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

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| DAVID CAICEDO; RAJIB CHOWDHURY; and FLORIDA RISING TOGETHER, INC.,<br><br>*Plaintiffs*,<br><br>v.<br><br>RON DESANTIS, individually and in his official capacity as Governor of the State of Florida,<br><br>*Defendant*. | **Case No. 6:23-cv-02303-WWB-RMN** |

**PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION TO DISMISS**

Plaintiffs' claims are fundamentally grounded in the right to an effective vote, a cornerstone of any democratic society that upholds a free and fair electoral process. As much as it is impermissible to remove a ballot from the box once it has been counted to alter the outcome, it is similarly unlawful for the Defendant to remove a duly elected official to substitute his own political preferences.

Plaintiffs have standing to bring this case as they have suffered direct and substantial injuries from the Governor's unconstitutional conduct. The complaint states claims for relief that warrant judicial review, highlighting the Governor's abuse of power and its chilling effect on voters. Moreover, the Governor is not

shielded by qualified or sovereign immunity, as his actions exceed the bounds of lawful authority and violate clearly established constitutional rights. Finally, given the egregious nature of the Defendant's conduct, which was intentional and aimed at suppressing the voters' will, Plaintiffs are entitled to punitive damages. As such, the Court should deny the Defendant's motion to dismiss.

## LEGAL STANDARD

A complaint survives Rule 12(b)(6) scrutiny if it contains factual allegations that on their face "raise a right to relief above the speculative level." *Bell Atlantic v. Twombly*, 550 U.S. 540, 555 (2007). Further, a court must "accept as true the facts as set forth in the complaint and draw all reasonable inferences in the plaintiff's favor." *West v. Warden*, 869 F.3d 1289, 1296 (11th Cir. 2017). Even where a court thinks it is improbable that plaintiffs will prove the facts alleged and that "recovery is very remote and unlikely," a well-pleaded complaint may still proceed. *Bell Atl. Corp.*, 550 U.S. at 556.

## ARGUMENT

### I. Plaintiffs Have Standing.

Article III standing requires plaintiffs to allege facts that plausibly show they have (1) "suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant and (3) likely to be redressed by a decision in the plaintiff's

favor." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). Defendant directly contests only whether plaintiffs identified an injury in fact.[1]

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." *Georgia Assoc. of Latino Elected Officials, Inc.* ("*GALEO*") *v. Gwinnett County Bd. of Registration and Elections*, 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." *Cox Cable Commc'ns, Inc. v. United States*, 992 F.2d 1178, 1182 (11th Cir. 1993). In other words, "a legally protectable interest…derives from a legal right." *Mt. Hawley Ins. Co. v. Sandy Lake Properties, Inc.*, 425 F.3d 1308, 1311 (11th Cir. 2005).

The fundamental right to vote is a well-established legally protected right. *Reynolds v. Sims*, 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 to cast

[1] Rule 3.01(f) of the Local Rules of the Middle District of Florida prohibits incorporation by reference in a motion. Thus, to the extent Defendant attempts to contest redressability via a footnote incorporating by reference a prior pleading, the Court should not consider that argument. If the Court considers Defendant's prior pleading, Plaintiffs respectfully request the Court consider their supplemental pleading regarding redressability. *See Pl.'s Suppl. Br. on Redressability,* ECF 50.

a ballot. *Moore v. Kusper*, 465 F.2d 253, 255 (7th Cir. 1972) ("Every citizen and voter has a right to fair election procedures."); *Baker v. Carr*, 369 U.S. 186, 208 (1962) (internal quotation omitted) (plaintiffs established standing by asserting "a plain, direct and adequate interest in maintaining the effectiveness of their votes."). An official, acting under color of law, is not immune from liability for election interference simply because they chose to wait until after the election was over to nullify the electoral result and impose their own political will over that of the voters. Whether the interference occurs mere months after the election and prior to the commencement of an elected official's term—like the attempted nullification of the presidential election of 2020 by an incumbent-but-defeated president and his confederates on and prior to January 6, 2021[2]—or midway through an elected official's lawful term of office—such as when Governor Ron DeSantis acted unlawfully, for political reasons, to remove Monique Worrell from office in this case—the constitutional injury to the voter is the same: a denial of the voter's substantive due process right to a free and fair electoral process and an abridgment of the voter's speech and associational rights, as demonstrated by their participation

[2] Count Four of the United States' August 1, 2023, indictment pending in the District of Columbia (Conspiracy Against Rights) charges former President Donald Trump with conspiring with others from November 14, 2020, through to January 20, 2021, to deprive persons of "a right and privilege secured to them by the Constitution and laws of the United States--that is, the right to vote, and to have one's vote counted." As detailed in that indictment, the conspiracy to deprive persons of their right to vote by negating the natural and intended effect of their vote includes many actions to subvert the vote that occurred months after states had already certified election results. *United States v. Trump*, No. 1:23-CR-257-TSC, ECF No. 1 (D.D.C. Aug. 1, 2023).

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 *Tully v. Edgar*, the Illinois Supreme Court analyzed the after-election-effect 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 "totally nullified" the votes cast by citizens. *Id.* at 49.

Here, there is no question that if the Governor acted before the election to block Ms. Worrell from taking office and instead installed his handpicked political ally, the right to vote would be implicated. The same holds true when the Governor acts post-election to affect a pretextual removal of Ms. Worrell, allowing for the

installation of his handpicked political ally. In either case, the Governor's action "deprives that same vote of its natural and intended effect." *Id.* at 48.

This makes sense, because the right to vote encompasses more than just the right to cast a ballot. *See Reynolds v. Sims,* 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."); *see also, e.g., Minn. Voters Alliance v. Ritchie*, 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' legally protected interest in a free and fair electoral process is not solely derived from Ms. Worrell's personal interest in holding on to her office. Rather, Plaintiffs have an independent interest in ensuring that the Defendant does not—for purely ideological and political reasons—subvert the democratic process by nullifying an American election and silencing the voices of the Plaintiffs who participated in it. *See Grizzle v. Kemp*, 634 F.3d 1314, 1321 (11th Cir. 2011) (internal citation omitted) ("[T]he Court has noted that 'the rights of voters and the rights of candidates do not lend themselves to neat separation; laws that affect candidates always have at least some theoretical, correlative effect on voters.'"); *see also Bullock v. Carter*, 405 U.S. 134, 142 (1972) (concluding that while "filing fees [for candidates for office are felt by aspirants for office rather than voters," voters still had standing to challenge

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 the Constitution itself."); *see also Bishop v. Bartlett*, 575 F.3d 419, 425 (4th Cir. 2009) (deprivation of right is a concrete harm.); *O'Hair v. White*, 675 F.2d 680, 688 (5th Cir. 1982) (appellant alleged injury in fact when she alleged violation of fundamental right to vote).

As this Court has already noted, "[t]he Supreme Court has long recognized that a person's right to vote is individual and personal in nature and voters who allege facts showing disadvantage to themselves as individuals have standing to sue as they have alleged a concrete and particularized injury." Order on Def.'s Mot. to Dismiss, ECF 51, 5 (quoting *GALEO*, 36 F.4th at 1114 (citations and quotations omitted). Accepting as true the facts set forth in the complaint and drawing all reasonable inferences in Plaintiffs' favor, *West v. Warden*, 869 F.3d 1289, 1296 (11th Cir. 2017), Defendant's unlawful suspension of Ms. Worrell invaded their legally protected interest in the legitimacy and natural political consequences of the electoral process in which they participated.

The Defendant cites distinguishable cases, like *Wood v. Raffensperger*, 981 F.3d 1307, 1314 (11th Cir. 2020), and *Becker v. Fed. Election Comm'n*, 230 F.3d 381, 384 (1st Cir. 2000). Those cases involved "generalized grievances" relating to such issues as the state's alleged failure to ensure the proper administration of elections; grievances that were "undifferentiated and common to all members of the public." *Wood*, 981 F.3d at 1314; *see also Becker*, 230 F.3d at 384. Conversely, here, Plaintiffs argue that because of their ideological and political preferences, Governor DeSantis treated them differently from other voters. Specifically, they allege DeSantis acted under color of state law to exact political retaliation against them by negating the effect and natural consequences of the electoral process in which they participated, diminishing their political speech and associational activity in favor of his own and that of his political allies, and thereby subverting an American democratic election. *See, e.g.,* Am. Compl., ECF No. 59 ¶¶ 87 ("Plaintiffs felt their vote was nullified when the Governor suspended their duly-elected official and replaced her with a person who did not share the progressive platform they supported."), 88 ("[Plaintiffs. . . express fear and concern about the undermining of the democratic process and its implications for future elections."), 90 ("[Plaintiffs] are concerned that voting for candidates with progressive policies in the future may inevitably lead to their suspension by Governor DeSantis."), 112 ("[The Defendant's] actions deprived the Plaintiffs. . . of their fundamental right to an

effective vote and threatens the integrity of the state's democratic system."). In such cases, courts have recognized plaintiffs distinctly suffer constitutionally cognizable harm. *See, e.g., Jacobson v. Fla. Sec'y of State*, 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."); *see also United States v. Hays*, 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."); *Davis v. Bandemer*, 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." *Baker*, 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 Eleventh Circuit, however, does not require a party suing as a representative to

"specifically name the individual on whose behalf the suit is brought." *Doe v. Stincer*, 175 F.3d 879, 884 (11th Cir. 1999). The Eleventh Circuit recently reaffirmed this principle, clarifying that its decision in *Ga. Republican Party v. SEC*[3] and the Supreme Court's decision in *Summers v. Earth Island Inst.*,[4] did not impose a requirement that an organizational plaintiff identify affected members by their legal names. *Am. All. for Equal Rts. v. Fearless Fund Mgmt., LLC* 103 F.4th 765, 773 (11th Cir. 2024). Since the Eleventh Circuit has rejected Defendant's interpretation of these cases, so too should this Court.

**ii. Florida Rising Has Demonstrated Organizational Standing.**

An organization can establish standing on its own behalf by satisfying the same three factors—injury, traceability, and redressability—as individual plaintiffs. *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 378 (1982).[5] An organization can establish injury under a diversion-of-resources theory by showing a defendant's illegal acts impaired its ability to conduct its business by "forcing the organization to divert resources to counteract those illegal acts." *City of S. Miami v. Governor*, 65 F.4th 631, 638 (11th Cir. 2023) (internal quotation omitted). Florida Rising alleges that after Defendant's suspension of Ms. Worrell, they

[3] 888 F.3d 1198 (11th Cir. 2018).
[4] 555 U.S. 488 (2009).
[5] Even if the Court found individual voters did not suffer a particularized injury, it could find Florida Rising pleaded a concrete and particularized injury sufficient to overcome a motion to dismiss. *See, e.g., Town of Chester v. Laroe Estates, Inc.*, 581 U.S. 433, 439 (2017).

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 criminal legal system reform and focused on marginalized communities, interfered and continues to interfere with Florida Rising's mission of empowering marginalized voters so they can effectuate change through voting and engaging in the democratic process. Suspending Ms. Worrell undermines Florida Rising's efforts to motivate and engage marginalized voters in the political process.

These allegations are sufficient to establish standing under a diversion of resources theory as enunciated in the Supreme Court's recent decision in *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367 (2024). While *All. for Hippocratic Med.* may have created "uncertainty over when a plaintiff's own choice to spend money" can provide standing to challenge an action, it did not eliminate an organization's ability to proceed on a diversion of resources theory. *Tennessee Conf. of the Nat'l Ass'n for the Advancement of Colored People v. Lee*, 105 F.4th 888, 905 (6th Cir. 2024). An organization can still establish standing by

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. *League of Women Voters of Ohio v. LaRose*, No. 1:23-CV-02414, 2024 WL 3495332 (N.D. Ohio July 22, 2024). There, the court found the facts of *Alliance for Hippocratic Medicine* distinguishable.

> Here, LWVO is not solely an issue-advocacy organization seeking to challenge [the law]. Instead, it is a voter-advocacy organization whose core mission is to educate and assist voters. They allege their members have been affected by [the law]. Unlike the organizational plaintiffs in *All. for Hippocratic Med.* or *Lee*, LWVO does not assert standing solely on the diversion of funds. And this is not, like in *All. for Hippocratic Med.* or *Lee*, a challenged law where it 'neither requires nor forbids any action' by the LWVO and its members. Indeed, Ohio law now forbids LWVO members from assisting disabled voters and its members could be subject to felony criminal charges for violations of the Challenged Ohio Law. LWVO's injury in this case is direct.

*Id.* at *5 n. 3. Likewise, here, Florida Rising is, among other things, a voter advocacy organization that invested time and resources to combat voter disengagement because of Defendant's corrosion of the democratic process. Moreover, Florida Rising's allegations relate to the staff hours expended to respond to the removal. While this also can be considered a financial expenditure—since outlay of staff hours necessarily means that staff time is either diverted from another function or exceeds regular time—the critical piece here is Florida Rising diverted staff time

from core functions. As mentioned *supra*, 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." *Duncan v. Poythress*, 657 F.2d 691, 700 (5th Cir. 1981);[6] *see Gonzalez v. Governor of Georgia*, 978 F.3d 1266 (11th Cir. 2020) (affirming preliminary injunction where plaintiffs alleged state officials violated their due process rights by not holding a district attorney election). Plaintiffs adequately allege Defendant seriously undermined the fundamental fairness and integrity of the electoral process when he intentionally nullified election results for ideological and political reasons.

#### i. The Fourteenth Amendment Protects Against the Nullification of Election Results by Corrupt Suspension.

[6] Fifth Circuit decisions issued before Oct. 1, 1981, are binding in the Eleventh Circuit. *Bonner v. City of Prichard, Ala.*, 661 F.2d 1206, 1210 (11th Cir. 1981) (en banc).

In *Duncan*, voters challenged state officials' refusal to hold a constitutionally required special election to fill a judgeship when the governor filled the position with his appointment power. 657 F.2d 691. The Court held the governor's actions violated voters' substantive due process rights because while the Fourteenth Amendment "provides no guarantee against innocent irregularities in the administration of state elections," *citing Gamza v. Aguirre*, 619 F.2d 449 (5th Cir. 1980), it does protect against state officials' actions that "seriously undermine the fundamental fairness of the electoral process." *Duncan*, 657 F.2d at 700. Similarly, in *Gonzalez*, the Eleventh Circuit found that disenfranchising voters and appointing a replacement can rise to the level of a substantive due process violation. 978 F.3d at 1271.

Plaintiffs allege the Governor undermined the fundamental fairness of the electoral process by suspending Ms. Worrell over ideological and political disagreements, and for doing nothing other than following through on the commitments she made to the voters who elected her. Am. Compl. ¶¶53, 62-66, 74, 111, 114-117. Plaintiffs further allege Defendant suspended Ms. Worrell for an unconstitutional reason and then used his appointment power, like the state officials in *Duncan* and *Gonzalez*, to replace her with an "ideological ally," effectively nullifying the election results. *Id*. ¶74. The *Duncan* and *Gamza* Courts were concerned with precisely this type of conduct. The *Gamza* Court found four factors, applied by the *Duncan* Court, provide guidance in determining whether particular

conduct undermines the fundamental fairness and integrity of the electoral process: 1) the nature of the injury; 2) whether the injury was inflicted intentionally or accidentally; 3) whether the injury is part of a pattern that erodes the democratic process; and 4) whether state officials have succumbed to temptations to control elections by corruption and violence. *Duncan*, at 701 (citing *Gamza*, 619 F.2d at 453). Plaintiffs have alleged facts satisfying each factor. *See e.g.* Am. Compl. ¶¶1, 9, 11, 84-90 (seriousness of injury); 8-9, 53, 87-88 (intent to ignore the electorate's will); 10, 91-106 (pattern of conduct eroding democratic process); 60-65, 74 (surrender to temptations to corruptly control and manipulate election outcomes).

**ii. Plaintiffs' Interest Is in a Free and Fair Electoral Process.**

While the due process challenges in *Duncan* and *Gonzalez* came about because of state officials' refusal to hold an election rather than after an election had occurred, the same legal principle applies.[7] In fact, following *Duncan*, the Eleventh Circuit held the counting of absentee ballots in possible violation of a state law witness requirement was a "post-election departure from previous practice" "implicat[ing] fundamental fairness" and due process rights enshrined in the Fourteenth Amendment. *Roe v. State of Ala. By & Through Evans*, 43 F.3d 574, 581

[7] *Duncan* prohibits actions that "seriously undermine the fundamental fairness of *the electoral process*," not elections. 657 F.2d at 703 (emphasis added). Ending the "electoral process" immediately after polls close or votes are counted reduces democracy to a mere performance.

(11th Cir. 1995); *see also Tully*, 171 Ill. 2d at 305-11 (legislation removing an elected official midterm invades "the fundamental right to vote").

Indeed, state officials cannot be shielded from legal action by allowing elections to proceed and then later undoing. Such an antidemocratic rule would create a blueprint for hollowing out the right to vote, reducing it to just the performative act of casting a ballot. Plaintiffs allege Defendant has repeatedly used that blueprint, suspending eight other officials not charged with crimes and replacing them with political allies. Am. Compl. ¶¶91-101.

*McGraw v. Banko* does not support Defendant's argument that Plaintiffs have failed to allege a plausible substantive due process violation, contrary to his assertion. There, a candidate claimed she had a substantive due process right to remain in an office she was never eligible to hold. 2022 WL 19333345 (N.D. Fla. Aug. 12, 2022), *aff'd*, 2023 WL 7039511 (11th Cir. 2023). While the district court ruled against the plaintiff, the court rejected her claim that she was entitled to remain in office on several grounds unrelated to *Duncan*. Importantly, the Eleventh Circuit found *Duncan* inapposite because state law barred McGraw's right to candidacy in a district where she did not reside, whereas, in *Duncan*, state law required officials to hold an election. *McGraw*, 2023 WL 7039511, at *2. Here, in contrast to *McGraw*, Ms. Worrell is unquestionably eligible to hold the office she overwhelmingly won. Therefore, Defendant's reliance on *McGraw* is misplaced and does not advance his

flawed argument that Plaintiffs must have a right to have their candidate remain in office to succeed on this claim.

**B. Plaintiffs Plausibly Allege Violations of Their First Amendment Rights.**

Plaintiffs have sufficiently alleged a First Amendment claim. Am. Compl. ¶¶119-131. Plaintiffs allege Defendant abrogated both their right to association and their right to expression when he corrupted the electoral process by removing voters' candidate of choice over political and policy preferences, which took away from and led voters to question the effectiveness of their vote. *Id.* at ¶¶11, 129.

**i. Plaintiffs Adequately Allege a Violation of Associational Rights.**

Voting is a protected First Amendment associational right. Def.'s Mot. to Dismiss 20. *See Clingman v. Beaver*, 544 U.S. 581, 586 (internal quotations omitted) ("[T]he First Amendment . . . protects the right of citizens "to band together in promoting among the electorate candidates who espouse their political views."); *Lyman v. Baker*, 954 F.3d 351, 376 (1st Cir. 2020) (internal citations omitted) (noting associational freedom includes "the right to cast an effective vote."). Actions burdening associational rights are subject to strict scrutiny. *Eu*, 489 U.S. at 225.

Defendant suggests the right to associate does not entitle voters to have a candidate remain in office. Def.'s Mot. to Dismiss 17. As discussed *supra* section II.A, this misconstrues Plaintiffs' argument. Plaintiffs make no claim that suspension, standing alone, violates voters' First Amendment rights. Plaintiffs allege

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. Defendant's actions violated Plaintiffs associational rights and the rights of similarly situated voters by limiting their ability to cast an effective vote, and—as noted in the amended complaint—impinging upon and chilling their right to associate with their preferred candidates in future elections. *See* Am. Compl. ¶ 11 (following Ms. Worrell's suspension, "[m]any voters were discouraged and began to question whether they could affect change through their vote."). At least three courts have concluded that removing an elected official for political reasons may violate voters' right to association. *See Cartagena v. Crew*, No. CV- 96-3399 CPS, 1996 WL 524394, at *1 (E.D.N.Y. Sept. 5, 1996) (acknowledging laws affecting candidates often impact voters because they are not easily separated and denying defendant's motion to dismiss voters' First Amendment claim); *Alamo v. Crew*, No. CV-96-3400 CPS, 1996 WL 524393, at *10 (E.D.N.Y. Sept. 5, 1996) (same); *Peel v. Crew*, No. 96 CIV. 7154 (RWS), 1996 WL 719378, at *9 FN 2 (S.D.N.Y. Dec. 13, 1996) (Court sua sponte suggested viability of First Amendment claim but dismissed Plaintiff's claim, noting the significance of Plaintiff's failure to allege Defendant's suspension was based on their political beliefs or statements).

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. *Sheet Metal Workers' Int'l Ass'n v. Lynn*, 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, *the potential chilling effect on Title I free speech rights is more pronounced when elected officials are discharged. Not only is the fired official likely to be chilled in the exercise of his own free speech rights, but so are the members who voted for him . . . .* "

*Id.* (emphasis added) While *Lynn* 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). *See United Steelworkers of Am., AFL-CIO-CLC v. Sadlowski*, 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. *See, e.g., Zilich v. Longo*, 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."); *Miller v. Town of Hull, Mass.*, 878 F.2d 523, 532 (1st Cir. 1989) (the act of voting by a member of a public agency or board "comes within the

freedom of speech guarantee of the first amendment."); *Rosen v. Brown*, 970 F.2d 169, 175 (6th Cir. 1992) ("An election ballot is a State-devised form through which candidates and voters are required to express themselves"); *Wright v. Mahan*, 478 F. Supp. 468, 473 (E.D. Va. 1979), aff'd, 620 F.2d 296 (4th Cir. 1980) (value of political expression diminishes without the right to cast a ballot). Moreover, Eleventh Circuit guidance—that determining whether speech is expressive turns on whether a reasonable person would interpret conduct "as some sort of message, not whether an observer would necessarily infer a specific message," *Holloman*, 370 F.3d at 1270 (11th Cir. 2004)—strongly suggests that a vote qualifies as expressive speech because a reasonable person would interpret voting as "some sort of message" about a candidate and/or a voter's political and ideological preferences. *See also Meyer v. Grant*, 486 U.S. 414, 422 (1988) (Core political speech is "interactive communication concerning political change"). Ms. Worrell's suspension violated Plaintiffs' right to engage in expressive conduct because it diminished the value of their political expression and because, going forward, the unlawful suspension will chill their engagement in the political process.

## III. The Defendant is Not Entitled to Qualified or Sovereign Immunity.

### A. Qualified Immunity Does Not Shield Unconstitutional Acts.

The doctrine of qualified immunity "shields public officials from liability for civil damages when their conduct does not violate a constitutional right that was

clearly established at the time of the challenged action." *Bailey v. Wheeler*, 843 F.3d 473, 480 (11th Cir. 2016). Where, as here, an official acted as part of a discretionary government function, the doctrine does not apply if "(1) the [official] violated a constitutional right, and (2) this right was clearly established at the time of the alleged violation." *Holloman*, 370 F.3d at 1264 (11th Cir. 2004). To determine if a right is clearly established in the absence of case law with indistinguishable facts, "a broad statement of legal principle" may suffice "if it establishes the law with obvious clarity," or if the conduct is so egregious that case law is not needed. *Melton v. Abston*, 841 F.3d 1207, 1221 (11th Cir. 2016). Accepting the allegations in the Amended Complaint as true, Plaintiffs have met their burden.[8]

To the first prong, the complaint plausibly alleges Defendant's abuse of suspension power to remove Ms. Worrell violates Plaintiffs' First and Fourteenth Amendment rights. *See* Am. Compl. ¶¶ 107-131; *see also supra,* Part II.

As to the "clearly established" prong, the Defendant does not get the benefit of a liability-free violation simply because his actions are unprecedented. *Holloman,* 370 F.3d at 1277 (11th Cir. 2004) (noting that a case "on all fours" with materially identical facts is not required for the "clearly established" prong of a qualified

[8] Plaintiffs do not contest the Governor acted within his discretionary authority. As the Defendant recites, the Governor issued the suspension "pursuant to Art. IV Section 7(a) of the Florida [C]onstitution and acted under color of state law at the time of the suspension." Def.'s Mot. to Dismiss 20 (citing Am. Compl. ¶ 19).

immunity analysis). The Eleventh Circuit recently denied qualified immunity to a state official on an issue of first impression at the motion-to-dismiss stage. *Plowright v. Miami-Dade County,* 102 F.4th 1358 (11th Cir. 2024). There, the court found the official's misconduct was "so obviously at the very core of what the Fourth Amendment prohibits that the unlawfulness of [his] conduct" should have been "readily apparent to [him], notwithstanding the lack of case law." *Id.* at 1367. (*citing Jones v. Fransen*, 857 F.3d 843, 852 (11th Cir. 2017) (internal citations omitted).

Here, the fundamental right to vote freely for the candidate of one's choice, in a free and fair electoral process, is "so obviously at the very core" of our democracy. *Plowright,* 102 F.4th at 1358 (11th Cir. 2024). The allegations in the Amended Complaint apply years of voting rights precedent to the facts with "obvious clarity." Further, the alleged conduct is "egregious." With a stroke of his pen, the Defendant chose to abuse his official discretion by negating elections without lawful cause or remorse, bragging that he politically targets those that are "woke" or "Soros-funded." Am. Compl. ¶ 92. Tellingly, no other governor, regardless of political party, has abused their suspension power to this extent. Am. Compl. ¶¶ 99-101. Indeed, the Defendant has a pattern of retaliating against and suspending duly elected officials who disagree with him and a history of manipulating election outcomes. Am. Compl. ¶¶ 91-106. His attempt to shield himself from liability does not outweigh this Court's interest in "[holding] public officials accountable when they exercise power

irresponsibly," *Kobie v. Fithian*, 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. *McClendon v. Ga. Dept. of Cmty. Health*, 261 F.3d 1252, 1256 (11th Cir. 2001) (*citing Ex Parte Young*, 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; *Smith v. Wade*, 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. *See, e.g.,* 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." *H.C. by Hewett v. Jarrard*, 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. *See, Lane v. Philbin*, 835 F.3d 1302, 1305 (11th Cir. 2016) (citing *Ashcroft v. Iqbal*, 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; and the Plaintiffs are entitled to damages; thus, this Court should deny Defendant's motion to dismiss on all counts.

Respectfully submitted this 16th day of August 2024,

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