

**STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW**

EASTERN MICHIGAN UNIVERSITY,

Plaintiff,

v.

22-001203-CL

Case No. 2022- -CL

Hon. JUDGE ARCHIE C. BROWN

EASTERN MICHIGAN UNIVERSITY  
CHAPTER OF THE AMERICAN  
ASSOCIATION OF UNIVERSITY  
PROFESSORS; MOHAMED EL-  
SAYED, MARK HIGBEE, CAREN  
PUTZU, MATT KIRKPATRICK,  
ALANKRITA PANDEY, MINNIE  
BLUHM, SARAH FABIAN, JILLIAN  
GRAVES, and MATT OCHES.

Defendants.

\_\_\_\_\_/

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JAMES P. GREENE (P33911)  
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**PLAINTIFF’S BRIEF IN SUPPORT OF ITS MOTION FOR TEMPORARY  
RESTRAINING ORDER, ORDER TO SHOW CAUSE AND PRELIMINARY  
INJUNCTION**

Plaintiff, Eastern Michigan University (“Plaintiff”, “EMU” or “University”), by its attorneys Dykema Gossett PLLC, hereby submits the following Brief In Support Of Motion For Entry Of A Temporary Restraining Order (“TRO”), Order To Show Cause And Preliminary Injunction.

## **INTRODUCTION**

This case concerns an illegal strike by public employees of a public university in violation of the Michigan Public Employment Relations Act (“PERA”), MCL 423.201, *et seq.* The strike began on September 7, 2022, a week after the expiration of the collective bargaining agreement (“CBA”) between Plaintiff and the Eastern Michigan University Chapter of the American Association of University Professors (“AAUP” or “Defendant AAUP”).

Plaintiff is a public university sanctioned pursuant to the Constitution and laws of the State of Michigan, and is thus a public employer under PERA, MCL 423.201 *et seq.* EMU is located in Ypsilanti, Michigan. Defendant AAUP is a labor organization that represents approximately 500 professors, associate professors, assistant professors, instructors, media service managers, coach/teachers and librarians with Faculty rank at EMU. With the exception of Matt Ochess, who is employed by Defendant AAUP, the individual named Defendants comprise Defendant AAUP’s Executive Committee. EMU’s mission is to maximize educational opportunities and personal and professional growth for students from diverse backgrounds through an array of courses taught in baccalaureate, masters and doctoral programs. EMU educates students from all over the United States, and from numerous foreign countries. EMU relies upon its faculty to teach a substantial portion of its courses.

In August 2015, Plaintiff and Defendant AAUP entered into a collective bargaining agreement that covered the period September 1, 2015 – August 31, 2019. The agreement was extended twice, first through August 31, 2021 and then through August 31, 2022. The collective bargaining agreement expired on August 31, 2022, and was not extended. Between July 15, 2022, when negotiations began, and August 31, Plaintiff and Defendant AAUP met 19 times to negotiate a successor agreement, including daily from August 22 through August 31. The last 10 negotiation

sessions took place with a mediator appointed by the Michigan Employment Relations Commission (“MERC”). The mediator was appointed at the request of EMU. The parties continued to bargain after the CBA expired, meeting daily on September 1, 2, 3 and 4, each time with the mediator present. On September 1, 2022, EMU filed a petition with MERC for Fact Finding. Fact Finding is a State of Michigan process which assists public employers and labor unions representing public employees to reach a collective bargaining agreement. MCL 423.25; Mich Admin Code R 423.132.

As a result of the strike, EMU, its student body, non-AAUP employees of EMU, and the general public, which supports and is served by EMU, have suffered irreparable injury and will continue to suffer serious irreparable injury, for which they have no adequate remedy at law (See **Exhibits 1-7**). If this illegal strike is permitted to continue, it will result in permanent and irreparable harm to EMU, EMU students, non-AAUP employees, and the community.

Accordingly, Plaintiff requests that the Court enter a TRO and Order To Show Cause why a preliminary injunction should not issue, preventing and restraining the Defendants from engaging in a strike in violation of PERA.

### **STATEMENT OF FACTS**

Plaintiff’s Verified Complaint setting forth all pertinent facts are fully incorporated herein, as well as the facts stated above and the Exhibits attached hereto.

### **ARGUMENT**

#### **I. TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION STANDARDS.**

#### A. Temporary Restraining Order.

MCR 3.310(B) provides that a temporary restraining order may be granted where it appears that “immediate and irreparable injury, loss or damage will result to the applicant from the delay required to effect notice.” The court rules allow a court to grant a TRO *ex parte* pending a hearing on a party’s motion for a preliminary injunction or a show cause hearing if:

- (a) it clearly appears from specific facts shown by affidavit or verified complaint that ***immediate and irreparable injury, loss, or damage will result to the applicant from the delay required to effect notice or the risk that notice will itself precipitate adverse action before an order can be issued;***
- (b) the applicant’s attorney certifies to the court in writing the efforts, if any, that have been made to give the notice and the reasons supporting the claim that notice should not be required; and
- (c) a permanent record or memorandum is made of any nonwritten evidence, or other representations made in support of the application.

MCR 3.310(B)(1)(a) (emphasis added).

The grant or denial of injunctive relief, including that sought by an *ex parte* TRO, is discretionary. See *Bratton v. DAIIE*, 120 Mich App 73, 79; 327 NW2d 369 (1982); *In re Esquire Products Intern, Inc*, 136 Mich App 492, 357 NW2d 77 (1984). *Bratton* sets forth the appropriate discretionary standard to be applied by a trial court as follows:

The grant or denial of a preliminary injunction is within the sound discretion of the trial court. The object of a preliminary injunction is to preserve the status quo, so that upon the final hearing the rights of the parties may be determined without injury to either. The status quo which will be preserved by a preliminary injunction is the last actual, peaceable, noncontested status which preceded the pending controversy.

120 Mich App at 79 (citations omitted).

#### B. Preliminary Injunction

A court may grant a preliminary injunction following a hearing. MCR 3.310(A). The object of a preliminary injunction is to preserve the status quo before final judgment. *Fancy v*

*Egrin*, 177 Mich App 714, 719, 442 NW2d 765 (1989) (citations omitted). Courts have fashioned a four-factor test to be applied to requests for injunctive relief. Those four factors are:

- (1) the likelihood that the party seeking the injunction will prevail on the merits;
- (2) the danger that the party seeking the injunction will suffer irreparable injury if the injunction is not issued;
- (3) the risk that the party seeking the injunction would be harmed more by the absence of an injunction than the opposing party would be by granting the relief; and
- (4) the harm to the public interest if the injunction is issued.

*Johnson v Michigan Minority Purchasing Council*, Case No. 357979, 2022 Mich App Lexis 1098 (Ct. App. Mar. 3, 2022. *See also School District for the City of Holland v Holland Education Association*, 380 Mich 314 (1968) (holding that Circuit Courts have authority to enjoin faculty strikes).

## **II. THE FOUR-FACTOR ANALYSIS REQUIRES THAT A TRO AND/OR A PRELIMINARY INJUNCTION BE ISSUED.**

### **A. There is a Substantial Likelihood that Plaintiff Will Prevail on the Merits Because Defendants’ Strike Is Illegal.**

#### **1. Public Employee Strikes are Illegal In Michigan.**

One of the primary purposes of PERA is to “prohibit strikes” by public employees. To that end, PERA specifically provides that “[a] public employee shall not strike.” MCL 423.202 (See *Jackson Fire Fighters Ass’n. Local 1306 v. City of Jackson*, 227 Mich. App. 520 (1998), “Strikes by public employees are forbidden by §2 of the public employment relations act (PERA)”; *Gibraltar Sch. Dist. V. Gibraltar MESPA-Transp.*, 443 Mich. 326 (1993), “Michigan public employees have no legal right to strike, even after the expiration of a collective bargaining agreement, MCL 423.202....”). Defendant employees are public employees within the meaning

of the Act. *Bd of Control of E Mich Univ v Labor Mediation Bd*, 18 Mich App 435, 439; 171 NW2d 471 (1969).

2. Defendants Have Engaged in a Strike

A “Strike” is defined in MCL 423.201 as:

... the concerted failure to report for duty, the willful absence from one’s position, the stoppage of work, or the abstinence in whole or in part from the full, faithful, and proper performance of the duties of employment for the purpose of inducing, influencing, or coercing a change in employment conditions, compensation, or the rights, privileges, or obligations of employment. . . .

The work stoppage, which occurred during negotiations for a new contract, is for the purpose of inducing, influencing, or coercing a change in employment conditions compensation, or the rights, privileges, or obligations of employment. **See Exhibit 1** submitted with Plaintiff’s Brief in Support of Motion for Injunctive Relief. Therefore, the work stoppage is a “strike” as defined in the Act, and that strike is illegal. Thus, the first factor weighs in favor of the grant of injunctive relief.

**B. A Danger Exists That Plaintiff Will Suffer Irreparable Injury If An Injunction Is Not Issued.**

Irreparable injury has occurred and will continue to occur to EMU, EMU students, non-AAUP employees of EMU, and the public if the Defendants are not enjoined from continuing their illegal strike. The injuries that Plaintiff has alleged in its Verified Complaint and supported by its Affidavits are not trivial, inconsequential, or speculative, but are irreparable injuries which will prevent it from accomplishing its essential functions, and will substantially adversely impact others, in particular EMU’s students. The uncertainty and the cancellation of classes and educational opportunities caused by the work stoppage will result in, without limitation:

- Hindering, altering, and delaying the academic progress of EMU's over 15,000 undergraduate and graduate students which could ultimately result in delayed graduation. (Exhibit 1)
- Requiring affected students to defer, delay, or forgo entirely planned post-graduate employment and planned graduate studies, both of which are contingent on the completion of their degree. (Exhibit 1)
- Hindering of students' preparation for licensure or certification examinations, required for entry into certain professions or positions. (Exhibit 1)
- Delaying disbursement of financial aid to students relied upon as support for meeting basic needs during the school year, including food and housing. (Exhibit 1)
- If the semester is prolonged to make up missed classes, there will be a negative impact on students' planned employment during the winter break, which aids students' finances and career perspectives. (Exhibit 1)
- Possible loss of state, regional and national accreditation, and non-compliance with federal requirements, if a strike continues. (Exhibit 1)
- Loss of reputation in the quality of public education at the University on behalf of the students, parents and the general public if such illegal conduct is allowed to continue, which could lead to enrollment decline. (Exhibit 1)
- Loss of student social work clinical/field settings opportunities. (Exhibit 2)
- Inability of students to make up required lab sessions. (Exhibit 2)
- Increase anxiety amongst students due to uncertainty of schedules. (Exhibit 3)
- Inability to timely provide mental health counseling to students due to increased demand. (Exhibit 3)
- Inability of fill-in instructors to adequately address student disability accommodation requests. (Exhibit 3)

- Unavailability of Faculty advisors to over 200 student groups. (Exhibit 3)
- International students who are not able to meet minimum hours requirements will be required to leave the country. (Exhibit 3)
- Loss of tuition and room and board revenue. (Exhibit 4)
- EMU's bond rating and capital projects would be jeopardized with loss of tuition and room and board revenue. (Exhibit 4)
- Negative impact on local businesses as a result of students leaving campus. (Exhibit 4)
- Layoff of non-AAUP employees. (Exhibit 4)
- Negative impact on current fundraising campaign and future fundraising efforts resulting in immediate and long-lasting negative impact on the University's finances and academic and extracurricular programs. (Exhibit 5)
- Negative impact on retention of current students and recruitment of future students. (Exhibit 6)
- Loss of scholarship for student athletes and job opportunities in administrative and management positions. (Exhibit 7)

Courts have found irreparable injury in similar teacher-strike situations. For example, in *Temple Ass'n of University Professionals, Etc Local 4531 v Temple University-Of Commonwealth System of Higher Educ*, 582 A2d 63 (Cmwlth PA, 1990), the court enjoined a faculty strike at Temple University due to the potential harm of lost course work, delayed graduation, reduction of financial aid to students, loss to the University's national stature, the University's loss of tuition revenue, and wage tax loss to the City of Philadelphia.

Similarly, in *Joint School District v Wisconsin Rapids Education Ass'n*, 234 NW2d 289 (Wis. 1974), the trial court held that a school board showed irreparable harm in seeking to enjoin a strike when it showed the following things:



(1) The illegal nature of the strike; (2) inability of the board to operate the school system and thereby meet its statutory duties and responsibilities to the taxpayers in the school district; (3) inability of the students to obtain the benefits of a tax-supported educational process; (4) possible loss of state aids; (5) inability of parents to comply with statutory responsibility to educate their children; and (6) cancellation of athletic events and other school activities.

234 NW2d at 299. The Wisconsin Supreme Court said, “There was an adequate showing of irreparable harm and the injunction properly issued.” *Id.* See also *Bristol Township Education Ass’n v School District*, 322 A2d 767 (Cmwlth PA, 1974) (finding the loss of state subsidies to a school system because of a strike particularly significant in a finding of “present danger or threat to the health, safety or welfare of the public”); *Menard v Woonsocket Teachers’ Guild-AFT*, 363 A2d 1349 (RI, 1976), (finding delay in a school year that would cause graduating seniors difficulty in competing with earlier graduates in the job market to support finding of irreparable harm).

The nature of injury necessary to support injunctive relief is characterized in 42 AM Jur 2d, Injunctions, Section 30, as follows:

It is not every injury which will warrant the issuance of an injunction. It is a familiar principal that the remedy is available only where the injury is actual or positive and substantial, and is not adequately remediable by law. Equity will not interfere by injunction where the damages suffered by the complainant are so small and the right invaded so unimportant as to make the case a trivial one. Nor will equity interfere to relieve against injuries which are technical or inconsequential, or which are fanciful or sentimental, or which are not of such serious consequence as to warrant judicial investigation. It must be a material and actual injury, existing or presently threatened, and not one that is fanciful, theoretical, or merely possible, or that is doubtful, eventual, or contingent.

Here, the injuries which Plaintiff has alleged in its Complaint and supported by its Affidavits are not trivial, inconsequential or speculative, but are injuries which will prevent it from accomplishing essential functions under state law, and which will significantly negatively impact the lifeblood of a university – the student body.

An injury is irreparable when it cannot adequately be compensated in damages. The Michigan Supreme Court has explained:

An injury to be irreparable need not be such as to render its repair physically impossible; but it is irreparable when it cannot be adequately compensated in damages, or when there exists no certain pecuniary standard for the measurement of damages . . . due to the nature of the right or property injured.

*Ainsworth v Munoskong Hunting & Fishing Club*, 153 Mich 185, 191; 116 NW2d 185 (1908) (citation omitted).

The injuries resulting from the fact that Plaintiff is prevented from providing an education for its students, and the critical ancillary counseling and other services it provides to them, cannot be adequately compensated in damages. The injuries alleged in the Verified Complaint and described in the attached Affidavits are both substantial and irreparable and can only be prevented by injunctive order of this Court.

**C. EMU Will Suffer Greater Harm in the Absence of Injunctive Relief than Defendant Will Suffer by Issuance of a Temporary Restraining Order and Preliminary Injunction.**

The object of a preliminary injunction is to preserve the status quo until final adjudication. *Fancy v Egrin*, 177 Mich App 714, 719, 442 NW2d 765 (1989) (citations omitted). The status quo is the “last actual, peaceable, noncontested status which preceded the pending controversy.” *Id.* The last actual, peaceable, noncontested status between Plaintiff and the Defendants was the moment before the Defendants instituted the present strike. This is the status quo Plaintiff seeks to preserve in this Motion, until the Court has the opportunity to review the legality of the strike. Notably, Plaintiff is requesting that the Court enjoin the strike and send EMU’s faculty back to work, not to determine the terms of a future collective bargaining agreement.

Under these circumstances, entry of an injunction will not harm the Defendants because it will only require that the AAUP and the faculty comply with their obligations under the law.

Therefore, the third factor also weighs in favor of the grant of injunctive relief.

**D. The Public Will Benefit from the Entry of an Injunction.**

The Michigan Supreme Court has held that strikes by public employees are against public policy. *City of Detroit v Division 26 Amalgamated Ass'n of Street, Elec, Ry & Motor Coach Employees of America*, 332 Mich 237, 249; 51 NW2d 228 (1952). Additionally, the Michigan Constitution provides that schools and means of education are encouraged. Const. 1963, art 8, § 1. Accordingly, the public interest cannot be served by judicial condonation of the Defendants' blatant disregard for Michigan law's prohibition on public employee strikes, or by its disregard for the importance of education. In addition, the Defendants' illegal strike will impose unnecessary costs on EMU, a public university, at a time when college costs are steadily rising and becoming a challenging expenditure for many students and families, and confer economic pain on local businesses.

**CONCLUSION**

For the reasons stated above, Plaintiff has shown a likelihood of success on the merits of its claims, that it will suffer irreparable harm, that it is without an adequate remedy at law, that the balance of equities tilts in its favor, and that an injunction would serve the public interest. Accordingly, Plaintiff respectfully requests that:

- A. This Court issue a Temporary Restraining Order commanding the individual Defendants and the AAUP, its officers, agents, employees, representatives, organizers, bargaining unit members, and all persons acting in concert with them or any of them, to absolutely desist and refrain from each and all of the acts listed in paragraphs (C)(1) - (C)(3) below, until further order of this Court.

- B. This Court order the individual Defendants and the AAUP, its officers, agents, employees, representatives, organizers, bargaining unit members, and all persons acting in concert with them or any of them, to show cause why they should not be enjoined, during the pendency of this suit, from the acts stated in paragraphs (C)(1) - (C)(3) below.
- C. This Court issue, after a hearing pursuant to the above Order to Show Cause, a Preliminary Injunction commanding the individual Defendants and the AAUP, its officers, agents, employees, representatives, organizers, bargaining unit members, and all persons acting in concert with them, or any of them, to absolutely cease, desist, and refrain from each and every of the following acts until such time as a final decision on the merits of this case be entered by the Court:
1. From striking, under any guise whatsoever, including any concerted failure to report for duty, or willfully absenting themselves from their positions, stopping work, or abstaining in whole or in part from the full, faithful and proper performance of their duties of employment, for the purpose of inducing, influencing or coercing a change in employment conditions, compensation, or the rights, privileges or obligations of employment.
  2. From encouraging, inducing or persuading faculty employees of EMU to strike, under any guise whatsoever, including any concerted failure to report for duty, or willfully absenting themselves from their positions, stopping work, or abstaining in whole or in part from the full, faithful and proper performance of their duties of employment, for the purpose of inducing, influencing or coercing a change in employment conditions, compensation, or the rights, privileges or obligations of employment.

3. From obstructing or interfering with the ingress and egress from EMU buildings and premises or the use of roads or other ways of travel, or from disrupting or otherwise interfering with EMU classes, extracurricular activities, and sporting events, by picketing or by other means.
- D. Upon final hearing in this cause, the Court issue a Permanent Injunction commanding the individual Defendants and the AAUP, its officers, agents, employees, representatives, organizers, bargaining unit members, and all persons acting in concert with it absolutely to desist and refrain from each and every of the acts which are stated in paragraphs (C)(1) - (C)(3) above.
- E. This Court order the individual Defendants and the AAUP, by its officers, to notify each of its bargaining unit members who are employees of EMU of the entry of this Court's Temporary Restraining Order and its Preliminary Injunction and inform them that they are legally bound to abide by the terms set forth in such orders. Each notice shall immediately be given orally to as many members as the officers can reasonably reach and in writing sent to the members of the AAUP by email, with read receipt requested. A copy of the e-mail and evidence of the e-mailing of notice of each of the Court's Orders shall be filed with this Court on or before the expiration of three (3) days following first service of each of the Court's Orders upon any officer or agent of the AAUP.

F. The Court award Plaintiff its costs and attorneys' fees incurred in having to bring this action; and grant Plaintiff such other and further relief as the Court shall deem proper.

Dated: September 7, 2022

Respectfully submitted,  
DYKEMA GOSSETT PLLC

By: /s/Melvin J. Muskovitz  
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MOTION FOR INJUNCTIVE RELIEF**

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2	Affidavit of Muralidharan Nair
3	Affidavit of Ellen Gold

- 4      Affidavit of Michael Valdes
- 5      Affidavit of William Shepard
- 6      Affidavit of Kevin Kucera
- 7      Affidavit of Scott Wetherbee



# EXHIBIT 1

**STATE OF MICHIGAN  
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jgreene@dykema.com

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**Affidavit of Dr. Rhonda Kinney Longworth  
In Support of Request for Injunctive Relief**

Dr. Rhonda Kinney Longworth, being duly sworn states as follows:

1. I am the Provost and Executive Vice President for Academic & Student Affairs at Eastern Michigan University ("EMU" or the "University"). As the University's Chief Academic Officer, I provide primary administrative leadership, direction, and evaluation for all academic activities and faculty affairs with respect to the University's Colleges of Arts and Sciences, Business, Education, Engineering and Technology, and Health and Human Services, and its over 150 graduate school programs.

2. I have personal knowledge of the facts stated in this affidavit and, if sworn as a witness, I am competent to testify to them. This affidavit is submitted in support of EMU's complaint for injunctive relief.

3. Defendant AAUP is a labor organization that represents approximately 500 individual employees of EMU. The EMU employees represented by Defendant AAUP include professors, associate professors, assistant professors, instructors, media service managers, coach/teachers and librarians with Faculty rank.

4. In August 2015, EMU and the AAUP entered into a collective bargaining agreement ("CBA") that covered the period September 1, 2015 – August 31, 2019. The CBA was extended twice, first through August 31, 2021 and then through August 31, 2022.

5. Between July 15, 2022, when negotiations began, and August 31, the expiration date of the CBA, EMU and the AAUP met 19 times to negotiate a successor agreement, including daily from August 22 through August 31. The last 10 negotiation sessions took place with a mediator appointed by the Michigan Employment Relations Commission ("MERC"). The mediator was appointed at the request of EMU.

6. The CBA expired without the parties reaching an agreement on a new contract.

7. The parties continued to bargain after the CBA expired, meeting daily on September 1, 2, 3 and 4, each time with the mediator present.

8. On September 1, 2022, EMU filed a petition with MERC for Fact Finding.

9. Fact Finding is a State of Michigan process which assists public employers and labor unions representing public employees to reach a collective bargaining agreement. MCL 423.25; Mich Admin Code R 423.132.

10. On September 6, 2022 the AAUP notified EMU that the Faculty would be on strike effective September 7, 2022.

11. Faculty members represented by the AAUP withheld their services and went on strike on September 7, 2022, for the purpose of inducing, influencing, or coercing a change in employment conditions, compensation, or the rights, privileges, or obligations of employment.

12. The strike will cause the cancellation or suspension of academic coursework.

13. Cancellation or suspension of academic coursework, even for a short period of time, would cause irreparable harm to EMU and its students, faculty, and staff in ways such as, but not limited to, the following:

a. Hindering, altering, and delaying the academic progress of EMU's over 15,000 undergraduate and graduate students which could ultimately result in delayed graduation.

b. Requiring affected students to defer, delay, or forgo entirely planned post-graduate employment, that is contingent on the completion of their degree.

c. Requiring affected students to defer, delay, or forgo entirely planned graduate studies, that are contingent on the completion of their degree.

d. Hindering of students' preparation for licensure or certification examinations, required for entry into certain professions or positions.

e. Delaying disbursement of financial aid to students relied upon as support for meeting basic needs during the school year, including food and housing.

f. Delaying the achievement of the Test of English as a Foreign Language (TOEFL) proficiency by international students for continued study at EMU due to a delay in English training.

g. Possible deportation of international students who cannot maintain a minimum load of in person courses because of a strike.

h. The timely completion of degree requirements is essential to be competitive in the post-graduation employment and post-graduation education market and a delay in graduation would place EMU graduates at a significant disadvantage in those markets.

i. Some degree programs require students to take pre-sequenced series of courses whose curricula build on each other from semester to semester. If courses are cancelled due to the strike, or a student is not able to adjust his/her schedule to attend make-up classes, the student's progression along the track toward their degrees will be disrupted, which will inevitably lead to dissatisfaction among the students and damage EMU's reputation.

j. Several required courses in EMU programs are only offered in the fall semester. If classes must be canceled due to the strike, or a student is not able to adjust his/her schedule to attend make-up classes, students needing these courses will be unable to graduate as planned, lengthening their time to degree, deferring their entrance into the job market and increasing the students' financial burden.

k. There are 15 weeks of instructional time in the fall semester. In the event that all class hours are not able to be made up, students will lose critical classroom instruction time required to achieve the course learning outcomes successfully. Moreover, this would create an unfair gap in student learning by making the students' success in the next sequenced class unnecessarily difficult due to the missed content.

l. If classes are made up by rescheduling or extending the fall semester, hardship will be placed on students. A significant percentage of EMU students find it necessary to work while attending classes and they will be forced to choose between attending makeup classes and suffering financially or missing important subject content. In addition, due to the logistical issues caused by rescheduling a large number of classes in a finite time, rescheduled class times may conflict, forcing students to choose between which class to attend.

m. It may not be possible to reschedule laboratory classes given the finite number of available labs, or for students to attend rescheduled labs do to competing obligations. In either event, students would be prevented from completing a course. At a minimum, this affects students in Biology, Chemistry, Physics, Nursing Physician Assistant, and Clinical Laboratory Sciences programs, as well as students taking courses for general education requirements or electives.

n. If the semester is prolonged to make up missed classes, there will be a negative impact on students' planned employment during the winter break, which aids students' finances and career perspectives.

o. Any delay in graduation would be extremely detrimental to students by delaying their ability to generate income and would result in additional costs for attendance including additional and extended housing and living expenses, and potential loss of tuition and financial aid.

14. Cancellation or suspension of academic coursework, even for a short period of time, would cause irreparable harm to EMU in ways such as, but not limited to, the following.

a. Creating an immediate financial strain in the form of lost tuition revenue, and potential tuition refunds, which could result in the layoff of non-academic staff who rely on income from the University to support their families.


b. Possible loss of state, regional and national accreditation, and non-compliance with federal requirements, if a strike continues.

c. Loss of reputation in the quality of public education at the University on behalf of the students, parents and the general public if such illegal conduct is allowed to continue, which could lead to enrollment decline.

d. Damaging the reputation and recruiting efforts of EMU with prospective students.

e. Students who are faced with uncertainty, particularly the at-risk, first generation, and college supports program student populations, may withdraw from classes and not attend any university or transfer to another school resulting in a loss of tuition and harm to the student's career progression.

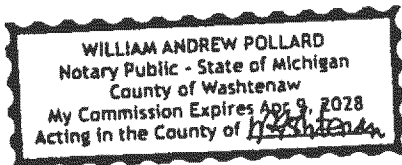
FURTHER AFFIANT SAITH NOT.

  
Dr. Rhonda Kinney Longworth

Subscribed and sworn to before me  
this 7<sup>th</sup> day of September, 2022.

  
\_\_\_\_\_

Notary Public, Washtenaw County, MI  
My commission expires: Apr 9, 2028



# EXHIBIT 2

**STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW**

EASTERN MICHIGAN UNIVERSITY,

Plaintiff,

v.

Case No. 2022-

-CL

Hon.

EASTERN MICHIGAN UNIVERSITY  
CHAPTER OF THE AMERICAN  
ASSOCIATION OF UNIVERSITY  
PROFESSORS; MOHAMED EL-  
SAYED, MARK HIGBEE, CAREN  
PUTZU, MATT KIRKPATRICK,  
ALANKRITA PANDEY, MINNIE BLUHM,  
SARAH FABIAN, JILLIAN GRAVES, and  
MATT OCHES.

Defendants.

\_\_\_\_\_/

Melvin J. Muskovitz (P18133)  
James P. Greene (P33911)  
DYKEMA GOSSETT PLLC  
Attorneys for Plaintiff  
2723 State St., Ste. 400  
Ann Arbor, MI 48108  
(734) 214-7633  
mmuskovitz@dykema.com  
jgreene@dykema.com

\_\_\_\_\_ /

**Affidavit of Muralidharan Nair**  
**In Support of Request for Injunctive Relief**

Muralidharan Nair, being duly sworn states as follows:

1. I am Dean of the College of Health and Human Services ("CHHS") at Eastern Michigan University ("EMU").
2. I have personal knowledge of the facts stated in this affidavit and, if sworn as a witness, I am competent to testify to them. This affidavit is submitted in support of EMU's complaint for a Temporary Restraining Order.



3. The Faculty at EMU are engaged in a strike. As a result of this strike, EMU, the CHHS and the CHHS students, will suffer irreparable harm including but not limited to the following:

a. The classroom instruction that CHHS students receive is closely coordinated with instruction in the clinical or field setting. The clinical aspects of many courses could go forward during a strike because the clinics are taught by part-time adjuncts (i.e., non-AAUP faculty members). For example, some School of Nursing students receive clinical training at the University of Michigan hospitals. However, because of the strike, the students are being denied the related and required course work otherwise taught by the faculty, thereby rendering them ill-prepared to handle the challenges presented by the clinical work. As a result, their performance and the reputation of the CHHS in the clinical community will suffer, as will the students' career prospects.

b. A strike could result in the University losing a number of social work clinical/field settings "slots" which require a Faculty member be present to provide supervision. The clinical sites provide essential experiences for our students, and we compete with other area universities for sufficient numbers of clinical/field slots to serve our students each term. There are only a finite number of positions. These cooperative arrangements are based on set schedules and time frames which CHHS students would not be able to meet if Faculty members who are required to be present are on strike. This would further jeopardize students' chances for participation. Loss of the clinical "slots" would be very damaging to the CHHS.

c. The CHHS programs benefit more than just students, through clinical and field placement of EMU students at, for example, hospitals and other healthcare facilities, shelters, and social services agencies. In these settings, EMU students provide care and assistance to some of the local community's most vulnerable members, including victims of domestic violence, substance abuse patients, and the mentally ill. The students develop the knowledge required to serve such persons in the classroom, and then learn how to apply it in the clinical setting. High levels of knowledge and skill are expected of EMU's students in these settings. To the extent the strike renders them unable to attain the requisite knowledge in class, these students will be unable to function at the level of practical skill demanded in the clinical setting. As a result, the needs of the people served in these clinical settings could be underserved.

d. Students in almost all of the programs of study offered by the CHHS are required to take licensure or certification examinations to enter their chosen field. Any significant interruption of their course schedule will hinder the students' abilities to prepare for those examinations; or even to take an exam as completion of certain courses are a prerequisite to sitting for an exam. Failing, or not taking an exam will decrease the value of the students' degrees after graduation. Further, in many program areas, students *must* pass the

examination as well as graduate from the EMU program in order to work in their profession.

e. Some courses are offered only once per year, and are offered sequentially. If a course is cancelled because of the strike, students would have to wait a year to take the course, or be forced to find replacement classes, either of which could inhibit their progress toward graduation.

f. Because of limited capacity, it would be physically impossible to make up lost time in laboratory, clinical, and field settings in the event of a prolonged delay in classes. As students have competing demands, such as other classes to make up, employment, etc., some students wouldn't be able to make up lost time even with a short delay in the start of school. The laboratory and clinical/field component of instruction is essential to students' professional preparation.

g. A prolonged interruption in instruction could arouse concern on the part of specialized accrediting bodies as to whether students are fully prepared.

h. As a result of the cancellation of class sessions, when classes resume, the rush to make up for lost time could make it more difficult to satisfy EMU policy and applicable laws with respect to the accommodation of students with special needs, such as the physically disabled.

i. The uncertainty and anxiety in the students caused by the strike damages the learning environment at EMU and in the CHHS.

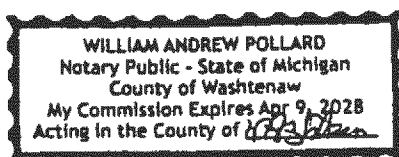
FURTHER AFFIANT SAITH NOT.

  
\_\_\_\_\_  
Muralidharan Nair

Subscribed and sworn to before me  
this day of September, 2022.

  
\_\_\_\_\_

Notary Public, Washtenaw County, MI  
My commission expires: April 9, 2028



# EXHIBIT 3

**STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW**

EASTERN MICHIGAN UNIVERSITY,

Plaintiff,

v.

Case No. 2022-

-CL

Hon.

EASTERN MICHIGAN UNIVERSITY  
CHAPTER OF THE AMERICAN  
ASSOCIATION OF UNIVERSITY  
PROFESSORS; MOHAMED EL-SAYED,  
MARK HIGBEE, CAREN PUTZU, MATT  
KIRKPATRICK, ALANKRITA PANDEY,  
MINNIE BLUHM, SARAH FABIAN,  
JILLIAN GRAVES, and MATT OCHES.

Defendants.

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Melvin J. Muskovitz (P18133)  
JAMES P. GREENE (P33911)  
DYKEMA GOSSETT PLLC  
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2723 State St., Ste. 400  
Ann Arbor, MI 48108  
(734) 214-7633  
mmuskovitz@dykema.com  
jgreene@dykema.com

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**Affidavit of Ellen Gold**  
**In Support of Request for Injunctive Relief**

Ellen Gold, being duly sworn states as follows:

1. I am the Senior Associate Vice President of Student Affairs and Dean of Students at Eastern Michigan University ("EMU"). In this position I oversee and have responsibility for the following departments that provide intentional student-centered programs and services to EMU students that contribute to the overall quality of student

life and empower them to achieve their educational and personal goals: Campus Life; Children's Institute; Conference and Event Services; Counseling & Psychological Services, Health Services; Housing & Residence Life; Office For International Students & Scholars; Office of Sexual Misconduct Prevention & Response; Office of Wellness & Community Responsibility; Recreation/Intramurals; and the Student Center.

2. I have personal knowledge of the facts stated in this affidavit and, if sworn as a witness, I am competent to testify to them. This affidavit is submitted in support of EMU's complaint for injunctive relief.

3. The Faculty strike will cause significant harm to students who require support for mental health concerns and disability-related accommodations, and will cause significant harm to student organizations who rely on Faculty advisors.

4. Due to the long-lasting pandemic situation and onerous measures such as lockdown and stay-at-home orders, the COVID-19 pandemic has brought significant impacts on higher education. The COVID pandemic has resulted in increased loneliness, stress, anxiety, and depression, among college students, including EMU's students.

5. Our first year students, along with many of our second year students, have arrived on campus to begin in-person classes for the first time. They are experiencing a host of emotions, including excitement and energy, along with anxiety and apprehension. They are ready to be in the classroom and be part of a "normal" college experience. The Faculty strike will likely cause further anxiety and depression, for those students already diagnosed with a mental health condition. The unknown about the length of a strike, how the lost time will be made up, and whether students living on campus should stay or go home are some of the basic questions that will be asked. It is anticipated that with a Faculty strike, Counseling & Psychological Services will reach capacity in their ability to serve students in need, while the demand for services continues to grow. As a result of this situation:

- Students may wait 2-3 weeks for their first appointment or are placed on a waiting list
- Students may wait up to 3-4 weeks for an appointment with the psychiatrist
- Appointment slots would be reduced in order to accommodate the client overload
- Clinicians will have inadequate time for follow-up with high risk clients
- Outreach and co-curricular programs on mental health topics cannot be offered

6. EMU has over 200 student organizations. Student involvement in campus organizations allows them the opportunity to develop organizational and leadership skills. In some organizations, students have the opportunity to expand their knowledge in a related field of interest. In support of these objectives, it is important that an

experienced individual be available to assist students in their organizational endeavors. While the range of organization activities and purposes is diverse, advisors can be valuable resource to an organization in terms of help and procedural matters, university regulations and policies, and financial concerns. Advisors must be an on-campus EMU faculty or staff member. Without an active advisor, a student organization cannot be recognized. The potential to be without an advisor will limit the number of current organizations, as well as newly created student organizations to be recognized and active. This is very important at the start of the academic year.

7. The Faculty strike will have an effect on students' parents as well. Parents do not want to have their child's first college experience begin with a Faculty strike and the possibility that brings of not having the students start school on time. Parents are asking if their children, who just moved on campus, should return home during the strike. Will there be activities organized on campus during that time? Will there be substitute instructors? How will the University handle the lost class time? Parents expect that the University will start classes on time and that it is important for their students to start the school year off without any major roadblocks, especially after experiencing the repercussions on the education of their children over the past two years.

8. Overall, a Faculty strike will have short and long term negative effects on students ranging from frustration and anger about the timing of the strike with the start of a new school year to reconsidering if this was the right school for them. The impact on one's mental health cannot be avoided for some students with this kind of disruption, especially after experiencing the effects of the pandemic for the past two years.

9. I am also responsible for directing, guiding, and overseeing all of EMU's international students (F-1 or J-1 students) and international scholars (J-1 scholars) programs. F-1 students are international students who are allowed to enter the United States as a full-time student at an accredited college or university. J-1 students are international exchange or Fulbright students in a program with an agreement with overseas institutions or with the U.S. Department of State. J-1 scholars are visiting researchers, professors, or specialists from a country outside of the United States who have been approved to enter the United States.

10. There are more than 535 F-1 and J-1 students enrolled at EMU for the fall 2022 semester. F-1 and J-1 students are generally required to be full-time status in order to maintain their F-1 or J-1 status. EMU is required to report their enrollment status to the federal immigration authorities on a semester-by-semester basis, confirming that they are full-time students and are pursuing a full course of study at EMU. EMU's F-1 and J-1 students also have approximately 55 dependents (spouses and children) whose immigration status in the United States depends on the continuing validity of their parent's or spouse's F-1 or J-1 immigration status. EMU also has J-1 scholars on campus who are working closely with faculty on various research projects, one J-1 scholar who is currently active and another two who expect to arrive at EMU soon. Many of these J-1 scholars also have dependents (spouses and children) whose

immigration status in the United States depends on the continuing validity of their parent's or spouse's J-1 immigration status.

11. A strike or work stoppage by EMU faculty would have a detrimental effect upon these F-1 students, J-1 students, J-1 scholars and their dependents in many ways including, without limitation, the following:

a. Confusion and fear among F-1 and J-1 students regarding their immigration status. Their immigration records would be terminated and they must leave the country immediately, if classes are cancelled and they are no longer enrolled as full-time students.

b. Many F-1 students are applying for curricular practical training (CPT) and optional practical training (OPT) in the coming days and weeks as part of their educational programs. CPT and OPT are enormously important training and work opportunities for F-1 students. Both the CPT and OPT processes require F-1 students to seek the support of their faculty advisors whose signature is critical to EMU's ability to approve an F-1 student for CPT or recommend an F-1 student for OPT. Faculty support is also necessary if these F-1 students want or need to extend their F-1 programs. If faculty are not working, it would be difficult or impossible for F-1 students to obtain the faculty support required to participate in any of these opportunities and many would lose the ability to participate in these processes forever.

c. Confusion and fear among F-1 students, J-1 students and J-1 scholars regarding the work they are currently performing, as teaching or research assistants, for faculty members and the possibility that these individuals may not be able to continue working during a strike while faculty are not available and, as a result, thereby losing their source of income.

d. F-1 students, J-1 students and J-1 scholars may be forced to transfer to other institutions to maintain their full-time student status and/or continue their teaching and research activities.

e. Any strike or work stoppage will likely cause reputational damage for EMU, especially with some of the larger organizations that fund international students coming to the United States. In addition, agreements between EMU and the U.S. Department of State and other institutions, particularly those in China, who send students to EMU would also be in jeopardy. The reputational damage could also have a cascading effect on EMU's ability to conclude these kinds of agreements with other potential international partners.

f. Based upon applicable immigration regulations, individuals working at EMU in either F-1 or J-1 status may lose their work authorization during any strike or work stoppage.

g. Any strike or work stoppage would result in a delay of providing English language training for international students, who will then be delayed in achieving passing scores on English proficiency exams that are a prerequisite for continued study at EMU.

FURTHER AFFIANT SAITH NOT.

Ellen Gold

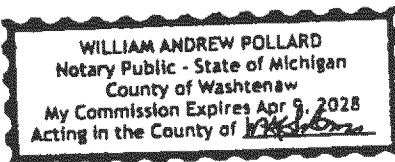
Ellen Gold

Subscribed and sworn to before me  
this 7 day of September, 2022.

William Andrew Pollard

Notary Public, Washtenaw County, MI

My commission expires: April 9, 2028





# EXHIBIT 4

**STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW**

EASTERN MICHIGAN UNIVERSITY,

Plaintiff,

v.

Case No. 2022-

-CL

Hon.

EASTERN MICHIGAN UNIVERSITY  
CHAPTER OF THE AMERICAN  
ASSOCIATION OF UNIVERSITY  
PROFESSORS; MOHAMED EL-  
SAYED, MARK HIGBEE, CAREN  
PUTZU, MATT KIRKPATRICK,  
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BLUHM, SARAH FABIAN, JILLIAN  
GRAVES, and MATT OCHES.

Defendants.

---

Melvin J. Muskovitz (P18133)  
James P. Greene (33911)  
DYKEMA GOSSETT PLLC  
Attorneys for Plaintiff  
2723 State St., Ste. 400  
Ann Arbor, MI 48108  
(734) 214-7633  
mmuskovitz@dykema.com  
jgreene@dykema.com

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**Affidavit of Michael Valdes**  
**In Support of Request for Injunctive Relief**

Michael Valdes, being duly sworn states as follows:

1. I am the Chief Financial Officer & Treasurer to the Board of Regents at Eastern Michigan University ("EMU"). In this position, I am involved on a daily basis with financial matters affecting EMU including financial management and reporting, budget development and control, and financial systems.

2. I have personal knowledge of the facts stated in this affidavit and, if sworn as a witness, I am competent to testify to them. This affidavit is submitted in support of EMU's complaint for injunctive relief.

3. The Faculty at EMU are engaged in a strike. As a result of this strike, EMU, EMU students, non-AAUP employees, and third parties with whom EMU does business, face irreparable harm in ways such as, but not limited to, the following:

- a. A loss of tuition revenue as a result of students dropping out of school as a result of the work stoppage. EMU's general fund is \$306.7 million, with 70.6% coming from tuition.
- b. A loss of room and board revenue as a result of students dropping out of school or delaying living in a dormitory until the strike ended and classes started. Approximately 70.0% of EMU's auxiliary fund budget is derived from room and board charges.
- c. EMU pays approximately \$61.3 million to various vendors and businesses, much of which in the immediate community and the State of Michigan and, if a significant amount of EMU's tuition and room and board revenue are lost, EMU will be required to reduce the products and services it purchases, thereby causing financial harm to the affected individuals and entities.
- d. Local businesses will also suffer from the absence of students on campus.
- e. Lost tuition and room and board revenue will negatively affect EMU's bond rating and jeopardize capital projects.
- f. Lost tuition and room and board revenue could lead to the layoff of non-bargaining unit employees who rely upon income from EMU to support their families.
- g. Cancellation or suspension of academic coursework, even for a short period of time, would jeopardize the University's ability to timely meet its debt payments, contractual, property maintenance, insurance coverages, and retirement funding obligations, and require the reduction or elimination of services.
- h. EMU will incur increased operating costs and related damages if the Fall semester must be extended or changed.
- i. EMU enjoys an outstanding and hard-earned reputation as being an ethical, honest, and reliable financial partner and a delay by EMU to honor its financial commitments would result in irreparable harm to its standing and reputation and would damage not just EMU, but also the entire southeast Michigan region.

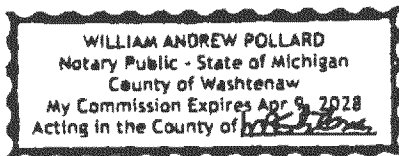
FURTHER AFFIANT SAITH NOT.

  
Michael Valdes

Subscribed and sworn to before me  
this 7<sup>th</sup> day of September, 2022.

  
\_\_\_\_\_

Notary Public, Washtenaw County, MI  
My commission expires: April 9, 2028



# EXHIBIT 5

**STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW**

EASTERN MICHIGAN UNIVERSITY,

Plaintiff,

v.

Case No. 2022-

-CL

Hon.

EASTERN MICHIGAN UNIVERSITY  
CHAPTER OF THE AMERICAN  
ASSOCIATION OF UNIVERSITY  
PROFESSORS; MOHAMED EL-SAYED,  
MARK HIGBEE, CAREN PUTZU, MATT  
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MINNIE BLUHM, SARAH FABIAN,  
JILLIAN GRAVES, and MATT OCHES.

Defendants.

---

Melvin J. Muskovitz (P18133)  
James P. Greene (P33911)  
DYKEMA GOSSETT PLLC  
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2723 State St., Ste. 400  
Ann Arbor, MI 48108  
(734) 214-7633  
mmuskovitz@dykema.com  
jgreene@dykema.com

---

**Affidavit of William Shepard  
In Support of Request for Injunctive Relief**

William Shepard, being duly sworn states as follows:

1. I am the Vice President for Advancement of Eastern Michigan University ("EMU" or the "University") and the Executive Director of the EMU Foundation. Among other responsibilities, I oversee all aspects of fundraising for EMU and am responsible

for ensuring that established goals for Give Rise: The Campaign for Eastern Michigan University are met by June 30, 2023.

2. I have personal knowledge of the facts stated in this affidavit and, if sworn as a witness, I am competent to testify to them. This affidavit is submitted in support of EMU's complaint for injunctive relief.

3. As Vice President for Advancement and Executive Director of the EMU Foundation, I oversee all of the University's fund raising efforts. The EMU Foundation is the fund raising arm of the University.

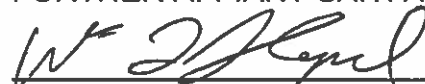
4. The University is in the final year of a comprehensive fund raising campaign ("Give Rise") to raise funds to support student success by creating more academic and need-based scholarships, to strengthen academic support programs, and to advance the University's Programs of Distinction by providing for faculty research, experiential learning opportunities for students, and modern, upgraded spaces.

5. The current faculty strike will have a significant impact on University fundraising. Donors support the University due to their respective perceptions of the University and its ability to fulfill its mission. Anything that casts the University's direction, leadership, programming and faculty in a negative light is detrimental to fundraising, admissions, and reputation.

6. In addition, the strike will negate the fundraising momentum achieved to date, and retard the annual growth rate for fundraising for several years into the future.

7. The loss, cancellation or delay of donor contributions to the University will have an immediate and long-lasting impact upon the University's finances as well as its academic, extracurricular and other programs.

FURTHER AFFIANT SAITH NOT.

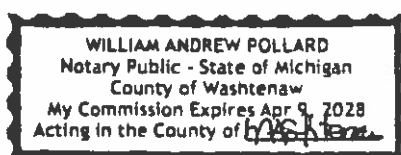
  
William Shepard

Subscribed and sworn to before me  
this 7 day of September, 2022.

  
\_\_\_\_\_

Notary Public, Washtenaw County, MI

My commission expires: April 9, 2028



# EXHIBIT 6



**STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW**

EASTERN MICHIGAN UNIVERSITY,

Plaintiff,

v.

Case No. 2022-

-CL

Hon.

EASTERN MICHIGAN UNIVERSITY  
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ASSOCIATION OF UNIVERSITY  
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JILLIAN GRAVES, and MATT OCHES.

Defendants.

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Attorneys for Plaintiff  
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Ann Arbor, MI 48108  
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mmuskovitz@dykema.com  
jgreene@dykema.com

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**Affidavit of Kevin Kucera In Support of  
Request for Injunctive Relief**

Kevin Kucera, being duly sworn states as follows:

1. I am Vice President Enrollment at Eastern Michigan University ("EMU"). Among other responsibilities, I oversee University admissions.

2. I have personal knowledge of the facts stated in this affidavit and, if sworn as a witness, I am competent to testify to them. This affidavit is submitted in support of EMU's complaint for injunctive relief.

3. The University's Division of Enrollment Management (EM) is responsible for recruiting undergraduate students, while facilitating graduate admission applications. The Division of EM works in collaboration with the Division of Academic and Student Affairs regarding retention initiatives.

4. EMU Faculty are engaged in a strike. This strike may create significant harm to the Division of Enrollment Management's operations and accomplishment of its mission to recruit and retain students. This harm includes, but is not limited to the following:

a. EMU's public image is of critical importance in recruitment and retention of students. In my opinion, news of a strike will travel quickly throughout southeastern Michigan, from which most of our students come, and will result in great uncertainty in the minds of students and their family regarding whether the academic year will begin and progress as scheduled.

b. This uncertainty could result in students who planned to enroll at EMU not to do so, and may cause students who were already enrolled at EMU to transfer to seek a more stable learning environment and predictable schedule.

c. The strike and any resulting cancelled classes can cause anxiety and confusion among students, particularly new students, who will be uncertain who their professors will be and how they should prepare for classes when they resume.

d. EMU recruits and enrolls a significant number of international students. These students depend on F-1 visas to remain in the United States and attend EMU. If these students do not maintain a minimum course load, in many circumstances they are subject to deportation. The strike may cause international students to avoid enrolling at EMU or transfer to another university for fear that due to circumstances out of their control they will be deported. EMU publicly takes pride in the number of international students we recruit. To the extent our recruitment of international students is negatively impacted by the strike, it will damage EMU's reputation for international enrollment.

e. In the Fall, admissions officers begin traveling throughout the state and region for recruiting activities at college fairs and similar functions. The strike has placed the admissions officers in the awkward position of having to promote EMU while conceding that a faculty work stoppage is preventing classes from taking place. This may impair the ability of the recruiters to attract potential students.

f. In September, EMU along with representatives from other Michigan public universities will participate in "Promoting the Publics," an event in which we meet personally with high school guidance counselors from around the state to discuss college admissions. At this event our focus is usually on promoting the benefits of the educational experience at EMU. If the strike is still occurring at that time, we fully expect to spend a significant amount of time discussing the strike instead of promoting EMU. This can have a negative impact on our recruitment efforts.

g. The amount of financial input EMU receives from the State of Michigan depends partially on enrollment. The potential loss of current and future enrollment caused by the inevitable publicity concerning the strike and its resulting disruption of classes will increase with every day the strike goes forward, and may result in lost revenue to the University.

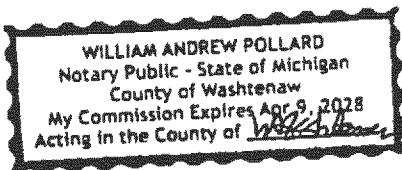
FURTHER AFFIANT SAITH NOT.

  
Kevin Kucera

Subscribed and sworn to before me this  
7 day of September, 2022.

  
\_\_\_\_\_

Notary Public, Washtenaw County, MI.  
My commission expires: April 9, 2028



# EXHIBIT 7

**STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW**

EASTERN MICHIGAN UNIVERSITY,

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Ann Arbor, MI 48108  
(734) 214-7633  
[mmuskovitz@dykema.com](mailto:mmuskovitz@dykema.com)  
[jgreene@dykema.com](mailto:jgreene@dykema.com)

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**Affidavit of Scott Wetherbee**  
**In Support of Request for Injunctive Relief**

Scott Wetherbee, being duly sworn states as follows:

1. I am the Vice President and Director of Intercollegiate Athletics of Eastern Michigan University ("EMU"). Among other responsibilities, I oversee all of EMU's intercollegiate athletic teams and am responsible for ensuring that EMU's athletic

programs comply with all applicable National Collegiate Athletic Association ("NCAA") rules so that EMU's student-athletes and teams can remain eligible to compete.

2. I have personal knowledge of the facts stated in this affidavit and, if sworn as a witness, I am competent to testify to them. This affidavit is submitted in support of EMU's complaint for injunctive relief.

3. EMU currently sponsors 19 NCAA Division I sports and over 450 student athletes participate in those sports.

4. Intercollegiate athletics provides millions of dollars in aid to student-athletes to assist in the payment of colleges expenses.

5. Each year hundreds of thousands of EMU fans, including students, faculty, staff, retirees, community members, professional scouts, and others attend athletic events and those sports that generate revenue through ticket sales are an essential part of the budget for the Athletics Department.

6. EMU Faculty are engaged in a strike. This strike can cause substantial disruption and irreparable harm to Intercollegiate Athletics in ways such as but not limited to the following:

- a. The potential of cancelling intercollegiate athletics contests and loss of time in a season if student-athletes elect to return home if classes are cancelled;
- b. Loss of irreplaceable revenue for cancelled home events or reduced attendance at events that go forward or significant financial penalty for cancelled away-from-home events, based on the terms of the game contracts for those events;
- c. The loss of aid to student-athletes thus jeopardizing their academic progress;
- d. The loss of publicity and media attention associated with Intercollegiate Athletics;
- e. The loss of sponsor and booster support if contests are cancelled; and
- f. The loss of advertising revenue associated with athletic events.


7. In addition to sustaining irreparable harm in common with non-athlete students, student-athletes would have to forgo participating in activities that are their passion and a key reason they chose EMU. Many student-athletes will pursue careers in their sport either as professional athletes, coaches, trainers, or support personnel. An interruption in their athletic and academic career would cause irreparable harm by way of reduced time in competition and delayed graduation in a highly competitive field.

8. I am also responsible for ensuring that EMU's athletic programs comply with all applicable National Collegiate Athletic Association ("NCAA") rules so that EMU's student-athletes and teams can remain eligible to compete. As a result of the strike by the Faculty members, EMU will suffer the following irreparable injuries:

- a. NCAA regulations require that a student-athlete must satisfactorily complete at least six credit hours per academic semester in order to participate in intercollegiate sports. If courses are cancelled, EMU's student-athletes may not be able to complete the minimum number of credit hours and could lose their scholarships and/or eligibility to compete for EMU. This would be disastrous for those student-athletes, and it would severely damage the reputation of EMU's athletic programs and the image of EMU in general.
- b. When student-athletes fail to comply with NCAA regulations, not only may those student-athletes be declared ineligible, but EMU may face fines or have to forfeit athletic contests if it is found to have used academically ineligible players. In order to avoid such serious consequences, EMU has a practice of utilizing the faculty athletics representative (FAR) in the review of the academic eligibility certification reports for all teams, prior to each team's first competition. The FAR is a member of EMU's faculty who has been designated by the president to serve as the liaison between the institution and the athletics department, while also representing EMU in conference and NCAA affairs. The review of academic eligibility certification reports is performed prior to the start of competition, because of the disruption that could be caused if EMU did not discover that a student-athlete was ineligible until after a significant portion of a season had been played. For example, application for student-athlete reinstatement is a highly time-consuming process that would take away from study and practice time. Because the faculty is on strike, EMU is without the services of the faculty member who serves in this role. Thus, EMU's athletic programs are competing without the benefit of the usual review of compliance issues.
- c. EMU's loss of reputation due to the strike will have a serious negative effect on its ability to recruit future student-athletes and retain the athletes that currently represent EMU.
- d. EMU's varsity football team plays under the auspices of NCAA Division I Football Bowl Subdivision. To maintain Division I Football Bowl Subdivision status, the highest status attainable by a college football program, EMU must average at least 15,000 in actual or paid attendance per home game. The publicity caused by the strike will negatively impact EMU's image such that public interest in EMU football will wane, leading to a decrease in attendance. In addition,

to the extent that students decide to transfer from EMU to other schools, this will also contribute to decreased attendance. This poses a dangerous threat of the loss of EMU's highly coveted Division I Football Bowl Subdivision status.

FURTHER AFFIANT SAITH NOT.

  
Scott Wetherbee

Subscribed and sworn to before me  
this 7 day of September, 2022.



Notary Public, Washtenaw County, MI  
My commission expires: April 9, 2028

