

IN THE COMMON PLEAS COURT OF HARDIN COUNTY, OHIO

SCOTT GERBER,
4302 Chesapeake Avenue,
Hampton, VA 23669,

Plaintiff,

v.

OHIO NORTHERN UNIVERSITY
C/O REGISTERED AGENTS INC.,
6545 Market Ave. N. Suite 100,
Canton, OH 44721,

And

OHIO NORTHERN UNIVERSITY BOARD OF
TRUSTEES,
525 South Main St.
Ada, OH 45810,

And

MEMBERS OF THE OHIO NORTHERN
UNIVERSITY BOARD OF TRUSTEES:
PAMELA S. HERSHBERGER; DR. MELISSA
J. BAUMANN; DR. RICHARD P. KEYES;
DR. JULIET K. HURTIG; JASON M.
BROGE; JENNIFER L. ROBY; SHANNON B.
CARNES; DR. CHARLES F. MCCLUSKEY
III; MICHAEL CHOW; COL. WILLIAM E.
ORR JR.; DR. JAMES F. DICKE III;
RESIDENT BISHOP GREGORY V. PALMER;
JASON S. DUFF; HON. JESSICA E. PRICE-
SMITH; DR. KAREN K. FIELDS, M.D.;
BRENDA L. REICHELDERFER; THEODORE
B. GRIFFITH; DR. ANDREW M.

Case No.: 2023 1107 CVH

Judge Jonathan P. Hein

**Plaintiff's Verified Second Amended
Complaint**

Jury Demand Endorsed Hereon

ROECKER; REV. DAVID C. HARRIS;
SCOTT L. SHUTT; DAVID R. HEPPNER;
KATRINA M. THOMPSON; DR. JOHN H.
HULL; DR. TIMOTHY S. TRACY;
ANMARIE S. KOLINSKI; HANLEY H.
WHEELER III; DR. RONDA K. LEHMAN;
MARK A. WHITE, in their official capacities
525 South Main St.
Ada, OH 45810,

And

PROF. JENNIFER DONLEY, in her individual
and official capacities
624 Clint Dr.
Ada, OH 45810,

And

DR. ALISA AGOZZINO, in her individual and
official capacities
1602 Edna Dr.
Lima, OH 45807,

And

PROF. KATHLEEN BARIL, in her individual
and official capacities
3477 London Dr.
Lima, OH 45806,

And

DR. DAVID MIKESELL, in his individual and
official capacities
James Lehr Kennedy 278
525 South Main Street
Ada, OH 45810,

And

DR. PHIL ZOLADZ, in his individual and
official capacities
416 SR 235

Ada, OH 45810,

And

DR. MELISSA BAUMANN, in her individual
and official capacities
920 West Lincoln Ave.,
Ada, OH 45810,

And

CHARLES H. ROSE III, in his individual and
official capacities
835 South Main St.
Findlay, OH 45840,

Defendants

VERIFIED SECOND AMENDED COMPLAINT

Plaintiff Dr. Scott Gerber, by and through the undersigned counsel, files this Complaint against the defendants.

INTRODUCTION

1. Dr. Scott Gerber is an accomplished legal scholar and author.
2. He is also a libertarian, an opponent of racial, gender, and ethnic preferences in hiring, and an expert on the jurisprudence of Justice Clarence Thomas.
3. This puts Dr. Gerber dramatically out of step with the politics of academia generally and defendant Ohio Northern University in particular.
4. Dr. Gerber should be free to argue for his heterodox views. After all, Ohio Northern purports to value academic freedom. Further, Dr. Gerber secured tenure protections more than a decade and a half ago.

5. “The purpose of academic tenure, as used in the academic community, is the preservation of academic freedom and the correlative protection of economic security for teachers.” *Rehor v. Case Western Reserve Univ.*, 43 Ohio St.2d 224, 230 (1975). By providing this security, tenure ensures “that a professor will not lose his job for exercising academic freedom, namely, his rights to teach, to think and to speak in accordance with his conscience in the traditions of the academic community.” *Id.* at 230–31 (spelling corrected).

6. Dr. Gerber’s tenure provided no such protection. In 2023, Ohio Northern University and certain of its employees decided to terminate Dr. Gerber’s employment, motivated by a desire to retaliate against him based on his unpopular views and his raising concerns about illegal conduct—including racially discriminatory hiring—at the University.

7. On April 14, 2023, school security—with support from armed police officers from Ada, Ohio—removed Dr. Gerber from his classroom in the presence of students. They escorted him to the office of Dean Charles H. Rose III, a defendant in this case, who told Dr. Gerber that he must either resign or face termination proceedings. After Dr. Gerber refused to resign, the University commenced termination proceedings against him. Neither the University nor any of its employees told Dr. Gerber what he was accused of having done, notwithstanding his contractual right to be informed with “reasonable particularity” of the accusations against him. When the hearing eventually went forward, the University ambushed Dr. Gerber with new accusations, denied Dr. Gerber his contractual right to confront the witnesses against him, and made Dr. Gerber subject to a sham hearing with a predetermined outcome.

8. In the midst of this, the University defamed Dr. Gerber; it issued a press release falsely labeling Dr. Gerber a threat to the physical safety of faculty, staff, and students. University

President Melissa Baumann further published this defamatory characterization by email to third parties. These statements, along with the manner in which Dr. Gerber was taken from his classroom, falsely published to the world that Dr. Gerber presented a safety threat.

9. In the months since the commencement of this case, the termination proceedings reached their predetermined outcome: Ohio Northern University terminated Dr. Gerber without cause, in breach of his employment contract.

10. Dr. Gerber filed this lawsuit in hopes of restoring his reputation, regaining his employment, securing compensation for the harm done to him, and setting a precedent that will stop colleges and universities from targeting professors who “deign to think for themselves,” *see Nomination of Judge Clarence Thomas to be Associate Justice of the Supreme Court of the United States: Hearing before the S. Comm. on the Judiciary*, 102d Cong. Part 4 157-58 (1991) (statement of Clarence Thomas, then J. on the U. S Court of Appeals for the D.C. Circuit).

PARTIES

11. The plaintiff, Dr. Scott Gerber, is a legal scholar. He joined the faculty of the Pettit College of Law at Ohio Northern University in 2001. He served as a tenured Professor of Law on the Ohio Northern faculty from approximately 2007 until the University terminated his employment in 2023.

12. Ohio Northern University (which this complaint sometimes calls “Ohio Northern” or “the University”), is a private university in Ada, Ohio, organized as a not-for-profit corporation under Ohio law, which employs more than fifteen individuals. Ohio Northern’s Pettit College of Law is part of the University and also located in Ada, Ohio.

13. On information and belief, the Ohio Northern University Board of Trustees is the governing body of Ohio Northern University. It consists of: Pamela S. Hershberger; Melissa J. Baumann; Richard P. Keyes; Juliet K. Hurtig; Jason M. Broge; Jennifer L. Roby; Shannon B. Carnes; Charles F. McCluskey III; Michael Chow; Col. William E. Orr Jr.; James F. Dicke III; Resident Bishop Gregory V. Palmer; Jason S. Duff; Hon. Jessica E. Price-Smith; Karen K. Fields; Brenda L. Reichelderfer; Theodore B. Griffith; Andrew M. Roecker; David C. Harris; Scott L. Shutt; David R. Heppner; Katrina M. Thompson; John H. Hull; Timothy S. Tracy; Anmarie S. Kolinski; Hanley H. Wheeler III; Ronda K. Lehman; Mark A. White. In this complaint, all references to the “Ohio Northern University Board of Trustees,” the “Board of Trustees,” or the “Board” refer to the Board and its members, in their official capacities, collectively.

14. Defendant Melissa Baumann is the President of Ohio Northern.

15. Defendant Charles H. Rose III is the Dean of Ohio Northern’s Pettit College of Law.

16. Defendant Jennifer Donley is an Associate Professor at Ohio Northern and served as the chair of the Hearing Committee on Dismissal of Faculty—the “Hearing Committee” for short—in Dr. Gerber’s case.

17. Defendant Alisa Agozzino is an Associate Professor at Ohio Northern and was a member of the Hearing Committee.

18. Defendant Kathleen Baril is an Associate Professor at Ohio Northern and was a member of the Hearing Committee.

19. Defendant David Mikesell is a Professor at Ohio Northern and was a member of the Hearing Committee.

20. Defendant Phil Zoladz is a Professor at Ohio Northern and was a member of the Hearing Committee.

JURISDICTION AND VENUE

21. All of the defendants are subject to personal jurisdiction in this Court. Ohio Northern is located in Hardin County, Ohio; the events out of which the causes of action arise all pertain to the defendants' transacting business in Ohio; the defendants' tortious and other actions relevant to this suit occurred in Ohio; and the Court can, on account of the defendants' residence in and other connections with the State of Ohio, assert personal jurisdiction over the defendants consistent with the Ohio and United States constitutions. *See* R.C. 2307.382(A)(1), (3), (8) & (C).

22. Venue and jurisdiction are appropriate in this Court because the relevant actions giving rise to the claims occurred in Hardin County, and because at least one of the defendants resides in Hardin County.

FACTUAL ALLEGATIONS

A. General Background

23. Dr. Gerber is an accomplished legal scholar.

24. He has published ten books, along with more than 200 articles, book reviews, op-eds, and other written pieces; and he has received multiple awards for his teaching, research, and service, including recently.

25. Dr. Gerber is a libertarian.

26. Dr. Gerber believes that human beings should be treated and respected as individuals, not as members of racial classes or other groups defined by innate characteristics.

27. As such, Dr. Gerber has publicly opposed the practice of considering race, sex, and ethnicity in the admission of college students and in the hiring of college faculty and staff.

28. Throughout his career, Dr. Gerber has criticized racial preferences in college admissions and hiring. *See, e.g.*, Scott Douglas Gerber, *First Principles: The Jurisprudence of Clarence Thomas* 110–12 (1999); Scott Douglas Gerber, *Stephen B. Presser, Law Professors: Three Centuries of Shaping American Law*, 67 *J. Legal Educ.* 635, 639–40 (2018); Scott D. Gerber, *Clarence Thomas, Fisher v. University of Texas, and the Future of Affirmative Action in Higher Education*, 50 *U. Rich. L. Rev.* 1169, 1190 (2016); Scott Douglas Gerber, *To Secure These Rights: The Declaration of Independence and Constitutional Interpretation* 97 (1995).

29. In one notable recent example, Dr. Gerber published an op-ed in March 2023 concerning a proposed Ohio law. There, Dr. Gerber criticized the use of “racial preferences” in faculty hiring, noting that “jobs are frequently set aside for minorities and women” so that “conservative and libertarian white males need not apply, or so it seems.” Scott Gerber, *Despite some good ideas, Senate Bill 83 should be defeated*, *Cincinnati Enquirer* (March 24, 2023), <https://perma.cc/49NM-DKZJ>.

30. In addition to speaking out about discrimination, Dr. Gerber has acted to prevent it.

31. To illustrate with an example: in one hiring cycle Dr. Gerber observed evidence that Ohio Northern considered race, sex, and ethnicity when making hiring decisions. At that time, the College of Law considered making offers to six individuals. Dr. Gerber concluded that none were qualified to serve as a law professor. And he noticed what would be a statistically improbable coincidence in the absence of discrimination: none of the individuals being considered were white males.

32. Dr. Gerber raised his concerns to Professor Dallan Flake, then the chair of the College of Law’s hiring committee, objecting that the University must not consider race, sex, or ethnicity when making hiring decisions. (Flake now teaches at Gonzaga University.)

33. Dr. Gerber asked Flake to resign from the hiring committee.

34. Dr. Gerber also raised additional internal objections, including by asking Dean Rose to remove Flake from the hiring committee.

35. Dr. Gerber—a member of the Ohio Advisory Committee to the United States Commission on Civil Rights since 2008—suggested himself as a replacement for Flake.

36. Dr. Gerber also raised his concerns about the University’s discriminatory hiring practices to government officials.

37. On another occasion, Dr. Gerber learned that Ohio Northern responded to an American Bar Association questionnaire by admitting that it takes race, sex, and ethnicity into account when making hiring decisions. Specifically, Ohio Northern reported to the ABA that it “pays careful attention to diversity in filling all faculty and staff positions,” and that the “associate dean has sought to recruit a faculty that is diverse with respect to gender, race and ethnicity.” (Questionnaire excerpts attached as Exhibit 3).

38. Those statements admit to illegal hiring practices.

39. Dr. Gerber discussed the illegality of these practices with at least one member of the committee responsible for answering the questionnaire—namely, former Professor of Law and Associate Dean Lauren Newell—and then expressed concern about the illegality of this practice to the University and additional school administrators. (Newell now teaches at Campbell University.)

40. In approximately October 2021, Dr. Gerber, himself a member of Ohio Northern's "University Council," reported to the Council that Ohio Northern's hiring practices violated anti-discrimination laws.

41. In approximately June 2022, Dr. Gerber filed complaints with the U.S. Equal Employment Opportunity Commission and the Ohio Civil Rights Commission, alleging that Ohio Northern, Flake, Newell, Rose, and others at the University acted in violation of laws prohibiting discrimination in hiring and employment.

42. Employees at Ohio Northern have taken actions signaling their frustration with Dr. Gerber's efforts to combat racism.

43. One example concerns a letter the Executive Committee of the Ohio Northern University Chapter of the American Association of University Professors wrote to Daniel A. DiBiasio, who then served as University President, on February 8, 2022. The letter concerned behaviors by Dean Rose believed to violate both Ohio Northern's policies and anti-discrimination laws. For example, Dean Rose told a female staff member that she was "the most pregnant woman" he had ever seen, and he told an Asian-American staff member that she did not appear Asian because her eyes were round rather than almond shaped. (Letter attached as Exhibit 4.)

44. During a law-faculty meeting, and while looking directly at Dr. Gerber, Dean Rose threatened to mete out "discipline" for the faculty member he suspected of being behind the criticism of his discriminatory comments.

45. Universities, including Ohio Northern, resent and resist limits on race-, sex-, and ethnicity-based preferences.

46. But the law forbids racial preferences in admission and hiring. And the law encourages the reporting of illegal consideration of race, ethnicity, and sex in hiring by protecting those who report such conduct.

47. In June 2023, the Supreme Court of the United States held that the Fourteenth Amendment and Title VI—the latter of which binds private schools, like Ohio Northern, that accept federal funds—forbid considering race as a factor in college admissions. *See Students for Fair Admissions v. President and Fellows of Harvard College*, 600 U.S. 181 (2023).

48. Similarly, Title VII prohibits employers from treating employees or applicants differently “because of” their “race,” “sex,” or “national origin.” 42 U.S.C. §2000e-2(a)(1).

49. Ohio law prohibits employers from treating employees or applicants differently “because of” their “race,” “sex,” “national origin,” or “ancestry.” R.C. 4112.02(A).

50. Treating an applicant’s race, sex, or ethnicity as a plus-factor entails treating individuals differently because of race, sex, or ethnicity.

51. In addition to opposing discrimination, Dr. Gerber believes professors have a moral duty to monitor their schools’ conduct and to report suspected wrongdoing to the relevant authorities.

52. Accordingly, Dr. Gerber has reported suspected legal violations by Ohio Northern and its employees—including, for example, violations of anti-discrimination law, tax law, and occupational-safety law—to the responsible authorities.

B. Dr. Gerber’s contract with the University

53. Ohio Northern’s Faculty Handbook, attached as Exhibit 1 (“Handbook”), operated at all times relevant to this dispute as a binding employment contract between Dr. Gerber and Ohio Northern.

54. An additional, signed contract incorporating the Handbook and other University policies is attached as Exhibit 2-1. Exhibit 2-2 includes an earlier contractual agreement between Dr. Gerber and Ohio Northern doing the same.

55. Section 2.2 of the Handbook “acknowledges the importance of academic freedom,” and imposes on all faculty members “a particular obligation to promote conditions of free inquiry.” Handbook §2.2. “A faculty member is entitled to freely study, discuss, investigate, teach, and publish.” *Id.*

56. This accords with the strong public policy of fostering free inquiry and the exchange of ideas—a policy reflected in the Free Speech Clause of the United States Constitution and in Section 11 of the Ohio Bill of Rights, Ohio Const., art. I, §11.

57. Section 2.7 of the Handbook governs the dismissal of faculty members.

58. Section 2.7.1 provides that dismissal of a tenured faculty member “shall be initiated only for adequate cause, and shall not be used to restrain faculty members in the exercise of academic and artistic freedom.” Handbook §2.7.1.

59. The same section lists causes that warrant dismissal. These include:

- “grave misconduct, which includes, but is not restricted to, deliberate and serious disruption of normal academic operations,” Handbook §2.7.1(3);
- “flagrant and persistent non-cooperation with other faculty members or administration to the extent that it constitutes rejection of responsibilities a faculty member normally assumes,” Handbook §2.7.1(4); and
- “refusal or continued failure to comply with the policies of the institution, college, library, school, department, or program, or to carry out specific assignments, when such policies or assignments are reasonable and nondiscriminatory,” Handbook §2.7.1(6).

60. Even if the University can establish adequate cause, termination is permitted only if it is “directly and substantially related to the” professor’s “fitness as a faculty member.” Handbook §2.7.1.

61. Section 2.7.2 provides that, when “the issue of dismissal for cause arises, the Dean or Library Director shall discuss the matter with the faculty member in personal conference.” Handbook §2.7.2. If the matter is not resolved by “mutual consent” at the conference, “a standing or ad hoc committee of five faculty members elected by the faculty and charged with the function of rendering confidential advice to both parties in such situations shall informally inquire into the situation.” *Id.* “If the President, after considering the committee’s report, determines that dismissal proceedings shall be undertaken, action shall be commenced in accordance with the procedures” specified in the Handbook. *Id.*

62. When the president decides to go forward with dismissal proceedings, the president “shall” give the accused a “statement specifying *with reasonable particularity* the proposed grounds for dismissal.” *Id.* (emphasis added).

63. Section 2.7.3 requires the president to notify the accused faculty member in writing of the right to a hearing “to determine whether or not the faculty member should be removed from the faculty position held *on the grounds stated*” in the document setting forth the bases for dismissal. Handbook §2.7.3 (emphasis added).

64. Section 2.7.4 states that, if the accused faculty member elects for a hearing, a “committee of five full-time faculty members shall conduct the hearing and render a decision.” Handbook §2.7.4. “The Committee shall be either an elected standing committee or an ad hoc committee elected by the faculty promptly after the President’s letter to the faculty member has been sent.”

Id. “In no event shall the members of this committee have been previously concerned with [the] case.” *Id.* “Each party shall have the right to exercise a single peremptory challenge” to a faculty member’s inclusion on the committee. *Id.* If “either the affected faculty member or the Administration should have a question regarding the ability of any member of the committee to hear the evidence and render a decision in a fair and impartial manner, such objection and the grounds thereof shall be presented to the committee in writing.” *Id.* “The committee” must then take “action as it deems appropriate.” *Id.*

65. Because the panel is composed of faculty members, each is susceptible to pressure by the University and its president.

66. Because the panel is composed of faculty members, each has an incentive to appease the University and its president.

67. Section 2.7.6 gives the University’s president “the option of attendance during the hearing.” Handbook §2.7.6. “The President may designate an appropriate representative to assist in developing the case, but the committee shall determine the procedures for the presentation of the evidence[,] conduct the questioning of the witnesses as it so desires, identify relevant evidence important to the case which has not been volunteered, and request the presentation by appropriate parties.” *Id.*

68. Under Section 2.7.7, the faculty member has the right to the assistance of counsel, who has the power, “within reasonable limits, to examine and cross-examine all witnesses who testify orally.” Handbook §2.7.7. “The faculty member shall have the opportunity to be confronted by all adverse witnesses.” *Id.* If “the witness cannot appear, the identity of the witness, as well as any statements, shall be disclosed to the faculty member, and statements may when necessary be taken

outside the hearing and used as evidence.” *Id.* “A recording or transcript of the proceedings will be made, and the faculty member may make a record or request a copy of the committee’s record at the faculty member’s cost.” *Id.* The committee issues its decision “upon the preponderance of the evidence,” and “the burden of proof” is on the Administration, not the faculty member. *Id.*

69. Section 2.7.8 provides guidance on conducting the proceedings. It specifies that the “purpose of [the] proceedings is to provide the affected faculty member with a vehicle to be judged by peers.” Handbook §2.7.8. “Accordingly, rules of evidence and other formal aspects of judicial proceedings will be followed only to the extent that they facilitate the committee’s performance of its function.” *Id.* “[T]he committee should ordinarily hear all testimony and receive all documents unless the testimony or the documents are clearly immaterial, irrelevant or otherwise improper.” *Id.* §2.7.8(A). “It is preferable that all witnesses be present so that [a] full inquiry may be had.” *Id.* §2.7.8(B). “The committee shall assist the parties in the production of all relevant evidence,” and “also assist in securing the attendance of witnesses.” *Id.* §2.7.8(C).

70. Section 2.7.9 discusses limits on the rights of counsel.

71. Section 2.7.10 says that the “committee shall reach its decision in conference on the basis of the evidence.” *See* Handbook §2.7.10. “The committee shall make explicit findings with respect to each of the grounds of removal presented and state its decision as to whether the faculty member should be dismissed.” *Id.*

72. Under Section 2.7.11, the “President and the faculty member” must be “furnished with a copy of the decision.” Handbook §2.7.11. “No publicity concerning the committee’s decision will be released by any party or the committee until consideration has been given to the case by the Board of Trustees.” *Id.*

73. Section 2.7.12 requires that the President “transmit to the Board of Trustees the full report of the hearing committee stating its action and the record of proceedings.” Handbook §2.7.12. “The Board of Trustees or its duly authorized Executive Committee shall make a decision within sixty (60) days sustaining or overruling the committee.” *Id.* “The Board’s announcement of the final decision should include a statement of the original action of the hearing committee.” *Id.*

74. Under Section 2.7.13, the faculty member may appeal any adverse decision by the Board under the “Grievance Procedure” laid out elsewhere in the Handbook.

75. Section 2.7.14 says: “Until final decision upon termination of an appointment, the faculty member will be suspended or assigned to other duties in lieu of suspension by the President *only if* immediate harm to the faculty member, to others, or the instructional program of Ohio Northern University is threatened by the faculty member’s continuance.” (emphasis added)

76. Section 2.24 of the Handbook lays out a process for faculty members to file grievances. Under this process, grievances are to be filed “within four weeks of the discovery of the action which caused the grievance ([or] if there is a series of actions, within three weeks of the most recent occurrence).” Handbook §2.24(Stage 1).

C. The University’s termination of Dr. Gerber.

77. At some point during or before January 2023, Ohio Northern retained the law firm of Taft Stettinius & Hollister LLP to investigate Dr. Gerber for alleged wrongdoing.

78. On information and belief, Ohio Northern or its employees initiated this investigation in retaliation for Dr. Gerber’s opposition to discriminatory hiring practices and his complaints concerning the University’s non-compliance with legal requirements, and in particular with anti-discrimination laws.

79. Neither Taft nor the University informed Dr. Gerber of the specifics of the alleged wrongdoing, despite Dr. Gerber's requests for this information.

80. Notwithstanding the investigation, Dean Rose assigned Dr. Gerber additional service responsibilities in February 2023 and Dr. Gerber, at Dean Rose's suggestion, was re-elected by acclamation by the law faculty to a new two-year term as a law faculty representative on Ohio Northern's University Council.

81. At some point during or before April 2023, Taft produced a report concerning the results of its investigation.

82. Taft provided the report to Ohio Northern.

83. Taft and Ohio Northern refused to provide Dr. Gerber with a copy of the report or with specifics concerning the report's conclusions.

84. On April 14, 2023, University security officials, with armed police from the Village of Ada on hand, entered Dr. Gerber's classroom with his students present.

85. The security officers ordered Dr. Gerber to leave his classroom.

86. The security officers and Ada police escorted Dr. Gerber to Dean Rose's office.

87. While being escorted to Dean Rose's office, Dr. Gerber feared he might be shot if he made a wrong move.

88. While the security officers and Ada police stood guard outside Dean Rose's office, indicating Dr. Gerber's inability to leave, Dean Rose informed Dr. Gerber that Dr. Gerber was immediately barred from all his faculty functions, including teaching his courses, and forbidden from entering Ohio Northern's campus.

89. On information and belief, Dr. Gerber’s suspension was not supported by a determination from President Baumann that “immediate harm to [Dr. Gerber], to others, or the instructional program of Ohio Northern University [was] threatened by” Dr. Gerber’s “continuance.” Handbook §2.7.14.

90. Dean Rose told Dr. Gerber, who was over 40 years of age, that if he did not sign a separation agreement and release all claims against the University by April 21, 2023, Ohio Northern would commence dismissal proceedings against him.

91. Dean Rose informed Dr. Gerber that these actions were being taken due to an alleged lack of “collegiality,” though he declined to provide specifics.

92. Lack of collegiality is not listed in the Handbook among the permissible grounds for terminating a tenured professor.

93. Prominent organizations have opposed collegiality-based terminations because collegiality is an overly subjective concept that can be used to punish those with heterodox views. See American Association of University Professors, *On Collegiality as a Criterion for Faculty Evaluation* (2016 revision).

94. On information and belief, Ohio Northern and its employees—Dean Rose and President Baumann, in particular—pursued termination in retaliation for Dr. Gerber’s opposition to discriminatory hiring practices and his complaints concerning the University’s non-compliance with anti-discrimination laws and other laws and policies.

95. Dr. Gerber experienced intense terror as a result of the April 14, 2023, events.

96. On information and belief, Dean Rose and President Baumann either arranged for or approved the plan to have Dr. Gerber removed from his class by security and armed town police

with students present, rather than informing Dr. Gerber of his suspension in a more-private manner.

97. Neither Dean Rose, President Baumann, nor the University had any lawful justification for removing Dr. Gerber from his classroom and then detaining Dr. Gerber in this manner.

98. The manner in which Dr. Gerber was removed from the classroom caused students to draw “morbid conclusions” about the reasons behind Dr. Gerber’s removal. *See Students Anxious After Professor Removed From Campus*, Northern Review, May 8, 2023, <https://perma.cc/2KQS-QREK>.

99. Some, for example, suspected his removal related to “moral turpitude.” Others feared for their safety. *Id.*

100. On May 10, 2023, Dean Rose sent a Recommendation of Dismissal of Faculty Member Professor Scott Gerber to the Review Committee on Dismissal of Faculty. (Attached as Exhibit 5.)

101. The Recommendation stated that Dr. Gerber bullied and harassed other faculty members, in particular “(1) persons who are inferior to him in rank, including untenured faculty, and who therefore feel vulnerable and less able to defend themselves; and (2) persons who were in a position to expose or discipline his misconduct.” Ex. 5 at 3. But the Recommendation provided no specific examples of such conduct, nor did it mention any details Dr. Gerber could use to understand the accusations against him. Further, the Recommendation did not explain what “misconduct” the allegedly aggrieved individuals might conceivably have exposed or disciplined.

102. On June 22, 2023, Ohio Northern issued a press release labeled “University Statement.” (Attached as Exhibit 6.) That statement, without providing specifics and without any basis

in fact, stated that Dr. Gerber presented a threat to the “safety of ... faculty, staff, and students.”

Ex. 6.

103. On information and belief, President Baumann authorized the issuance of this statement.

104. President Baumann also directed subordinates to publish this information by email to individuals who wrote with concerns about the handling of Dr. Gerber’s case. (Email attached as Exhibit 7.)

105. On information and belief, the University and President Baumann knew that Dr. Gerber did not present a threat to the safety of Ohio Northern’s faculty, staff, and students when they published these statements; alternatively, they had no sound basis for concluding that Dr. Gerber presented a threat to the safety of Ohio Northern’s faculty, staff, and students and took no steps to determine the truth of this assertion before publishing it.

106. On June 28, 2023, President Baumann sent Dr. Gerber a “Statement of Grounds for Dismissal.” (Attached as Exhibit 8.)

107. The Statement of Grounds for Dismissal contained three charges.

108. Charge 1 alleged a violation of Section 2.7.1(3) of the Handbook, which forbids “grave misconduct,” including “deliberate and serious disruption of normal academic operations.” Handbook at §2.7.1(3).

109. Charge 2 alleged a violation of Section 2.7.1(4) of the Handbook, which forbids “flagrant and persistent non-cooperation with other faculty members or administration to the extent that it constitutes rejection of responsibilities a faculty member normally assumes.” Handbook §2.7.1(4).

110. Finally, Charge 3 alleged a violation of Section 2.7.1(6), which forbids the “refusal or continued failure to comply with the policies of the institution, college, library, school, department, or program, or to carry out specific assignments, when such policies or assignments are reasonable and nondiscriminatory.” Handbook §2.7.1(6).

111. Each charge was said to rest on the same misconduct.

112. Although the Handbook requires that statements of the grounds for dismissal “specif[y] with reasonable particularity the proposed ground for dismissal,” Handbook §2.7.2, the Statement of Grounds for Dismissal included no particularity.

113. Rather than identifying specific *instances* of misconduct, the Statement of Grounds for Dismissal vaguely alluded to *categories* of alleged misconduct. Here are the stated grounds, in full:

- Dr. Gerber specifically targeted law school faculty members including, but not limited to Dallan Flake, Melissa Kidder, and Lauren Newell.
- Dr. Gerber engaged in an aggressive written and verbal communication style that has created an unhealthy and unprofessional climate within the law school.
- Dr. Gerber exploited his position as a tenured professor and member of the tenure committee when he attempted to manipulate junior faculty members into supporting his position on committee issues by threatening to oppose their tenure, and opposed their promotion and tenure when they disagreed with his position.
- Dr. Gerber repeatedly accused his law school colleagues of misconduct without knowing all of the facts and when his allegations were investigated, debunked, and he was made aware of this, he continued to assert his debunked allegations despite all evidence to the contrary. His colleagues have expended time and resources defending themselves internally against his claims after they’d been proven false, including in their tenure and review processes. Dr. Gerber’s pervasive pattern of bullying, harassment, and verbal abuse has contributed to faculty leaving the university.
- Dr. Gerber’s misconduct has created a hostile work environment for untenured, junior faculty and other untenured faculty. His conduct has created fear and apprehension that has negatively impacted the law school community. This impacts other faculty’s ability to work, teach, research, and engage in service.

- Dr. Gerber’s misconduct has negatively impacted the law school’s ability to retain faculty.
- Dr. Gerber’s pervasive pattern of misconduct has resulted in the deliberate serious disruption of the law school and university’s efficiency and productivity.

Ex. 8 at 2–3.

114. At no point did the University provide Dr. Gerber with a copy of any report prepared pursuant to Handbook §2.7.2.

115. The Statement of Grounds for Dismissal set a July 10, 2023 hearing date, leaving Dr. Gerber with just six business days to prepare for a hearing for which Ohio Northern had at least six months to prepare.

116. On June 29, 2023, at 6:55 p.m.—one day after Dr. Gerber received the Statement for Grounds of Dismissal—defendant Jennifer Donley, Chair of the Hearing Committee on Dismissal of Faculty, emailed Dr. Gerber to request “documentation relevant to the charges outlined in the Statement of Grounds for Dismissal,” along with “a list of witnesses that” Dr. Gerber would “be soliciting for attendance at the July 10, 2023 hearing.” (Email attached as Exhibit 9.)

117. Donley’s email required Dr. Gerber to provide this information no later than 5:00 p.m. on July 5, 2023.

118. Thus, the Chair of the Hearing Committee gave Dr. Gerber a mere three business days to compile documents regarding, and to identify witnesses with knowledge of, events never identified in the Statement of Grounds for Dismissal.

119. Counsel for Dr. Gerber contacted the Hearing Committee, requesting that the hearing be moved to a later date. Donley responded that she lacked authority to move the hearing date, and that only President Baumann could do so. (Email attached as Exhibit 10.)

120. Dr. Gerber then sued in this Court, securing a temporary restraining order that temporarily blocked the hearing from proceeding on July 10, 2023. *See* J. Entry Granting TRO (July 6, 2023).

121. A subsequent order extending the temporary restraining order compelled the University to “provide to Dr. Gerber’s counsel (1) a bill of particulars describing with reasonable particularity the proposed grounds for dismissal; and (2) copies of all letters of concern or complaints that relate to the proposed grounds for dismissal (to the extent that they have not already been provided).” Order Extending TRO and Developing Hear’g Procedures (July 24, 2023) (“Extension Order”).

122. The Bill of Particulars did not comply with the Court’s order. (Bill of Particulars attached as Exhibit 11.)

123. First, it expressly declined to provide “copies of *all* letters of concern or complaints” relating to the proposed grounds for dismissal, contrary to the Court’s order. Extension Order at 1 (emphasis added). Instead, it stated that the examples it provided were “not meant in any way to limit the testimony of witnesses presented by the President at the Hearing ...” Ex. 11 at 2.

124. Second, the Bill of Particulars does not specify with “reasonable particularity” the grounds for dismissal generally alleged in the Statement of Grounds for Dismissal. *See* Extension Order at 1.

125. Here is the entirety of the specific accusations that appeared in the Bill of Particulars, all of which involved events outside the time limit for filing grievances set forth in Section 2.24 of the Handbook.

- In the spring of 2017, Dr. Gerber pressured junior faculty member Dallan Flake to vote a certain way regarding post-tenure review proposals at the College. When

Flake did not vote in accordance with Dr. Gerber's views, Dr. Gerber sent Flake aggressive emails and in October 2017, Dr. Gerber wrote a separate statement to accompany Flake's promotion packet. In the separate statement, Dr. Gerber accused Flake of failing to do his due diligence and said that Flake needed to be more "humble." *See* Flake January 16, 2018 Letter to Tonya Paul and attached Separate Statement signed by Scott D. Gerber.

- In September 2019, Dr. Gerber sent Flake numerous aggressive emails regarding a Law Review matter when Flake was the advisor and Dr. Gerber had no active role with the organization. *See* November 12, 2019 Letter and attached emails.
- In March 2022, Flake chose to leave the College, in part, as a result of Dr. Gerber's behavior toward him. Since 2020, Dr. Gerber had been accusing Flake of unlawful employment discrimination connected with Flake's involvement on the hiring committee. The allegations of discrimination were meritless, and were made when Dr. Gerber had [sic] did not have facts to support his claim. At one point, Dr. Gerber suggested that Flake resign from the hiring committee and suggested that he, Dr. Gerber, would be an acceptable replacement. *See* March 8, 2022 Letter to Charlie Rose.
- In October 2020, Dr. Gerber evaluated Melissa Kidder's externship class. During the class, a student disclosed that she had been sexually harassed. Dr. Gerber accused Kidder of failing to follow up on that student's allegations and said that the alleged sexual harassment occurred during her externship. In fact, Kidder did follow up with the student privately and also determined the sexual harassment did not occur in her externship. Despite this correction, Dr. Gerber separately wrote on Kidder's retention again regurgitating false claims about Kidder's "failed" [sic] to address a student's disclosure of sexual harassment. *See* November Separate Statement.
- In April of 2021, Dr. Gerber again evaluated Kidder's class. This time Dr. Gerber commented "With all due respect, the clinic director should not be teaching doctrinal courses." *See* April Evaluation of Juvenile Law Class.
- In September 2021, Dr. Gerber cornered Lauren Newell following a faculty meeting and badgered her regarding faculty matters—to the point where an observer felt the need to intervene. *See* Deanna Cira Letter.

126. Some of the categories of misconduct alleged in the Statement of Grounds for Dismissal are entirely unsupported by the supposed misdeeds alleged in the Bill of Particulars. For example, while the Statement of Grounds for Dismissal says that Dr. Gerber "attempted to manipulate junior faculty members into supporting his position on committee issues by threatening to oppose their

tenure,” Ex. 8 at 2, none of the examples in the Bill of Particulars alleges an instance in which Dr. Gerber did that—the first bullet point concerning Dr. Gerber’s interaction with Flake perhaps attempts to, but it contains no details suggesting that Dr. Gerber’s efforts constituted attempted manipulation rather than legitimate attempts at persuasion.

127. The examples in the Bill of Particulars do not provide any detail concerning alleged wrongdoing relevant to any of the three counts in the Statement of Grounds for Dismissal. Again, those three counts include:

Count 1: Dr. Gerber engaged in “grave misconduct” of the sort that causes “deliberate and *serious* disruption of normal academic operations,” Handbook §2.7.1(3) (emphasis added);

Count 2: Dr. Gerber acted in ways that constituted the “rejection of responsibilities [of] a faculty member,” Handbook §2.7.1(4);

Count 3: Dr. Gerber violated “policies of the institution” or refused “to carry out specific assignments.” Handbook §2.7.1(6).

128. The accusations that Dr. Gerber (1) “pressured” Flake to vote a certain way “regarding post-tenure review proposals,” Ex. 11 at 2, (2) objected in “aggressive” terms to Flake’s failure to do so, and (3) wrote a statement for Flake’s promotion packet concerning his lack of humility and failure to exercise due diligence, without more, all reflect only disagreements about the proper operation of the University. Disagreements about university operations do not (1) constitute grave misconduct that deliberately and seriously disrupts normal academic operations, (2) entail the rejection of faculty-member responsibilities, or (3) suggest any policy violation or refusal to perform specified assignments. The University did not (and still has not) produced any evidence indicating that Dr. Gerber engaged in improper pressure rather than efforts at legitimate persuasion, or that his objections exceeded the normal bounds of disagreement in academia.

129. Similarly, Dr. Gerber’s allegedly sending “aggressive emails” in 2019 to Flake regarding concerns with the operation of the law review would not (1) constitute grave misconduct that deliberately and seriously disrupts normal academic operations, (2) entail the rejection of faculty-member responsibilities, or (3) suggest any policy violation or refusal to perform a specified assignment.

130. Dr. Gerber’s raising concerns that Flake, the hiring committee, and the College of Law unlawfully considered race (or other protected traits) in hiring also would not (1) constitute grave misconduct that deliberately and seriously disrupts normal academic operations, (2) entail the rejection of faculty-member responsibilities, or (3) suggest any policy violation or refusal to perform a specified assignment. To the contrary, expressing concerns about illegal practices is a protected activity that cannot legally or contractually be punished.

131. The Bill of Particulars alleges that Dr. Gerber, after observing Melissa Kidder’s externship class, wrote in his review that Kidder failed to follow-up about a student’s claim of sexual harassment. The Bill of Particulars says Kidder did follow up. But even if that is true, Dr. Gerber’s recording his understanding that Kidder “failed” to follow up—an understanding corroborated by a student witness—would not (1) constitute grave misconduct that deliberately and seriously disrupts normal academic operations, (2) entail the rejection of faculty-member responsibilities, or (3) suggest any policy violation or refusal to perform a specified assignment. Indeed, Dr. Gerber was required by law and ONU policy to report that a student had said she had been sexually harassed. Dr. Gerber reported it, which is a protected activity that cannot legally or contractually be punished.

132. Next, the Bill of Particulars says that Dr. Gerber wrote in his evaluation of Kidder’s class that Kidder, a clinical instructor, “should not be teaching doctrinal courses.” Ex. 11 at 3.

Debates over the value and role of clinical education are commonplace in legal academia. *Cf., e.g.,* Brian Leiter, *More mischief afoot at the ABA!*, Brian Leiter’s Law School Reports (Dec. 10, 2013), <https://tinyurl.com/ABAMischief>. Such statements do not (1) constitute grave misconduct that deliberately and seriously disrupts normal academic operations, (2) entail the rejection of faculty-member responsibilities, or (3) suggest any policy violation or refusal to perform a specified assignment.

133. Finally, the accusation that Dr. Gerber “badgered” then-Associate Dean Newell “regarding faculty matters,” Ex. 11 at 3, in addition to being vague, again suggests only disagreement about university operations. That does not (1) constitute grave misconduct that deliberately and seriously disrupts normal academic operations, (2) entail the rejection of faculty-member responsibilities, or (3) suggest any policy violation or refusal to perform a specified assignment. That is especially so because Dr. Gerber’s supposed “badgering” did not exceed the normal bounds of direct communication in academia and involved his legally protected right to object to the associate dean about discriminatory hiring practices in which she and others were engaged.

134. All told, the Bill of Particular never states, with reasonable particularity, any conduct that could support termination of a tenured faculty member under any of the three counts.

135. This Court eventually denied the preliminary injunction and allowed the temporary restraining order to expire, but only based “upon the understanding that the procedural safeguards agreed by counsel” in earlier proceedings “are in fact implemented during the termination hearing.” J. Entry Denying Mot. for Injunction and Deferring Decision on Mot. to Dismiss (July 31, 2023).

136. The Hearing Committee conducted Dr. Gerber's termination hearing on August 1-2, 2023.

137. The Hearing Committee, along with the Taft investigation on which it relied, labored under the influence of Dean Rose, President Baumann, and internal institutional pressures. As a result, the hearing was held under circumstances in which Dr. Gerber's termination was preordained.

138. The hearing involved numerous irregularities.

139. First, the entire process was infected by severe conflicts of interest. For example, the Hearing Committee was advised by a lawyer who reported directly to President Baumann, who was prosecuting Dr. Gerber's case. (Dr. Gerber's counsel at the time objected to this and other conflicts, but the Hearing Committee made no changes in response.) Additionally, the Hearing Committee worked *ex parte* with President Baumann on matters pertaining to the dismissal process.

140. Second, although the Handbook gives faculty members the right "to be confronted by all adverse witnesses," Handbook §2.7.7, the Hearing Committee, over the objections of Dr. Gerber, allowed testimonial statements to be entered through hearsay and video and, on information and belief, it did so without taking sufficient efforts to secure in-person testimony. The Hearing Committee also failed to "assist in the securing the attendance of" Dr. Gerber's witnesses (for example, Bruce French), violating Handbook §2.7.8(C).

141. Third, and relatedly, the non-presence of adverse witnesses denied Dr. Gerber his contractual right to examine and cross-examine witnesses. *Id.* At bare minimum, the non-presence of witnesses whose statements were introduced denied Dr. Gerber a meaningful opportunity to examine and counter their accusations.

142. Fourth, although the Handbook provides that the purpose of a termination hearing is “to determine whether or not the faculty member should be removed from the faculty position held *on the grounds stated*,” Handbook §2.7.3 (emphasis added), President Baumann’s representatives at the hearing introduced significant amounts of evidence unrelated to any examples stated with particularity in the Statement of Grounds for Dismissal or even the Bill of Particulars.

143. Finally, after the hearing ended, the Hearing Committee sought materials from Ohio Northern on an *ex parte* basis, never giving Dr. Gerber a chance to present evidence or offer submissions in response to those materials.

144. On September 10, 2023, Dr. Gerber’s counsel contacted the Hearing Committee upon learning that a member of the Hearing Committee had shared gossip and complaints about Dr. Gerber and the termination hearing at an event in Lancaster, Ohio. Such gossip violates the Handbook, which provides that “[n]o publicity concerning the committee’s decision will be released by any party or the committee until consideration has been given to the case by the Board of Trustees.” Handbook §2.7.11. It also demonstrates that the Hearing Committee was not treating Dr. Gerber in a fair, independent, and impartial fashion. *See* Handbook §2.7.4.

145. The Hearing Committee did not deny the truth of Dr. Gerber’s counsel’s letter about the event in Lancaster, Ohio.

146. None of the evidence introduced at the hearing established a valid basis for terminating Dr. Gerber’s employment under the Handbook.

147. The evidence at the hearing established that the University and its employees were motivated to terminate Dr. Gerber by his opposition to race-, sex- and ethnicity-based preferences in

hiring and his accusations (internally and to the government) regarding violations of anti-discrimination laws.

148. The evidence at the hearing showed that Dr. Gerber occasionally engaged in direct, blunt communication, but never established any exertion of improper pressure or abuse of colleagues or other actions justifying termination of a tenured professor under the Handbook.

149. On September 11, 2023, the Hearing Committee issued its termination decision. The decision relies heavily on alleged acts unmentioned in the Statement of Grounds for Dismissal or the Bill of Particulars. This violated Section 2.7.3 of the Handbook, under which the hearing must be held to address “whether or not the faculty member should be removed from the faculty position held on the grounds stated” in the Statement of Grounds for Dismissal. Accordingly, Dr. Gerber was punished in connection with incidents as to which he had no meaningful opportunity to develop a defense.

150. The Hearing Committee’s written termination decision confirms that Dr. Gerber’s termination was motivated by his objecting to illegal hiring practices and other illegal acts.

151. But for Dr. Gerber’s engaging in these legally protected activities, he would not have been terminated.

152. On October 27, 2023, the Board sustained the Hearing Committee’s termination decision of Dr. Gerber, though it issued no explanation of its decision.

153. Dr. Gerber, pursuant to the Handbook, submitted a grievance regarding his termination and the process leading to his termination. On November 27, 2023, President Baumann informed Dr. Gerber that his grievance had been denied and that his dismissal was final. President Baumann did not provide Dr. Gerber with a copy of the decision by the grievance committee—a committee

whose members reported to the President and met with Ohio Northern's lawyer, and thus labored under conflicts of interest.

154. On December 11, 2023, the Ohio Department of Job and Family Services determined that Ohio Northern had discharged Dr. Gerber without just cause.

155. As a result of the proceedings before the Ohio Department of Job and Family Services, Dr. Gerber obtained a copy of the grievance committee's decision. That decision revealed that the grievance committee improperly (1) received *ex parte* instructions from the University's lawyer, (2) failed to review the dismissal hearing transcripts or the evidence submitted during the dismissal process, and (3) ignored or mischaracterized the bases for Dr. Gerber's grievance.

D. The damage done to Dr. Gerber.

156. Dr. Gerber complied with his contractual obligations to Ohio Northern.

157. Dr. Gerber's post-tenure review established that Dr. Gerber either met or exceeded all expectations concerning teaching, scholarship, service, and professional development.

158. Since his suspension, Dr. Gerber has lived with his aged, widowed mother.

159. Dr. Gerber has not obtained tenured academic employment, though he has taken steps to secure such employment.

160. Because Dr. Gerber lost his job, he has no longer been able to collect the salary and benefits he previously earned at Ohio Northern University.

161. And because the University was determined to terminate Dr. Gerber's employment, it denied him the Fisher Chair in early 2023. That chair, for which Dr. Gerber was qualified, would have provided him with significantly increased salary and benefits.

162. The University's punishment, which was meted out through a flawed process under which Dr. Gerber had no reasonable means to defend himself, cost Dr. Gerber his job, irreparably tarnished his reputation, and interfered with Dr. Gerber's ability to obtain comparable employment at another university.

163. The University's false statement that Dr. Gerber presents a physical danger has dramatically diminished Dr. Gerber's employment options.

164. President Baumann's repeating this statement through emails sent personally or through subordinates has tarnished Dr. Gerber's reputation and further diminished Dr. Gerber's employment options.

165. President Baumann also published a letter on November 7, 2023, falsely stating that Dr. Gerber was terminated for "moral turpitude." (Letter attached as Exhibit 12.) That letter defamed Dr. Gerber, tarnished his reputation, and diminished his employment options.

166. The University diminished Dr. Gerber's employment options by having security officers, with the assistance of armed town police, remove him from a class in front of students, thereby portraying him as a security threat.

167. After being barred from Ohio Northern's campus, Dr. Gerber has not been allowed to return to obtain his personal property from his former office, nor has the University accommodated Dr. Gerber's reasonable requests to allow others to help him obtain that property.

168. That property includes books that Dr. Gerber owned, books that he wrote, articles he wrote, research materials, awards and recognitions Dr. Gerber received, autographs, photographs, a painting, and an ergonomic chair.

169. Ohio Northern has failed to timely forward mail sent to Dr. Gerber at his former office.

170. Ohio Northern and its employees have opened mail addressed to Dr. Gerber at his former office.

171. Dean Rose and the University have withheld from Dr. Gerber the 2023 Fowler Harper Award for excellence in faculty scholarship, despite acknowledging in filings before the federal government that he won the award.

172. From April 14, 2023, onward, Dr. Gerber experienced extreme emotional distress from seeing his livelihood threatened, being portrayed as a safety threat, being forcibly removed from his classroom and humiliated before his students, and being kept in the dark about the accusations against him.

173. Specifically, Dr. Gerber was made to experience the extreme anxiety necessarily associated with seeing one's multi-decade career upended.

174. Dr. Gerber has also faced public humiliation, scorn, reputational damage, and a diminution in his ability to secure work from being falsely portrayed as a physical danger to others.

175. As a direct result of the defendants' actions, Dr. Gerber has had to seek psychological treatment.

176. On December 11, 2023, Dr. Gerber filed a charge jointly with the U.S. Equal Employment Opportunity Commission and the Ohio Civil Rights Commission, alleging that he was terminated in retaliation for his objecting to illegal hiring practices.

177. The U.S. Equal Employment Opportunity Commission issued Dr. Gerber a right-to-sue letter in connection with this charge on January 19, 2024.

CAUSES OF ACTION

178. The following causes of action are all pled in the alternative.

COUNT 1

Breach of Contract (against Ohio Northern University and the Ohio Northern University Board of Trustees)

179. Dr. Gerber restates and incorporates each of the preceding paragraphs as if fully set forth herein.

180. The Handbook constituted a binding contract between Dr. Gerber and Ohio Northern University.

181. Additional contracts between the University and Dr. Gerber, which incorporate the Handbook and other University rules, are attached as Exhibits 2-1 and 2-2.

182. Dr. Gerber, throughout his time as a professor at Ohio Northern University's College of Law, complied with all material terms of his employment contract.

183. The University and its employees materially breached the contract throughout Dr. Gerber's dismissal process by:

- Initiating an investigation, and ultimately terminating Dr. Gerber's employment, in retaliation for his outspoken opposition to racial discrimination in hiring, in violation of the Handbook's provision barring the University from using the dismissal process "to restrain faculty members in the exercise of academic and artistic freedom." Handbook §2.7.1. The same actions violate Handbook §2.32, which protects individuals who report in good faith actual or suspected violations of law.
- Initiating an investigation, and ultimately terminating Dr. Gerber's employment, in retaliation for his raising concerns about, and reporting, suspected misconduct by the University and University personnel, in violation of the Handbook's guarantee to "protect any faculty, staff or student who, in good faith, reports actual or suspected violations of law." Handbook §2.32.
- Failing to tell Dr. Gerber with "reasonable particularity the proposed grounds for dismissal" in the Statement of Grounds for Dismissal provided by the President, violating Handbook §2.7.2.
- Failing to hold the personal conference required by Handbook §2.7.2, and failing to have the "standing or ad hoc committee of five faculty members ... charged with the function

- of rendering confidential advice to both parties” meet with Dr. Gerber, as required by Handbook §2.7.2.
- Initiating dismissal proceedings, and ultimately terminating Dr. Gerber’s employment, based on conduct that does not constitute “cause” for dismissing a tenured faculty member, violating Handbook §2.7.1.
 - Holding a termination hearing at which the President presented, as a basis for termination, grounds other than those particularly stated in the Statement of Grounds for Dismissal (or the subsequent Bill of Particulars), violating Handbook §2.7.3.
 - Terminating Dr. Gerber’s employment based on grounds other than those particularly stated in the Statement of Grounds for Dismissal (or the subsequent Bill of Particulars), violating Handbook §2.7.3.
 - Allowing individuals at the hearing to share testimony from non-testifying witnesses, thus denying Dr. Gerber his “opportunity to be confronted by all adverse witnesses.” Handbook §2.7.7.
 - Denying Dr. Gerber his opportunity to cross-examine those witnesses. *Id.*
 - Allowing witnesses to testify by video at Dr. Gerber’s dismissal hearing, denying him the “opportunity to be confronted by all adverse witnesses.” *Id.*
 - Failing to assist Dr. Gerber in securing the attendance of witnesses, violating Handbook §2.7.8(C).
 - As laid out in paragraph 144, violating the prohibition on publicizing the Hearing Committee’s decision before consideration by the Board of Trustees. *See* Handbook §2.7.11.
 - Suspending Dr. Gerber and barring him from entering campus without a finding by the President deeming that Dr. Gerber’s presence would risk “immediate harm to [Dr. Gerber], to others, or the instructional program of Ohio Northern University is threatened by” Dr. Gerber’s “continuance.” Handbook §2.7.14.
 - Evading the time limits on the grievance process laid out in Handbook §2.24 by making time-barred grievances the focus of the dismissal proceeding.
 - Holding a dismissal hearing in which the Hearing Committee labored under intense conflicts of interest—including, for example, being advised by an attorney who reported directly to President Baumann—notwithstanding Dr. Gerber’s implicit and explicit contractual right to a fair, independent and impartial proceeding. *See* Handbook §§2.7.4, 2.7.5, 2.7.7, 2.7.8, 2.7.10. Relatedly, Ohio Northern breached Dr. Gerber’s contract by engaging in *ex parte* communications with the Hearing Committee.

- Violating the implied covenant of good faith and fair dealing by, among other things, during and in the aftermath of the dismissal process, withholding from Dr. Gerber the 2023 Fowler Harper Award for excellence in faculty scholarship that the University has acknowledged he won.
- Violating the implied covenant of good faith and fair dealing by resolving Dr. Gerber's grievance concerning his dismissal using a grievance committee that, laboring under conflicts of interest, ignored and mischaracterized Dr. Gerber's arguments and evidence.

184. These breaches caused damage to Dr. Gerber, including denying him a meaningful ability to defend himself, depriving him of his salary and profession, irreparably damaging his reputation, hindering his ability to obtain work at another institution, and interfering with his ability to defend himself in the dismissal hearing and in the court of public opinion.

185. The breaches occurred in conjunction with independent tortious actions involving malice.

186. As a direct and proximate result of the defendants' actions, Dr. Gerber suffered monetary damages in excess of \$25,000. He is entitled to actual damages, punitive damages, pre-judgment and post-judgment interest, costs and attorneys' fees, an order reinstating him to his position as a tenured professor, a declaration that Dr. Gerber's termination constituted a breach of contract, and any and all further legal and equitable relief available to Dr. Gerber.

COUNT 2

Violation of R.C. 4112.02 (against all defendants)

187. Dr. Gerber restates and incorporates each of the preceding paragraphs as if fully set forth herein.

188. The University and its Board of Trustees terminated Dr. Gerber after he objected to the defendants' consideration of race, sex, and ethnicity in the hiring and promotion of Ohio Northern faculty—conduct which violates R.C. 4112.02.

189. The defendants were aware of Dr. Gerber's objections to discriminatory hiring.

190. The defendants initiated investigations into and ultimately terminated Dr. Gerber because of his objections to these illegal practices.

191. But for Dr. Gerber's objecting to these discriminatory hiring practices, the defendants would not have terminated his employment.

192. And but for Dr. Gerber's objecting to these discriminatory hiring practices, the members of the Hearing Committee would not have concluded that Dr. Gerber should be dismissed.

193. The defendants are liable for these actions under R.C. 4112.02(I).

194. Alternatively, any defendants not liable under R.C. 4112.02(I) are liable for violating R.C. 4112.02(J)'s prohibition on aiding and abetting violations of, among other statutes, R.C. 4112.02(I).

195. Dr. Gerber filed a charge regarding the defendants' retaliatory actions jointly with the U.S. Equal Employment Opportunity Commission and the Ohio Civil Rights Commission on December 11, 2023 through a procedural process known as "dual-filing" a charge.

196. The U.S. Equal Employment Opportunity Commission issued a right-to-sue letter in connection with this charge on January 19, 2024.

197. As a direct and proximate result of the defendants' actions, Dr. Gerber suffered damages in excess of \$25,000. He is entitled to bring this civil suit under R.C. 4112.052(B)(2)(b). He is entitled to actual damages, a mandatory injunction ordering that he be reinstated to his position as a tenured professor, pre-judgment and post-judgment interest, costs and attorneys' fees, a declaration that Dr. Gerber's termination violated Ohio law, and any and all further legal and equitable relief available to Dr. Gerber, including punitive damages.

COUNT 3

**Wrongful Termination in Violation of Public Policy
(against all defendants)**

198. Dr. Gerber restates and incorporates each of the preceding paragraphs as if fully set forth herein.

199. The defendants terminated Dr. Gerber after he publicly opposed discriminatory practices in hiring, objected to the defendants' consideration of race, sex, and ethnicity in the hiring and promotion of Ohio Northern faculty, objected that another instructor had inadequately responded to a student's report of sexual harassment, and raised concerns regarding other actions by Ohio Northern and its employees that Dr. Gerber genuinely believed to be illegal.

200. The defendants' decision to terminate Dr. Gerber was motivated by these objections.

201. State and federal law evince a strong policy in opposition to discrimination in hiring.

202. State and federal law evince a strong policy in opposition to sexual harassment.

203. State and federal law evince a strong policy in favor of free inquiry, free expression, and academic freedom.

204. State and federal law evince a strong policy in support of whistleblowing by employees who believe they witnessed wrongdoing.

205. Dismissing Dr. Gerber under these circumstances jeopardized the just-discussed public policies by deterring individuals from coming forward or exercising their free-speech rights.

206. The defendants lacked any legitimate business or contractual justification for dismissing Dr. Gerber.

207. By terminating Dr. Gerber, the defendants undermined these policies and directly and proximately caused Dr. Gerber to suffer damages in excess of \$25,000. Dr. Gerber is entitled to

actual damages, punitive damages, pre-judgment and post-judgment interest, costs and attorneys' fees, an order reinstating him to his position as a tenured professor, a declaration that Ohio Northern terminated him for exercising his free-speech rights and engaging in other protected activity of which the University disapproved, and any and all further legal and equitable relief available to Dr. Gerber.

COUNT 4

Defamation (against Ohio Northern University, the Ohio Northern University Board of Trustees, and Melissa Baumann)

208. Dr. Gerber restates and incorporates each of the preceding paragraphs as if fully set forth herein.

209. The University, the Board of Trustees, and President Baumann are liable for defamation based on the statement issued on or about June 22, 2023. *See* Ex. 6.

210. President Baumann is further liable for emailing, or directing her subordinates to email, the same or similar statements. *See, e.g.,* Ex. 7.

211. The statement, which the University published with President Baumann's approval, and which President Baumann circulated through subordinates to others, falsely implies that Dr. Gerber presented a safety threat to students, faculty, and staff at the University.

212. At the time the statement was made, the University and President Baumann knew this accusation was false and had no reason to believe that the statement regarding Dr. Gerber's presenting a safety threat was true. The defendants thus published their statements with knowledge of the statements' falsity or with a reckless indifference to the truth.

213. Neither the University nor President Baumann, before publishing their statements, conducted an appropriate inquiry to determine whether the statement concerning Dr. Gerber's presenting a safety threat was true.

214. The statements defamed Dr. Gerber by portraying him as a physical danger to people in the community where he lived and taught.

215. President Baumann further defamed Dr. Gerber by sending a letter, on or about November 7, 2023, *see* Ex. 12, falsely stating that Dr. Gerber was terminated for "moral turpitude."

216. At the time President Baumann made this statement she either knew it was false or acted with reckless indifference to the truth of the statement.

217. The defendants' defamatory statements have caused special injury to Dr. Gerber, including by eroding his standing in the community and reputation, staining his name, and hindering his ability to obtain work at other academic institutions.

218. As a direct and proximate result of the defendants' actions, Dr. Gerber suffered damages in excess of \$25,000. Dr. Gerber is entitled to actual damages, punitive damages, pre-judgment and post-judgment interest, costs and attorneys' fees, and any and all further legal and equitable relief available to Dr. Gerber.

COUNT 5

False Light (against Ohio Northern University, the Ohio Northern University Board of Trustees, Charles Rose, and Melissa Baumann)

219. Dr. Gerber restates and incorporates each of the preceding paragraphs as if fully set forth herein.

220. The University's June 22, 2023, statement describes Dr. Gerber as a safety threat. *See* Ex. 6. So did the identical or similar statements that President Baumann sent, either personally or through a subordinate, by email. *See, e.g.,* Ex. 7.

221. Further, the manner in which Dr. Gerber was removed from his classroom by security officers and armed town police on April 14, 2023, publicly portrayed Dr. Gerber as a safety threat.

222. Dr. Gerber did not pose a safety threat at any time relevant to this case.

223. The June 22 statement saying otherwise, and the April 14 actions suggesting otherwise, would be highly offensive to a reasonable person.

224. The University, Dean Rose, and President Baumann either knew that Dr. Gerber was not a safety threat or acted in reckless disregard as to the question whether Dr. Gerber was a safety threat.

225. The University, Dean Rose, and President Baumann either knew or acted with reckless disregard with respect to the false light in which their actions would portray Dr. Gerber.

226. The University, the Board of Trustees, Dean Rose, and President Baumann are thus liable under Ohio's false-light tort.

227. As a direct and proximate result of the defendants' actions, Dr. Gerber suffered damages in excess of \$25,000. Dr. Gerber is entitled to actual damages, punitive damages, pre-judgment and post-judgment interest, costs and attorneys' fees, and any and all further legal and equitable relief available to Dr. Gerber.

COUNT 6

Conversion (against Ohio Northern University, the Ohio Northern University Board of Trustees, Charles Rose, and Melissa Baumann)

228. Dr. Gerber restates and incorporates each of the preceding paragraphs as if fully set forth herein.

229. Dr. Gerber owns or has a right to possess property—for example, the books that Dr. Gerber owned, books that he wrote, articles he wrote, research materials, awards and recognitions Dr. Gerber received, autographs, photographs, a painting, and an ergonomic chair—that remained in his office as of April 14, 2023 or that the University is otherwise in possession of.

230. The University, Dean Rose, and President Baumann have interfered with Dr. Gerber's ability to obtain this property, either on his own or through agents.

231. The University, Dean Rose, and President Baumann have retained this property, refusing Dr. Gerber's reasonable requests to return it or allow for its return.

232. The failure to return Dr. Gerber's property is the product of malice.

233. As a result, Dr. Gerber has been denied the ability to use and enjoy the property that remained in his office as of April 14, 2023 or that the University is otherwise in possession of.

234. Accordingly, the University, the Board of Trustees, Dean Rose, and President Baumann are liable for the tort of conversion.

235. As a direct and proximate result of the defendants' actions, Dr. Gerber sustained more than \$25,000 in damages. Dr. Gerber is entitled to the return of his property, actual damages, punitive damages, pre-judgment and post-judgment interest, costs and attorneys' fees, and any and all further legal and equitable relief available to Dr. Gerber.

COUNT 7

Replevin, *see* R.C. Chapter 2737 (against Ohio Northern University, the Ohio Northern University Board of Trustees, Charles Rose, and Melissa Baumann)

236. Dr. Gerber restates and incorporates each of the preceding paragraphs as if fully set forth herein.

237. Dr. Gerber owns personal property located in his former office (or otherwise in the University's possession), including books that he owned, books that he wrote, articles he wrote, research materials, awards and recognitions Dr. Gerber received, autographs, photographs, a painting, and an ergonomic chair.

238. Dr. Gerber is entitled to possession of that property.

239. Dr. Gerber is entitled to the return of his property, to over \$25,000 in actual damages, and to any and all further legal and equitable relief available to Dr. Gerber, including punitive damages.

COUNT 8

Intentional Infliction of Emotional Distress (against all defendants)

240. Dr. Gerber restates and incorporates each of the preceding paragraphs as if fully set forth herein.

241. The defendants' actions—subjecting Dr. Gerber to a career-threatening investigation without disclosing the specifics of the accusations against him, ordering that Dr. Gerber be removed from class by security and armed police in front of his students, forcing Dr. Gerber to sit with Dean Rose while security and armed police guarded the door, publicly and falsely characterizing Dr. Gerber as a safety threat, initiating dismissal proceedings without giving Dr. Gerber the facts he needed to rebut or even understand the accusations against him, conducting the dismissal process in an

unfair, biased, and malicious fashion, defaming his character, and refusing to allow him to retrieve his possessions—caused serious emotional distress to Dr. Gerber.

242. By undertaking these actions, the defendants either intended to cause serious emotional distress to Dr. Gerber, or else knew or should have known that their actions would cause serious emotional distress.

243. The nature of the defendants' investigation and actions were so extreme and outrageous that they went beyond all possible bounds of decency and are completely intolerable in a civilized community.

244. Removing Dr. Gerber from his class using security and armed town police and portraying him as a safety threat subjected Dr. Gerber to easily avoidable public humiliation and scorn. These actions exceeded all possible bounds of decency and can be considered completely intolerable in a civilized community.

245. The defendants' actions directly and proximately caused Dr. Gerber's emotional distress.

246. As a direct and proximate result of the defendants' actions, Dr. Gerber suffered serious mental anguish of a nature no reasonable person could be expected to endure.

247. As a direct and proximate result of the defendants' actions, Dr. Gerber has suffered damages in excess of \$25,000. Dr. Gerber is entitled to actual damages, punitive damages, pre-judgment and post-judgment interest, Dr. Gerber's costs and attorneys' fees, and any and all further legal and equitable relief available to Dr. Gerber.

PRAYER FOR RELIEF

In light of the foregoing, Dr. Gerber demands judgments against the defendants, jointly and severally where appropriate, and seeks the following relief:

- A. Actual and compensatory damages in an amount exceeding \$25,000.00;
- B. A declaratory judgment that the University breached its contract with Dr. Gerber;
- C. An order requiring that Dr. Gerber be reinstated to his position as a tenured professor of law at Ohio Northern University;
- D. Punitive damages;
- E. Plaintiff's attorneys' fees, costs, and disbursements;
- F. Pre- and post-judgment interest;
- G. A writ of replevin or other order requiring Ohio Northern to return to Dr. Gerber his personal property remaining in the school's possession; and
- H. Any additional relief this Court deems just and proper.

Respectfully submitted,

Nicholas Barry
(*pro hac vice* application forthcoming)
America First Legal Foundation
611 Pennsylvania Ave., SE #231
Washington, DC 20003
Tel: (615) 431-9303
nicholas.barry@aflegal.org

/s/ Benjamin M. Flowers
Benjamin M. Flowers (0095284)
Julie E. Byrne (0085174)
PO Box 8248
Cincinnati, OH 45249
Tel: (513) 582-7424
bflowers@ashbrookbk.com
jebyrne@ashbrookbk.com

Counsel for Plaintiff Scott Gerber

JURY DEMAND

Pursuant to Civ. R. 38(B), Plaintiff Scott Gerber demands trial by jury on all issues so triable.

Nicholas Barry
(*pro hac vice* application forthcoming)
America First Legal Foundation
611 Pennsylvania Ave., SE #231
Washington, DC 20003
Tel: (615) 431-9303
nicholas.barry@aflegal.org

/s/ Benjamin M. Flowers
Benjamin M. Flowers (0095284)
Julie E. Byrne (0085174)
PO Box 8248
Cincinnati, OH 45249
Tel: (513) 582-7424
bflowers@ashbrookbk.com
jebyrne@ashbrookbk.com

Counsel for Plaintiff Scott Gerber

VERIFICATION

I, Scott D. Gerber, verify that I have read the Verified Complaint, and I certify under penalties of perjury that the allegations contained therein are true and correct to the best of my information and belief.



Scott. D. Gerber

The foregoing instrument was acknowledged before me on this 23rd day of January, 2024, by Scott D. Gerber, an individual.



Notary Public

FELICIA H. JOHNSON NOTARY PUBLIC Commonwealth of Virginia Reg. #331025 My Commission Expires <u>3/31/2027</u>

My Commission Expires: 3/31/2027

CERTIFICATE OF SERVICE

I certify that, on January 23, 2024, this verified second amended complaint was filed electronically through the Court's online filing system and served by email upon:

Matthew R. Duncan
Brennan, Manna & Diamond
75 E. Market St.
Akron, OH 44308
mrduncan@bmdllc.com

Counsel for the Defendants