

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION**



favor.” *Ur qmgq. 'Kpe0x0T qdkpu*, 578 U.S. 330, 338 (2016). Defendant directly contests only whether plaintiffs identified an injury in fact.<sup>1</sup>

Plaintiffs properly identify an injury in fact when their allegations show they “suffered an invasion of a legally protected interest that is concrete and particularized and actual or imminent, not conjectural or hypothetical.” *I gqti k' Cuuqe0' qh' Nc vkpq "Grgevgf "QHkcknu. "Kpe0 (“I CNGQ”) x0'I y kppgw' Eqwv\ "Df 0' qh' Tgi km cvkq" cpf "Grgevkpu*, 36 F.4th 1100, 1114 (11th Cir. 2022) (internal citation omitted). Individual plaintiffs and Florida Rising have made this showing.

**A. Plaintiffs Sufficiently Plead a Legally Protected Interest in a Free and Fair Electoral Process Underlying the Right to Vote.**

An injury is legally cognizable if it “is protected by statute or otherwise.” *Eqz' Ecdrg'Eqo o epu. 'Kpe0x0Wpkgf 'Uc vgu*, 992 F.2d 1178, 1182 (11th Cir. 1993). In other words, “a legally protectable interest...derives from a legal right.” *O v0J cy rg\ 'Kpu0' Eq0x0Uc p\ { 'Ncng' Rtqr gt vku. 'Kpe0* 425 F.3d 1308, 1311 (11th Cir. 2005).

The fundamental right to vote is a well-established legally protected right. *Tg\pqf u'x0Uko u*, 377 U.S. 533 (1964). That right necessarily includes a right to a free and fair electoral process that extends beyond merely protecting the right }

a



in the electoral process. Defendant's argument to the contrary would render hollow the right to vote and convert the American electoral process into the type of meaningless performative exercise conducted by authoritarian regimes.

In *Vannoy v. State of Illinois*, the Illinois Supreme Court analyzed the after-election impact on the right to vote of a law that truncated the terms of trustees of the Board of Trustees of the University of Illinois by changing their positions, mid-term, from elected to appointed. 664 N.E.2d 43, 45 (Ill. 1996). Plaintiff sued under the state constitution, alleging the act violated the right to vote because reducing their terms after their elections amounted to a “‘post-hoc’ negation of his right to vote.” *Id.* at 46. The Illinois Supreme Court, employing strict scrutiny, agreed: “It strains logic to suggest that the right to vote *is* implicated by legislation that prohibits a citizen from casting a vote or from having that vote counted, but *is not* implicated by legislation that, in effect, deprives that same vote of its natural and intended effect.” *Id.* at 48 (emphasis in original). The court found the legislation unconstitutional, finding it

installation of his handpicked political ally. In either case, the Governor’s action “deprives that same vote of its natural and intended effect.” *Kat* 48.

This makes sense, because the right to vote encompasses more than just the right to cast a ballot. *Ugg'Tg{pqrf u'x0'Uko u.* 377 U.S. 533, 555 (1964) (the right of suffrage can be denied by a debasement or dilution of the weight of a citizen’s vote just as effectively as by wholly prohibiting the free exercise of the franchise.”); *ugg" cnuq."gQ 0"O kpp0'Xqvgt u"Cmkpeg"x0'Tkøj kg,* 720 F.3d 1029, 1031 (8th Cir. 2013) (noting the right to have one’s vote counted without dilution).

Thus, contrary to Defendant’s assertion (Def.’s Mot. to Dismiss 4), Plaintiffs’ legal, Pla , Pla , Plaa la M€ ht to vote M ht to have

Texas’s filing-fee scheme because the scheme “had a real and appreciable impact on the exercise of the franchise . . . .”).

**B. Individual Plaintiffs’ Injury is Sufficiently Particularized.**

“Harms specified by the Constitution,” including infringement of the right to vote, constitute concrete harm. *See TransUnion LLC v. Ramirez*, 594 U.S. 413, 425 (2023) (concrete harm for Article III standing “may also include harms specified by





effective vote and threatens the integrity of the state’s democratic system.”). In such cases, courts have recognized plaintiffs distinctly suffer constitutionally cognizable harm. *Ugg. "g0 0 Lceqduqp x0Hrc0Uge} "qhUxcvg*, 974 F.3d 1236, 1246 (11th Cir. 2020) (finding in case involving challenge to the order of appearance on ballots that voters “have an interest in their ability to vote and in their vote being given the same weight as any other.”); *ugg"cnuq"Wpkvgf "Ucvgu"x0J c{u*, 515 U.S. 737, 744-45 (1995) (noting that a plaintiff residing in a racially gerrymandered district has “been denied equal treatment because of the legislature’s reliance on racial criteria, and therefore has standing to challenge the legislature’s action.”); *Fcxku"x0Dcpgogt*, 478 U.S. 109, 133 (1986) (plurality opinion) (noting courts may find a constitutional violation where “the electoral system substantially disadvantages certain voters in their opportunity to influence the political process effectively.”). As such, Plaintiffs assert “a plain, direct, and adequate interest in maintaining the effectiveness of their votes.” *Dcngt*, 369 U.S. at 208 (internal citations omitted).

**C. Florida Rising Has Both Associational and Organizational Standing.**

**i. Florida Rising Has Established Associational Standing.**

In addition to attempting to challenge Florida Rising’s associational standing based on a challenge to the standing of its members, Defendant argues Plaintiffs failed to identify specific members. Def.’s Mot. to Dismiss 9, ECF No. 58. The

L

<sup>a</sup>

M



diverted significant resources, including staff hours, into addressing the fallout. Am. Compl. ¶¶ 75-83. Moreover, the complaint alleges facts about their organizational mission and core business activities, and states the suspension of Ms. Worrell directly interfered with their core business activities because they required Florida Rising to develop new ways to engage voters and encourage participation in the electoral process. Am. Compl. ¶¶ 5, 11, 13, 16, 18, 57-58. Defendant's suspension of Ms. Worrell, an elected official who championed

showing the defendant's actions "directly affected and interfered with" a plaintiff's core business activities. *Id.* at 395.

Indeed, since the Court decided *All. for Hippocratic Med.*, at least one district court found the decision did not impact the organizational standing of the League of Women Voters of Ohio.

from core functions. As mentioned *in* *Wright*, the Governor’s suspension of Ms. Worrell directly interferes with Florida Rising’s mission of empowering marginalized voters so they can effectuate change through voting and engaging in the democratic process, establishing direct standing.

## **II. Plaintiffs Have Stated Claims for Relief Warranting Review.**

### **A. Plaintiffs Plausibly Allege a Violation of Substantive Due Process Rights.**

Plaintiffs have sufficiently alleged a violation of their substantive due process rights under the Fourteenth Amendment. Am. Compl. ¶¶107-118. A substantive due process violation occurs when “state officials . . . seriously undermine the fundamental fairness of the electoral process.” *Fry v. City of New York*, 501 U.S. 85, 100 (1991).

In *Fwpecp*









Defendant violated their First Amendment right to association when he suspended Ms. Worrell—not for legitimately disqualifying reasons under state law, such as malfeasance in office, but rather for reasons tied directly to the ideological and political preferences of the voters who elected her.

In a similar context, the Supreme Court found a local union’s removal of an elected business agent chilled the free speech rights of the union members who voted for him by denying them the representative of their choice. *Uj ggv'O gxcn'Y qt ngt uo' KpvnlCuuo'xONl pp*, 488 U.S. 347, 355 (1989).

To begin with, when an elected official ...is removed from his post, the union members are denied the representative of their choice.... Furthermore, *vj g'r qvkvnc'nej kiki "ghgev'qp Vkvng'Kt gg'ur ggej 'tki j u'ku" o qtg'rt qpwpegf 'y j gp'grgevgf "qhtekcn'ctg'fkuej cti gf OPqv'qpn' 'ku'vj g" Ht gf "qhtekcn'rkngn' "v"dg'ej kvngf "p"vj g"gzgtekug'qh'j ku'qy p"lt gg'ur ggej " tki j u. 'dw'luq'ctg'vj g'o go dgtu'y j q'xqvgf 'lqt 'j ko '0000"*

*K'O*(emphasis added)"While *Nl pp* is not a First Amendment case, Supreme Court precedent suggests First Amendment free speech restrictions require greater justifications and are more stringent than Title I of the Labor Management Reporting and Disclosure Act (LMRDA). *Ugg'Wpkvgf "Uggry qt ngt u'qh'Co O'CHN/EKQ/ENE"xO' Ucf rgy unk*, 457 U.S. 102, 111 (1982).

**ii. Plaintiffs Plausibly Allege a Violation of Their Right to Expression.**

While the Eleventh Circuit and the Supreme Court have not directly addressed whether voting is either expressive conduct or core political speech, several circuits have held voting constitutes either political expression or expressive conduct. *Ugg."* *gO O"\ kkej "xO'Nqpi q*, 34 F.3d 359, 363 (6th Cir. 1994) (noting that voting on legislative resolutions that express political viewpoints “are simply the expression of political opinion.”); *O kngt "xO'Vqy p"qh'J wn"O cuuQ* 878 F.2d 523, 532 (1st Cir. 1989) (the act of voting by a member of a public agency or board “comes within the







irresponsibly,” *Mqdkg'x0Hkj kcp*, No. 2:12-CV-98-FTM-29DNF, 2013 WL 6498398, at \*3 (M.D. Fla. Dec. 11, 2013) (internal citation omitted).

The core principles of voters’ rights under the First and Fourteenth Amendment apply here with obvious clarity, and the Defendant’s abuse of power does not merit protections. Thus, Defendant is not entitled to qualified immunity.

**B. Sovereign Immunity Is Inapplicable as Plaintiffs Raise Federal Claims.**

The Governor’s assertion of sovereign immunity is similarly unavailing. As the Defendant concedes, federal courts can consider suits against state officers for violations of federal law. *O eErppf qp'x0I c0F grv0qh'Eo v'0J gcnj* , 261 F.3d 1252, 1256 (11th Cir. 2001) (*ekkpi "Gz"Rctvg"[qwpi* , 209 U.S. 123 (1908)). Despite this, Defendant invokes sovereign immunity by attempting to reframe Plaintiffs’ federal claims as state law claims. Def.’s Mot. to Dismiss at 12. But this Court need not look to the Defendant for Plaintiffs’ “gravamen”; Plaintiffs make clear the gravamen of their complaint is a violation of their federal constitutional rights. Defendant cannot invoke unwarranted protection by substituting his interpretation of the claims for Plaintiffs’. Accordingly, the Defendant is not entitled to sovereign immunity.

**IV. Plaintiffs Are Entitled to Punitive Damages.**

Finally, the Defendant’s efforts to evade punitive liability disregard the severity of his actions and the Plaintiffs’ minimal burden to prove them as such. Defendant concedes Plaintiffs may recover punitive damages upon showing

Defendant engaged in intentional or reckless conduct that violated Plaintiffs' federally protected rights. Def.'s Mot. to Dismiss 23; *Ub kj 'x0Y cf g*, 461 U.S. 30, 51 (1983) (“we are content to adopt the policy judgment of the common law—that reckless or callous disregard for the plaintiff’s rights, as well as intentional violations of federal law, should be sufficient to trigger a jury’s consideration of the appropriateness of punitive damages”). Yet, he contends Plaintiffs have not plausibly alleged such intentional conduct despite Plaintiffs having alleged—and a federal judge having concluded—that Defendant has demonstrated a pattern of intentionally nullifying election results he does not like. *Ugg. "g0 0 Am. Compl.* ¶¶ 91 (“Governor DeSantis has a history of targeting elected officials who disagree with him on policy positions”), 92 (“Governor DeSantis chooses which elections to negate through suspension based on the political leanings of the prevailing candidate”), 94 (a federal judge found Defendant’s suspension of another state attorney was motivated solely by political and ideological reasons), 95-101 (Defendant has shattered norms with several suspensions of elected officials of the rival political party who were not facing charges). These “actions transcended mere negligence and constituted callous indifference to [Plaintiffs’] federally guaranteed rights.” *J 0E0d{ "J gy gw'x0Lctt ctf*, 786 F.2d 1080, 1089 (11th Cir. 1986). Plaintiffs have clearly satisfied their burden of plausibly alleging an intentional deprivation of their constitutional rights (and, at a minimum, a reckless deprivation of those rights), notwithstanding Defendant’s



erroneous attempt to raise Plaintiffs' pleading burden. *Ugg. Ncpg'xORj kdlp*, 835 F.3d 1302, 1305 (11th Cir. 2016) (citing *Cuj etqh'xO'K dcn*, 556 U.S. 662, 678 (2009)) (“The allegations must be plausible, but plausibility is not probability.”).

### **CONCLUSION**

Plaintiffs' complaint alleges injuries-in-fact sufficient to establish Article III standing, and sufficiently pleads Plaintiff Florida Rising's associational and organizational standing. Further, the complaint adequately pleads valid claims supported by applicable legal principles. Moreover, the Governor is not entitled to qualified or sovereign immunity