are not treated as actions against the State.'" Jennings v. Univ. of N.C. at Chapel Hill, 240 F. Supp. 2d 492, 498-99 (M.D.N.C. 2002) (citation omitted) (quoting Kentucky v. Graham, 473 U.S. 159, 167 n.14 (1985)). Rather, "[u]nder Ex parte Young, private citizens may sue state officials in their official capacities in federal court to obtain prospective relief from ongoing violations of federal law." Allen v. Cooper, 895 F.3d 337, 354 (4th Cir. 2018); see Ex parte Young, 209 U.S. 123 (1908).

Here, because the verified amended complaint plausibly alleges ongoing violations of the First Amendment pursuant to Plaintiffs Rogers, Dames, and Newman, the Ex parte Young exception applies to University Defendants. University Defendants are

therefore not entitled to sovereign immunity in their official capacities with respect to the viewpoint discrimination or retaliation claims of Plaintiffs Rogers, Dames, and Newman. However, because Chief James has lifted Plaintiff Mohanarajah's campus ban, she no longer plausibly alleges any ongoing constitutional violation against EEAC Defendants. (See Doc. 29.) As a result, any of her viewpoint discrimination and retaliation claims against EEAC Defendants in their official capacities not barred by sovereign immunity are now moot.

Defendants also argue that sovereign immunity bars all state-law claims brought against the State, thereby foreclosing the claims brought pursuant to Article I, § 14 of the North Carolina Constitution against University and EEAC Defendants in their official capacities. (Doc. 18 at 10-13; Doc. 27 at 2 n.1.) However, the North Carolina Supreme Court has held that "[t]he doctrine of sovereign immunity cannot stand as a barrier to North Carolina citizens who seek to remedy violations of their rights guaranteed by the Declaration of Rights." Corum v. Univ. of N.C. ex rel. Bd. of Governors, 413 S.E.2d 276, 291 (N.C. 1992). "Thus, when there is a clash between these constitutional rights and sovereign immunity, the constitutional rights must prevail." Id. at 292. Accordingly, sovereign immunity does not bar Plaintiffs' state constitutional claims against University and EEAC Defendants in their official capacities.

E. Qualified Immunity for University and EEAC Defendants in Their Individual Capacities

As for Plaintiffs' remaining claims against University and EEAC Defendants in their individual capacities – namely, the viewpoint discrimination and retaliation claims - Defendants next argue that they are entitled to qualified immunity. (Doc. 18 at 30-31.) Plaintiffs first counter that the determination of qualified immunity would be premature at the motion to dismiss stage. (Doc. 23 at 35-36.) Next, Plaintiffs assert that the law has clearly established "that the First Amendment protects peaceful, nondisruptive speech on a university campus." (Id. at 36.)

Qualified immunity shields government officials performing discretionary functions from personal liability for civil damages under § 1983, so long as "their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Ridpath v. Bd. of Governors Marshall Univ., 447 F.3d 292, 306 (4th Cir. 2006) (quoting Wilson v. Layne, 526 U.S. 603, 609 (1999)). Officials are entitled to immunity unless the § 1983 claim satisfies a two-prong test: (1) the allegations, if true, substantiate a violation of federal statutory or connotational right, and (2) the right was "clearly established" such that a reasonable official would have known his acts or omissions violated that right. Id. The court may consider

the prongs in either order, as a plaintiff's failure to satisfy either entitles the officer to immunity. Pearson v. Callahan, 555 U.S. 223, 226 (2009). "A Government official's conduct violates clearly established law when, at the time of the challenged conduct, the contours of a right are sufficiently clear that every reasonable official would have understood that what he is doing violates that right." Ashcroft v. al-Kidd, 563 U.S. 731, 741 (2011) (citation modified).

As Defendants correctly argue, the determination of qualified immunity at this stage would not be premature. (Doc. 27 at 3.) In fact, "[b]ecause qualified immunity is designed to shield officers not only from liability but from the burdens of litigation, its establishment at the pleading or summary judgment stage has been specifically encouraged." Pritchett v. Alford, 973 F.2d 307, 313 (4th Cir. 1992) (emphasis added). And because the court has already found that Plaintiffs have sufficiently alleged viewpoint discrimination and retaliation by University and EEAC Defendants, the question is whether it was "clearly established" in April 2024 that these Defendants' conduct would violate the First Amendment.

The Fourth Circuit applies a split burden of proof for claims of qualified immunity. The plaintiff bears the burden of showing a violation of their rights, while the defendant bears the burden of proving that the right was not clearly established. Stanton v.

Elliott, 25 F.4th 227, 233 (4th Cir 2022). "For a constitutional right to be clearly established, its contours 'must be sufficiently clear that a reasonable official would understand that what he is doing violates that right.'" Hope v. Pelzer, 536 U.S. 730, 739 (2002) (quoting Anderson v. Creighton, 483 U.S. 635, 640 (1987)). However, it is not necessary that the precise "action in question has previously been held unlawful." Anderson, 483 U.S. at 640. Rather, "in the light of pre-existing law the unlawfulness must be apparent." Id. An officer has a right to fair notice of the unlawfulness of the conduct. Hope, 536 U.S. at 739.

1. Qualified Immunity on Viewpoint Discrimination Claims

Defendants have the burden to demonstrate that the right was not clearly established. And here, Defendants cite Somers v. Devine, 732 F. Supp. 3d 445, 468 (D. Md. 2024), aff'd, 132 F.4th 689 (4th Cir. 2025), for the proposition that "it would not have been clear to Defendants" that Plaintiffs' removal from UNC-CH's campus and receipt of indefinite campus bans violated Plaintiffs' First Amendment rights. (Doc. 18 at 31.) In Somers, the court granted qualified immunity at the Rule 12(b)(6) stage where the defendant issued the plaintiff a trespass ban of "at least" three months from school board property because of her alleged disruptive conduct at a school board meeting. Somers, 732 F. Supp. 3d at 468. The court reasoned that the defendant "could very reasonably"

have relied on Wood to conclude that the plaintiff's ban from school board property would pass First Amendment scrutiny. Id.

Plaintiffs, on the other hand, first cite Occupy Columbia v. Haley, 738 F.3d 107, 124 (4th Cir. 2013), in which the court declined to grant qualified immunity for alleged First Amendment violations where the defendants arrested protesters for remaining on the South Carolina State House grounds - a traditional public forum – beyond the governor's 6:00 p.m. deadline despite "not violating any law." Occupy Columbia, 738 F.3d at 113, 123. Plaintiffs also cite Tobey v. Jones, 706 F.3d 379, 391 (4th Cir. 2013), in which the court declined to grant qualified immunity for alleged First Amendment violations where the defendants arrested a man at an airport after he "bizarre[ly]" protested an advanced imaging security scan by removing his shirt to reveal the text of the Fourth Amendment written on his chest. Tobey, 706 F.3d at 384, 391.

Clearly, the facts of both cases cited by Plaintiffs differ significantly from the circumstances presented here. Unlike the encampment protesters in Occupy Columbia, who occupied a traditional public forum, Plaintiffs received their indefinite campus bans while engaged in an encampment protest on the UNC-CH campus, a limited public forum with the objective purpose of providing an education. And while the protesters in Occupy Columbia alleged to have "not violat[ed] any law," Plaintiffs do

not dispute that the tent encampment here violated established UNC-CH policy. Moreover, pursuant to N.C. Gen. Stat. § 14-159.13(a)(1), Defendants had a reasonable basis to believe that Plaintiffs committed second degree trespass when they refused to depart UNC-CH's campus. And finally, a case about the arrest of an individual for "bizarre" behavior at an airport could not possibly have put University or EEAC Defendants on notice that their conduct violated clearly established law. See Tobey, 706 F.3d at 388.

In contrast, Defendants' cited case is substantially on point. Like the defendant in Somers, the University and EEAC Defendants could reasonably have relied on Wood to conclude that the removal and indefinite ban of Plaintiffs from the UNC-CH campus would pass constitutional muster. Given Plaintiffs' refusal to depart Polk Place despite UNC-CH's dispersal order, their ability to seek relief from the bans after twenty-four months, and UNC-CH's authority to remove individuals from its campus who violate either the law or its policies, it cannot be said that the potential unlawfulness of the campus bans would have been apparent to University or EEAC Defendants. Therefore, University and EEAC Defendants are entitled to qualified immunity on Plaintiffs' viewpoint discrimination claims.

2. Qualified Immunity on Retaliation Claims

To carry their burden of proving the right was not clearly

established, Defendants again cite Somers, 732 F. Supp. 3d at 470, which also granted qualified immunity to the police officer who arrested the plaintiff after she refused to comply with the officer's lawful order and refused to leave the premises "after being repeatedly told to do so by an officer." The court found that when the plaintiff repeatedly refused to comply with the officer's order, "it was reasonable for him to believe he had probable cause to arrest her for failure to obey a lawful order and that doing so would not violate either her First or Fourth Amendment rights." Id. at 471.

In contrast, Plaintiffs cite Norris, 721 F. Supp. 3d at 417, where the court declined to even reach whether qualified immunity barred the plaintiff's First Amendment retaliation claim because it had already found that qualified immunity did not apply to the plaintiff's due process claim. Plaintiffs then cite Ridpath, 447 F.3d at 318-19, in which the court declined to grant qualified immunity on a First Amendment retaliation claim where the university fired the plaintiff after he criticized the university's response to NCAA rule violations.

Here, like the police officer in Somers, the University and EEAC Defendants issued the Trespass Notices to Plaintiffs after informing the protesters of the need to depart Polk Place by 6:00 a.m. (Doc. 10 ¶¶ 109, 138, 160.) Moreover, Plaintiffs do not dispute that the tents violated UNC-CH policy for outdoor public

spaces because they had been erected without prior approval. (Id. ¶¶ 87-88.) These outdoor public spaces only remain open to the public "as long as they follow the law and University policies." (Id. ¶ 40 n.5.) And ultimately, an individual's refusal to leave the premises of another after being directed to do so violates North Carolina criminal law. See N.C. Gen. Stat. § 14-159.13(a)(1). Given the reasonableness of determining that Plaintiffs remained at Polk Place in violation of both UNC-CH policy and state law, a case involving an adjunct faculty member's termination for speaking out against his university employer's conduct could not have put University or EEAC Defendants on notice that they were violating Plaintiffs' clearly established rights. Accordingly, University and EEAC Defendants are entitled to qualified immunity on Plaintiffs' retaliation claims.

F. Fourth Amendment Claims

1. Unlawful Arrest

Defendants contend that Plaintiffs' allegations establish that Officer Defendants had probable cause to arrest Plaintiffs for second degree trespass. (Doc. 18 at 33.) Alternatively, Defendants argue that qualified immunity bars the claims against Officer Defendants because they would not have known that their conduct violated Plaintiffs' constitutional rights. (Id. at 36.) Plaintiffs counter that they never received reasonable notice to disperse from any person authorized to issue such a notice, and

their trespass charges were ultimately dismissed. (Doc. 23 at 32.)

As already noted, an individual commits second degree trespass if she remains "[o]n the premises of another after [she] has been notified not to enter or remain there by the owner, by a person in charge of the premises, by a lawful occupant, or by another authorized person." N.C. Gen. Stat. § 14-159.13(a)(1). Moreover, "to determine whether an arrest was backed by probable cause, [courts] ask whether the facts known to the officer could make a prudent officer believe that the suspect's conduct satisfies the elements of a criminal violation." Thurston v. Frye, 99 F.4th 665, 674 (4th Cir. 2024). "If an officer has probable cause to believe that an individual has committed even a very minor criminal offense in his presence, he may, without violating the Fourth Amendment, arrest the offender." Atwater v. City of Lago Vista, 532 U.S. 318, 354 (2001). "It is well settled that the ultimate dismissal of charges does not render the original arrest void of probable cause." Freeland v. Simmons, No. 09cv01384, 2012 WL 258105, at *7 (D.S.C. Jan. 27, 2012) (citing Michigan v. DeFillippo, 443 U.S. 31, 36 (1979)).

Here, Plaintiffs allege that UNC-CH shared a letter signed by Chancellor Roberts among the protesters to direct their departure from Polk Place. (Doc. 10 ¶ 81; see Doc. 10-2.) Moreover, Plaintiffs Dames, Rogers, and Newman all concede that they received

oral notice – at least from somebody – of this direction to disperse prior to the 6:00 a.m. deadline. (Doc. 10 ¶¶ 109, 138, 160.) And finally, UNC-CH maintains an established policy prohibiting the erection of tents without prior approval. (See id. ¶ 87 n.22.) Accordingly, the allegations contained within Plaintiffs' verified amended complaint demonstrate that the facts as known to Officer Defendants provided probable cause to arrest Plaintiffs. Because probable cause is enough, the court will grant the motion to dismiss Plaintiffs' unlawful arrest claims.

2. Excessive Force

Defendants next argue that neither Plaintiff Dames nor Plaintiff Rogers has sufficiently alleged excessive use of force in connection with her arrest. (Doc. 18 at 33.) Alternatively, Defendants assert that Officers Wylie and Lee are entitled to qualified immunity because they would not have been aware that the force used during the arrests violated Plaintiffs' constitutional rights. (Id. at 36.) Plaintiffs counter that the force used by Officers Wylie and Lee exceeded the amount necessary because Plaintiffs were engaged in nothing more than nondisruptive, nonviolent activity. (Doc. 23 at 33.)

To determine whether an arresting officer's use of force was reasonable pursuant to the Fourth Amendment, courts balance "'the nature and quality of the intrusion on the individual's Fourth Amendment interests' against the countervailing governmental

interests at stake." Graham v. Connor, 490 U.S. 386, 396 (1989) (quoting Tennessee v. Garner, 471 U.S. 1, 8 (1985)). "[T]he right to make an arrest . . . necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it." Id. However, the "proper application" of the Fourth Amendment's reasonableness test "requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." Id.

a. Officer Wylie

As for Plaintiff Dames's claim against Officer Wylie, Defendants argue that the act of being tightly handcuffed cannot, as a matter of law, sustain an excessive force claim. (Doc. 18 at 34.) Further, Defendants argue that the verified amended complaint fails to sufficiently connect Officer Wylie to Plaintiff Dames's handcuffing and resultant injuries. (Id.) Plaintiffs disagree on both fronts. (Doc. 23 at 33-34.)

First, Plaintiffs sufficiently allege that Plaintiff Dames sustained her injuries due to her arrest by Officer Wylie. (See Doc. 10 ¶¶ 141, 387-89.) And while Defendants cite Carter v. Morris, 164 F.3d 215, 219 n.3 (4th Cir. 1999), the Fourth Circuit's holding that de minimis injuries from excessively tight handcuffs

"cannot as a matter of law support" a claim pursuant to the Fourth Amendment has since been abrogated by the Supreme Court. See Wilkins v. Gaddy, 559 U.S. 34, 38 (2010) (per curiam) ("Injury and force, however, are only imperfectly correlated, and it is the latter that ultimately counts."); see also Anderson v. Baltimore County, No. 24-1314, 2025 WL 3459768, at *2 n.4 (4th Cir. Dec. 2, 2025) (per curiam) (recognizing Wilkins's abrogation of Carter). Indeed, more recently, the Fourth Circuit has noted that "this [c]ourt has never held that using handcuffs is per se reasonable" in the context of Fourth Amendment excessive force claims. E.W. ex rel. T.W. v. Dolgos, 884 F.3d 172, 180 (4th Cir. 2018). Thus, "[a] police officer can violate a person's Fourth Amendment rights by using excessive force during handcuffing." Stutzman v. Krenik, 350 F. Supp. 3d 366, 382 (D. Md. 2018).

Here, Plaintiffs have sufficiently alleged that Officer Wylie's use of force while handcuffing Plaintiff Dames was unreasonable. Plaintiff Dames alleges she engaged in nondisruptive protest activity throughout her time at the protest encampment. (Doc. 10 ¶¶ 135-37.) She was then arrested for misdemeanor trespass after failing to leave Polk Place by the 6:00 a.m. deadline. (Id. ¶ 140.) And as noted, she alleges that she suffered bruising and lacerations on her wrists because of Officer Wylie's use of handcuffs. (Id. ¶¶ 141, 389.) There is no indication that Plaintiff Dames posed a threat to others or that

she attempted to resist or evade arrest.

Because Plaintiff Dames plausibly alleges a violation of her constitutional rights, qualified immunity only bars the action against Officer Wylie if Defendants carry their burden to show that the right was not clearly established at the time of the arrest. Defendants cite only the abrogated portion of Carter, however, as an analogous case. In contrast, Plaintiffs point to a Supreme Court of North Carolina case, Bartley v. City of High Point, 873 S.E.2d 525, 535 (N.C. 2022), which clearly established that, in some circumstances, "excessively tight or forceful handcuffing, particularly handcuffing that results in physical injury, constitutes excessive force."[11] Thus, Defendants have not carried their burden to show that the right was not clearly established at the time of Plaintiff Dames's arrest, and they have therefore failed to demonstrate at this stage that qualified immunity bars her claim against Officer Wylie.

b. Officer Lee

As for Plaintiff Rogers's claim against Officer Lee, Defendants assert that Officer Lee's "actions were within the degree of physical coercion allowed during her arrest." (Doc. 18 at 35.) According to Defendants, Officer Lee made a split-second

[11] To determine whether a right was clearly established, the Fourth Circuit "look[s] ordinarily to 'the decisions of the Supreme Court, this court of appeals, and the highest court of the state in which it arose.'" Owens ex rel. Owens v. Lott, 372 F.3d 267, 279 (4th Cir. 2004) (quoting Edwards v. City of Goldsboro, 178 F.3d 231, 251 (4th Cir. 1999)).

decision and had to consider "the presence of potential weapons" like Plaintiff Rogers's cane. (Id.) Plaintiffs counter that Plaintiff Rogers had already indicated her intent to comply at the time she alleges Officer Lee took her cane and threw her to the ground. (Doc. 23 at 33.)

Again, this sufficiently alleges an excessive force claim. According to Plaintiff Rogers, she engaged in nondisruptive protest activity throughout her time at the protest encampment. (Doc. 10 ¶¶ 106-108.) She told Officer Lynch that she would not resist arrest before asking whether she could keep her cane. (Id. ¶ 111.) She then informed Officer Lynch that she would take a step forward to permit her arrest. (Id. ¶ 112.) At this point, according to Plaintiffs, Officer Lee allegedly exclaimed, "F*** your cane," before grabbing it and throwing her to the ground. (Id. ¶ 113.) And as a result, Plaintiff Rogers alleges that she suffered a superior labrum tear and bicep tenonitis. (Id. ¶ 114.) Like in the case of Plaintiff Dames, there is no indication that Plaintiff Rogers posed a threat to others or that she attempted to resist or evade arrest.

Additionally, Defendants have not carried their burden to show that Plaintiff Rogers's right was not clearly established. They cite Kelly v. Solomon, No. 17-cv-311, 2020 WL 247539, at *13 (W.D.N.C. Jan. 15, 2020). But as Plaintiffs correctly point out, Kelly involved the taking of a prisoner's cane after he had struck

the officer in the face during their confrontation. The circumstances here differ dramatically, and Defendants have not shown that Officer Lee is entitled to qualified immunity at this stage.

G. State-Law Tort Claims

1. Battery

Defendants contend that Plaintiffs fail to allege that Officers Lynch or Wylie made physical contact with any Plaintiff. (Doc. 18 at 39.) Moreover, Defendants assert that Officers Lynch, Wylie, and Lee are entitled to public official immunity because Plaintiffs have not alleged any specific facts to support that the officers acted with malice. (Id. at 38-39.) Plaintiffs counter that they did sufficiently allege physical contact and that public official immunity is unavailable for intentional torts. (Doc. 23 at 38-40.)

"[A] battery is the carrying of the threat into effect by the infliction of a blow." Dickens v. Puryear, 276 S.E.2d 325, 330 (N.C. 1981). Further, "[t]he interest protected by the action for battery is freedom from intentional and unpermitted contact with one's person." Id. "[A] police officer may be held liable for assault and battery in the course of an arrest if they used unnecessary or excessive force to effect that arrest." Bartley v. City of High Point, 846 S.E.2d 750, 754 (N.C. Ct. App. 2020), aff'd, 873 S.E.2d 525 (N.C. 2022).

Here, Plaintiffs have sufficiently alleged battery claims against Officers Wylie, Lynch, and Lee. As previously noted, Plaintiffs allege that Plaintiff Dames suffered bruising and lacerations on her wrists because of Officer Wylie's handcuffing. (Doc. 10 ¶¶ 141, 387-89.) Moreover, they allege that Officer Lee knocked Plaintiff Rogers's cane away and threw her to the ground before ordering Officer Lynch to zip-tie her hands. (Id. ¶ 113.) Plaintiff Rogers contends she sustained a superior labrum tear and bicep tenonitis because of these actions. (Id. ¶ 114.)

As to whether Officers Wylie, Lynch, and Lee are entitled to public official immunity, police officers are entitled to public official immunity unless the officer's actions were "malicious, corrupt, or outside the scope of his official authority." McCarn v. Beach, 496 S.E.2d 402, 404 (N.C. Ct. App. 1998). "Thus, elementally, a malicious act is an act (1) done wantonly, (2) contrary to the actor's duty, and (3) intended to be injurious to another." Wilcox v. City of Asheville, 730 S.E.2d 226, 230 (N.C. Ct. App. 2012). "An act is wanton when it is done of wicked purpose or when done needlessly, manifesting a reckless indifference to the rights of others." Foster v. Hyman, 148 S.E. 36, 37-38 (1929). Moreover, in the context of intentional torts, "wanton and reckless behavior may be equated with an intentional act." Bartley, 873 S.E.2d at 534. However, public official immunity still may sometimes apply to the intentional tort of

battery because battery "need not necessarily be perpetrated with malice, willfulness or wantonness" but, instead "may be supplied by grossly or culpably negligent conduct." Maney v. Fealy, 69 F. Supp. 3d 553, 565 (M.D.N.C. 2014) (quoting Lynn v. Burnette, 531 S.E.2d 275, 279 (N.C. Ct. App. 2000)).

Here, Plaintiffs allege that Officers Wylie, Lynch, and Lee "acted wantonly, contrary to their duty, and with intent to injure." (Doc. 10 ¶ 402.) However, such a conclusory statement does not by itself establish that the officers acted with malicious intent to injure.

As for Officer Lee, Plaintiff Rogers contends that, after she stepped forward to comply with Officer Lynch's instructions, Officer Lee said, "F*** your cane" before grabbing the cane and throwing her to the ground. (Id. ¶¶ 112-13.) This allegation, taken as true, is sufficient factual support for the claim that Officer Lee acted with malicious intent to foreclose public official immunity at the pleading stage.

As for Officer Wylie, however, Plaintiff Dames merely alleges that she suffered bruising and lacerations on her wrists during her arrest by Officer Wylie. (Id. ¶ 141.) Similarly, Plaintiff Rogers only alleges that Officer Lee "ordered [Officer] Lynch to zip-tie her hands" and that she sustained a superior labrum tear and bicep tendonitis. (Id. ¶¶ 113-14.) The verified amended complaint is otherwise devoid of any allegations regarding Officer

Wylie's or Officer Lee's malicious intent.

Plaintiffs Dames and Rogers do not, for example, allege that they ever informed the officers that the handcuffs were too tight. Cf. Bartley, 873 S.E.2d at 535 (holding that evidence of the plaintiff's expressed discomfort, combined with the arresting officer's refusal to heed the complaints and loosen the handcuffs, supported the existence of malicious intent at the summary judgment stage). Nor do they contend that the officers said anything during the arrest that would suggest a retaliatory motive. Cf. id. (holding that the arresting officer's statement provided evidence of retaliation where he admonished the plaintiff that he would not have been in the situation he was in if he had done as initially told). Accordingly, both Officers Wylie and Lynch are entitled to public official immunity from the battery claims.

2. Unlawful Arrest

Finally, Defendants argue that the unlawful arrest claims must be dismissed because Officer Defendants had probable cause to arrest Plaintiffs for second degree trespass. (Doc. 18 at 40.) Plaintiffs respond that Officer Defendants lacked probable cause to believe Plaintiffs committed any criminal offense. (Doc. 23 at 39.)

"A false arrest is an arrest without legal authority and is one means of committing a false imprisonment." Marlowe v. Piner, 458 S.E.2d 220, 223 (N.C. Ct. App. 1995). Pursuant to N.C. Gen.

Stat. § 15A-401(b)(1), "an officer may arrest a person without a warrant if the officer has probable cause to believe that the person has committed a criminal offense in the officer's presence." Id. "Probable cause is generally defined as 'a reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious man in believing the accused to be guilty' of an unlawful act." State v. Parker, 860 S.E.2d 21, 28 (N.C. Ct. App. 2021) (quoting State v. Yates, 589 S.E.2d 902, 904 (N.C. Ct. App. 2004)).

Here, for the reasons already discussed in connection with Plaintiffs' Fourth Amendment unlawful arrest claims, Officer Defendants had probable cause to arrest Plaintiffs. Therefore, Plaintiffs have not sufficiently alleged their unlawful arrest claims pursuant to North Carolina law, and the claims will be dismissed.

III. CONCLUSION

For the reasons stated,

IT IS THEREFORE ORDERED that Defendants' motion to dismiss (Doc. 17) is GRANTED as follows:

1. As to all Plaintiffs' prior restraint claims (Count I), viewpoint discrimination claims against Defendants in their individual capacities (Count II), retaliation claims against Defendants in their individual capacities (Count III), due process claims (Count IV), Fourth

Amendment unlawful arrest claims (Count V), and state law unlawful arrest claims (Count X); and those claims are DISMISSED.

2. As to Plaintiff Mohanarajah's viewpoint discrimination and retaliation claims against Defendants in their official capacities (Counts II and III); and those claims are DISMISSED.

3. As to Plaintiff Rogers's battery claim against Defendant Lynch in his individual capacity (Count IX); and that claim is DISMISSED.

4. As to Plaintiff Dames's battery claim against Defendant Wylie in her individual capacity (Count IX); and that claim is DISMISSED.

In all other respects, the motion to dismiss is DENIED.

/s/ Thomas D. Schroeder
United States District Judge

February 4, 2026