IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

J. MICHAEL BROWN; YOUNG AMERICANS FOR LIBERTY AT JONES COUNTY JUNIOR COLLEGE — **PLAINTIFFS**

V. — **Case No.: 2:19-cv-127-KS-MTP**

JONES COU- [illegible]

Colleg (YAL)" have sued the Colleg, its Board of Trustees, and four Colleg administrators in their official and individual capacities for alleged First Amendment violations. Plaintiffs have failed to establish standing to pursue their claims, and they have not alleged any appreciable damages. Moreover, the Individual Defendants are entitled to qualified immunity.

FACTS

Brown, a resident of Hattiesburg, Mississippi, was enrolled as a student at the College between August 2018 and April 9, 2019. Compl., at ¶¶ 12, 38, 73 [Doc. 1]. YAL purports to be an "unrecognized student organization" and a "political club" started by Brown in August 2018 at the College. Id. at ¶¶ 3, 13, 38. At some point before February 2019, Brown spoke to at least one

that any Defendant denied such a request or suggested such a request would be denied. Between August 2018 and February 2019, Brown alleges he walked around the College's campus four times talking to fellow students about YAL and soliciting members. *Id*. at ¶ 39.

The College's Student Handbook contains "Student Activity Policies" requiring student organizations to schedule meetings, activities, and events with the Vice President for Student Affairs. *Id*. at ¶¶ 25, 30. Plaintiffs' allegations stem from these policies and from two separate YAL events on campus during the Spring 2019 academic semester. First, Plaintiffs allege Brown and Mitch Strider, a non-student acquaintance, "inflated an oversized beach ball" (referred to in the Complaint as the "free speech ball") and rolle

or disciplined in any way related to the "free speech ball" event. Brown also does not allege he ever contacted Magee to try to schedule an activity.

Second, Plaintiffs allege Brown, his girlfriend, and Nathan Moore, a non-student acquaintance, conducted another YAL activity on the patio in front of the main entrance of an academic building on April 4, 2019. *Id*. at ¶¶ 73-74. The YAL participants invited passing students to mark a sign, solicited them to sign up for YAL, and distributed pamphlets and pocket Constitutions. *Id*. at ¶ 74. Two College employees, including a campus police officer, asked Brown whether he had scheduled this second event pursuant to the College's policies, and he responded that he had not. *Id*. at ¶¶ 80-90. Defendant Livingston arrived and instructed Brown and his girlfriend to go to his office. In his office, Livingston told Brown again that campus events should be scheduled through Defendant Magee's office. *Id*. at ¶ 108. Easley also came to Livingston's office and told Brown that campus events had to be scheduled through Magee's office. *Id*. at ¶¶ 112-13. Again, Plaintiffs do not allege that Brown was arrested, detained, or disciplined as the result of Brown's activity, or that he contacted Magee to schedule an activity.

LEGAL STANDARDS

"Federal courts are courts of limited jurisdiction; without jurisdiction conferred by statute, they lack the power to adjudicate claims." *In re FEMA Trailer Formaldehyde Prods. Liab. Litig*., 668 F.3d 281, 286 (5th Cir. 2012) (citing *Kokkonen v. Guardian Life Ins. Co. of Am*., 511 U.S. 375, 377 (1994)). A court properly dismisses a claim under Rule 12(b)(1) when the court lacks the statutory or constitutional authority to adjudicate it. *Home Builders Ass'n, Inc. v. City of Madison*, 143 F.3d 1006, 1010 (5th Cir. 1998). "[T]he plaintiff constantly bears the burden of proof that jurisdiction does in fact exist." *Raj v. La. St. Univ*., 714 F.3d 322, 327 (5th Cir. 2013).

Standing cannot be confer

is a threat of [] injury to any individual member of the association' and thus '

Brown has not established standing to challenge the College's policies because he does not claim to still be a student at the College to whom the "Student Activity Policies" apply, that he is still a member or officer of YAL, or that he intends or desires to participate in student activities or assemblies at the College. Brown also does not allege he or any other College student was threatened, arrested, prosecuted, or disciplined in any way as a result of the College's policies or their application to Brown.

Moreover, Plaintiffs' allegations belie their assertion that Defendants' actions chilled their speech because Brown *actually* staged another YAL event on campus after the first time Easley and Livingston told him to schedule such events through Magee's office in February 2019. Brown's allegation that the February conversations with Easley and Livingston "would have chilled a student of ordinary firmness from exercising their right to free speech," *id*. at ¶ 70, is conclusory and may be disregarded. *See Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009) (holding that conclusions not supported by factual allegations "not entitled to the assumption of truth" for 12(b)(6) purposes). As Plaintiffs do not allege any Defendant threatened Brown or took any escalated action at the time of the April 2019 event, they have also failed to allege a "specific future harm" arose from that meeting. ch members6.08 (u)1AL.

Plaintiffs do allege Defendant Livingston told Strider and Moore to leave campus and threatened to arrest them, but Plaintiffs do not allege Strider and Moore were College students

in the defendant's circumstances would have then known that the defendant's conduct violated the United States Constitution or the federal statute as alleged by the plaintiff." *Thompson v. Upshur Cty.*, 245 F.3d 447, 457 (5th Cir. 2001).

constitutional rights, and

with specificity how a particular training program is defective." *Goodman v. Harris County*, 571 F.3d 388, 395 (5th Cir. 2009). The Fifth Circuit has noted that liability for failure to supervise typically lies "only in those situations in which there is a history of widespread abuse" such that knowledge may be imputed to a supervisory official who can be found to have caused a violation

Defendant Easley

To the extent Plaintiffs' allegations against Defendant Easley consist of a recitation of his job responsibilities, those allegations are insufficient to state an individual-capacity claim against him for the reasons detailed above.

In addition to their as-applied challenge to the College's policies, Plaintiffs also allege

Livingston

3. Plaintiffs have failed to state a claim for compensatory damages.

Among other relief, Plaintiffs seek "[m]onetary damages in an amount to be determined by the Court to compensate Plaintiffs for Defendants' unconstitutional interference with their rights under the First and Fourteenth Amendments to the Constitution of the United States." Compl., at 33 (Prayer for Relief). Even if Plaintiffs ultimately prevail on their claims, mere proof of a violation of constitutional rights does not give rise to an award of compensatory damages. *See Ryland v. Shapiro*, 708 F.2d 967, 976 (5th Cir. 1983); *see also Carey v. Piphus*, 435 U.S. 247, 257, 267 (1978) (holding that, while nominal damages might be available, compensatory damages awards under § 1983 should be governed by the principle of compensation for actual loss).

Moreover, compensatory damages for emotional distress caused by an alleged deprivation of constitutional rights must "be supported by competent evidence concerning the injury." *Brady v. Fort Bend Cty.*, 145 F.3d 691, 718 (5th Cir. 1998) (*citing Carey*, 435 U.S. at 264 n.20). To justify emotional distress damages, the Fifth Circuit requires proof of a "specific discernable injury to the claimant's emotional state" and evidence of the "nature and extent" of the harm. *Brady*, 145 F.3d at 718 (*citing Patterson v. P.H.P. Healthcare Corp.*, 90 F.3d 927, 938, 940 (5th Cir. 1996)). While the Fifth Circuit has held that conditions such as sleep loss, weight loss, marital problems, or depression may support an award of emotional distress damages, *see Giles v. GE*, 245 F.3d 474, 488 (5th Cir. 2001), it has also recognized that "'hurt feelings, anger and frustration are part of life' and are not the types of harm that c[an] support a mental anguish award." *Brady*, 145 F.3d at 718 (*citing Patterson*, 90 F.3d at 938). Conclusory statements that a plaintiff suffered emotional distress, such as a plaintiff's claim that he was "highly upset" after his

termination or that it was the "worst thing that has ever happened to me," do not qualify as evidence of demonstrable emotional distress. *Brady*, 145 F.3d at 719.

Plaintiffs have failed to allege they suffered any kind of compensable harm as the result of Defendants' alleged actions. Plaintiffs do not allege they were physically harmed or that any of their property was damaged. Brown does not allege Defendants arrested, prosecuted, expelled, suspended, or deprived him in any other way of the benefits of his tuition dollars or his educational pursuits at the College. Brown alleges he felt "intimidated" and "distressed" by Defendants' actions because he "felt that they inhibited his ability to recruit members for YAL." Compl., at ¶¶ 71, 115. He also alleges he experienced "emotional distress, humiliation, embarrassment, and injury to his reputation" because of Defendant Livingston's alleged acts. *Id.* at ¶ 150.

Brown's generalized allegation of "distress" due to Defendants' actions is, at best, tantamount to an allegation of the type of "hurt feelings, anger, and frustration" the Fifth Circuit has held is insufficient to sustain an award of emotional distress damages. Plaintiffs' claims for damages should be dismissed.

CONCLUSION

Plaintiffs' allegations, even if true, are insufficient to establish that they have standing to bring this action. Those allegations are also insufficient to defeat the Individual Defendants' qualified immunity. Finally, Plaintiffs have not pled facts sufficient to support an award of damages. The Court should dismiss their claims with prejudice or, in the alternative, dismiss their individual capacity claims and their claim for damages.

THIS, the 31st day of October, 2019.

Respectfully submitted,

JONES COUNTY JUNIOR COLLEGE; BOARD OF TRUSTEES OF JONES COUNTY JUNIOR COLLEGE; JESSE SMITH; MARK EASLEY; GWEN MAGEE; AND STAN LIVINGSTON

/s/ Paul B. Watkins, Jr.

J. CAL MAYO, JR. (MB NO. 8492)
PAUL B. WATKINS, JR. (MB NO. 102348)
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