IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

TAYAH LACKIE,

Plaintiff,

v.

MINNESOTA STATE UNIVERSITY STUDENT ASSOCIATION, INC. d/b/a STUDENTS UNITED; ST. CLOUD STATE 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.

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

PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO STUDENTS UNITED'S MOTION TO DISMISS

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INTRODUCTION

When the government forces someone to subsidize political views she does not share, it necessarily interferes with that person's First Amendment free speech and association rights. *See generally Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, 585 U.S. 878 (2018). Thus when Tayah Lackie found herself forced to subsidize a political-advocacy-focused corporation called Students United as an adamantine condition of enrollment at a school in the Minnesota State University system, she brought suit against that corporation. Students United's efforts to avoid this claim entirely—arguing that the complaint should be dismissed for failure to state a claim—are unavailing.

Acting in concert with the State, Students United fixes the mandatory fees it wants state universities to charge students, then accepts those fees from the State and forces all students to join its membership. Then, it uses those fees and student support to support its advocacy efforts. In doing so, Students United forced Ms. Lackie to associate with, and subsidize, political advocacy against her will—violating her First Amendment rights and unjustly enriching itself at Ms. Lackie's expense.

Nonetheless, Students United asserts that Ms. Lackie has failed to state any claim against it. Students United first protests that it is an improper party because it didn't cause Ms. Lackie's injuries and declaratory relief can't provide sufficient redress for injuries that occurred in the past. But the Supreme Court found causation and standing in the nearly identical case of *Janus v. AFSCME, Council 31*, which involved a union accepting employee dues collected via a state employer. 585 U.S. 878, 888, 890 (2018). What's more, Students United is an active partner with the State in the process of siphoning money from

Ms. Lackie. Students United also fails to dent redressability: it misses that declaratory relief, when paired with monetary damages, can be appropriate for retroactive injuries. In any event, Ms. Lackie has requested other forms of relief that Students United has left unchallenged.

Next, Students United insists that it is not a state actor for the purpose of § 1983. A private actor engages in state action where it (1) exercises some right created by the state and (2) can fairly be said to be a state actor. In Students United's telling, it exercised no right sourced in state authority because it "receives" fees rather than "collecting" them. This is pure sophistry—the Supreme Court and the Eighth Circuit have used the word "collect" to describe a process nearly identical to Students United's challenged conduct, and found state action in similar cases. Though Students United dwells on the fact that its leadership is private, so are unions like AFSCME, the defendant in *Janus*. Literal state leadership nexus is unnecessary. Instead, joint cooperation between a state agency and a private actor is sufficient to turn that private actor into a state actor, especially when the private actor makes non-negotiable demands on the plaintiff. Here, Students United cooperates with the Board of Trustees of the Minnesota State Colleges and Universities and St. Cloud State University to set its fees and then accepts those fees from the state university after those fees are involuntarily extracted from students like Ms. Lackie. Construing all allegations in Ms. Lackie's favor, the complaint sufficiently alleges that Students United is a state actor subject to a § 1983 claim.

Last, Students United argues that it can't be liable for unjust enrichment because it received Ms. Lackie's fees under Minnesota state law. But Ms. Lackie alleges that this

receipt was unconstitutional. In any event, under Minnesota state law, that a defendant knowingly benefits from the unlawful efforts of another is enough to show unjust enrichment.

For these reasons, the Court should deny Students United's motion to dismiss.

STATEMENT OF THE CASE

To avoid repetition, Ms. Lackie incorporates by reference the facts section from her memorandum of law opposing the State Defendants' motion to dismiss, which describes those facts alleged in the Complaint or fairly embraced by it.

LEGAL STANDARD

"Federal Rule of Civil Procedure 8(a)(2) requires only 'a short and plain statement of the claim showing that the pleader is entitled to relief,' in order to give the defendant fair notice of what the claim is and the grounds upon which it rests." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (cleaned up). "This simplified notice pleading standard relies on liberal discovery rules and summary judgment motions to define disputed facts and issues and to dispose of unmeritorious claims." *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512 (2002).

"[A] complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations." *Twombly*, 550 U.S. at 555. "Although the Plaintiff must allege more than . . . a formulaic recitation of the elements of her claim, . . . she need not allege facts in painstaking detail. . . Rather, the facts alleged must be enough to raise a right to relief above the speculative level." *Watkins v. City of St. Louis*, 102 F.4th 947, 951 (8th Cir. 2024) (internal citations and quotation marks omitted, cleaned up). "To determine whether a

complaint states a facially plausible claim," courts "accept the factual allegations in the complaint as true and draw all reasonable inferences in the nonmovant's favor." *Cook v. George's, Inc.*, 952 F.3d 935, 938 (8th Cir. 2020).

ARGUMENT

I. Students United is a proper party.

Students United's first argument is that it is "an improper party." Minn. State Univ. Student Assoc., Inc. d/b/a Students United's Mem. in Supp. of Mot. to Dismiss ("SU Motion"), ECF No. 24, July 15, 2024, at 7. Students United does not cite any rule or caselaw explaining the legal basis of this argument, so its argument is improperly presented. *See* Fed. R. Civ. P. 7(b)(1)(B) (motions must "state with particularity the grounds for seeking the order"). Only several pages into the argument does it passingly cite one decision discussing a rule about joinder of parties for removal purposes under 28 U.S.C. § 1446. *See* SU Motion 9 (quoting *All. Energy Sers., LLC v. Kinder Morgan Cochin, LLC*, 80 F. Supp. 3d 963, 972 (D. Minn. 2015)). That rule is irrelevant here, given that there is no removal (and has been no joinder of new parties).

One can speculate that Students United's argument is based on standing, given that its thrust is to put the blame for the allegedly unconstitutional actions on other entities. *See id.* at 8. But Students United does not move to dismiss under Rule 12(b)(1) for lack of subject-matter jurisdiction, and never specifically alludes to any standing rules. Nonetheless, Ms. Lackie will explain causation and redressability against Students United here because it is hard to understand Students United's argument in any other way. This

discussion also shows why Students United's attack on the complaint's request for declaratory relief is misplaced.

A. Students United has caused Ms. Lackie's injury.

Students United starts by arguing that Ms. Lackie has pointed the finger at the wrong culprit: the blame lies with "the legislature, **not** Students United." SU Motion 8. Though not stated clearly, it seems that Students United is thereby challenging causation: disclaiming its responsibility for Ms. Lackie's injuries. *See id.* at 7 ("it is not Students United that required or compelled Lackie . . . to become a member or to pay fees."). Students United seems to believe that to satisfy causation, it must have singlehandedly "forced Lackie to be a member and pay fees to it." *Id.* at 10; *see also id.* at 8. Students United is mistaken.

One of the three prongs of Article III standing is "a causal connection between the injury and the challenged law." *Hershey v. Jasinski*, 86 F.4th 1224, 1229 (8th Cir. 2023). In other words, the injury-in-fact should be "fairly traceable to the [challenged provision]." *Id.* at 1230 (internal quotation marks omitted).

Here, Students United's effort to sever this connection hits two roadblocks—the Supreme Court has found causation in a similar case, and according to the complaint's allegations, Students United is far more involved in the dues-collecting process than it lets on.

First, the Supreme Court has found causation in a similar case—*Janus v. AFSCME, Council 31*, 585 U.S. 878 (2018). There, the Court held that a non-union-member employee had standing to sue a union—a private entity—that, pursuant to state law, received dues

from him without his permission. *Id.* at 884–87. Under the state law, non-union-member employees were required to pay a certain percentage of union dues, earmarked to support the union's collective-bargaining responsibilities. *Id.* at 887. It was up to the union to categorize what percentage of its union dues was "chargeable"; once it had done so, the amount was audited and certified to the government employer, after which the government employer would "automatically deduct[] that amount from the nonmembers' wages." *Id.* at 888. The Court held that the plaintiff "clearly has Article III standing" to sue the union because "petitioner was injured in fact by Illinois' agency-fee scheme." *Id.* at 890.

This case is nearly identical. Both cases were brought against a representative association (there, a public-sector union; here, a student union) by someone who, without voluntarily affiliating with that association, was forced to give financial "dues" to that association regardless. In both cases, the dues-assessing and -collecting processes were conducted according to state law. And in both cases, the association would receive the dues without personally collecting them. In *Janus*, a government employer collected the dues from the employee's paycheck, and here, the state university collects the dues through the student's bill which must be paid for the student to attend the university. In *Janus*, the dues had to be paid for the employee to keep his job; here, the dues must be paid for the student to attend school. Since the Supreme Court found that "any Article III issue [had] vanishe[d]" in the one case, *Janus*, 585 U.S. at 890, causation is at *least* "plausible" in the other based on the facts Ms. Lackie has alleged.

Eighth Circuit precedent agrees. In *Bierman v. Dayton*, for instance, the Eighth Circuit found that a group of parents who provided homecare services to their disabled

children had standing to sue a union that was authorized by the state legislature to exclusively represent "persons who provide in-home care to disabled Medicaid recipients." 900 F.3d 570, 572 (8th Cir. 2018).

Thus, Students United's effort to sever causation is unsupported and novel. But the flaws don't end there: its argument is also shaky on the facts. Students United is not, as it protests, "merely the recipient of the fees . . . required by the legislature." SU Motion 8. Rather, just like the union in *Janus*, Students United *sets* the mandatory fees it receives pursuant to state law. Minn. Stat., § 136F.22, subd. 2; *accord* SU Motion 2 (admitting the point). And once it has set those fees, it can "submit any changes in its fees to the [B]oard for review." Minn. Stat., § 136F.22, subd. 2. Students United isn't a passive piggy bank; it's an active partner in the process of setting and receiving dues.

Last and more broadly, even as much as Ms. "Lackie's issues are really with the legislature," SU Motion 9, it is black-letter law that plaintiffs cannot sue "the legislature"—and that the proper defendants in such cases are those who "giv[e] effect to a state statute in a manner that allegedly injures a plaintiff and violates h[er] constitutional rights." *McDaniel v. Precythe*, 897 F.3d 946, 952 (8th Cir. 2018). Students United is such a party, and Ms. Lackie's injuries can be traced to its actions. Students United's musings, unmoored from rule or precedent, cannot defeat the sufficiency of her allegations.

B. Ms. Lackie's requested relief will redress her injuries.

Students United also argues that Ms. Lackie is seeking inappropriate relief in declaratory judgment because such relief is prospective only. Again, the basis and scope of Students United's challenge is unclear. It could not be challenging redressability for

standing purposes writ large, for Ms. Lackie's other requested forms of relief, such as restitution and nominal damages, Compl. Prayer for Relief ¶¶ 2–4, would provide sufficient redress for her injury for standing purposes. *See, e.g.*, *Uzuegbunam v. Preczewski*, 592 U.S. 279, 293 (2021) (holding "that, for the purpose of Article III standing, nominal damages provide the necessary redress for a completed violation of a legal right"). Thus, the Court should disregard Students United's attack on a single requested relief: it is "well-settled law" that "a Rule 12(b)(6) motion is not the appropriate vehicle for the dismissal of one of [the plaintiff's] prayers for relief." *AG Spectrum Co. v. Elder*, 181 F. Supp. 3d 615, 617 (S.D. Iowa 2016) (quoting *Dingxi Longhai Dairy, Ltd. v. Becwood Tech. Grp. LLC*, 635 F.3d 1106, 1108 (8th Cir. 2011)).

In any event, Students United's argument that a declaration "based on past conduct" is never available (SU Motion 9) is wrong. Courts routinely entertain retrospective declaratory judgments when they are paired with damages claims.[1] Students United relies on cases where damages were no longer at stake, or had no serious chance of being

[1] *See, e.g., Wolff v. McDonnell*, 418 U.S. 539, 555 (1974) (explaining that "a declaratory judgment as a predicate to a damages award would not be barred"); *PETA v. Rasmussen*, 298 F.3d 1198, 1202–03 n.2 (10th Cir. 2002) (explaining that courts will "consider declaratory relief retrospective to the extent that it is intertwined with a claim for monetary damages that requires [it] to declare whether a past constitutional violation occurred"); *Crue v. Aiken*, 370 F.3d 668, 677 (7th Cir. 2004) ("When a claim for injunctive relief is barred but a claim for damages remains, a declaratory judgment as a predicate to a damages award can survive."); *Pucket v. Rounds*, No. Civ. 03-5033-KES, 2006 WL 120233, at *6 (D.S.D. Jan. 17, 2006) (explaining that "[a] claim for damages . . . will prevent a claim for declaratory relief from becoming moot as well").

awarded.[2] But Students United has not challenged the appropriateness of Ms. Lackie's damages claims.

In conclusion, Students United's attempts to undercut Ms. Lackie's allegations fall flat. She has alleged facts that, taken as true, easily support a plausible showing that Students United is, in its words, a "proper party," having caused her injury, which can be redressed by a favorable court decision. SU Motion 2.

II. Ms. Lackie has plausibly alleged that Students United acted under color of state law.

"Section 1983 provides a cause of action against a defendant whose actions were taken 'under color of' state law and deprived another of a federal right." *Burns v. Sch. Servs. Emps. Union Loc. 284*, 75 F.4th 857, 860 (8th Cir. 2023) (quoting *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 931 (1982)). "The right to be free from compelled speech is secured by the First and Fourteenth Amendments," which "prohibit only state action." *Hoekman v. Educ. Minn.*, 41 F.4th 969, 977 (8th Cir. 2022) (internal citations omitted).

Private actors' "conduct may be deemed state action" "if that conduct is 'fairly attributable to the State.'" *Id.* (quoting *Rendell-Baker v. Kohn*, 457 U.S. 830, 838 (1982)). "If the challenged conduct of respondents constitutes state action . . . then that conduct was also action under color of state law and will support a suit under § 1983." *Lugar*, 457 U.S.

[2] *See Just. Network Inc. v. Craighead Cnty*, 931 F.3d 753, 762 (8th Cir. 2019) (addressing declaratory judgment after first finding damages to be foreclosed), relied on by Students United, SU Motion 8–9; *Hageman v. Minn. Dep't of Corr.*, No. 20-2257 (SRN/BRT), 2021 WL 3476780 (D. Minn. April 26, 2021) (ultimately dismissing the *pro se* plaintiff's complaint for many flaws), relied on by Students United, SU Motion 9.

at 935. "In such circumstances, the defendant's alleged infringement of the plaintiff's federal rights is 'fairly attributable to the State.'" *West v. Atkins*, 487 U.S. 42, 49 (1988) (quoting *Lugar*, 457 U.S. at 937).

The "fair attribution" inquiry involves consideration of two questions: (1) whether "the claimed deprivation 'resulted from the exercise of a right or privilege having its source in state authority," and (2) "if 'under the facts of th[e] case,'" the court "may 'appropriately characterize[the defendant] as a state actor.'" *Doe v. N. Homes, Inc.*, 11 F.4th 633, 637 (8th Cir. 2021) (quoting *Lugar*, 457 U.S. at 939).

A. Students United's right to collect dues is based in state authority.

Starting with whether Students United's dues collection is founded in state authority, it is. Ms. Lackie alleges that Students United exercises a right or privilege having its source in state authority when it collects mandatory fees from St. Cloud State University and students like her. Compl. ¶ 22. Students United barely contests the point, saying in a passing sentence that it "merely receives" fees and does not collect them directly from students. SU Motion 11.

Students United cites no precedent to support this argument. That is unsurprising because both the Supreme Court and the Eighth Circuit have used the word "collect" to describe a process through which a union receives funds retrieved from employees by an employer—much like the process here, where the Defendant, a student union, receives funds retrieved from students by the school.

Start with *Janus*, which scrutinized a law allowing a union to certify a fee to the employer, after which the employer would "automatically deduct that amount from" a

nonmember's wages without consent. 585 U.S. at 888. The Court struck down this scheme, declaring that "[n]either an agency fee nor any other payment to the union may be deducted from a nonmember's wages, nor may any *other attempt be made to collect* such a payment, unless the employee affirmatively consents to pay." *Id.* at 930 (emphasis added); *see also Hoekman v. Education Minn.*, 41 F.4th 969, 974–75 (8th Cir. 2022) (using the term "collect" to describe a union's collection of employee dues via an employer deduction from wages, and finding no state action only because that collection was by private agreement rather than by statute).

Thus, as Students United all but concedes, its collection of mandatory fees pursuant to a state statute "satisf[ies] the first part of the state action analysis." SU Motion 11. Like the unions in *Janus* and *Hoekman*, Students United is "collect[ing] membership dues from" Ms. Lackie by receiving fees from St. Cloud University after the school charged those fees to Ms. Lackie's account. *Hoekman*, 41 F.4th at 978. And Students United is only entitled to those fees thanks to state authority.

B. Students United is a state actor for the purpose of § 1983.

Students United's primary argument is that Ms. Lackie's complaint "fails to allege any basis upon which Student's United can be determined to be a state actor." SU Motion 12. It attacks a straw man, suggesting that Ms. Lackie's only allegations of state action are that Students United has passively been recognized and subsidized by the Board. *Id.* But Ms. Lackie expressly alleged that "Students United . . . collects mandatory fees from St. Cloud State University and students such as Plaintiff." Compl. ¶ 22. She has further alleged that "Defendants required Plaintiff and require students to associate with and subsidize

Student United's political speech by charging and collecting mandatory fees," *id.* ¶ 54, and that "[a] policy . . . enforced by Defendants compelled Plaintiff to be a member of Students United as a condition of her enrollment at St. Cloud State University," *id.* ¶ 61. These factual allegations, taken as true, support a plausible showing that Students United is a state actor. *See Twombly*, 550 U.S. at 555.

Important as well, "[t]he state-actor question presents a 'necessarily fact-bound inquiry.'" *N. Homes*, 11 F.4th at 637 (quoting *Lugar*, 457 U.S. at 939). That makes it particularly inappropriate to resolve against the plaintiff at the motion-to-dismiss stage.

"The Supreme Court has recognized a number of circumstances in which a private party may be characterized as a governmental actor, including where a private actor is a willful participant in joint activity with the governmental entity or its agents." *Meier v. St. Louis*, 934 F.3d 824, 829 (8th Cir. 2019) (cleaned up). "These . . . circumstances are merely examples and not intended to be exclusive." *Wickersham v. City of Columbia*, 481 F.3d 591, 597 (8th Cir. 2007). "Facts that address any of these criteria are significant, but no one criterion must necessarily be applied." *Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass'n*, 531 U.S. 288, 303 (2001). While there are various "kinds of facts that can justify characterizing an ostensibly private action as public," "a conclusion of state action under [one] criterion . . . [is] in no sense unsettled merely because other criteria of state action may not be satisfied by the same facts." *Id.* at 302–03. "The one unyielding requirement is that there be a 'close nexus' . . . between the state and the alleged deprivation itself." *Meier*, 934 F.3d at 829.

Here, Ms. Lackie has alleged facts easily sufficient to make plausible her claim that Students United is a state actor because it acted jointly with the State to siphon money from her against her will.

1. Students United is a state actor because it acted jointly with the State.

"[W]hen private parties make use of state procedures with the overt, significant assistance of state officials, state action may be found." *Tulsa Prof'l Collection Servs., Inc. v. Pope*, 485 U.S. 478, 486 (1988). In other words, "[t]o act 'under color' of law does not require that the accused be an officer of the State. It is enough that he is a willful participant in joint activity with the State or its agents." *Lugar*, 457 U.S. at 941. Here, Students United is a willful participant in a joint activity with the State, as it knowingly asks for and receives mandatory student fees from public university students for its own purposes.

Start with a case that closely mirrors the facts here: *Janus v. AFSCME*, 942 F.3d 352 (7th Cir. 2019) ("*Janus II*"). There, a non-union-member employee sued a union under § 1983 after it unconstitutionally received dues from him without his consent. *Id.* at 354. The policy invalidated by the Supreme Court in *Janus* had required non-union-member employees to pay a certain percentage of union dues, earmarked to support the union's collective-bargaining responsibilities. *Id.* Under that unconstitutional scheme, the public employer would withhold money from its employees' paychecks and then transfer that money to the union. *Id.* at 356.

In *Janus II*, the court easily found that the union had "acted under color of state law" for the purpose of § 1983. *Id.* at 361. It explained that "if [the union's] receipt from [the public employer] of the . . . fees is attributable to the state, then the 'color of law'

requirement is satisfied." Because the union "was a joint participant with the state in the agency-fee arrangement[, wherein the public-sector employer] deducted . . . fees from the employees' paychecks and transferred that money to the union, . . . [t]his is sufficient for the union's conduct to amount to state action." *Id.*

Similarly, in *Lugar v. Edmondson Oil Co.*, the Supreme Court declared that "a private party's joint participation with state officials in the seizure of disputed property is sufficient to characterize that party as a 'state actor.'" 457 U.S. 922, 941 (1982). In *Lugar*, the plaintiff sued an oil company after it filed a successful petition for prejudgment attachment of his property. *Id.* at 924–25. The Court held the company to be a state actor, explaining that "private persons, jointly engaged with state officials in the prohibited action, are acting 'under color' of law for purposes of" § 1983. *Id.* at 941 (quoting *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 152 (1970)). As noted above, the Court said that "to act 'under color' of law does not require that the accused be an officer of the state. It is enough that he is a willful participant in joint activity with the State or its agents." *Id.* (quoting *Adickes*, 398 U.S. at 152).

Here, like the plaintiff in *Janus II*, Ms. Lackie has alleged joint participation between the state and a private entity: specifically, that Students United is a joint participant with St. Cloud State University in an arrangement wherein the school charged fees to its students and transferred that money to Students United. *See, e.g.,* Compl. ¶ 20. And just as in *Lugar* the government attached the plaintiff's property for the private company's benefit, here the State took money from Ms. Lackie for Students United's benefit.

Settled Eighth Circuit precedents confirm this conclusion. In *Americans United for Separation of Church & State v. Prison Fellowship Ministries, Inc.*, the Eighth Circuit found that a 501(c)(3) non-profit corporation was a state actor when it provided an optional residential inmate program, partly funded by the state according to state law. 509 F.3d 406, 413, 417 (8th Cir. 2007). The court explained that "a private party can appropriately be characterized as a state actor is when it is 'a willful participant in joint activity with the State or its agents.'" *Id.* at 423 (quoting *Adickes*, 398 U.S. at 152). The Eighth Circuit explained that the nonprofit had "acted jointly with the [Department of Corrections]" "to incarcerate, treat, and discipline inmates" and thus qualified as a state actor. 509 F.3d 406, 423 (8th Cir. 2007).

In *Meier v. St. Louis*, the Eighth Circuit found a towing company to be a state actor after it allegedly towed the plaintiff's truck according to the direction of the local police department and refused to release the truck until authorized to do so by that department. 934 F.3d 824, 829–30 (8th Cir. 2019). The court explained that "'a meeting of the minds[] between the private party and the state actor' is sufficient to establish that the private party was acting under color of law." *Id.* at 830 (quoting *Pendleton v. St. Louis Cnty.*, 178 F.3d 1007, 1011 (8th Cir. 1999)). The court concluded that "the evidence indicates that" the police department and the towing company "shared a mutual understanding concerning the truck and that [the towing company] willfully participated in [the police department's] policy." *Id.* Therefore, the towing company was a state actor.

In *Roberson v. Dakota Boys & Girls Ranch*, the Eighth Circuit found a private psychiatric facility to be a state actor after the state Department of Corrections transferred

a child in their custody to that facility. 42 F.4th 924 (8th Cir. 2022). The court explained that "[t]he critical facts are that the [facility] cooperated with [the state], that [the child] could receive treatment only from it, and that it functioned as [the child]'s medical provider within the state system." *Id.* at 935 (internal quotation marks omitted).

Here, as in *Americans United* and *Roberson*, Students United has "acted jointly" with and "cooperated with" the state Board and university to collect fees. As in *Meier*, Students United accomplishes this through "a meeting of the minds." It has a "mutual understanding concerning the" fees: once it tells the Board its fees, the Board's schools collect those fees and return them to Students United, which accepts them. Students United is no more a passive recipient of fees than a patron at a restaurant is a passive recipient of food when he gives an order to a server, who retrieves the requested dish from the chef and returns it to the eager guest. Of course a restaurant patron cooperates with the restaurant by ordering food, and likewise Students United cooperates with the State by ordering fees.

Students United protests that it has no agency here, but is "merely the recipient of the fees . . . required by the legislature." SU Motion 8; *see also id.* at 2. Not so. No one forced Students United to sign on as the designated Minnesota student association, or to set its fees at $0.80 per credit, or to accept students' monies. *See* Compl. ¶ 21. Instead, like the towing company in *Meier*, Students United is "willfully participat[ing] in" this scheme. Ms. Lackie has alleged sufficient facts to establish a plausible claim that the outcome here mirrors these precedents.

2. Students United is also a state actor because it acted without Ms. Lackie's consent.

Students United's identity as a state actor is reinforced by the allegation that it took money from Ms. Lackie without her consent. *See* Compl. ¶ 20. When a plaintiff is *forced* to interact with a purportedly private body, courts often find that body to be a state actor. For example, the Eighth Circuit in *Roberson* was disturbed by the nonvoluntary aspect of the private party's action, finding that to be another reason to mark the private party as a state actor. 42 F.4th at 935 (noting that a "critical fact[]" was that the child "could receive treatment only from" the private actor).

Students United's own cases emphasize the same point. The First Circuit in *Logiodice v. Trustees of Maine Central Institute*, which involved claims against private school officials, drew a contrast with the 1988 case of *West v. Atkins*, in which the Supreme Court found that a doctor who provided medical services to prisoners on a part-time, independent-contract basis was a state actor. 296 F.3d 22, 29 (1st Cir. 2002) (citing *West v. Atkins*, 487 U.S. 42, 55–57 (1988), relied on by SU Memo 26). The First Circuit contrasted the plaintiff prisoner in *West* to the plaintiff student before it: whereas in *West* "the plaintiff was literally a prisoner of the state," "the plaintiff in [*Logiodice*] is not required to attend [the defendants' private school]." *Id.* Here, Ms. Lackie alleges that she, like the plaintiff prisoner in *West*, is *required* to subsidize Students United by law. Compl. ¶ 20.[3]

[3] The arrangement between Students United and St. Cloud State that forces Ms. Lackie to participate is no less coercive of Ms. Lackie than the arrangement between AFSCME,

Likewise, consider the other case Students United cited, *Robertson v. Red Rock Canyon School, LLC*, No. 2:05-CV-758 TC, 2006 WL 3041469 (D. Utah Oct. 24, 2006). There, the district court distinguished a Tenth Circuit case that found state action by noting that, in that case, the "plaintiffs [had] established a nexus between the action at issue (use of an unconstitutional behavior modification program) and the state's involvement (placing juveniles in the program *against their will*)." *Id.* at *4 (emphasis added) (citing *Milonas v. Williams*, 691 F.2d 931 (10th Cir. 1981)). Again, that distinction dovetails with the facts here: Ms. Lackie has plausibly stated a nexus between the action at issue (unconstitutionally forcing Ms. Lackie to subsidize Students United's political speech) and the State's involvement (helping funnel fees from Ms. Lackie to Students United *against her will*).

3. Students United's cases do not help its argument.

As just suggested, Students United's cherry-picked cases (SU Motion 12–16) not only fail to challenge the sufficiency of Ms. Lackie's factual allegations, but further support her argument.

First, Students United uses *Manhattan Community Access Corp. v. Halleck*, 587 U.S. 802 (2019), to respond to two straw-man arguments. *See* SU Memo 12 ("Seemingly, Lackie might argue that the Board's recognition of Students United as the statewide student association and subsidization through mandatory fees allows for this private entity to be considered a state actor."). But Ms. Lackie has alleged facts showing that Students United's

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Council 31 and the Illinois Department of Healthcare and Family Services that forced Mark Janus to participate.

link to the State is much stronger than a mere designation as a student association or receipt of funds: it exists instead in Students United's *partnership with the State* in assessing and receiving fees from non-consenting students like Ms. Lackie. *See, e.g.,* Compl. ¶¶ 22, 42.

On top of that, *Manhattan* dealt with a different criterion of state action—public function—that is not at issue here. *See Brentwood Acad.*, 531 U.S. at 302–03 (noting the distinction between "a public function test" and other "criteria of state action"). From the outset, the Supreme Court in *Manhattan* clarified that it was dealing with only *one* of the possible grounds for state action. *See* 587 U.S. at 809 (addressing whether the company performed "a traditional, exclusive public function"). The Court found no state action because the contested private action, the "operation of public access channels on a cable system," "has not traditionally and exclusively been performed by government." *Id.* at 810. Thus *Manhattan's* holding that neither a government contract nor government funding suffices "to transform a private entity into a state actor" "unless the private entity is performing a traditional exclusive public function" must be read in light of the Court's limited consideration of the "traditional public function" test. *Id.* at 814–15. This is the only way to make sense of the Court's most recent state-action precedents, like *Lindke v. Freed*, 601 U.S. 187, 199 (2024), where the Court held that "'*[m]isuse* of power, possessed by virtue of state law,' constitutes state action." Violating Ms. Lackie's First Amendment rights by assessing and collecting fees from her is easily state action where Students United admits that the source of its authority to do so is Minnesota law.

But in any event, Ms. Lackie does not assert that Students United is performing a "traditional public function" here, so *Manhattan* is irrelevant. As noted, "a conclusion of

state action under [one] criterion . . . [is] in no sense unsettled merely because other criteria of state action may not be satisfied by the same facts." *Brentwood Acad.*, 531 U.S. at 302. Ms. Lackie need not allege that Students United is exercising a "traditional, exclusive public function" to plausibly allege that it is a state actor. Instead, as explained above, Ms. Lackie has pleaded facts that plausibly show that Students United and St. Cloud State acted together, cooperated, and had a mutual understanding in a way that forced Ms. Lackie to pay dues against her will to benefit Students United.

Next, Students United cites a string of cases to assert that a private entity is only a state actor if it is "governed by a[] government entity or actors." SU Motion 17. But the Supreme Court has expressly rejected this rule: "[t]o act 'under color' of law does not require that the accused be an officer of the State." *Lugar*, 457 U.S. at 941. And the Eighth Circuit likewise rejected this argument in several cases by focusing the inquiry on a "close nexus" "between the state and the alleged deprivation itself." *Meier*, 934 F.3d at 829.

Consider the cases above in which the Supreme Court, the Eighth Circuit, and the Seventh Circuit found private entities—a labor union, an oil company, a nonprofit prison ministry, a towing company, and a center for troubled youth—to be state actors. *Janus II*, 942 F.3d at 361; *Lugar*, 457 U.S. at 941–42; *Americans United*, 509 F.3d at 422–23; *Meier*, 934 F.3d at 829–30; *Roberson*, 42 F.4th at 928–30. In each, the court came to its conclusion without inquiring into whether the company was managed by the government. *Janus II*, 942 F.3d at 361; *Lugar*, 457 U.S. at 941–42; *Americans United*, 509 F.3d at 422–23; *Meier*, 934 F.3d at 829–30; *Roberson*, 42 F.4th at 928–30. Students United's emphasis that it "is not governed by any government entity" (SU Motion 17) thus proves nothing: what matters

is that it was a "willful participant in a joint activity with the State." *Lugar*, 457 U.S. at 941.

The cases that Students United cites do not undermine this established rule. Start with *Brentwood Academy Secondary v. Tennessee Secondary School Athletic Association*, in which the Supreme Court found a sports regulatory nonprofit to be a state actor because of government agents' pervasive entwinement in the nonprofit's leadership and structure. 531 U.S. at 295–302. Students United seems to think that because the Court found one particular criterion to support a state-actor designation, that criterion is the *only* one that can support such a designation. But as explained earlier, many roads can lead to being a state actor. Again, *Brentwood* warned against this very mistake, explaining that there are various "kinds of facts that can justify characterizing an ostensibly private action as public" and that "a conclusion of state action under [one] criterion . . . [is] in no sense unsettled merely because other criteria of state action may not be satisfied by the same facts." *Id.* at 302–03. The Court went on to explain:

> Facts that address any of these criteria are significant, *but no one criterion must necessarily be applied*. When, therefore, the relevant facts show [that one test for state action is satisfied] . . . the implication of state action is not affected by pointing out that the facts might not loom large under a different test.

Id. at 303 (emphasis added). Here, because Ms. Lackie has shown that the joint-action test is satisfied, "the implication of state action is not affected by pointing out that the facts

might not loom large under [the entwinement] test." *Id.*[4]

Next, returning to the First Circuit's decision in *Logiodice*, that decision also demonstrates Students United's mistaken fixation on the relationship between "the state and the private party" rather than "between the state and the alleged deprivation itself." *Meier*, 934 F.3d at 829. Students United correctly notes that the court in *Logiodice*, in finding a private school not to be a state actor, noted that the leadership consisted of private citizens. But Students United left out the crux of the court's conclusion: that "looking to the *particular activity* sought to be classified as state action," "there is no entwinement." *Id.* at 28 (emphasis added). In *Logiodice*, the challenged activity—the school's disciplinary policies—were *solely* the purview of the private trustees. *Id.* Here, by contrast, the challenged activity—Students United's assessment and collection of student fees—is outlined in state law, and Students United voluntarily engages with the State when it sets the fees, seeks to update them, and works with the State to accept the fees collected on its behalf. *See* Compl. ¶¶ 16–20.

Likewise, the unpublished, out-of-circuit decision in *Robertson* (SU Motion 16) only underscores the settled law that the key is the relationship between the state and the challenged action, not merely the state and the private entity. *See Meier*, 934 F.3d at 829.

[4] Students United's citation to the unpublished, out-of-circuit decision in *McGee v. Virgina High School League, Inc.* adds nothing to the discussion. No. 2:11-CV-00035, 2011 WL 4501035, at *2 (W.D. Va. Sept. 28, 2011); *see* SU Motion 15. All that decision says is that *Brentwood* deemed "statewide athletic associations" "to be state actors" because they are "governed by government entities." 2011 WL 4501035, at *2. *McGee* doesn't challenge the Supreme Court's teaching that "no one criterion must necessarily be applied" in a state-action analysis. *Brentwood Acad.*, 531 U.S. at 303.

Although Students United cherry-picks a line to suggest that *Robertson* hinged on the private management of the private entity (SU Motion 16), the case's full context shows this to be wrong. The *only* connection between private entity and state alleged by the *Robertson* plaintiffs was the defendant's bare receipt of state funds. 2006 WL 3041469, at *3. The court held that this connection was not enough, explaining that "even where regulation and funding exist, state action is not present absent any showing that the state directed, controlled, or influenced the *specific action* at issue in the case." *Id.* (cleaned up, emphasis added). The court noted, as an example, that "the Plaintiffs do not allege that Red Rock *was managed by* an entity or individual directly associated with a governmental entity." *Id.* at *5 (emphasis added). In the very next sentence, the court said that "[t]he Plaintiffs do not allege that [the defendant's challenged action] was in any way directed, controlled, or influenced by a governmental entity." In other words, the court focused not on the management's composition *per se* but on what that management *did*: whether it controlled, directed, or influenced the actions. Here, Ms. Lackie alleges that the Board and St. Cloud State University directed and influenced the specific action at issue: the collection of her money without her consent.[5]

[5] Students United seems to suggest two other reasons it ought not to be called a state actor: it doesn't "directly" receive "state funds", and it has independence over its use of those funds. SU Motion 13, 17. But, as already shown, direct financial entwinement with the government isn't necessary for a state-actor designation. *See Lugar*, 457 U.S. at 941–42 (finding an oil company a state actor); *Meier*, 934 F.3d at 829–30 (finding a towing company a state actor). And in *Janus*, there was no question that once AFSCME received Mark Janus' dues, it could do with them what it pleased. That was actually the First Amendment problem because Mark Janus disagreed with what the union did with his money. *Janus*, 585 U.S. at 921 ("*Abood's* line between chargeable and nonchargeable

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In sum, Ms. Lackie alleges facts sufficient to raise a plausible inference that there are enough connections "between the state and the private party" and "between the state and the alleged deprivation itself" to treat Students United as a state actor. *Meier*, 934 F.3d at 829. She alleges that Students United was a joint participant with St. Cloud State University in an arrangement wherein the school charged fees to its students and transferred that money to Students United. *See, e.g.,* Compl. ¶ 20. And she alleges that she was forced to become a member of Students United's organization and forced to pay it dues. *Id.* ¶¶ 54, 61. Taking these allegations as true and drawing all plausible inferences in Ms. Lackie's favor, the complaint alleges that Students United is a state actor.[6]

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union expenditures has proved to be impossible to draw with precision."). And, in fact, it is bedrock labor law that a government employer cannot interfere with a private union's decisions on how it spends money. Yet in *Janus II*, AFSCME was declared a state actor. 942 F.3d at 361.

[6] Students United cannot raise a throwaway sovereign immunity defense via "incorporat[ion]" in a footnote. "[A]rguments raised in a footnote are not properly before the Court and will not be considered." *Wildman v. Am. Central Servs, LLC*, No. 4:16–CV–00737–DGK, 2018 WL 2326627, at *7 n.11 (W.D. Mo. May 22, 2018); *see also, e.g.*, *Jacam Chemical Co. 2013, LLC v. Shepard*, 101 F.4th 954, 960 n.2 (8th Cir. 2024) ("declin[ing] to address [an] argument because [the party] did not properly present it," since it was, inter alia, "only raised in a footnote"). Students United has forfeited any such defense by not raising it and properly explaining it. But regardless, private entities considered state actors because they act jointly with the state to take money from college students against their will are not "the State" for sovereign immunity purposes. *See, e.g.*, *Grigsby v. Ludi*, No. EDCV 14-2316 JAK(JC), 2015 U.S. Dist. LEXIS 192458, at *4 n.2 (C.D. Cal. Feb. 19, 2015) ("A private hospital under contract with the state to provide medical services to prisoners and indigent citizens may act under the color of state law for purposes of Section 1983, even though it may not be an arm of the state entitled to state sovereign immunity. *See Lopez v. Department of Health Services*, 939 F.2d 881, 883 (9th Cir. 1991) (private entity under contract with state to provide medical services to indigent

III. In any event, Ms. Lackie has plausibly alleged that Students United is liable for unjust enrichment because it received unconstitutional fees.

Last, Students United contends that Ms. Lackie's unjust enrichment claim cannot succeed because it "did not receive [her] fees in a manner that was illegal, unlawful, or legally unjustifiable." SU Motion 18. But Ms. Lackie has plausibly alleged that the transfer of her fees *was* illegal and unlawful, because it violated the First Amendment. *See, e.g.*, Compl. ¶ 58 ("Forced payment of fees to Students United violated Plaintiff's First Amendment rights . . . ."). *id.* ¶ 54. And Students United does not challenge the sufficiency of Ms. Lackie's First Amendment claim. Nor does Students United contest the sufficiency of Ms. Lackie's allegation that "[i]t would be unjust for Defendant Students United to retain the benefit of Plaintiff's mandatory fees because the fees were collected in violation of Plaintiff's First Amendment rights." *Id.* ¶ 70. Last, Students United does not contest that Ms. Lackie has adequately pleaded the other elements of unjust enrichment—benefit conferred and knowingly accepted. *See id.* ¶¶ 68–69. Thus, Students United's challenge to the unjust enrichment claim fails because it does not address Ms. Lackie's claim—presumed correct at this stage—that Students United's receipt of her fees was unlawful.

Students United's primary response is to contend that "the fees were unquestionably collected and paid to Students United pursuant to a statute, which was at the time, and currently, valid." SU Motion 18. This response is difficult to understand because the U.S. Constitution is supreme over state statutes. *See* U.S. Const. art. VI, cl. 2. So, for instance,

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citizens acts under color of state law); *Del Campo v. Kennedy*, 517 F.3d 1070, 1080 81 & n.16 (9th Cir. 2008) (private entity acting under color of state law not entitled to state sovereign immunity).").

the Supreme Court in *Janus* held that a fee collection procedure under a (presumptively valid) statute nonetheless "violate[d] the First Amendment." 585 U.S. at 930. That Ms. Lackie does not facially "challenge the statute's validity or constitutionality" (Doc. 24 at 18) makes no difference, other than making her challenge easier: if the collection of her own fees violated the First Amendment (and again, Students United does not contest the sufficiency of that claim), then Students United's receipt of her fees *was* unlawful, no matter what state statutes purported to authorize that unlawful activity. And it was unlawful *at the time*—the First Amendment has not changed in the last three years. Indeed, in considering an unjust-enrichment challenge to a statute, the Seventh Circuit has held that where such a "claim rests on the same improper conduct alleged in another claim, then the unjust enrichment claim will be tied to this related claim—and, of course, unjust enrichment will stand or fall with the related claim." *Platt v. Brown*, 872 F.3d 848, 853 (7th Cir. 2017) (internal quotation omitted).

To the extent Students United is again trying to distinguish between the initial "collection of fees" and its "receiv[ing] these fees" (SU Motion 18), that distinction fares no better, for at least three reasons.

First, the complaint alleges that Students United's receipt of the fees itself violated the First Amendment—so Students United's own conduct was unlawful. *See, e.g.*, Compl. ¶ 58.

Second, Students United's argument would not matter anyway because, under Minnesota law, "a plaintiff may maintain an unjust enrichment claim against the entity who benefits from the wrongdoing committed by another." *Hartford Fire Ins. v. Clark*, 727 F.

Supp. 2d 765, 778 (D. Minn. 2010) (quoting *Kranz v. Koenig*, 484 F. Supp. 2d 997, 1001 (D. Minn. 2007)); *see also Volk v. Wigen*, No. 18-CV-3485 (PJS/DTS), 2021 WL 168490, at *14 (D. Minn. Jan. 19, 2021) (same). As courts in this district have explained, the "narrow description of unjust-enrichment claims" in the 1981 authority relied on by Students United "is inconsistent with broader descriptions appearing in other decisions of the Minnesota Supreme Court." *Hartford Fire*, 727 F. Supp. 2d at 778 (discussing *First Nat'l Bank of St. Paul v. Ramier*, 311 N.W.2d 502 (Minn. 1981), relied on by SU Motion 18). "The Minnesota Supreme Court has consistently described unjust enrichment claims in terms of the inequitable resulting circumstances and not necessarily on the defendant's wrongful actions." *Lighthouse Mgmt. Grp., Inc. v. Deutsche Bank Tr. Co. of Americas*, 380 F. Supp. 3d 911, 920 (D. Minn. 2019). So even if the complaint alleged only that the schools' fee collection was unconstitutional, an unjust enrichment claim would still lie against Students United. Of note, Students United does not question the sufficiency of the complaint's allegation that it "knowingly" received a benefit from this unlawful collection. Compl. ¶69.

Third, on top of the above, "[a]n unjust enrichment claim also applies when 'the defendants' conduct in retaining the benefit is morally wrong,'" *Kranz*, 484 F. Supp. 2d at 1001 (quoting *Schumacher v. Schumacher*, 627 N.W.2d 725, 729–30 (Minn. Ct. App. 2001)). Because the complaint plausibly alleges that it "would be unjust for Defendant Students United to retain the benefit of Plaintiff's mandatory fees"—and Students United does not contend that the complaint fails to allege that retention would be at least morally wrong— Students United's argument fails.

Thus, Ms. Lackie has stated an unjust enrichment claim.[7]

CONCLUSION

For these reasons, the Court should deny Students United's motion to dismiss.

Respectfully submitted,

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[7] Whether Students United is a state actor, *see supra* Part II, is irrelevant to the unjust enrichment claim.