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. **CIVIL ACTION NO. 2:19-cv-00127-KS-MTP**

JONES COUNTY JUNIOR COLLEGE; BOARD OF TRUSTEES OF JONES COUNTY JUNIOR COLLEGE; JESSE SMITH, in his individual and official capacities; MARK EASLEY, in his individual and official capacities, GWEN MAGEE, in her individual and official capacities, And STAN LIVINGSTON, in his individual and official capacities

DEFENDANTS

MEMORANDUM OPINION AND ORDER

This cause comes before the Court on Defendants' Motion to Dismiss [14]. Plaintiffs have filed their response [18,19], and Defendants replied [21]. Having reviewed the parties submissions, the record in this matter, and the relevant legal authorities, and otherwise being fully advised in the premises, the Court finds that the motion will be gsmiss the Complaint.

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capacity claims; and that Plaintiffs
mages. On December 9, 2019, the
C. § 517 [23], arguing that JCJC's
sition on the issues in Defendants'

I. BACKGROUND

Plaintiff J. Michael Brown was a student enrolled at Jones County Junior College ("JCJC") at the institution's Ellisville campus between August 2018 and August 2019. [1] at ¶¶ 12, 116. Brown has been a member of the national organization Young Americans for Liberty ("YAL"), a libertarian youth advocacy organization with chapters on college and university campuses nationwide, since August 2018. That same month he founded a JCJC chapter of YAL. *Id.* ¶ 38. YAL is an unrecognized student organization at JCJC. *Id.* ¶ 13.

Defendants are JCJC, its Board of Trustees, and individually-named JCJC administrators and police, who are sued in their official and individual capacities. *Id.* ¶¶ 14-19. The Individual Defendants are Presidenso(a)Tj 0 Tc 0.39 Tw -3 (y)]TJ8ly

sign-up sheet. *Id.* Brown and Strider's activities caused no disruption to pedestrian or vehicular traffic or in any other way disrupted JCJC's operations. *Id.* ¶ 44.

Thereafter, Brown and Strider moved with the ball to a grassy area next to the Administration Building. *Id.* ¶ 45. Once there, they were approached by an unidentified JCJC staff person, who asked if they had spoken with JCJC Dean of Students Mark E-Td [.21 0 Td 7w-

leave campus. *Id.* ¶¶ 64-65. In response to Brown's inquiries about the policies governing his obligations as a student who wished to have a free speech ball on campus, Livingston stated that Brown needed to come back later and speak with Magee to discuss what approval procedures JCJC policy required and what expressive activity Brown was permitted to engage in on campus. *Id.* ¶ 66. Brown and Strider then deflated the ball and left campus. *Id.* ¶ 69. Since then, neither Brown nor any other member of the YAL chapter or YAL's national organization has attempted to bring a free speech ball onto JCJC's Ellisville campus or any other JCJC property for fear of disciplinary action, removal from campus, or arrest. *Id.* ¶ 72.

Several months later, however, on April 4, 2018, Brown visited the campus—this time without the free speech ball and joined by Brown's girlfriend, a JCJC student and YAL chapter member, and Nathan Moore, a staff member of the national YAL organization—to speak with students about YAL's mission in attempt to find students to join his YAL chapter. *Id.* ¶¶ 73-74. The trio stood on Centennial Plaza, near the entrance to JCJC's Jones Hall. *Id.* ¶ 74. Brown held up a sign inviting students to share their thoughts on whether marijuana should be legalized. *Id.* The three carried pamphlets and pocket copies of the U.S. Constitution to give to interested students, as well as a sign-up sheet. *Id.*

Shortly after arriving, however, while they were speaking with two students, JCJC staff member Hammonds stopped Brown and Moore and asked them what they were doing. *Id.* ¶ 77. Brown explained that they were speaking with students about civil liberties and the government. *Id.* ¶ 80. Hammonds then asked if Brown had been on campus earlier with a beach ball. *Id.* ¶ 81. After Brown responded in the affirmative, Hammonds summoned JCJC campus police. *Id.* ¶ 84. The students who had been speaking to Brown and Moore then walked away. *Id.* ¶ 86. Hammonds took Brown, his girlfriend, and Moore to the vestibule of Jones Hall to await campus police. *Id.* ¶ 87.

obtain prior approval before conducting any "events" on campus. *Id.* ¶¶ 111-113. Although Brown continued as a student at JCJC throughout the 2019 spring and summer semesters, neither he nor any other member of the YAL chapter or YAL's national organization engaged in expressive activity on the Ellisville campus or any other JCJC property after April 4, 2019, for fear of disciplinary action, removal from campus, or arrest. *Id.* ¶ 116.

B. The Challenged Policies

JCJC's Student Handbook contains section entitled Code of Conduct ("Conduct Code").[1] The terms of the Handbook require that all student who register at JCJC agree to comply with the Conduct Code's regulations and policies and are subject to disciplinary action for any violations. [1] at ¶ 22. The Conduct Code sets forth actions that are considered violations of college regulations, one of which is contained in Paragraph 9, which states:

> 9. Disruptive Activity, which is any action by an individual, group, or organization to impede, interrupt, interfere with, or disturb the holding of classes, the conduct of college business, or *unauthorized events and activities of any and all segments of the college.*
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> ***
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> 17. Disorderly conduct, sexual assault, lewd, indecent, or obscene conduct, or public profanity on campus or at a college function.

[1-2] at pp. 4, 5 (emphasis added).

The Student Handbook also contains a subdivision on Student Affairs, which contains a section titled "Student Activities Policies." [1-3] at p. 2. This section contains, among others, the following provisions:

> 1. Scheduling and Planning, which states, in part:
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> a. All college connected student activities conducted by a student organization at Jones County Junior College must be scheduled by the Vice President of Student Affairs. The Vice President of Student Affairs reserves

[1] The Court referenced the Student Handbook for the 2018-2019 academic school year at https://web.archive.org/web/20190710155131/http://www.jcjc.edu/studentpolicies/docs/studenthandbook.pdf

liability under 42 U.S.C. § 1983 against JCJC;[2] and Plaintiffs' Fifth Cause of Action is for Declaratory Relief and Injunction pursuant to 28 U.S.C. §§ 2201, *et seq*. as to all Defendants. For all of these claims Plaintiffs seek declaratory relief, injunctive relief, and money damages. [1] at ¶¶ 134, 141, 151, 158.

II. DISCUSSION

A. Legal Standard

Under Federal Rule of Civil Procedure 12(b)(1), "'[w]hen standing is challenged on the basis of the pleadings,' [the court] must 'accept as true all material allegations of the complaint and . . . construe the complaint in favor of the complaining party.'" *Ass'n of Am. Physicians & Surgeons, Inc. v. Texas Med. Bd.*, 627 F.3d 547, 550 (5th Cir. 2010) (quoting *Pennell v. City of San Jose*, 485 U.S. 1, 7 (1988) (citations and internal quotation omitted)).

"To survive a motion to dismiss under Rule 12(b)(6), 'a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.'" *Hollins v. City of Columbia*, No. 2:19-CV-28-KS-MTP, 2019 U.S. Dist. LEXIS 122381, at *3 (S.D. Miss. July 23, 2019) (Starrett, J.) (quoting *Great Lakes Dredge & Dock Co. LLC v. La. State*, 624 F.3d 201, 210 (5th Cir. 2010)). "The Court must 'accept all well-pleaded facts as true and construe the complaint in the light most favorable to the plaintiff.'" *Id.* (quoting *Great Lakes Dredge & Dock Co. LLC*, 624 F.3d at 210). "[T]he Court will not accept as true 'conclusory allegations, unwarranted factual inferences, or legal conclusions.'" *Id.* (quoting *Great Lakes Dredge & Dock Co. LLC*, 624 F.3d at 210). "Likewise, 'a formulaic recitation of the elements of a cause of action will not do.'" *Id.* (quoting *PSKS, Inc. v. Leegin Creative Leather Prods., Inc.*, 615 F.3d 412, 417 (5th Cir. 2010)).

[2] *See Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978).

1. Standing

"[T]he requirement that a claimant have 'standing is an essential and unchanging part of the case-or-

student throughout the spring and summer semesters, he did not engage in any expressive activity for fear of disciplinary action, removal from campus, or arrest.

i. Injury-in-Fact

Defendants rely on the fact that Brown is no longer a student and no longer faces any threat of enforcement and that he does not allege an intention to engage in any future course of conduct on the campus. Defendants' argument misses the mark. Recall that an injury-in-fact must be that one "has suffered or imminently will suffer." *Barbour*, 529 F.3d at 544. Oftentimes those who bring facial challenges have yet to face any enforcement or actual injury, and thus, the federal courts in those situations will "relax the prudential limitations and allow yet unharmed litigants to attack potentially overbroad statutes." *Fairchild v. Lib3t87o(l)-1.9 (d d (s)-1 (-2 (y*

ii. Requested Relief

While the fact that Brown is no longer a student does not affect the injury-in-fact portion of the analysis, it may affect the third prong of standing, which is that the relief sought will address the injury. Brown seeks damages, declaratory relief, and injunctive relief. The Court agrees with Brown that, based on the alleged past injury, he clearly has standing to pursue damages. Contrary to Defendants' urging, the Court will not engage in an analysis at this stage of the proceedings

b

not have standing to challenge school policy). Although YAL alleges that it wishes to engage in expressive activity on the campus, it does not have the means to do so nor has it alleged that it does. With Brown no longer a student, there does not appear to be any members of a YAL chapter at JCJC that would have standing to present a claim.

constitutional right.[4]

proximately causes the harm — that is, so long as the plaintiff's constitutional injury in fact occurs pursuant to the policy." *OSU Student All. v. Ray*, 699 F.3d 1161, 1179 (10th Cir. 2012).

from engaging in expressive activities on campus. *Id.* ¶¶ 38-118. Specifically, on February 29, 2019 and April 4, 2019, individuals under the supervision of Smith and Magee told Brown and YAL members that they could not continue to engage in their recruitment efforts because they did not receive permission from Magee in accordance with JCJC's policies. *Id.* ¶¶ 62-68, 109.

Plaintiffs have further alleged that Smith and Magee "knew or reasonably should have known" that the unconstitutional policies that they implemented would be enforced to deprive Plaintiffs of their constitutional rights and failed to take the action necessarvT /TT1 1 T8 (d be)4 (e)-6

Defendants' motion to dismiss Plaintiffs' claims against Smith and Magee in their individual capacities is hereby denied.

b. Defendant Mark Easley

Defendant Easley is the Dean of Student Affairs at JCJC. The Complaint states that he is responsible for coordinating and supervising the areas of discipline, campus safety, student activities, clubs and organizations, and coordination of facility use. It goes on to allege that he also

> is responsible for the promulgation, implementation, and enforcement of JCJC policies, procedures, and practices, including those that were applied to deprive Brown and YAL of their constitutional rights. Magee knew or reasonably should have known that JCJC's policies, procedures, and practices would lead to this deprivation. Easley knew that individuals under his supervision implemented JCJC's policies, procedures, and practices that deprived Brown and YAL of their constitutional rights, and Easley, with deliberate indifference, failed to act with regard to the constitutional rights of Brown, YAL, and all JCJC students. Easley also interfered with Brown and YAL's exercise of their constitutional rights by applying JCJC policy to Brown and YAL's constitutionally protected expression and by summoning campus police to stop Brown and YAL from engaging in constitutionally protected speech.

[1] at ¶18.

Based on these allegations, like Smith and Magee above, Plaintiffs have alleged liability on the grounds of implementing and enforcing an unconstitutional policy. As noted above, Plaintiffs have alleged that these policies are facially unconstitutional, the policies were the "moving force" that caused Plaintiffs' constitutional deprivation, and that Easley acted with deliberate indifference to the constitutional rights of Brown, h a2 (e)6 (of8 pol)8f of8 posm3E (tif)5 (f)5 (c

acquaintances about the College's policy requiring advance scheduling of student organization events. However, there is much more that has been alleged with regard to Easley. Plaintiffs have pled that Easley enforced JCJC's unconstitutional policies against Plaintiffs in order to stop their peaceful, non-disruptive expressive activity in outdoor areas of campus. *Id.* ¶¶ 47-69. Specifically, Easley told Brown and a YAL member that "they were not permitted to be present on campus with the free speech ball because they had not followed JCJC's policies to

In addition to the supervisory/direct implementation claims, Plaintiffs also bring a retaliation claim against Livingston, who argues that in order to sufficiently state a retaliation claim, Plaintiffs must allege "(1) they were engaged in constitutionally protected activity, (2) Defendant Livingston caused them to suffer an injury that would chill a person of ordinary firmness from continuing to engage in that activity, and (3) Livingston's adverse actions were substantially motivated against Plaintiffs' exercise of constitutionally protected conduct." [15] at p. 15 (citing *Keenan v. Tejeda*, 290 F.3d 252, 258 (5th Cir. 2002)).

Defendant Livingston challenges the second element and argues that Plaintiffs have alleged only that he told Brown to schedule the YAL event with Defendant Magee, required Brown to meet with him in his office, and instructed Brown's friends to leave campus under threat of arrest. Livingston argues these are not allegations of an injury that would chill a person of ordinary firmness from engaging in their activities and that any injury Plaintiffs claim to have suffered is too "trivial or minor" to support a claim for retaliation. The Court disagrees.

To succeed on a First Amendment retaliation claim, a plaintiff must prove that the defendant's *actions* would chill a person of ordinary firmness from engaging in expressive activities as well as an injury. For example, in *Keenan*, the Fifth Circuit found that the

injury and actions by the defendants that would "chill a person of ordinary firmness from engaging in expressive activities."

An officer's threat to arrest individuals or their companions in retaliation for protected expression would chill a person of ordinary firmness from continuing to engage in that expressive activity. As Plaintiffs point out, "[t]he law is settled that as a general matter the First Amendment prohibits government officials from subjectrm fdividuals nant (fdi)-2 (vi)-2 (duw.(ubj)th)

members that they could not continue to talk to students. *Id.* at ¶¶ 68, 95. Also, Livingston required Brown and other YAL members to stop their activities and chastised Brown about engaging in on campus activities without administrative permission. *Id.* at ¶¶ 60, 95. Livingston also ordered the YAL members accompanying Brown to leave campus and threatened to arrest them if they returned. *Id.* at ¶¶ 64, 100-103. Finally, Livingston directed Dikes to take Brown to his office and when in the office, Livingston again chastised Brown regarding his on-campus activity. *Id.* at ¶ 106. Livingston insisted that Brown go through Magee's process before engaging in any expressive activity on campus and insinuated that Brown would be punished for any future expressive conduct, telling him not to "cause any

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III. CONCLUSION

For the reasons set forth herein, it is hereby ORDERED that Defendants' Motion to Dismiss [14] is GRANTED IN PART and DENIED IN PART. The motion is GRANTED in so far as the Court has found that Plaintiff, Young Americans for Liberty at Jones County Junior College, does not have standing to assert any claims in this action, and all such claims are hereby dismissed without prejudice. In all other aspects, the motion is DENIED.

The Court notes that because the defense of qualified immunity was raised only insofar as the sufficiency of the pleadings was concerned, the motion is denied without prejudice to raising the defense again in a dispositive motion at the close of discovery.

SO ORDERED AND ADJUDGED this 28th day of May 2019.

/s/ Keith Starrett
KEITH STARRETT
UNITED STATES DISTRICT JUDGE