UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Tayah Lackie,

Plaintiff,

Civil File No. 24-cv-01684 (JWB/LIB)

vs.

Minnesota State University Student Association, Inc. d/b/a Students United; St. Cloud University; Robbyn R. Wacker, in her personal and official capacity as President of St. Cloud State University; and Larry Lee, in his personal and official capacity as Vice President for Finance and Administration at St. Cloud State University,

Defendants

MEMORANDUM OF LAW IN SUPPORT OF STATE DEFENDANTS' MOTION TO DISMSS

INTRODUCTION

Plaintiff graduated from St. Cloud State University (SCSU) in May 2024. Plaintiff is suing her alma mater because she was required to pay fees to Students United, the statewide student association for university students that attend universities that are part of the Minnesota State Colleges and Universities, during the one year she paid tuition, and they occasionally expressed views she disagreed with. (Compl., ¶ 5.) Plaintiff disagreed with Students United's social media advocacy for student debt abolition because she worked to avoid taking out loans during the two semesters she paid to attend SCSU. (Compl., ¶¶ 2, 5.)

Plaintiff did not take out student loans because she enrolled at SCSU as a high school junior, and the State of Minnesota paid the entire cost of Plaintiff's tuition, fees, and books through Minnesota's Post-Secondary Education Options (PSEO) program for two full years. (Compl., ¶¶ 37–38.) After graduating high school, Plaintiff's SCSU tuition was no longer covered by the PSEO program, so she paid for tuition, fees, and books. (Compl., ¶ 39.) Also like every regular student, Plaintiff was required to be a member of Students United, and SCSU was required by state law to collect fees and remit them to Students United. (Compl., ¶¶ 39, 41.) Plaintiff paid a total of $21.60 in statewide student association fees during the two semesters she paid for school. (*Id.*)

Plaintiff seeks monetary damages, a refund of these fees, and a declaration that what happened to her was unconstitutional, but because she no longer attends SCSU, is not a member of and pays no fees to Students United, she cannot seek prospective relief.

Plaintiff cannot sue SCSU, former President Wacker, or former Vice President Lee[1] in federal court because sovereign immunity deprives this Court of subject matter jurisdiction over these official capacity claims. Likewise, qualified immunity bars the personal capacity claims against President Wacker and Vice President Lee. In one way or another, the State Defendants are all immune from Plaintiff's suit, and it must be dismissed.

[1] Dr. Larry Dietz became Interim President on July 1, 2024. Dan Golombiecki became Interim Vice President for Finance and Administration on May 5, 2024.

STATEMENT OF FACTS

Plaintiff brought this case against her alma mater, St. Cloud State University, its former President Robbyn R. Wacker (President Wacker), and Larry Lee, its former Vice President for Finance and Administration (Vice President Lee) (collectively "State Defendants"). (Compl., ¶¶ 13–15.)[2]

SCSU is part of the Minnesota State Colleges and Universities system ("Minnesota State"). (Compl. ¶ 13.) Like all colleges and universities in the Minnesota State system, state law requires SCSU to have a campus student association. Minn. Stat. § 136F.22. Minnesota law declares that all state college and university students are automatically members of their statewide student association, and requires all state colleges and universities, like SCSU, to collect fees from tuition-paying students and remit them to the statewide student association:

136F.22 STUDENT ASSOCIATIONS.

Subdivision 1. **Statewide.** The board shall recognize one statewide student association for the state universities and one for the community and technical colleges. Each campus student association shall be affiliated with its statewide student association and all students enrolled on those campuses shall be members of their respective statewide association.

Subd. 2. **Fees.** Each statewide association shall set its fees to be collected by the board and shall submit any changes in its fees to the board for review. The board may revise or reject the fee change. Fees must be collected by each state college and university and shall be credited to each association's account to be spent as determined by that association.

Subd. 3. **Consolidation.** Changes may be made to student associations located on community college, state university, technical college, or consolidated colocated campuses with the approval of the students of each affected campus.

History: *1994 c 532 art 7 s 7; 1995 c 212 art 2 s 7; art 4 s 20,21,64; 1999 c 214 art 2 s 13*

[2] Plaintiff also sued Students United, which is a private entity and is separately represented. (*See* Compl., ¶ 12.)

Minn. Stat. § 136F.22 (2023). The statute leaves no discretion for state colleges and universities, like SCSU, or their administrators, like former President Wacker and former Vice President Lee.

Minnesota State implements the campus association mandate through a policy enacted by its Board of Trustees.[3] SCSU's campus student association exists "to enhance the educational potential and the learning environment of the University through the promotion of a student-centered process of policy."[4] SCSU's student government is elected by and represents the members of the campus student association.[5]

Minnesota law also mandates a statewide student association for all university students within Minnesota State. Minn. Stat. § 136F.22; Minn. State Policy 3.7. Defendant Students United is the statewide student association for university students. (Compl. ¶¶ 13, 16.) Students United exercises its authority through its board of directors.[6] The board consists of one member from each of the seven universities within

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[3] Minn. State. Policy 2.1, *Board Policies and System Procedures*, Minn. State, https://www.minnstate.edu/board/policy/.

[4] Student Government Constitution, art. I, St. Cloud State Univ., https://www.stcloudstate.edu/studentgovernment/governing-documentation/student-association.aspx.

[5] *Id.*, arts. II, https://www.stcloudstate.edu/studentgovernment/governing-documentation/student-government.aspx, VII, https://www.stcloudstate.edu/studentgovernment/governing-documentation/elections.aspx.

[6] Students United FY24 Bylaws, art. 6, sec. 1, available at https://static1.squarespace.com/static/574e037a1bbee008cb2da343/t/65bac5c893e39d092b8939d8/1706739144278/FY24+Bylaws+-+Jan+Update.pdf. (last visited _____).

Minnesota State.[7] Campus student associations select members of the board of directors according to their own rules.[8] Students United's board proposes student fees which are subject to approval by the Minnesota State Board of Trustees. *See* Minn. Stat. § 136F.22, subd. 2.

Students United charges a fee of $0.80 per credit to each student at universities in the Minnesota State system. (Compl. ¶ 21.) In compliance the statute and Board Policy, SCSU collects fees for Students United and credits Students United's account to be spent as Students United determines. Minn. Stat. § 136F.22, subd. 2; Minn. State Policy 3.7, part 3. Plaintiff's sole allegation against former President Wacker and former Vice President Lee consists of her belief that they are "responsible for collecting dues from students like for Students United and [have] collected dues from Plaintiff for Students United." (Compl., ¶¶ 14–15.)

Plaintiff Tayah Lackie enrolled as an undergraduate student at SCSU from Fall 2021 until May 3, 2024, when she graduated. (Compl. ¶ 11.) As a student at SCSU, Plaintiff was a member of Students United pursuant to Minnesota Statutes section 136F.22. (Compl. ¶¶ 16, 41.) Plaintiff was not aware she was a member of Students United. (Compl. ¶¶ 42, 43.) Plaintiff graduated from SCSU on May 3, 2024, and is no longer a member of Students United and no longer pays membership fees. (*See* Compl. ¶¶ 11, 41.)

LEGAL STANDARD

[7] *Id.*, sec. 2.

[8] *Id.*

The State Defendants move to dismiss the complaint for a lack of subject matter jurisdiction as to SCSU and the official capacity defendants, under Rule 12(b)(1), and for failure to state a claim upon which relief can be granted as to the individual capacity defendants, under Rule 12(b)(6).

A. Rule 12(b)(1) Motion to Dismiss.

A federal court's subject matter jurisdiction is a threshold question that, when challenged, must be decided before any other issues. *See Dreith v. City of St. Louis, Missouri*, 55 F.4th 1145, 1150 (8th Cir. 2022). "A motion to dismiss pursuant to Rule 12(b)(1) challenges the Court's subject matter jurisdiction and requires the Court to examine whether it has authority to decide the claims." *Damon v. Groteboer*, 937 F. Supp. 2d 1048, 1063 (D. Minn. 2013). In this facial Rule 12(b)(1) attack, the Court "restricts itself to the face of the pleadings and the non-moving party receives the same protections as it would defending against a motion brought under Rule 12(b)(6)." *Osborn v. United States*, 918 F.2d 724, 729 n.6 (8th Cir. 1990) (citation omitted). "The general rule is that a complaint should not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Id.* (cleaned up).

B. Rule 12(b)(6) Motion to Dismiss

A complaint must be dismissed if it fails to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). Rule 12(b)(6) "serves to eliminate actions which are fatally flawed in their legal premises and designed to fail, thereby sparing litigants the

burden of unnecessary pretrial and trial activity." *Onyiah v. St. Cloud State Univ.*, 655 F. Supp. 2d 948, 959–60 (D. Minn. 2009) (citation omitted).

To survive a motion to dismiss, a plaintiff must plead "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007)). A complaint must provide more than "labels and conclusions" or "a formulaic recitation of the elements of a cause of action." *Id.* The Complaint "must include sufficient factual allegations to provide the grounds on which the claim rests. A district court, therefore, is not required to divine the litigant's intent and create claims that are not clearly raised, and it need not conjure up unpled allegations to save a complaint." *Gregory v. Dillard's Inc.*, 565 F.3d 464, 473 (8th Cir. 2009) (cleaned up).

ARGUMENT

Each of Plaintiff's claims against the State Defendants fail. Sovereign immunity bars her claims against SCSU and the State Defendants in their official capacity, because she seeks damages and retrospective declaratory relief. Plaintiff's claims against the State Defendants in their personal capacity are barred by qualified immunity for two reasons. First, the former President Wacker and former Vice President Lee acted in conformity with a mandatory state law, and its constitutionality has never been challenged. Second, Plaintiff failed to plead that former President Wacker and former Vice President Lee had any personal involvement in the actions that harmed her. For these reasons, all of Plaintiff's claims against each State Defendant must be dismissed.

I. SCSU AND THE OFFICIAL CAPACITY DEFENDANTS ARE SHIELDED BY SOVEREIGN IMMUNITY.

"Generally, States are immune from suit under the terms of the Eleventh Amendment and the doctrine of sovereign immunity." *Whole Woman's Health v. Jackson*, 595 U.S. 30, 39 (2021); *Montin v. Moore*, 846 F.3d 289, 292 (8th Cir. 2017) ("Sovereign immunity bars any suits against states and their employees in their official capacities.").

The Supreme Court has "recognized a narrow exception grounded in traditional equity practice—one that allows certain private parties to seek judicial orders in federal court preventing state executive officials from enforcing state laws that are contrary to federal law." *Jackson*, 595 U.S. at 39 (citing *Ex parte Young*, 209 U.S. 123, 159–60 (1908)).

A. Minnesota's Sovereign Immunity Extends to SCSU.

Sovereign immunity protects instrumentalities of the state from suit. *Webb v. City of Maplewood*, 889 F.3d 483, 485 (8th Cir. 2018); *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 100, (1984) ("It is clear, of course, that in the absence of consent a suit in which the State or one of its agencies or departments is named as the defendant is proscribed by the Eleventh Amendment.").

Defendant SCSU is an instrumentality of the state. *Portz v. St. Cloud State Univ.*, 297 F. Supp. 3d 929, 938 (D. Minn. 2018). SCSU is therefore protected from this suit by sovereign immunity. *Portz*, 297 F. Supp. 3d at 938 ("Eleventh Amendment immunity

extends to SCSU because it is an instrumentality of the state."). Accordingly, this Court lacks subject matter jurisdiction to hear Plaintiff's claims against SCSU.

B. Former President Wacker and Former Vice President Lee Are Immune From Plaintiff's Damages Claims Because the State is The Real, Substantial Party In Interest.

In addition to SCSU having immunity, its leaders also have immunity in their official capacities. "The Eleventh Amendment bars a suit against state officials when 'the state is the real, substantial party in interest.'" *Pennhurst*, 465 U.S. at 101 (citations omitted). When state officials are sued, a question arises as to whether that suit is actually a suit against the State itself. "The general rule is that relief sought nominally against an officer is in fact against the sovereign if the decree would operate against the latter." *Id.* (citation omitted). Just like a suit against the state itself, "a suit against state officials that is in fact a suit against a State is barred regardless of whether it seeks damages or injunctive relief." *Id*. at 102 (citation omitted).[9]

When a plaintiff seeks to recover "money from the state, the state is the real, substantial party in interest and is entitled to invoke its sovereign immunity from suit even though individual officials are nominal defendants." *Regents of the Univ. of California v. Doe*, 519 U.S. 425, 429 (1997); *Raymond v. Bd. of Regents of Univ. of Minnesota*, 140 F. Supp. 3d 807, 813–14 (D. Minn. 2015), *aff'd*, 847 F.3d 585 (8th Cir. 2017) ("[T]he Eleventh Amendment prohibits federal-court lawsuits seeking monetary

[9] The *Ex parte Young* exception does not apply "when 'the state is the real, substantial party in interest.'" *Virginia Off. for Prot. & Advoc. v. Stewart*, 563 U.S. 247, 255 (2011).

damages from individual state officers in their official capacities because such lawsuits are essentially 'for the recovery of money from the state.'").

Plaintiff's claims for nominal damages, refunds of fees SCSU remitted to Students United, and damages for dignitary harm against the Official Capacity Defendants would all be paid out from state coffers. The State of Minnesota is the real, substantial party in interest for Plaintiff's claims against the Official Capacity Defendants, and therefore this Court lacks subject matter jurisdiction to address them.

C. The State Defendants' Sovereign Immunity Bars This Suit.

Plaintiff's claims against the State Defendants[10] in their official capacity can only overcome sovereign immunity if she establishes *Ex parte Young*'s exception.[11] "In determining whether [*Ex parte Young*'s] exception applies, a court conducts 'a straightforward inquiry into whether [the] complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective.'" *Minnesota RFL Republican Farmer Lab. Caucus v. Freeman*, 33 F.4th 985, 989–90 (8th Cir. 2022) (citation omitted). But here, Plaintiff does not allege either.

1. Plaintiff Does Not Allege An Ongoing Violation of Federal Law.

As an initial matter, Plaintiff does not allege an ongoing violation of federal law; she only pleads past conduct. Plaintiff graduated from SCSU. (Compl. ¶ 11.) Plaintiff is

[10]The *Ex parte Young* exception only applies to state officials, not state instrumentalities like SCSU. *Monroe v. Ark. State Univ.*, 495 F.3d 591, 594 (8th Cir. 2007).

[11] The other exception, when states waive sovereign immunity, is not applicable here. *See Portz*, 297 F. Supp. 3d at 938–40 (holding that Minnesota has not waived sovereign immunity for section 1983 claims).

no longer a member of Students United and Defendants no longer collect fees for Students United from Plaintiff. This is evident from her request for declaratory relief, which is phrased in the past tense. (See Compl., Prayer for Relief ¶ 1) (requesting a declaration that Defendants "*violated* Plaintiff's First Amendment rights") (emphasis added).) Moreover, her damages claims only look backward, and she does not seek any forward-looking relief. (Compl. ¶¶ 58, 65.)

2. Plaintiff Only Seeks Retrospective Relief.

Plaintiff seeks only retrospective relief from the State Defendants. (Compl. ¶¶ 58, 65, Prayer for Relief 1–4.) Along with damages claims she cannot pursue, Section B, *supra*, Plaintiff seeks a retrospective declaratory judgment. (Complaint, Prayer for Relief 1.) But a claim seeking "a declaration of past liability," rather than the plaintiff's "future rights, does not satisfy the definition of declaratory judgment." *Justice Network Inc. v. Craighead Cnty.*, 931 F.3d 753, 764 (8th Cir. 2019) (cleaned up).

"[T]he Eleventh Amendment does not permit judgments against state officers declaring that they violated federal law in the past." *Id.* To meet the *Ex parte Young* exception, "declaratory relief is limited to *prospective* declaratory relief." *Id.*; *see also Green Mansour,* 474 U.S. 64, 68–69 (1985) (finding *Ex parte Young*'s exception does not permit a retrospective declaratory judgment action).

Because Plaintiff only seeks a retrospective declaratory judgment against the States Defendants, her claims against them in their official capacity do not fall within *Ex parte Young*'s exception, and they are barred by sovereign immunity.

II. The Defendants Wacker and Lee Are Entitled To Dismissal Of The Personal Capacity Claims.

Defendants Wacker and Lee are entitled to dismissal of the claims against them in their personal capacities for two reasons. First, they are entitled to qualified immunity. Second, they did not have the level of personal involvement necessary to support a personal capacity claim.

A. The Defendants Wacker and Lee Are Entitled to Qualified Immunity.

Qualified immunity bars Plaintiff's claims against Defendants Wacker and Lee in their personal capacities. Qualified immunity generally protects government actors from liability for actions that are objectively reasonable. *See Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S. Ct. 2727, 2738 (1982). When a defendant asserts entitlement to qualified immunity in a section 1983 lawsuit, the Plaintiff must show "that the defendant violated a constitutional right that was 'clearly established' at the time of the incident." *Ness v. City of Bloomington*, 11 F.4th 913, 921 (8th Cir. 2021). "The reliance on a state statute that has not been declared unconstitutional is generally a paradigmatic example of reasonableness that entitles an officer to qualified immunity." *Id.*

Defendant Wacker's and Defendant Lee's actions – as Plaintiff alleges in her complaint – merely consisted of complying with mandatory provisions of Minnesota Statutes section 136F.22. Section 136F.22 requires the establishment of a statewide student association and the automatic membership of "all students enrolled on those campuses." Minn. Stat. § 136F.22, subd. 1. The statute also requires fees for the statewide association to "be collected by each state . . . university." *Id.*, subd. 2.

Defendants Wacker and Lee are merely alleged to have collected fees for the applicable statewide association, exactly as Minnesota law required them to do. (Compl. ¶¶ 14, 15.) In the 30 years since its enactment, section 136F.22 has never before been challenged in court, let alone declared unconstitutional.[12] In other words, Plaintiff has pled "the paradigmatic example of reasonableness that entitles [Defendants Wacker and Lee] to qualified immunity." *Ness*, 11 F.4th at 921.

Because Defendants Wacker and Lee are entitled to qualified immunity, the claims against them must be dismissed.

B. Defendants Wacker and Lee Lacked Sufficient Personal Involvement.

The Complaint fails to allege that Defendants Wacker and Lee individually took actions that could subject them to personal liability. An official's general supervisory authority over a public institution does not subject that official to individual liability. *Jackson v. Nixon*, 747 F.3d 537, 545 (8th Cir. 2014). Rather, the official must be "directly involved in making, implementing, or enforcing a policy decision that created unconstitutional conditions." *Id.* (internal quotation omitted). A plaintiff must plead facts plausibly supporting the official's personal involvement. *Norgren v. Minn. Dep't of Human Servs.*, 96 F.4th 1048, 1057 (8th Cir. 2024).

Former-President Wacker is only alleged, on information and belief, to have been "responsible for collecting dues from students like Plaintiff for Students United" and to have "collected dues from Plaintiff for Students United." (Compl. ¶ 14.) Former-Vice

[12] The statute was originally codified in 1994 as Minnesota Statutes section 136E.525. Minn. L. 1994, ch. 532, art. 7, sec. 7. In 1995, section 136E.525 was moved to section 136F.22. Minn. L. 1995, ch. 212, art. 4, sec. 64.

President Lee is only alleged, on information and belief, to have been "responsible for collecting dues from students like Plaintiff for Students United" and to have "collected dues from Plaintiff for Students United." (Compl. ¶ 15.)

These conclusory allegations, pled only on information and belief, fall short of stating a plausible claim that the former University president and vice president had the type of personal involvement in collecting dues from Plaintiff required for an individual capacity claim. Moreover, Plaintiff affirmatively alleges that the policy decisions to collect dues were made by the legislature. (Compl. 17–20.) Defendants Wacker and Lee lack the requisite personal involvement in the acts Plaintiff contests subject them to individual liability. Accordingly, the personal capacity claims against the Defendants Wacker and Lee must be dismissed.

CONCLUSION

Plaintiff seeks compensation for and a declaration that the State Defendants violated her constitutional rights in the past. But rather than stating a cognizable claim for relief, Plaintiff pleaded paradigmatic examples of claims barred by sovereign and qualified immunity. Accordingly, all claims against the State Defendants must be dismissed.

Dated: July 15, 2024

Respectfully submitted,

KEITH ELLISON
Attorney General
State of Minnesota

/s/ Nick Pladson
NICK PLADSON
Assistant Attorney General
Atty. Reg. No. 0388148
ALEC SLOAN
Assistant Attorney General
Atty. Reg. No. 0399410

445 Minnesota Street, Suite 1400
St. Paul, Minnesota 55101-2131
(651) 300-7083 (Voice)
(651) 296-7438 (Fax)
Nick.Pladson@ag.state.mn.us

ATTORNEYS FOR THE STATE DEFENDANTS