IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

SHARON AUSTIN, *et al.*,

Plaintiffs, **Case No.: 1:25-cv-00016-MW-MJF**

v.

BRIAN LAMB, *et al.,*

Defendants.

THE UNIVERSITY OF FLORIDA, FLORIDA STATE UNIVERSITY AND FLORIDA INTERNATIONAL UNIVERSITY BOARD OF TRUSTEES' RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Defendants, members of the University of Florida ("UF") Board of Trustees, members of the Florida State University ("FSU") Board of Trustees, and members of the Florida International University ("FIU") Board of Trustees (collectively, "the Boards of Trustees") respectfully submit this Response in Opposition to Plaintiffs' Motion for Preliminary Injunction (the "Motion") [ECF Nos. 22, 23].

INTRODUCTION

The allegations in this case will likely sound very familiar to the Court. Plaintiffs, a collection of UF, FSU and FIU professors, seek to enjoin the Boards of Trustees from enforcing two provisions under Senate Bill 266. As this Court is aware, SB 266 modified Florida's general education core course standards,

Fla. Stat. § 1007.25(3)(c) (the "general education provision"); and how Florida's universities, such as the Boards of Trustees, may spend state and federal funds, Fla. Stat. § 1004.06(2) and Board of Governors Regulation 9.016 (collectively, the "funding provision"). SB 266 regulates Florida's universities, not faculty or students. Yet Plaintiffs allege that these two provisions censor their speech in violation of their First Amendment rights. Plaintiffs also challenge the two provisions on the basis that they are vague and overbroad.

According to Plaintiffs, the Boards of Trustees have allegedly caused them harm because they can no longer teach certain courses as general education courses or attend certain conferences on the State's dime. As a result, Plaintiffs allegedly will not advance in their careers and will ultimately lose their tenure status. Plaintiffs replicate the claims and speculative harms that were previously set forth in *NFC Freedom, Inc., et al. v. Manny Diaz, Jr., et al*., Civ. A. No. 4:23-cv-360 (N.D. Fla. 2023). Those claims did not pass Article III muster. The same is true here.

Plaintiffs' theory of constitutional harm requires imaginative leaps and bounds that are unsubstantiated by the evidence they rely upon and belied by the plain text of SB 266. None of the provisions at issue target Plaintiffs with disciplinary action for their speech. Nor do the provisions require the Boards of Trustees to punish Plaintiffs for certain speech. In fact, Plaintiffs' speech is not subject to the provisions. Instead, the provisions control funding for government

speech, such as that of the Boards of Trustees—not individual professors, such as Plaintiffs.

Despite the passage of time since the Court's Order denying a motion for preliminary injunction in *NFC*, 700 F. Supp. 3d 1057 (N.D. Fla. 2023), little has changed to warrant a different result today. There is still no constitutional right to teach general education courses. And it is undisputed that Plaintiffs may teach the same courses in the same manner as before as an upper-level elective or more advanced course. No speech is being infringed. Similarly, there is also no constitutional right to receive State funding to attend a conference. And Plaintiffs are still permitted to attend any conference they wish and present their research, without fear of punishment or repercussions. Again, no speech is being infringed. There is also no evidence Plaintiffs will experience any negative consequences in the post-tenure review process as a result of the SB 266 provisions.

Even if Plaintiffs could establish a recognized constitutional injury that transcends speculation, Plaintiffs cannot show that the Boards of Trustees have caused their alleged harm. The Boards of Trustees are responsible for their own compliance with SB 266. They do not ultimately decide which courses will or will not be afforded general education status. The speculative nature of Plaintiffs' alleged injuries also precludes a finding that they will suffer irreparable harm if an injunction isn't issued.

The evidence shows that the Court is faced with the exact same legal questions it addressed in *NFC* without a significant change in evidence. The Plaintiffs here, just as the plaintiffs in *NFC*, cannot prevail on their standing inquiry. And even if they could fashion an injury that is traceable to the Boards of Trustees, their alleged speculative harms are not irreparable. A preliminary injunction is a drastic remedy which is not called for based on the current facts and plain text of the law. Accordingly, the Motion should be denied.

BACKGROUND

I. The Relevant Laws and Regulations

On May 3, 2023, the Florida Legislature passed Senate Bill 266, Ch. 2023-82, Laws of Florida, titled "Higher Education" ("SB 266" or the "Act"), which imposed numerous reforms to Florida's public post-secondary educational institutions. Ch. 2023-82, Laws of Fla. The Governor signed SB 266 into law on May 15, 2023, and it became effective on July 1, 2023. *Id*. § 13.

The general education provision provides the following:

> General education core courses may not distort significant historical events or include a curriculum that teaches identity politics, violates s. 1000.05, or is based on theories that systemic racism, sexism, oppression, and privilege are inherent in the institutions of the United States and were created to maintain social, political, and economic inequities.

Fla. Stat. § 1007.25(3)(c).

Under the Act, appointed faculty committees must "review and submit recommendations to the Articulation Coordinating Committee and the commissioner for the removal, alignment, realignment, or addition of general education core courses that satisfy the requirements of this subsection." Id. at § 1007.25(3). Public postsecondary educational institution boards of trustees and presidents annually review and approve, at a public meeting, courses that meet the general education course requirements under section 1007.25. Id. at § 1007.55(2). Thereafter, the Articulation Coordinating Committee submits those courses that each institution has approved as meeting general education requirements to the State Board of Education and the Board of Governors who must approve or reject the list of general education courses for each Florida College System institution and state university. Id. at § 1007.55(4). The new general education courses under SB 266 will go into effect in the 2025-2026 academic year, which begins with the Summer B session. *See* Declaration of Heather Russell ¶ 3, attached hereto as **Exhibit A.**

The funding provision provides the following:

> (1) A Florida College System institution, state university, Florida College System institution direct-support organization, or state university direct-support organization may not expend any funds, regardless of source, to purchase membership in, or goods and services from, any organization that discriminates on the basis of race, color, national origin, sex, disability, or religion.
> (2) A Florida College System institution, state university, Florida College System institution direct-support organization, or state university direct-support organization may not expend any state

> or federal funds to promote, support, or maintain any programs or campus activities that:
> (a) Violate s. 1000.05; or
> (b) Advocate for diversity, equity, and inclusion, or promote or engage in political or social activism, as defined by rules of the State Board of Education and regulations of the Board of Governors.

Fla. Stat. § 1004.06(1)–(2).

On January 24, 2024, the Board of Governors promulgated Regulation 9.016 which defined "diversity, equity and inclusion," and "political and social activism," amongst other terms. It also provided that a state university, such as UF, FSU and FIU, "advocates for DEI" when it engages in a program, policy or activity that:

> (a) Advantages or disadvantages, or attempts to advantage or disadvantage an individual or group on the basis of color, sex, national origin, gender identity, or sexual orientation, to equalize or increase outcomes, participation or representation as compared to other individuals or groups; or
> (b) Promotes the position that a group or an individual's action is inherently, unconsciously, or implicitly biased on the basis of color, sex, national origin, gender identity, or sexual orientation.

BOG Reg. 9.016.

II. SB 266 at the University of Florida

Dr. Sharon Austin, the only UF Plaintiff, is a tenured Professor of Political Science. ECF No. 23-1, Austin Decl. ¶ 3. Plaintiff Austin teaches two courses at issue in this litigation: "Politics of Race at UF" and "Black Horror and Social Justice." *Id.* ¶¶ 22, 25. At UF, students are required to take one Quest 1 class and one Quest 2 class. *See* Declaration of Gillian Lord ¶ 2, attached hereto as **Exhibit B**.

Politics of Race at UF is an approved Quest 1 class, while Black Horror and Social Justice is an approved Quest 2 class. *Id.* Because Quest classes are required courses, like State general education courses, students are incentivized to take Politics of Race at UF and Black Horor and Social Justice at UF. *Id.* Plaintiff Austin may teach Quest classes during the upcoming Summer 2025 term. *Id.* In fact, Plaintiff Austin will be teaching Politics of Race at UF during the summer term as a Quest 1 course. *See* Declaration of Kendall Kroger, ¶ 2, attached hereto as **Exhibit C**. Plaintiff Austin did not apply to teach Black Horror and Social Justice during the Summer 2025 term. *Id.* ¶ 3. Plaintiff Austin also states that she applied for funding to attend the Diversity Abroad (now Global Inclusion) conference and that UF denied her request. Austin Decl. ¶ 47.

At UF, the post-tenure review process evaluates faculty performance over a five-year span. Declaration of Kevin P. Knudson ¶ 3, attached hereto as **Exhibit D**. Generally, tenured faculty are expected to perform satisfactorily at: teaching; research, scholarship, or creative work; service; and other assigned responsibilities. *Id.* UF adheres to the Board of Governors Regulation 10.003, which provides that the post-tenure review includes consideration of the following:

> a. The level of accomplishment and productivity relative to the faculty member's assigned duties in research, teaching, service, and other assignments including extension and clinical assignments.

b. The faculty member's history of professional conduct and performance of academic responsibilities to the university and its students.
c. The faculty member's non-compliance with state law, Board of Governors' regulations, and university regulations and policies.
d. Unapproved absences from teaching assigned courses.
e. Substantiated student complaints.
f. Other relevant measures of faculty conduct as appropriate.

Id. The required portions of the packets submitted to the post-tenure review committee do not disclose whether courses taught are or are not general education courses. *Id.* ¶ 4. Further, faculty are permitted to submit an optional one-page narrative to provide context for their activities documented in the packet. *Id.* A faculty member could include information regarding SB 266, such as the impact, if any, of the removal of general education status on his or her teaching or the impact on his or her research due to the absence of public funding for certain speaking opportunities. Knudson Decl. ¶¶ 4–5.

At UF, the absence of attendance at a single conference would not undermine a faculty member's post-tenure review. *Id.* ¶ 5. While presenting at conferences is a measure of scholarly productivity, research output is measured primarily through the production of peer-reviewed journal articles, books, book chapters, or their intellectual equivalent as defined in each academic unit's post-tenure review research criteria. *Id.* ¶ 7. The resulting peer-review provides the means to produce sound and rigorous scholarship. *Id.* Not being able to attend a specific conference

does not prevent Plaintiff Austin from advancing her scholarship through these written methods. *Id.* Further, UF Policy Number 1-005, Post-Tenure Faculty Review Regulations, provides that "Matters such as political opinion, expressive viewpoint, and ideological beliefs are not appropriate matters for evaluation and shall not be considered in post-tenure review." *Id.* ¶ 6.

III. SB 266 at the Florida State University

Dr. Robin Goodman, the only FSU Plaintiff, is a Distinguished Research Professor of English. ECF No. 23-5, Goodman Decl. ¶ 3. Plaintiff Goodman teaches one course that is at issue in this litigation: "Third World Cinema." *Id.* ¶ 14. At FSU, Third World Cinema is still being offered as an elective and it meets several of FSU's graduation requirements, which may draw students to enroll in the course. *See* Declaration of Janet Kistner ¶ 3, attached hereto as **Exhibit E**.

Similar to UF, FSU's post-tenure review process evaluates faculty performance over a five-year span. *Id.* ¶ 4. Generally, tenured faculty are expected to perform satisfactorily at: teaching; research, scholarship, or creative work; service; and other assigned responsibilities. *Id.* FSU too adheres to the Board of Governors Regulation 10.003. *Id.* The required portions of the post-tenure review materials submitted by the faculty member to the department chair/unit head include a curriculum vita, assignment of responsibilities, SPCI reports, grade distributions and other evidence of effective teaching. *Id.* ¶ 5. Faculty members also submit a

one-page summary of their accomplishments for the review period. *Id.* Faculty members may also provide additional evidence or explanation of their teaching, research and service accomplishments and performance (up to three pages). *Id.* These materials do not disclose whether courses taught by the faculty member carry general education designations. *Id.* In the permitted narratives, the faculty member can provide context for the activities documented in the materials. *Id.* ¶ 6. Plaintiff Goodman is free to discuss the removal of the general education designations from her course and describe the impact on her teaching. *Id.*

Plaintiff Goodman is currently in her 5-year post-tenure review cycle and FSU will likely issue a decision on her post-tenure review in May of 2025. Kistner Decl. ¶ 7. Thus, SB 266 does not and could not impact Plaintiff Goodman's current post-tenure review cycle since FSU considers the time period before SB 266 was enacted. *Id.* Plaintiff Goodman's next post-tenure review will not occur until 2030. *Id.*

IV. SB 266 at the Florida International University

Dr. Matther Marr, a FIU Plaintiff, is an Associate Professor of Sociology in the Department of Global & Sociocultural Studies and the Asian Studies Program. ECF No. 23-2, Marr Decl. ¶ 3. Plaintiff Marr teaches one course that is at issue in this litigation: "Introduction to Sociology." *Id.* ¶ 10. Dr. Andrea Queeley, a FIU Plaintiff, is an Associate Professor in both the Department of Global and Sociocultural Studies and the African and African Diaspora Studies Program. ECF

No. 23-4, Queeley Decl. ¶ 3. Plaintiff Queeley teaches two courses that are at issue in this litigation: "The Anthropology of Race and Ethnicity" and "Black Popular Cultures: Global Dimensions." *Id.* ¶ 6. Plaintiff Dr. Jean Muteba Rahier, a FIU Plaintiff, is a Professor of Anthropology and African and African Diaspora Studies. ECF No. 23-3, Rahier Decl. ¶ 3. Plaintiff Rahier teaches two courses at issue in this litigation: "Black Popular Cultures: Global Dimension" and "Myth, Ritual, and Mysticism." *Id.* ¶¶ 17–18.

At FIU, there are two types of general education courses: Tier 1 courses, which are courses that students take to satisfy state-mandated requirements; and Tier 2 courses, which are courses that students take to satisfy university-mandated requirements. Marr. Decl. ¶ 12. Introduction to Sociology is still offered as a Tier 1 course. *Id.* Plaintiff Queeley was scheduled to teach two, out of three, sections of The Anthropology of Race and Ethnicity for the Spring 2025 semester. *See* Declaration of Jeffery Gonzalez ¶ 6**,** attached hereto as **Exhibit F**. One of those sections was cancelled due to a drop in enrollment that occurred prior to the decision to remove the course from the general education curriculum. *Id.*

All of Plaintiffs Queeley's, Rahier's and Marr's courses can be offered as electives or be required courses in either their home or other departments. Russell Decl. ¶ 3. At FIU, it is too soon to predict that the loss of general education designation for any of Plaintiffs' courses will lead to a decline in enrollment since

the new general education requirements do not go into effect until the 2025-2026 academic year. *Id.* In fact, there is currently no indication that a decline in enrollment in any of Plaintiffs' respective courses will impact the funding allocated to Plaintiffs' School or Departments by FIU. *See* Declaration of Barbara Manzano ¶ 4, attached hereto as **Exhibit G**. The University's 2025-2026 Budget is unaffected by SB 266 or any changes made as a result. *Id.*

Further, decisions regarding allocations of funds amongst different departments at FIU are made holistically, and there is no dollar figure assigned to any department based on undergraduate enrollment numbers within that department. Gonzalez Decl. ¶ 3. Even if there was a decrease in enrollment within Plaintiffs' Departments in the future, this does not correlate to a loss of funding within that Department. Manzano Decl. ¶ 5. Enrollment at the Green School, which includes FIU's Department of Global and Sociocultural Studies and three degree granting programs that includes African and African Diaspora Studies Program, has been stable. Gonzalez Decl. ¶ 4. Even if it were not, there are several schools throughout FIU that do not generate enough tuition revenue to cover the costs needed to fund department research and activities. Manzano Decl. ¶ 5. In such cases, FIU adopts a funding model which subsidizes these costs. *Id.*

The number of teaching assistants assigned to work or teach within any department also does not depend on undergraduate enrollment. Gonzalez Decl. ¶ 4.

Instead, the allocation of teaching assistants to any particular department within the Green School is a function of the Graduate Program. *Id.* As of right now, there is actually more demand for teaching assistants within the Green School departments than there are teaching assistants available to satisfy the demand. *Id.* ¶ 5.

Plaintiffs Rahier and Marr have not submitted any request for funding to FIU. Accordingly, FIU has not denied Plaintiffs Rahier or Marr funding for their research as a result of SB 266, nor does it expect to. Russell Decl. ¶ 4; Gonzalez Decl. ¶ 7. And FIU does not prohibit faculty from self-funding or procuring private options to support their research. Russell Decl. ¶ 5.

Similarly to UF and FSU, FIU's post-tenure review process evaluates faculty performance over a five-year span. Russell Decl. ¶ 8. Generally, tenured faculty are expected to perform satisfactorily at: teaching; research, scholarship, or creative work; service; and other assigned responsibilities. *Id.* FIU too adheres to the Board of Governors Regulation 10.003. *Id*. The required portions of the post-tenure review materials submitted by the faculty member do not disclose whether courses taught by the faculty member carry general education designations. *Id*. ¶ 9. Nor would such disclosure carry any additional weight with respect to positive or negative considerations with respect to teaching performance. *Id.* Faculty members may submit option narratives discussing their research, teaching and service, which could provide context for the activities documents in the material submitted. *Id.* Plaintiffs

Queeley, Rahier and Marr would be free to discuss the removal of general education designations from their courses and describe the impact on their teaching. *Id.*

An inability to attend a conference would not undermine a faculty member's post-tenure review at FIU. *Id.* ¶ 10. While presenting at a conference is a measure of scholarly productivity and provides a venue for peer-to-peer intellectual exchange, research output is measured primarily through the production of peer-reviewed journal articles, books, book chapters or their intellectual equivalent as defined in each academic unit's post-tenure review research criteria. *Id.* ¶ 13. Not being able to attend a specific conference does not prevent Plaintiffs from advancing their scholarship through these written methods. *Id.* Further, if a faculty member attended fewer conferences overall, the faculty member could explain in the research narrative his or her belief that SB 266 limited the available public funding for his or her speaking opportunities. *Id.* ¶ 10. FIU does not interpret SB 266 as having any provisions which would preclude faculty attendance at conferences to present their research in their field of study. *Id.*

LEGAL STANDARDS

Standing is an "indispensable" part of the preliminary-injunction analysis and is not a mere pleading requirement. *Shen v. Simpson*, 687 F. Supp. 3d 1219, 1231 (N.D. Fla. 2023). Plaintiffs bear the burden of establishing standing for purposes of

a preliminary injunction. *Falls v. DeSantis*, 609 F. Supp. 3d 1273, 1281–82 (N.D. Fla. 2022).

Standing exists when a plaintiff shows (1) that they have suffered an injury-in-fact that is (2) traceable to the defendant and that (3) can likely be redressed by a favorable ruling. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992). And "where a plaintiff moves for a preliminary injunction, the district court . . . should normally evaluate standing 'under the heightened standard for evaluating a motion for summary judgment.'" *Waskul v. Washtenaw Cnty. Cmty. Mental Health*, 900 F.3d 250, 255 n. 5 (6th Cir. 2018) (quoting *Food & Water Watch, Inc. v. Vilsack*, 808 F.3d 905, 912 (D.C. Cir. 2015)). Thus, "a plaintiff cannot 'rest on such mere allegations, but must set forth by affidavit or other evidence specific facts, which for purposes of the summary judgment motion will be taken to be true.'" *Cacchillo v. Insmed, Inc.*, 638 F.3d 401, 404 (2d Cir. 2011) (some alteration in original) (quoting *Lujan*, 504 U.S. at 561).

"[A] plaintiff must demonstrate standing for each claim he seeks to press and for each form of relief that is sought." *LaCroix v. Lee Cnty.,* 819 F. App'x 839, 841 (11th Cir. 2020) (alteration in original) (quoting *Davis v. Fed. Election Comm'n*, 554 U.S. 724, 734 (2008)). A Court can only grant a plaintiff's preliminary injunction motion with respect to those provisions for which the plaintiff has

standing. *See CAMP Legal Def. Fund, Inc. v. City of Atlanta*, 451 F.3d 1257, 1271–72 (11th Cir. 2006).

A preliminary injunction[1] is appropriate only when the moving party can show that: (1) "it has a substantial likelihood of success on the merits"; (2) it will suffer "irreparable injury" unless an "injunction issues"; (3) this "threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party"; and (4) "the injunction would not be adverse to the public interest." *Otto v. City of Boca Raton, Fla.*, 981 F.3d 854, 860 (11th Cir. 2020). "A preliminary injunction is an extraordinary and drastic remedy and should not be granted unless the movant clearly establishes the burden of persuasion as to each of the four prerequisites." *FF Cosmetics FL, Inc. v. City of Miami Beach*, 866 F.3d 1290, 1298 (11th Cir. 2017) (quotations omitted).

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[1] The Boards of Trustees' Response in Opposition to the Motion addresses whether Plaintiffs have standing to seek a preliminary injunction as to the Boards of Trustees and whether Plaintiffs will suffer irreparable harm unless an injunction issues. The Board of Trustees note that Plaintiffs appear to assert their First Amendment "Viewpoint Discrimination" claim only as to the funding provision in their Complaint for Declaratory and Injunctive Relief. *See* ECF No. 1 ¶¶ 123-26. Yet their Motion and Complaint are replete with allegations of harm and injury that appear to exceed their purported vagueness and overbreadth challenges. *See* ECF No. 23 at 8-12. Accordingly, the Boards of Trustees address Plaintiffs' lack of standing and irreparable injury as to both funding and general education provision. As to the other merits of Plaintiffs' request for a preliminary injunction, the Boards of Trustees joins in and incorporates the arguments set forth in the Board of Governor's Response in Opposition to the Motion, ECF No. 38, as if set forth fully herein.

The irreparable harm inquiry is a critical component of the preliminary injunction analysis and is considered the "*sine qua non* of injunctive relief." *Ne. Fla. Chapter of Ass'n of Gen. Contractors of Am. v. Jacksonville, Fla.*, 896 F.2d 1283, 1285 (11th Cir. 1990). Proof of irreparable harm is an indispensable prerequisite to a preliminary injunction analysis, and where a party fails to carry the burden as to irreparable harm, it is "unnecessary to address the other prerequisites to such relief." *United States v. Jefferson County*, 720 F.2d 1511, 1519 (11th Cir. 1983); *see Ne. Fla. Chapter of Ass'n of Gen. Contractors*, 896 F.2d at 1285 (noting that the court did not need to address each element of the preliminary injunction analysis because it concluded that no showing of irreparable injury was made); *see also Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000) (stating that "the absence of a substantial likelihood of irreparable injury would, standing alone, make preliminary injunctive relief improper"); *see also Canal Auth. of Fla. v. Callaway*, 489 F.2d 567, 574 (5th Cir. 1974) (stating that "where no irreparable injury is alleged and proved, denial of a preliminary injunction is appropriate").

ARGUMENT

Plaintiffs cannot distinguish their claims or alleged harms from the plaintiff professors in *NFC*. In fact, their alleged injuries are the same—inability to teach a general education courses despite the course still being offered as an elective or upper-level course; fear of discipline for certain speech despite the lack of provisions

directed to their conduct or speech; and an unsubstantiated fear of loss of tenure. The same speculative evidence warrants the same response.

Even if Plaintiffs could cobble together a harm that is concrete, it is not traceable to the Boards of Trustees. The Boards of Trustees ultimately does not have the authority to determine the general education status of a course. The general education provision leaves that power in someone else's hands. Further, Plaintiffs cannot avoid the speculative nature of their injuries which is fatal to their Motion. There is no evidence showing that the absence of an injunction will leave Plaintiffs irreparably injured. While the Court did not have an opportunity to face this question in *NFC*, the ultimate outcome is the same—the Motion should be denied.

As a preliminary matter, Plaintiff Katie Rainwater, a FIU Plaintiff, has not submitted any evidence in support of the Motion. To the extent she requests a preliminary injunction against the Boards of Trustees, her request should summarily be denied as to all provisions. *See NFC*, 700 F. Supp. 3d at 1063 (considering the standing of only the plaintiffs who have filed evidence in support of the motion).

Further, Plaintiffs Queeley and Goodman have only provided evidence in support of the Motion as to the general education provision. *See* Queeley Decl. (only discussing the alleged harms caused by the general education provision) and Goodman Dec. (same). Therefore, neither of them has submitted evidence in support of the Motion as to the funding provision and their request should be

summarily denied on that basis. *See NFC*, 700 F. Supp. 3d at 1063. Accordingly, because Plaintiff Goodman is the only professor from FSU, no injunction can issue as to the FSU Board of Trustees on the funding provision claim.

In addition to the Plaintiffs who did submit declarations, five other witness declarations were submitted. Two of the declarations were submitted by non-party UF faculty. *See* ECF No. 23-7, Smith Decl.; ECF No. 23-9, Adejumo Decl. These two non-party declarations filed by Plaintiffs theorize what might happen at UF and to UF—but not to Plaintiff Austin—under SB 266. *See id.* But UF is not a party Plaintiff; Plaintiff Austin sued UF. Any alleged speculative harm to UF—losing public funding, reducing research, and losing academic freedom in Florida's public universities, Smith Decl. ¶¶ 28–29—would be harm particular to the university.

Likewise, without harm of her own, Plaintiff Austin cannot support her standing based on the speculative impact of SB 266 on student education or finance. *See* Adejumo Decl. ¶¶ 26, 27, 29. To the extent these affidavits express their subjective fears over harm they will suffer if they cannot teach certain courses at UF due to SB 266, those affidavits are insufficient to support Plaintiff Austin's standing. *Burri Law PA v. Skurla*, No. CV-20-01692-PHX-DLR, 2021 BL 16850, at *4 (D. Ariz. Jan. 19, 2021) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)) ("Plaintiffs lack standing to assert the harm of a non-party as the basis for jurisdiction.") *vacated on other grounds*, 35 F.4th 1207 (9th Cir. 2022). Harm to

third parties provides no basis to support Plaintiff Austin's standing to sue UF. *Int'l Union, United Mine Workers of Am. v. Consol Energy Inc.*, 111 F.4th 1232, 1237 (D.C. Cir. 2024) (harm to "a non-party does not create the injury-in-fact required for Article III standing").

Two of the declarations were submitted by non-party students speculating about potential harms under SB 266. *See* ECF No. 23-6, Williams Decl.; ECF No. 23-8, Weilhammer Decl. Ms. Williams is a doctoral candidate at UF and Ms. Weilhammer is a law student at FSU College of Law. Williams Decl. ¶ 3; Weilhammer Decl. ¶ 3. Their declarations focus on the funding provision. Plaintiffs lack standing to sue on behalf of these students.

It is well-established that a litigant may not predicate its claim for relief on the legal rights or interests of third parties. *Warth v. Seldin*, 422 U.S. 490, 505 (1975). Third-party standing is permissible *only* when "(1) the relationship between the plaintiff and the third party is such that the plaintiff is nearly as effective a proponent of the third party's right as the third party itself, and (2) there is some obstacle to the third party asserting the right." *Knight v. State of Ala.*, 14 F.3d 1534, 1554 (11th Cir. 1994). Plaintiffs offer no evidence or argument that could support third-party standing on behalf of these students. Further, there are no obstacles to preclude these students from pursuing their own claims. *See id.* (rejecting university

plaintiff's attempt to sue on behalf of its students and faculty because there was no obstacle to the students and faculty asserting their rights for themselves).

The final declaration was submitted by non-party Nicole Morse. ECF No. 23-10, Morse Decl. Ms. Morse is an Associate Professor at the University of Maryland who was previously the Director of the Center for Women, Gender, and Sexuality Studies at Florida Atlantic University. Morse Decl. ¶¶ 4, 5. Ms. Morse has never attended, worked at, or been affiliated with UF, FSU, or FIU. Her assertion that she was suspended from hosting a program at Florida Atlantic University, a non-party, cannot form the basis of Plaintiffs claims or support their request for injunctive relief. Plaintiffs lack any relationship with Ms. Morse warranting third-party standing and any alleged harm Ms. Morse contends she suffered by Florida Atlantic University certainly cannot support any of Plaintiffs claims against the Boards of Trustees.

A. This Court Should Deny the Motion Because Plaintiffs Lack Standing to Challenge the General Education Provision

1. Plaintiffs Are Not Injured by the General Education Provision.

The alleged injuries asserted by Plaintiffs mirror those considered by the Court in *NFC* and that were found to be insufficient. *See NFC*, 700 F. Supp. 3d at 1065–66. A plaintiff's asserted free-speech injury—including self-censorship and chilled speech—must be objectively reasonable with respect to the challenged

provision. *Link v. Diaz*, 669 F.Supp.3d 1192, 1195 (N.D. Fla. 2023); *see also Am. Civil Liberties Union v. The Fla. Bar*, 999 F.2d 1486, 1492 n. 13, 1494 (11th Cir. 1993). The Eleventh Circuit has explained,

> [T]o determine whether a First Amendment plaintiff has standing, we simply ask whether the operation or enforcement of the government policy would cause a reasonable would-be speaker to self-censor—even where the policy falls short of a direct prohibition against the exercise of First Amendment rights. In making that assessment, the threat of formal discipline or punishment is relevant to the inquiry, but it is not decisive. The fundamental question under our precedent—as well as under the precedent of other courts that have decided similar "speech code" cases—is whether the challenged policy "objectively chills" protected expression.

Speech First, Inc. v. Cartwright, 32 F.4th 1110, 1120 (11th Cir. 2022) (cleaned up).

Here, there is no evidence that Plaintiffs' speech has been injured. This Court has interpreted the general education provision and held that "[n]othing in either section 1007.25 or section 1007.55 is directed at individual professors." *NFC*, 700 F. Supp. 3d at 1066. Instead, the general education provision is directed at state actors. *Id.* The statute remains unchanged since this Court last addressed SB 266.

Further, Plaintiffs are permitted to teach their courses at their respective universities in the same manner as they have done in the past. Plaintiffs may use the same syllabi. Plaintiffs may use the same modules. Plaintiffs have not identified a single SB 266 restriction that dictates what Plaintiffs may say in the course of their classroom instruction. *See also* Kistner Decl. ¶ 8 ("Dr. Goodman raised additional

concerns about whether some of the other courses that she currently teaches, ones that are not part of FSU's general education curriculum, might violate SB 266 and possibly lead to disciplinary action against her. Related to these concerns, I note that SB 266 focuses only on general education courses").

The *only* difference between Plaintiffs' teaching in the past and Plaintiffs' teaching in the 2025-2026 term will be that Plaintiffs' courses are no longer classified as State required general education courses. That is their alleged injury—the lost opportunity to teach general education courses. Yet, this Court has already recognized that "professors do not have a constitutional right to teach general education courses." *NFC*, 700 F. Supp. 3d at 1066. Plaintiffs' "injury" lacks any grounding in the Constitution. Just like the professors in *NFC*, Plaintiffs simply have not suffered an invasion of a legally protected interest by having their courses reclassified. *Id.*

Perhaps recognizing the weakness in their alleged injury, Plaintiffs assert a parade of horribles that will surely befall them if they are not permitted to teach State required general education courses. First, if Plaintiffs do not teach general education courses, the enrollment in their courses (which they are still permitted to teach) "*will likely*" decrease and be at risk of cancellation. Motion, ECF No. 23 at 9 (citing Austin Decl. ¶ 9; Goodman Decl. ¶¶ 25–26; Marr Decl. ¶¶ 30–31; Queeley Decl. ¶¶ 30–32). Next, *if* enrollment decreases, Plaintiffs will teach less classes; and *if* they

teach less classes, they will individually earn less income, and their departments will earn less revenue. Motion, ECF No. 23 at 9, 32 ("Entire departments risk elimination from decreased revenue"); Austin Decl. ECF ¶ 43 ("If I am only able to teach during the fall and spring, I will not earn this extra income"). Then, *if* Plaintiffs teach less classes, there could be "punitive consequences to their tenure status or contract," resulting in again, less income, or loss of employment. Motion, ECF No. 23 at 32. Put mildly, Plaintiffs' alleged additional injuries are pure conjecture. While Plaintiffs may genuinely harbor these fears, they are not objectively reasonable. *See NFC*, 700 F. Supp. 3d at 1069–70.

First, the majority, if not all, of the courses Plaintiffs are teaching are still classified as courses that satisfy requirements at their respective universities. Thus, students are incentivized to take these courses. For example, at UF, university students are required to take one Quest 1 class and one Quest 2 class. Lord Decl. ¶ 2. Plaintiff Austin's two courses at issue in this litigation are Quest courses, and therefore within the category of university courses that meet graduation requirements. *Id.* Similarly, at FSU, Plaintiff Goodman's one course at issue in this litigation meets several of FSU's graduation requirements. Kistner Decl. ¶ 3. Likewise, at FIU Plaintiffs Queeley's, Rahier's and Marr's courses can be offered as electives or be required courses in either their home or other departments. Russell Decl. ¶ 3.

There is no evidence that any course will in fact have a decreased enrollment or be cancelled due to the lack of State general education status. *See, e.g.,* Russell Decl. ¶ 3 ("It is too soon to predict that the loss of general education designation for any of Plaintiffs' respective courses will lead to a decline in enrollment since the new general education requirements do not go into effect until AY 2025-2026"). Further, there are a myriad of reasons why students may or may not enroll in a course, such that any fluctuation in enrollment cannot be tied to SB 266.

For example, Plaintiff Queeley avers that one of her courses experienced a drop in enrollment, from typically 30 students to 6 students, such that the course was ultimately cancelled for the Spring 2025 term. Queeley Decl. ¶ 28. This decreased enrollment occurred *while the course was being offered as a general education course and before the application of SB 266*. *Id.* Clearly, SB 266 could not be the proverbial culprit. Gonzalez Decl. ¶ 6 ("The removal of the general education designation is effective Fall 2025; therefore, the drop in enrollment [for The Anthropology of Race and Ethnicity] occurred prior to the decision to remove this course from the general education curriculum"). Plaintiffs' fears regarding course enrollment are too speculative to be a concrete injury.

Finally, and similar to the *NFC* professors, Plaintiffs allege that the general education provision will negatively impact their post-tenure review. *NFC*, 700 F. Supp. 3d at 1069 ("Plaintiffs suggest that tenure decisions are now in jeopardy based

on whether professors run afoul of the general education requirements."). That is simply not the case and there is no evidence to support this fear. Plaintiffs can point to no evidence that they will face disciplinary action as a result of the general education course change or for their speech in courses that are not general education during the post-tenure review.

To the contrary, for Plaintiff Goodman, who is already in her post-tenure review process, which is expected to conclude in May 2025, she cannot claim any harm from SB 266. Kistner Decl. ¶ 7. At UF, FSU and FIU, the required materials that professors submit to the post-tenure review committee do not disclose whether courses taught are or are not general education courses. *Id.* ¶ 5; Knudson Decl. ¶ 4; Russell Decl. ¶ 9. Professors are permitted to provide an optional narrative if they feel that SB 266 had any impact on their teaching that they would like to share. Kistner Decl. ¶ 6; Knudson Decl. ¶¶ 4-5; Russell Decl. ¶ 9.

The utter absence of regulations and evidence showing that Plaintiffs will face any consequences as a result of their speech is utterly lacking. In fact, the Legislature has recently changed the way tenure works in Florida, *see* Fla. Stat. § 1001.706(6)(b), and the Board of Governors has explicitly prohibited considering a professor's viewpoint while conducting post-tenure review. *See* Board of Governors Regulation 10.003(3)(b). Plaintiffs' subjective fears fail to carry their burden as to

standing. As Plaintiffs have not been injured by the general education provision, the Motion should be denied.

2. Plaintiffs' Alleged Injuries Are Not Traceable to the Boards of Trustees

Plaintiffs cannot establish that any alleged injury was a result of the Boards of Trustees' actions. "To show that an injury is traceable to a defendant, a plaintiff must allege a plausible causal chain between the defendant's action and the resulting harm." *W. Flagler Assocs. Ltd. v. DeSantis*, 568 F. Supp. 3d 1277, 1283 (N.D. Fla. 2021). "An injury is not traceable to the defendant if an independent source would have caused the plaintiff to suffer the same injury." *Id.* (cleaned up). Plaintiffs have not shown traceability because they have not shown a "plausible casual chain between any enforcement of the law" by the Boards of Trustees and their purported injuries of loss of general education status or self-censorship. *See M.A. v. Fla. State Bd. of Educ.*, No. 4:22-CV-134-AW-MJF, 2023 WL 2631071, at *3 (N.D. Fla. Feb. 15, 2023).

Take, for example, the scenario in *Wood v. Fla. Dept. of Educ.*, 729 F. Supp. 3d 1255, 1285 (N.D. Fla. 2024) (Walker, C.J.), where a plaintiff was prohibited by a law from using her preferred personal pronouns with students and the law provided an express punishment for the teacher violating the law, including revoking a teaching license. Here, there is no punishment against Plaintiffs. That's because the Boards of Trustees are not enforcing the general education provision against the

Plaintiffs. On its face, SB 266 does not provide any enforcement mechanism against any individual professor, much less a punishment; the provision is directed at, and enforced against, the universities. Fla. Stat. § 1007.25.

Since the law does not regulate Plaintiffs, they must show more to support traceability. *Lujan*, 504 U.S. at 562 ("When . . . a plaintiff's asserted injury arises from the government's allegedly unlawful regulation (or lack of regulation) of *someone else,* much more is needed. In that circumstance, causation and redressability ordinarily hinge on the response of the regulated (or regulable) third party to the government action or inaction—and perhaps on the response of others as well."); *see also Warth*, 422 U.S. at 505 (explaining that when a statute imposed on one party causes indirect harm to a third party it is "substantially more difficult to meet the minimum requirement of Art. III: to establish that, in fact, the asserted injury was the consequence of the defendants' actions, or that prospective relief will remove the harm").

The Boards of Trustees are merely ensuring that *they* are in compliance with *their obligations* under State law as to the general education provision. Under the general education provision, the Boards of Trustees are tasked with "perform[ing] their own course reviews." *NFC* 700 F. Supp. 3d at 1066. That's it. And Plaintiffs' own evidence demonstrates that the Boards of Trustees attempted to assist Plaintiffs

in keeping courses as general education, rather than removing them. *See, e.g.,* Austin Decl. ¶¶ 29-35; Queeley Decl. ¶ 22.

Plaintiffs' real problem is not with the Boards of Trustees, but with the existence of SB 266 itself. *See, e.g., W. Flagler*, 568 F. Supp. 3d at 1285 (finding lack of traceability where "the Parimutuels are not harmed by the Secretary's ability to monitor the Tribe's casino or submit audit reports to the State. The plaintiffs' real problem is with the Compact itself—its existence—and the economic consequences that its passage…will visit on their businesses. None of that, though, appears to be due to any past, present, or likely future conduct of the Secretary.") (quotations omitted). Accordingly, there is no causal link as to the Boards of Trustees.

B. This Court Should Deny the Motion Because Plaintiffs Austin, Rahier and Marr Are Not Injured by the Funding Provision and therefore Lack Standing

In *NFC*, this Court harbored concerns regarding whether the professor plaintiffs could demonstrate that their asserted injuries as to the funding provision were objectively reasonable. *NFC*, 700 F. Supp. 3d at 1071. The same concerns exist here. When the Court decided *NFC,* the professor plaintiffs' challenges were pre-enforcement and pre-regulation. The Board of Governors has now promulgated Regulation 9.016, but it is only Plaintiff Austin that challenges the funding provision from a post-enforcement posture. UF declined to use public funds to pay for Plaintiff Austin's trip to a conference as part of her employment. Plaintiffs Rahier and Marr

challenge the funding provision from a pre-enforcement posture, just as the plaintiffs in *NFC*. 700 F. Supp. 3d at 1063. Regardless of the enforcement posture, the outcome is still the same—there is no evidence that Plaintiffs' speech has been injured.

The funding provision does not harm Plaintiffs' speech—it does not govern it at all. Plaintiffs Austin, Rahier and Marr are free to attend conferences and speak on the topic of their choice; the university simply cannot use public funds for attendance within the limits of SB 266. Recognizing this, Plaintiffs argue that they have lost "funding and opportunities to engage in valuable and irreplaceable research, conduct peer review, learn about emerging trends in their fields, and engage in networking opportunities with other professionals." Motion, ECF No. 23 at 2. Notably absent from that list is any interest founded in the Constitution. That is because this is not about free speech; it is about Plaintiffs' career aspirations. Plaintiffs appear to possess an unfounded fear that their career will not materialize in the manner they would like and that it will be held against them. Just as the Plaintiffs are free to teach their desired courses irrespective of the general education provision, Plaintiffs are free to conduct their research and scholarship irrespective of the funding provision.

For example, Plaintiff Austin's entire claim is premised on UF's decision to not fund one trip to a conference. Austin Decl. ¶ 47. She theorizes that if she cannot

attend the conference, her research and scholarship will suffer which, in turn, will adversely affect her tenure. Notably, UF did not prevent Plaintiff Austin from attending the conference or speaking at the conference. She was never ordered to not attend; she was not advised that if she attended there would be consequences. Instead, Plaintiff Austin *chose* not to attend because UF would not pay for her attendance. No injury attaches to Plaintiff Austin's decision not to attend this conference.

Further, the absence of attendance at a single conference would not undermine Plaintiff Austin's, or any Plaintiffs', post-tenure review. Knudson Decl. ¶ 5. And if Plaintiff Austin attended fewer conferences overall, she could explain in her research narrative that SB 266 limited the public funding available for her speaking opportunities. *Id.* BOG Policy #1-005 prohibits the post-tenure review committee to even consider matters such as political opinion, expressive viewpoint, and ideological beliefs during the post-tenure review period. *Id.* at ¶ 6. Thus, if Plaintiff Austin's public funding for a conference was limited because it was related to a political opinion or viewpoint, that fact would be irrelevant during her post-tenure review process. Finally, while presenting at a conference is a measure of given scholarly productivity, research output is measured primarily through the production of peer reviewed journal articles, books, book chapters or their intellectual equivalent. *Id*. at ¶ 7. Plaintiff Austin can still advance her scholarship through

these written methods or other methods. *Id.* The resulting peer review provides the means to produce sound and rigorous scholarship. *Id.*

The other Plaintiffs, Plaintiffs Rahier and Marr, piggyback on Plaintiff Austin's alleged harm, asserting their own subjective fears that they will suffer a lack of funding and be unable to attend conferences at the taxpayers' expense, bring certain speakers to campus, or hire research assistants, which could all have downstream impacts on their tenure review. Rahier Decl. ¶¶ 29–31; Marr Decl. ¶¶ 38–45.[2] In short, Plaintiffs Austin's, Rahier's and Marr's "theory requires quite a chain of 'maybes.'" *Int'l Union, United Mine Workers*, 111 F.4th at 1236.

"Maybe" the conference they wish to speak at will advocate for DEI. And "maybe" they will be unable to receive questions and feedback on their research if they decide not to attend the conference and present their research. If they are unable to develop their research in other manners than attending this conference, or inviting this speaker, or hiring this research assistant, "maybe" they will have a weak tenure packet. "Maybe" the post-tenure review committee will not accept their explanation

[2] Tellingly, Plaintiff Marr's department ultimately received funding for the speaker event he highlights in this declaration. Russell Decl. ¶ 6. And the research assistants that Plaintiff Marr fears losing are working on a research project that privately funded. *Id.* ¶ 5. FIU is not aware of any current or future plans by Dr. Marr or any other Plaintiff to hire student researchers for which they might be denied funding. *Id.* Similarly, FIU is not aware of any plans by any Plaintiffs to invite guest speakers from their respective fields of study for which the University would deny them funding. *Id.* ¶ 6.

that there was a lack of public funding available for certain meetings or conferences. "Maybe" the post-tenure review committee will not follow the guidance of BOG Regulations that prevent them from considering that it was perhaps their subject matter that prevented the public funding. And worst of all, "maybe" that the tenure review committee will hold all of this against them and rescind their tenure. Just maybe.

Plaintiffs Austin, Marr and Rahier are unable to sustain their standing burden. They have not shown that the continued application of SB 266 to UF or FIU will harm them academically, professionally, or financially. SB 266 does not proscribe their speech, it prevents UF and FIU from using state funds under the limitations subscribed by SB 266. *Bd. of Cnty. Comm'rs, Wabaunsee Cnty., Kan. v. Umbehr*, 518 U.S. 668, 675 (1996) ("[T]he First Amendment does not create property or tenure rights, and does not guarantee absolute freedom of speech."). Plaintiffs Austin, Marr and Rahier can continue to advance their research and scholarship in a different manner to accomplish the same result. *See Am. Civil Liberties Union of Md., Inc. v. Wicomico Cnty., Md.*, 999 F.2d 780, 786 (4th Cir. 1993) (prison's "decision to withdraw from its special arrangement [permitting an ACLU paralegal to meet with prisoners in private] . . . may have inconvenienced Appellees, but it did not chill, impair, or deny their exercise of First Amendment rights" because the paralegal was still "free to visit with inmates in secure, non-contact meeting rooms,"

which was "all that [the prison] provide[d] to any paralegal or other non-professional visitor").

C. The Motion Should be Denied Because Plaintiffs' Will Not Suffer Irreparable Harm

Plaintiffs will not face irreparable harm absent an injunction. Plaintiffs must clearly establish imminent harm that only the issuance of an injunction can avoid. *Ne. Fla. Chapter of Ass'n of Gen. Contractors of Am.*, 896 F.2d at 1285. A mere possibility of future harm is not enough. The chief function of preliminary injunctions "is to preserve the status quo until the merits of the controversy can be fully and fairly adjudicated." *Id.* at 1284; *see Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981); *All Care Nursing Serv. v. Bethesda Mem'l Hosp., Inc.*, 887 F.2d 1535, 1537 (11th Cir. 1989). Irreparable injury "must be neither remote nor speculative, but actual and imminent." *SME Racks, Inc. v. Sistemas Mecanicos Para, Electronica, S.A.*, 243 F. App'x 502, 504 (11th Cir. 2007) (per curiam).

As discussed *supra* at pages 21-27 and 29-34, Plaintiffs' alleged harms are entirely speculative. As to the general education provision, there is no evidence that Plaintiffs: cannot teach their desired courses as an elective or upper-level course; the enrollment in their courses will decrease, let alone such that the courses will be cancelled; their departments will have decreased revenues; their post-tenure review will suffer; or that they will experience any negative consequences.

Similarly, as to the funding provision, there is no evidence that Plaintiffs Austin, Marr or Rahier cannot attend any and all conferences or professional meetings they wish; cannot develop their research or scholarship; or will suffer negative consequences in the post-tenure review process. The current status quo does not harm, yet alone imminently harm Plaintiffs. The Court must undertake imaginative leaps and bounds to transform Plaintiffs' subjective fears into an actual and imminent injury. The record simply belies any notion that Plaintiffs will suffer irreparable harm. Therefore, Plaintiffs are not entitled to an injunction. *Ruffin v. Great Dane Trailers*, 969 F.2d 989, 995 (11th Cir. 1992) ("An injunction is inappropriate if the possibility of future harm to the plaintiff arising out of the behavior plaintiff seeks to enjoin is purely speculative.").

Even if the Court did construe Plaintiffs' alleged injuries to implicate the First Amendment, the injury flowing from the violation must constitute a "direct penalization" of the First Amendment for an automatic finding of irreparable injury. *Floridians Protecting Freedom, Inc. v. Ladapo*, Civ. A. No. 4:24-cv-419, 2024 WL 4518291, at *5 (N.D. Fla. Oct. 17, 2024) (Walker, C.J.). "Incidental inhibition of First Amendment rights" is insufficient. *See id.* Here, there is no direct penalization. *See e.g., id.* (finding irreparable injury where "Defendant is threatening to prosecute anyone that continues to broadcast Plaintiff's political speech"); *Wood,* 729 F. Supp. 3d at 1285 (finding plaintiff suffered an "unconstitutional direct penalization of

protected speech" where she was prohibited from using her personal pronouns, and if she did, such violation was grounds for discipline). This Court has previously held that nothing in the general education provision is directed at individual professors, such as Plaintiffs, *NFC*, 700 Supp. 3d. at 1066, and the same is true of the funding provision. At the absolute worst, any alleged impairment on speech—which the Boards of Trustees contends has not occurred here—is incidental at best. Accordingly, there is no basis for a finding of irreparable injury.

CONCLUSION

In deciding *NFC,* the Court laid out a clear roadmap for a future plaintiff: "a plaintiff could point to a law that directly targets them with disciplinary action—and thus, results in their chilled speech;" (2) "in the absence of some law that directly targets their speech, a plaintiff could point to an implementing regulation—like the plaintiffs did in *Pernell* [*v. Fla. Bd. of Govs. of State Univ. Sys.*, 641 F. Supp. 3d 1218 (N.D. Fla. 2022)]—that enforces a challenged statute and orders the decisionmakers to punish violators, and thus, results in chilled speech;" or (3) "in the absence of either a statute that directly targes the plaintiff's speech or a regulation that orders punishment for speech in violation of state law, a plaintiff could point to other evidence that the defendants intend to enforce the statute at issue against their speech in the very manner that they fear." *NFC*, 700 F. Supp. 3d at 1075–76. Plaintiffs here have identified none of those things.

The general education and funding provisions do not target individual professors and their speech. The general education and funding provisions do not order the Boards of Trustees to punish Plaintiffs for their speech. There is no evidence that the Boards of Trustees intend to enforce the general education and funding provisions against Plaintiffs' speech in the manner that they fear—negatively impacting their post-tenure review. Despite the Court's clear guidance, the Plaintiffs' recycled *NFC* claims "do not move the needle." *Alachua Cnty. Educ. Ass'n v. Carpenter,* 741 F. Supp. 3d 1202, 1222 (N.D. Fla. 2024) (Walker, C.J.). The evidence in this case warrants the same response as the evidence in *NFC*, a denial for lack of standing.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(F)

I hereby certify that this Response in Opposition to Plaintiffs' Motion for Preliminary Injunction contains 8,953 words, excluding the parts of the document omitted by the rule, which is less than the 11,200 word limit. *See* ECF No. 32.

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