

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

NATHAN BARBIERI AND THOMAS
RADOMSKI,

Plaintiffs,

Case No. 1:23-cv-525

v.

Hon. Paul L. Maloney

THOMAS JEITSCHKO, *et al.*,

Defendants.

OPINION AND ORDER

In the spring 2023 semester, Plaintiffs Nathan Barbieri and Nolan Radomski enrolled in MKT 250, a business communications course at Michigan State University (“MSU”), taught by Defendant Amy Wisner. One part of the course’s requirements was a \$99.00 subscription to “The Rebellion Community,” an online global learning platform controlled and operated by Wisner. Plaintiffs allege that Wisner used the funds for her own political speech and political agenda. Plaintiffs disagreed with Wisner’s political speech and agenda. Plaintiffs sued Wisner and also named as defendants, in their official capacities, two members of MSU administration, Interim Provost Thomas Jeitschko and Interim Dean of the College of Business Judith Whipple (the “MSU Defendants”). (ECF No. 1.) Plaintiffs allege two First Amendment violations and an unconstitutional conditions claim under 42 U.S.C. § 1983 against Defendants. Defendants have filed separate motions to dismiss under Federal Rule of Civil Procedure 12(b)(6). (ECF Nos. 15, 25.) The Court will grant the motions for the reasons herein.

I. BACKGROUND

According to the complaint, Plaintiffs were sophomore-year business students at MSU during the spring semester of 2023. (Compl. ¶¶ 13-14.) They allege that they are Christians and have “deeply-held religious beliefs and views on philosophical, moral, political, and social issues grounded in those beliefs.” (*Id.* ¶¶ 25-27.) Plaintiffs allege that they oppose practices of “abortion” and other views contrary to their religious faith, like divorce or premarital sex. (*Id.* ¶¶ 28-36.)

Wisner taught at MSU’s business school for the 2022-23 school year. (*Id.* ¶ 38.) Plaintiffs allege that Wisner held diametrically opposing views than them. (*See id.* ¶¶ 41-45.) She allegedly explained during a “Tedx Talk” that she “believes that most social expectations, especially in the realm of sexual morality and the family . . . are synthetic strictures that should be discarded.” (*Id.*) And she wants people to “Reject the Rules and Discover [Their] Truth.” (*Id.*)

For the spring 2023 semester, Plaintiffs enrolled in MKT 250, “Business Communication.” (*Id.* ¶ 72.) This course was a required course for every MSU business student. (*Id.* ¶ 39.) At the time, Wisner taught MKT 250. (*Id.* ¶ 38.) Plaintiffs allege that for many years, Wisner took a “conventional approach” to teaching business communication, like teaching “memoranda and presentations.” (*Id.* ¶ 40.) That approach changed a few years before Plaintiffs enrolled in the course. (*See id.* ¶ 41.)

Plaintiffs allege that Wisner “re-designed” MKT 250 “to reflect her own newfound political views.” (*Id.* ¶ 46.) She stopped assigning grades and “stopped teaching traditional forms of business communication,” instead, focusing on “personal exploration” and “growth.” (*Id.*) Plaintiffs allege that Wisner required them to buy a subscription to “The Rebellion Community.” (*Id.* ¶ 73.) “As the syllabus explain[ed], ‘The Rebellion Community . . . is a global social learning community with a private space dedicated to [MKT 250].’” (*Id.* ¶ 78, quoting Ex. G – The Rebellion, ECF No. 7, PageID.70.) Wisner instructed the students to pay the \$99.00 subscription

fee by visiting the platform's website. (*Id.* ¶¶ 6, 79.) Once they joined The Rebellion Community, they had to comment "got it" so Wisner and other students "could see their participation." (*Id.* ¶ 85.) Plaintiffs were "frustrated by having to pay the \$99 membership fee" because The Rebellion Community seemed "unnecessary and duplicative." (*Id.* ¶ 86.) Plaintiffs claim that MSU had a similar online platform (Desire to Learn or "D2L") that does not require an additional fee. (*Id.*) They also allege that they "did not detect any functional advantage that The Rebellion Community Website had over the University's D2L system." (*Id.* ¶ 87.)

Plaintiffs allege that they later discovered Wisner required students to buy the \$99.00 membership to fund her political speech and political agenda. (*Id.* ¶¶ 71, 90.) At first, this wasn't apparent because Wisner stated in class "that she did not benefit from the membership fees" and The Rebellion Community website acknowledged that Wisner did not receive any compensation from the fees. (*Id.* ¶¶ 80-83.) But they allegedly discovered that Wisner "personally controlled The Rebellion Community, The Rebellion Community Website, and all of its associated sites and resources." (*Id.* ¶ 89.) They also claim that Wisner used the funds to "engage in political speech Plaintiffs disagreed with" and donated the funds to organizations Plaintiffs disagreed with. (*Id.* ¶ 90.)

Plaintiffs claim "many" students "complained to university officials," when they discovered Wisner obtained all subscription fees from The Rebellion Community. (*Id.* ¶ 116.) Consequently, Interim Dean of the College of Business Judith Whipple, "placed [Wisner] on leave." (*Id.* ¶ 117.) She also gave students a \$99.00 credit to their MSU account. (*Id.*) Plaintiffs claim, however, that this wasn't enough. (*See id.* ¶ 118.) They allege that MSU's Code of

Teaching Responsibility¹ and Conflicts Policy² (the “Policies”) allowed Wisner to do this in the first place and the Policies do not “ensure” that something like this will not happen again. (*Id.* ¶¶ 66, 118.) Nor do the Policies stop Wisner from “continuing to use the money she unlawfully extracted from Plaintiffs” to support her political speech and agenda, speech and an agenda Plaintiffs “oppose.” (*Id.* ¶ 118.) Because the Policies allow instructors to determine “course content, grading, . . . classroom procedures,” and required materials. (*Id.* ¶ 130.)

On May 18, 2023, Plaintiffs filed this suit and moved for a preliminary injunction against Defendants. Plaintiffs’ complaint asserts three claims against the MSU Defendants in their official capacities and Wisner in her official and individual capacity under 42 U.S.C. § 1983. They allege that Defendants compelled their speech and association in violation of the First Amendment and subjected them to unconstitutional conditions in violation of § 1983. On July 31, 2023, the MSU Defendants moved to dismiss Plaintiffs’ claims under Rules 12(b)(1) and 12(b)(6). On August 28, 2023, Wisner moved to dismiss Plaintiffs’ claims under Rules 12(b)(1) and 12(b)(6). That same day, this Court denied Plaintiffs’ motion for a preliminary injunction. (ECF No. 27.)

II. LEGAL STANDARD

Defendants seek dismissal of Plaintiffs’ complaint on two grounds, lack of subject matter jurisdiction under Rule 12(b)(1) and failure to state a claim under Rule 12(b)(6).

¹ Plaintiffs allege that the Code of Teaching Responsibility grants instructors the authority to determine course content, grading, classroom procedures, and which materials are required, like internet sites and subscriptions. (Compl. ¶¶ 48-50.)

² Plaintiffs allege that the Conflicts Policy “addresses circumstances where instructors assign their own work from which they derive some financial benefit (e.g., royalties). In addition to the fairly common scenario of a professor assigning his or her own scholarship, the Conflicts Policy sweeps far more broadly, covering all ‘materials’ whatsoever, including ‘other types of course materials’ like ‘courseware, or software that supports course participation.’” (Compl. ¶ 64.) In addition, “[t]he Conflicts Policy permits instructors to assign ‘materials’ from which they derive ‘payments,’ but says instructors are ‘expected’ (but not required) ‘to forego any royalties or payments they derive from the sales of textbooks or other course materials to their own students and are encouraged’ (but again not required) ‘to donate to a charity or fund that’ (in the instructor’s sole discretion) ‘would benefit students.’” (*Id.* ¶ 65.)

Federal Rule of Civil Procedure 12(b)(1) permits dismissal for lack of subject matter jurisdiction. The Court lacks subject matter jurisdiction if the plaintiff lacks Article III standing to bring suit. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). Thus, “challenges to standing are properly brought under . . . [Rule] 12(b)(1) for a lack of subject matter jurisdiction.” *Miller v. Collins*, No. 23-3191, 2023 WL 7303305, at *2 (6th Cir. Nov. 6, 2023) (citing *Tenn. Gen. Assembly v. U.S. Dep’t of States*, 931 F.3d 499, 507 (6th Cir. 2019)). The nonmoving party has the burden of establishing jurisdiction to survive a Rule 12(b)(1) challenge. *Rogers v. Stratton Indus., Inc.*, 798 F.2d 913, 915 (6th Cir. 1986).

A Rule 12(b)(1) motion may mount a facial attack on the Court’s subject matter jurisdiction. A facial attack merely questions the sufficiency of the pleading. *Ohio Nat’l Life Ins. Co. v. United States*, 922 F.2d 320, 325 (6th Cir. 1990). When such an attack is raised, “the court must take the material allegations of the [pleading] as true,” “construe [them] in the light most favorable to the nonmoving party,” and decide whether the pleading establishes jurisdiction. *United States v. Ritchie*, 15 F.3d 592, 598 (6th Cir. 1994).

Federal Rule of Civil Procedure 12(b)(6) permits dismissal for failure to state a claim on which relief can be granted. A plaintiff’s complaint must make a “short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a). It must contain “sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A motion under Rule 12(b)(6) challenges whether the plaintiff has stated a claim to relief that is plausible on its face. *See id.*; *Peatross v. City of Memphis*, 818 F.3d 233, 240 (6th Cir. 2016). In evaluating a Rule 12(b)(6) motion the Court construes the complaint in the light most favorable to the plaintiffs and accept the complaint’s allegations as true. *Albrecht v. Treon*, 617 F.3d 890, 893 (6th Cir. 2010). The Court cannot accept “naked

assertions,” legal conclusions, or “formulaic recitation[s] of the elements of a cause of action.” *Iqbal*, 556 U.S. at 678 (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007)).

Courts are generally bound to consider only the complaint when resolving a motion to dismiss under Rule 12(b)(6), unless the Court converts the motion to one for summary judgment. *Wysocki v. IBM Corp.*, 607 F.3d 1102, 1104 (6th Cir. 2010). “However, a court may consider exhibits attached to the complaint, public records, items appearing in the record of the case, and exhibits attached to defendant's motion to dismiss, so long as they are referred to in the complaint and are central to the claims contained therein, without converting the motion to one for summary judgment.” *Gavitt v. Born*, 835 F.3d 623, 640 (6th Cir. 2016).

III. ANALYSIS

Plaintiffs assert compelled speech and association violations against Defendants and an unconstitutional conditions claim under 42 U.S.C. § 1983. Defendants have filed separate motions to dismiss Plaintiffs’ claims. Both motions, however, move to dismiss under Rules 12(b)(1) and 12(b)(6). The MSU Defendants argue that dismissal is proper because Plaintiffs (i) lack standing and their claims are moot; (ii) cannot overcome sovereign immunity; and (iii) fail to state a claim on which relief can be granted. Similarly, Wisner argues that dismissal is proper because Plaintiffs (i) lack standing, and (ii) cannot state a claim on which relief can be granted.

The Court will start with the jurisdictional issues, standing and sovereign immunity, then move to the failure to state a claim defense. *Ladd v. Marchbanks*, 971 F.3d 574, 576 n.2 (6th Cir. 2020) (finding that state sovereign immunity is a jurisdictional issue).

A. Standing

Article III of the United States Constitution empowers the federal courts to hear only “cases or controversies,” U.S. Const. art. III, § 2, cl. 1, “a cradle-to-grave requirement that must be met in order to file a claim in federal court.” *Fialka-Feldman v. Oakland Univ. Bd. of Trs.*, 639 F.3d

711, 713 (6th Cir. 2011). A plaintiff “must show that she has suffered, or will suffer, an injury that is concrete, particularized, and actual or imminent; fairly traceable to the challenged action; and redressable by a favorable ruling.” *Murthy v. Missouri*, 603 U.S. 43 (2024) (cleaned up). Standing may not be established “in gross.” *Davis v. Colerain Twp.*, 51 F.4th 164, 171 (6th Cir. 2022) (quoting *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 353 (2006)). Rather, a plaintiff “must prove standing’s elements for each claim and remedy.” *Id.*

1. Injunctive and Declaratory Relief

To seek injunctive or declaratory relief, Plaintiffs must show that they are either currently suffering the injury alleged or will likely suffer the injury again. *See Hange v. City of Mansfield, Ohio*, 257 F. App’x 887, 891 (6th Cir. 2007). “Past exposure to illegal conduct . . . does not in itself show a present case or controversy regarding” prospective relief. *L.A. v. Lyons*, 461 U.S. 95, 102 (1983). In *L.A. v. Lyons*, the Supreme Court held that the victim of a police chokehold lacked standing to enjoin the department’s chokehold policy because he could not show any likelihood that he would be choked again. *Id.* at 111.

Plaintiffs do not adequately allege a current or future injury against the MSU Defendants. To start, Whipple placed Wisner on leave, assigned a different faculty member to complete the spring 2023 MKT 250 course, and conferred Plaintiffs a \$99.00 credit to their University account, once she found out what had happened. (Compl. ¶ 117.) But Plaintiffs allege that wasn’t and isn’t enough because these “measures do not remedy the harm” Wisner caused nor “ensure that the harm caused by the Policies will not be repeated.” (*Id.* ¶ 118.) As to the latter concern, Plaintiffs do not allege that there will be another course with similar requirements or that Plaintiffs would be required to enroll in such a course. So Plaintiffs’ theory that they will be exposed to similar harms is far too speculative to warrant prospective relief. As for the former, Plaintiffs seem to allege that because Wisner still has the funds she obtained from her time as a professor, Plaintiffs

currently suffer harm. (*Id.* ¶ 127.) Plaintiffs cite no authority—and the Court is aware of none—that this somehow constitutes a harm when the MSU Defendants refunded Plaintiffs their \$99.00.

Plaintiffs do not adequately allege a current or future injury against Wisner, either. They are no longer enrolled in MKT 250, and it appears that Defendant Wisner no longer teaches at MSU. (*See* Compl. ¶ 117.) Plaintiffs, thus, will not be subjected to MKT 250 or Defendant Wisner’s teaching again. Because MSU refunded Plaintiffs’ money, the connection between Wisner’s current or future advocacy and Plaintiffs has been severed. (*See id.*)

To be sure, Plaintiffs seek a declaration that Defendants “violated” Plaintiffs’ constitutional rights under the First Amendment. This is an “unusual” request. *Diei v. Boyd*, 116 F.4th 637, 642 (6th Cir. 2024). Because declaratory relief addresses *future* injuries, not completed or past injuries. *See id.*

Plaintiffs also seek declaratory relief concerning the Policies; Plaintiffs argue that the Policies subject them to further constitutional injury. But if the Court issued a decision on whether these Policies are constitutional or not, the Court would be issuing an advisory opinion. Plaintiffs do not allege that they are currently subject to them nor do they allege an imminent risk that they will be again. Accordingly, Plaintiffs lack standing to seek a declaration that declares Wisner and MSU’s past conduct as unconstitutional when there is no prospect that such a declaration could redress a future or even current injury.

In short, Plaintiffs fail to assert a claim for prospective relief against Defendants because Plaintiffs’ allegations for prospective relief concern either completed or hypothetical injuries.

2. Nominal Damages

Plaintiffs also seek nominal damages. A plaintiff has standing to seek nominal damages for “completed injuries.” *Allen v. Whitmer*, No. 21-1010, 2021 WL 3140318, at *2 (6th Cir. July 26, 2021) (citing *Uzuegbunam v. Preczewski*, 592 U.S. 279, 284, 292 (2021)). In *Uzuegbunam*,

the Supreme Court held that “for the purpose of Article III standing, nominal damages provide the necessary redress for a completed violation of a legal right.” *Uzuegbunam*, 592 U.S. at 293. Still, the plaintiff must “establish the other elements of standing”—injury in fact and causation. *Id.*

“To establish injury in fact, a plaintiff must show that he or she suffered ‘an invasion of a legally protected interest’ that is ‘concrete and particularized’ and ‘actual or imminent. . . .’” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016). A plaintiff must also show “a fairly traceable connection between the plaintiff’s injury and the complained-of-conduct of the defendant.” *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 103 (1998).

Plaintiffs seek nominal damages against Wisner and the MSU Defendants. For Wisner, Plaintiffs claim they should be awarded nominal damages for violation of their First Amendment rights when Wisner required them to join The Rebellion Community. As for the MSU Defendants, Plaintiffs seek nominal damages for the Policies the MSU Defendants enacted that let Wisner violate Plaintiffs’ constitutional rights.

Plaintiffs satisfy the injury in fact and traceability prongs for its nominal damages claim against Wisner. They allege that The Rebellion Community is an organizational program, created, controlled, and operated by Wisner, that expresses contrary views and has no “legitimate pedagogical concern” to business communication. (Compl. ¶¶ 54-56, 90, 147.) They also allege that Defendant Wisner levied excessive fees for The Rebellion Community. (*See id.* ¶ 104.) The Court finds these alleged injuries to constitute concrete harms that are traceable to Wisner’s requirement that Plaintiffs subscribe to The Rebellion Community.

However, the same cannot be said for Plaintiffs’ nominal damages claim against the MSU Defendants. Plaintiffs allege that the MSU Defendants’ Policies constituted an injury in fact because the Policies permitted Wisner to promulgate The Rebellion Community requirement. But

the fact that these Policies were in place doesn't mean the injury they suffered was traceable or flowed from the Policies. Plaintiffs have put forth no facts showing that the Policies were unconstitutionally vague, overly broad, or facially problematic. The alleged harm they suffered was by the acts of Wisner, not the MSU Defendants. Therefore, Plaintiffs have no standing to assert their claims against the MSU Defendants.

In sum, Plaintiffs lack standing to pursue their claims against the MSU Defendants but have standing to pursue their claims against Wisner.

B. Sovereign Immunity

Even assuming that Plaintiffs have standing to pursue their claims against the MSU Defendants, the Eleventh Amendment protects the MSU Defendants in their official capacities.

The Eleventh Amendment bars suits against a state in federal court. *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 98 (1984). Michigan state universities are state agencies subject to Eleventh Amendment immunity. *See Stanley v. W. Mich. Univ.*, 105 F.4th 856, 864 (6th Cir. 2024); *W. Mich. Univ. Bd. of Control v. State*, 565 N.W.2d 828, 832 (Mich. 1997) (“State universities are clearly a part of state government in Michigan[.]”). This amendment also confers immunity to state university officials in their official capacities. *See Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 (1989); *McCormick v. Miami Univ.*, 693 F.3d 654, 662 (6th Cir. 2012). MSU is a state university, therefore, the MSU Defendants have sovereign immunity. *See Hutchins v. Bd. of Trs. of Mich. State Univ.*, 595 F. Supp. 862, 865-66 (W.D. Mich. 1984).

Eleventh Amendment immunity, however, is not absolute. According to *Ex parte Young*, “private parties may sue state officials to stop on going constitutional violations.” *McNeil v. Cmty. Prob. Servs., LLC*, 945 F.3d 991, 994 (6th Cir. 2019) (citing *Ex parte Young*, 209 U.S. 123, 155-56 (1908)). Plaintiffs seek to take advantage of the *Ex parte Young* exception. Under this exception, Plaintiffs must sufficiently allege “an ongoing violation of federal law” and seek “relief

properly characterized as prospective” against the MSU Defendants. *Verizon Md., Inc. v. Pub. Serv. Comm’n of Md.*, 535 U.S. 635, 645 (2002).

Plaintiffs request two orders from this Court regarding the MSU Defendants. First, they seek injunctive relief requiring the MSU Defendants “[t]o instruct all faculty that their discretion to select course materials does not include authority to require students to pay membership fees to outside organizations or to financially support any private expression.” (Compl., PageID.35.) Second, they seek injunctive relief requiring the MSU Defendants “[n]ot to apply the current Policies to authorize faculty to require students to pay membership fees to outside organizations or to financially support any private expression.” (*Id.*)

While these requests seek prospective relief, Plaintiffs have not sufficiently alleged an ongoing violation of federal law. Rather than complaining of an ongoing violation of law, Plaintiffs fear that the MSU Defendants will compel Plaintiffs to speak or associate again. Generalized fears, without more, are not sufficient to establish a claim for injunctive relief: “a plaintiff must show that he is under threat of suffering injury in fact that is concrete and particularized, and that threat must be actual and imminent, not conjectural or hypothetical.” *Sumpter v. Wayne Cnty.*, 868 F.3d 473, 491 (6th Cir. 2017) (cleaned up). Plaintiffs have failed to do so. Their allegation that another MSU faculty member will require Plaintiffs to support outside organizations or speech is purely speculative. Plaintiffs have pointed to no authority suggesting that this Court may grant prospective relief on a mere possibility. So Plaintiffs may not proceed against the MSU Defendants in their official capacities.

C. Failure To State A Claim

That leaves Plaintiffs’ claims for compelled speech and association, and unconstitutional conditions claims against Wisner. Wisner argues that Plaintiffs fail to state a claim on which relief can be granted.

1. Compelled Speech

The First Amendment’s free speech clause states that “Congress shall make no law . . . abridging the freedom of speech. U.S. Const. amend. I. The Supreme Court has held that this guarantee also “prohibits the government from telling people what they must say.” *Rumsfeld v. Forum for Academic & Institutional Rights, Inc.*, 547 U.S. 47, 61 (2006).

“In order to compel the exercise or suppression of speech, the governmental measure must punish, or threaten to punish, protected speech by governmental action that is regulatory, proscriptive, or compulsory in nature.” *Wilkins v. Daniels*, 744 F.3d 409, 415 (6th Cir. 2014) (internal quotation marks omitted). For instance, a state statute requiring residents to display the state’s motto on their license plates is compelled speech. *Wooley v. Maynard*, 430 U.S. 705, 717 (1997). But where there is no punishment or threat to punish then there is no compulsion. *See, e.g., Hanover Cnty. Unit of the NAACP v. Hanover Cnty.*, 461 F. Supp. 3d 280, 87 (E.D. Va. 2020) (finding no compulsion where plaintiffs alleged they “would be forced to champion the racial inferiority that is inherent in the school names, team and student-body names, cheers, and culture”); *C.N. v. Ridgewood Bd. of Educ.*, 430 F.3d 159, 189 (3d Cir. 2005) (finding no compulsion where there was no “disincentive or penalty” if the challenged assignment was not completed; “[t]he record supports only that students were made to sit in chairs and put pen to paper”). Therefore, a plaintiff must plausibly allege that he was actually faced, or threatened with, punishment for not adopting the government’s speech. *See Wilkins*, 744 F.3d at 415-16.

The Sixth Circuit finds that in the public-school setting, the freedom of speech guarantee “implicates two strands of law that occasionally run into each other.” *Ward v. Polite*, 667 F.3d 727, 732 (6th Cir. 2012). On the one hand is the principle that “public schools are not expression-free enclaves.” *Id.* “[E]ach person should decide for himself or herself the ideas and beliefs deserving of expression, consideration, and adherence.” *Agency for Int’l Dev. v. All. for Open*

Soc’y Int’l, Inc., 570 U.S. at 213 (quoting *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 641 (1994)). Put simply, a public school cannot tell its students that there are ideas and beliefs “they must say.” *See id.*

On the other hand, “public high schools and universities, have *considerable* authority to control their own speech.” *Ward*, 667 F.3d at 732 (citing *Garcetti v. Ceballos*, 547 U.S. 410, 421-22 (2006), *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 271, 273 (1988), *Evans-Marshall v. Bd. of Educ. of Tipp City Exempted Vill. Sch. Dist.*, 624 F.3d 332, 340 (6th Cir. 2010)). “Foremost among a school’s speech is its selection and implementation of a curriculum—the lessons students need to understand and the best way to impart those lessons—and public schools have broad discretion in making these choices.” *Id.* (citing *Christian Legal Soc’y v. Martinez*, 561 U.S. 661, 702-05 (2010)). Thus, a public school may compel speech by implementing and neutrally enforcing a “legitimate school curriculum.” *Id.* at 733.

The Sixth Circuit addressed these competing interests in *Ward v. Polite*. There, Eastern Michigan University (EMU) officials expelled the plaintiff from EMU’s graduate counsel program when she requested the option to refer a client seeking gay-affirming counsel. *Id.* at 731-33. She claimed that EMU compelled her speech when it threatened expulsion and actually expelled her for not adopting the university’s preferred ideological position on sexual counseling. *Id.*

EMU moved for summary judgment on her claim. *Id.* at 732. The Sixth Circuit explained that the practicum was part of the EMU’s curriculum and therefore the court would only disturb the expulsion if it was not “reasonably related to legitimate pedagogical concerns.” *Id.* at 733 (quoting *Hazelwood Sch. Dist. V. Kuhlmeier*, 484 U.S. 260, 273 (1988)). In applying this rule, the court dropped some helpful nuggets along the way: (1) “When a university lays out a program’s curriculum or a class’s requirements for all to see, it is the rare day when a student can exercise

a First Amendment veto over them”; and (2) “The closer expression comes to school-sponsored speech, the less likely the First Amendment protects it.” *Id.* at 734.

EMU argued that the plaintiff’s request violated a counselor’s code of ethics; thus, the expulsion was reasonably related to legitimate pedagogical concerns. The court found that the plaintiff, however, did not violate the code of ethics EMU claims she did. So a reasonable jury could find that EMU’s alleged “legitimate pedagogical concern” was a mere pretext. *Id.* at 734, 738 (“A university cannot compel a student to alter or violate her belief systems based on a phantom policy as the price for obtaining a degree.”).

Also take *West Virginia State Board of Education v. Barnette* for example. 319 U.S. 624 (1943). In *Barnette* the Supreme Court addressed the constitutionality of a public school’s decision to expel two Jehovah’s Witnesses for refusing to salute the American flag during the Pledge of Allegiance. *Id.* at 629. The Court found the expulsions in violation of the First Amendment because the First Amendment prohibits any “compulsory unification of opinion.” *Id.* at 641. The Court also struck down the rule that required the students to pledge allegiance to the American flag, because it required students to “declare a belief” and “utter what is not in [their] mind[s].” *Id.* at 631, 634.

Contrast *Barnette* with *Wood v. Arnold*. 915 F.3d 308 (4th Cir. 2019). In *Wood* the Fourth Circuit found that the plaintiff was not compelled to speak when she was required to complete, in writing, two missing words of a portion of the *shahada* for a classroom assignment. *Id.* at 318. The record was clear that the plaintiff was not required to “profess or accept the tenets of Islam” by completing the assignment. *Id.* at 319. “The students were not asked to recite the *shahada*, nor were they required to engage in any devotional practice related to Islam.” *Id.* The court found

that the *shahada* assignment was limited to an academic exercise to demonstrate students' understanding of world history and therefore could not constitute compelled speech. *Id.*

The Fifth Circuit used similar reasoning in *Brinsdon v. McAllen Independent School District*. 863 F.3d 338 (5th Cir. 2017). In *Brinsdon*, the plaintiff argued that the public school compelled his speech by “requiring the recital of the Mexican pledge.” *Id.* at 349. But the Fifth Circuit found that this exercise was constitutional because the plaintiff provided no evidence that the exercise sought to “force orthodoxy.” *Id.* at 350.

In sum, for Plaintiffs to allege a plausible compelled speech claim against Wisner, they must allege some: (1) facts showing that Wisner punished or threatened to punish Plaintiffs for failing to subscribe to The Rebellion Community; and (2) facts showing that subscribing to The Rebellion Community forced Plaintiffs to declare a belief or utter what is not in their minds, or subscribing to The Rebellion Community had no legitimate pedagogical concerns, or the concerns were a mere pretext.

(a) Punishment or Threat of Punishment

For compulsion to occur, there must be an actual obligation to speak, enforced by a credible threat or a realistic chance of punishment for failing to comply. *Duren v. Byrd*, No. 1:18-cv-00084, 2021 WL 3848105, at *18 (M.D. Tenn. Aug. 26, 2021); *see also Morrison v. Bd. of Educ. of Boyd Cnty.*, 521 F.3d 602, 610 (6th Cir. 2008). “The consequence need not be direct,” *Wilkins*, 744 F.3d at 415 (citation omitted), but a “discouragement that is minimal and wholly subjective does not, however, impermissibly deter the exercise of free speech rights.” *Id.* (quoting *Phelan v. Laramie Cty. Cmty. Coll. Bd. of Trs.*, 235 F.3d 1243, 1247-48 (10th Cir. 2000)). In other words, a plaintiff cannot claim “he was injured when he self-imposed a punishment for non-compliance under the assumption that he would have been punished for non-compliance anyway if he did not do it himself.” *Duren*, 2021 WL 3848105, at *19.

Here, Plaintiffs fail to allege any facts that plausibly show Wisner or MSU for that matter, actually punished or threatened to punish Plaintiffs for not subscribing to The Rebellion Community. Indeed, Plaintiffs allege that a subscription was required per the syllabus, and they did subscribe to The Rebellion Community. Yet this does not show a real threat of punishment for non-compliance. Instead, these facts show that Plaintiffs self-imposed a punishment for non-compliance under the assumption that they would have been punished for non-compliance. Thus, Plaintiffs fail to plausibly allege that they suffered a punishment or a threat of punishment.

(b) Compelling a Belief and Attitude of Mind

Even assuming there was a threat of punishment or actual punishment, Plaintiffs fail to allege that Wisner compelled them to adopt a particular belief and attitude of mind.

As the Supreme Court found in *Barnette*, the public school unacceptably sought to compel “a belief and an attitude of mind” when it required students to salute the American flag during the Pledge of Allegiance. 319 U.S. at 632-34, 641-42. The Court found that saluting the pledge was not just a tool for teaching civility, discipline, or respect. *See id.* It also was a tool to compel patriotism; this latter goal was unacceptable. *See id.* On the other hand, a teacher may require recital of say the South Korean Pledge or the Torah for *academic purposes*.

The complaint fails to allege facts that show Wisner made Plaintiffs utter beliefs they did not hold by requiring membership to The Rebellion Community. According to the complaint, The Rebellion Community “is an expressive organization established and controlled by Defendant Wisner.” (Compl. ¶ 54.) Even so, Plaintiffs fail to allege any facts that, by subscribing to this platform, they were required to adopt to particular ideas or beliefs. The complaint, rather, suggests that The Rebellion Community was just another platform for students to communicate with each other. (*Id.* ¶¶ 77, 86-88, 150.) Unlike high school students, which is an important distinction as explained by Judge Sutton: “When a university lays out a program’s curriculum or a class’s

requirements for all to see, it is the rare day when a student can exercise a First Amendment veto over them.” *Ward*, 667 F.3d at 734.

Accordingly, Plaintiffs do not plausibly allege a compelled speech claim.

(c) Reasonably Related to Legitimate Pedagogical Concerns

Even assuming that Wisner or MSU compelled Plaintiffs to subscribe to the Rebellion Community, Plaintiffs fail to allege that subscription to the Rebellion Community was not reasonably related to legitimate pedagogical concerns.

“Where learning is the focus, as in the classroom, student speech may be even more circumscribed than in the school newspaper or other open forum.” *Settle v. Dickson Cty. Sch. Bd.*, 53 F.3d 152, 155-56 (6th Cir. 1995). “The closer expression comes to school-sponsored speech, the less likely the First Amendment protects it.” *Ward*, 667 F.3d at 734. “Few activities bear a school’s ‘imprimatur’ and ‘involve pedagogical interests,’ *Fleming*, 298 F.3d at 924, more significantly than speech that occurs within a classroom setting as part of a school’s curriculum.” *Axson-Flynn v. Johnson*, 356 F.3d 1277, 1289 (10th Cir. 2004) (citing *Miles v. Denver Pub. Schs.*, 944 F.2d 773, 776 (10th Cir. 1991)).

Here, the alleged compelled speech—joining the Rebellion Community—bore MSU’s “imprimatur” as it took place in the classroom as part of MKT 250’s curriculum. Plaintiffs allege that the syllabus explained the Rebellion Community to be “a global social learning community with a private space dedicated to [MKT 250].” (Compl. ¶ 78.) MKT 250 students weren’t limited to the private space; they also had access to spaces used by the “broader community.” (*Id.*) However, Plaintiffs assert that they joining the group was “unnecessary and duplicative” because MSU already had “an online platform for course materials called ‘Desire to Learn.’” (*Id.* ¶ 86.) And “Plaintiffs did not detect any functional advantage that the Rebellion Community Website had over the University’s D2L system.” (*Id.* ¶ 87.)

Even taking these allegations as true, the Court finds that Plaintiffs fail to plausibly allege that the Rebellion Community had no legitimate pedagogical purposes. MKT 250 was a business communications course. Having a global social learning community with a private space dedicated to MKT 250 students was a way for students to improve communication. And it was a way for Wisner to monitor participation. Plaintiffs even compare the Rebellion Community to MSU's Desire to Learn platform.

Plaintiffs argue that the Rebellion Community was duplicative in light of the Desire to Learn Platform. Maybe. But that is not the question before the Court. The question is whether the subscription to The Rebellion Community had any reasonably legitimate pedagogical concerns or purposes. Plaintiffs' conclusory allegation that The Rebellion Community membership had no legitimate pedagogical purpose doesn't get the job done. The Court finds that when viewing the complaint as a whole, The Rebellion Community had some legitimate pedagogical purposes. The Court, therefore, refuses to second-guess the pedagogical wisdom or efficacy of Wisner's goals in teaching her course.

On these facts, Wisner did not violate Plaintiffs' First Amendment right against compelled speech.

2. Compelled Association

Plaintiffs also claim that Wisner violated their First Amendment right to freely associate. By requiring them to join the Rebellion Community, Wisner forced them to associate, they claim. But for similar reasoning as why the compelled speech claim fails, Plaintiffs' compelled association claim fails, too. As just discussed, the challenge in this case does not present an instance of compelled personal speech, for no personal speech was compelled from anyone. No student was required to confess by word or act, a belief in any message, as was the case in *Barnette*. Nor was any student required to act as a courier for an ideological message, as was the case in

Wooley. Put simply, Plaintiffs fail to allege a real threat (or actual likelihood) of punishment for not joining The Rebellion Community online social learning platform that had a private learning space for MKT 250 students.

Plaintiffs claim that Wisner violated Plaintiffs' First Amendment rights when she allegedly used the funds to fund outside organizations and causes. This argument misses the mark. Unlike the petitioner in *Janus v. AFSCME, Council 31*, who was required by statute to fund an organization he did not support, Plaintiffs were only required to purchase an online subscription for class curriculum. 585 U.S. 878 (2018). Put differently, buying a membership to The Rebellion Community did not require Plaintiffs to associate with a view they didn't endorse. If this wasn't the case, then book royalties, tuition that funds a professor's salary, or grants would invariably involve compelled association if the professor wrote anything a student disagreed with. Those instances surely don't invoke the First Amendment. Neither does this.

3. Unconstitutional Conditions

Plaintiffs also allege an unconstitutional conditions claim under 42 U.S.C. § 1983. The "unconstitutional conditions" doctrine provides, in the First Amendment context, that "the government may not deny a benefit to a person on a basis that infringes his constitutionally protected . . . freedom of speech even if he has no entitlement to that benefit." *Rumsfeld*, 547 U.S. at 59 (internal quotation marks omitted). This doctrine does not, however, give rise to a constitutional claim in its own right; the condition must actually cause a violation of a substantive First Amendment right. *See id.* at 59-60 (declining to address unconstitutional conditions issue because no underlying constitutional violation would arise from direct restriction).

Plaintiffs' allegations on this claim are barebones and conclusory. They allege that "Defendants' applications of the Policies . . . continues to authorize all faculty to violate Plaintiffs' rights in the same way going forward. Each time Plaintiffs enroll in a class, the Policies subject

them to further constitutional injury.” (Compl. ¶ 136.) Plaintiffs fail to identify a specific course, faculty member, or syllabus that has similar requirements. Thus, Plaintiffs fail to alleged a violation of a substantive First Amendment to create an unconstitutional condition.

IV. CONCLUSION

Defendants have established pleading deficiencies in the complaint sufficient for this court to dismiss the lawsuit. Plaintiffs lack standing to seek prospective relief because the complaint fails to plead an ongoing or likely future harm. Sovereign immunity precludes Plaintiffs from obtaining monetary damages from any defendant in his or her official capacity. Plaintiffs have not pled facts to show a traceable injury to the MSU Defendants. Plaintiffs failed to plead sufficient facts to state a cause of action against Defendant Wisner in her individual capacity.

ORDER

Consistent with the accompanying Opinion, the Court **GRANTS** Defendant Wisner’s motion to dismiss (ECF No. 25) and also **GRANTS** the MSU Defendants’ motion to dismiss (ECF No. 15). **IT IS SO ORDERED.**

Dated: July 29, 2025

/s/ Paul L. Maloney
PAUL L. MALONEY
UNITED STATES DISTRICT JUDGE