

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

**HONEYFUND.COM, INC.,
PRIMO TAMPA, LLC,
CHEVARA ORRIN, and
WHITESPACE CONSULTING,
LLC D/B/A
COLLECTIVE CONCEPTS, LLC,**

Plaintiffs,

v.

RON DESANTIS, *in his official
capacity as Governor of Florida*;
ASHLEY MOODY, *in her official
capacity as Attorney General of
Florida*, **DARRICK MCGHEE**, *in his
official capacity as the Chair of the
Florida Commission on Human
Relations*, et al.

Defendants.

Case No. 4:22-cv-227 (MW) (MAF)

**PLAINTIFFS' OPPOSITION
TO DEFENDANTS' MOTION TO
DISMISS**

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INTRODUCTION

Governor Ron DeSantis’s motion to dismiss himself from this case should be denied, given the substantial connections between his official actions and the Stop WOKE Act. Governor DeSantis introduced the law to great fanfare, decried “woke ideology” to fundraise off of the law, signed the bill, and has made numerous speeches pointing to the passage of the law restricting private employers’ speech as one of his great achievements in establishing “the free state of Florida.”¹ Facing litigation, he now seeks to disclaim responsibility for or any connection to his handiwork. But apart from building his political brand around the bill, the Governor has also repeatedly mobilized the levers of the state to retaliate against what he characterizes as “corporate wokeness” by businesses who dare to publicly disagree with his policy positions. Because of the very real threat that Governor DeSantis will use his executive authority to reach out and punish Plaintiffs for criticizing the Stop WOKE Act and advancing diversity, equity, and inclusion in their workplaces, or to interfere with enforcement by the Florida Commission on Human Relations, he is a proper defendant.

¹ WKMG News 6 ClickOrlando, *Gov. DeSantis holds news conference in South Florida*, at 13:46-13:55, YouTube (Apr. 22, 2022), <https://www.youtube.com/watch?v=8EHIBR9FN88>.

In addition, Defendants’ arguments under Rule 12(b)(6) are unavailing. The Stop WOKE Act explicitly bans any mandatory training that “espouses, promotes, [or] advances” any of the eight enumerated “concepts” that the State disagrees with. The Act is a blatant restriction on free speech on the basis of viewpoint, and its passage has already had a chilling effect on Plaintiffs’ speech. Moreover, the Act is both vague and overbroad. Plaintiffs have squarely stated claims under both the First and Fourteenth Amendments.

FACTUAL BACKGROUND

In December 2021, Governor DeSantis announced the “Stop the Wrongs to Our Kids and Employees” or “Stop W.O.K.E. Act,” which he characterized as “tak[ing] on . . . corporate wokeness” and “protect[ing] Florida workers against the hostile work environment that is created when large corporations force their employees to endure [critical race theory or] CRT-inspired ‘training’ and indoctrination.”² At his press conference unveiling the bill, the Governor described

² Press Release, *Florida Office of the Governor, Governor DeSantis Announces Legislative Proposal to Stop W.O.K.E. Activism and Critical Race Theory in Schools and Corporations* (Dec. 15, 2021), <https://www.flgov.com/2021/12/15/governor-desantis-announces-legislative-proposal-to-stop-w-o-k-e-activism-and-critical-race-theory-in-schools-and-corporations/>. This Court may take judicial notice of news articles about Governor DeSantis and videos of speeches by him. *See Turner v. Wells*, 879 F.2d 1254, 1272 n.5 (11th Cir. 2018) (taking judicial notice of videos and articles about the plaintiff without considering them for the truth of the matters they assert). *See also* Fed. R. Evid. 201 (allowing court to take judicial notice of a fact not subject to reasonable dispute and generally known or capable of accurate and ready determination).

workplace diversity, equity, and inclusion (“DEI”) trainings as creating “a hostile work environment” by telling “[people] that they’re privileged or that they’re part of oppressive systems.”³ He characterized DEI trainings as “basically corporate sanctioned racism” that “they’re trying to shove . . . down these employees’ throats.”⁴ In Governor DeSantis’s view, “nobody wants this crap.”⁵ He sent out a fundraising email later that day touting the Stop WOKE Act as “outlaw[ing] Critical Race Theory and other racist indoctrination tactics in businesses and schools.”⁶ After the Governor’s announcement of the Stop WOKE Act, legislative leaders introduced and passed House Bill 7.

During the legislative session, the Governor continued to criticize private employers who spoke in ways that contradicted his policy preferences. For example, in a January 2022 speech to the Common Sense Society, Governor DeSantis labeled DEI trainings by employers as “corporate wokeness” that Florida would target in its laws: “We also oppose corporate wokeness. And you see that and how they treat some of their employees, doing training programs which are absolutely outrageous.

³ Governor Ron DeSantis, *Introducing the Stop W.O.K.E. Act*, at 17:55-18:18, Facebook (Dec. 15, 2021), <https://www.facebook.com/GovRonDeSantis/videos/introducing-the-stop-woke-act/877277022969704/>.

⁴ *Id.* at 18:18-18:30.

⁵ *Id.* at 26:55-27:06.

⁶ A.G. Gancarski, *Ron DeSantis starts fundraising off ‘Stop W.O.K.E. Act’*, Florida Politics (Dec. 15, 2021), <https://floridapolitics.com/archives/480663-ron-desantis-starts-fundraising-off-stop-w-o-k-e-act/>.

And we believe that that violates people's rights. And we are going to work to make sure that that's clarified in Florida law."⁷ The Governor elaborated that private businesses that expressed opinions on political issues that contradicted his views would be targeted by the state of Florida. Regarding corporate speech, he said:

Look, it's a free country. And you do have the ability—if you want to stick your beak into voter ID or some of these other things, that is fine. But understand this: if you're just genuflecting to the mob, if you're trying to placate the Left at our expense, in Florida, we're fighting back against you. We are going to make sure we expose what you're doing and we're going to stand up for our people. And when . . . these companies were trashing the Georgia election bill, virtue-signaling and pursuing false narratives, we took note of that in Florida and said that ain't going to work here. We did an election bill a couple months later that was much stronger than Georgia. The Left had a spasm. The media had a spasm. But you know, the corporations didn't say anything because they know we are going to fight back in the state of Florida and we are going to continue to do that. This wokeness, it's a religion of the Left. And it's infecting a lot of institutions, big corporate America, big tech, the bureaucracy, . . . of course academia. . . . This wokeness is dangerous. And we've got to defeat it on all fronts.⁸

In essence, the Governor made clear that private businesses that “virtue-signaled” by voicing criticism of policies he favored would have to deal with the Governor and his team “fighting back against [them].” And he celebrated that his efforts to silence such speech had been successful.

⁷ Common Sense Society Gala, *Governor DeSantis Remarks*, at 21:59-22:15, C-SPAN (Jan. 28, 2022), <https://www.c-span.org/video/?517403-10/common-sense-society-evening-gala-governor-desantis-rosa-maria-paya-remarks>.

⁸ *Id.* at 22:16-24:06.

One month later, the Governor again targeted businesses that criticized policies he supports or expressed views with which he disagrees at the Conservative Political Action Conference (“CPAC”). He reiterated this theme that private business speech that criticized policies he supports was “woke activism,” and a “problem” or “virus” to be addressed:

The woke is the new religion of the Left. And this is what they have in mind. That’s why they want CRT because they want to divide the country. . . . [T]he problem that we face as conservatives is a lot of major institutions in our country have become infected with this woke virus . . . You look at corporate America, they’re mentioning they’re opposing voter I.D. Many of them make a lot of money from Chinese slave labor, but they don’t want voter I.D. in the United States. So they are engaging in woke activism.⁹

Then, in April, after the Governor signed the bill, he again held a press conference in which he extolled the Stop WOKE Act as a measure against “corporate wokeness”¹⁰ that ensured “freedom from having oppressive ideologies imposed upon you without your consent” in the workplace. He criticized DEI training as seeking to indoctrinate employees and singled out the Walt Disney Corporation for “of course claim[ing] that American was founded on ‘systemic racism’ and encourag[ing] employees to complete a ‘white privilege checklist.’” The Governor

⁹ News 19 WLTX, *Ron DeSantis 2022 CPAC Speech*, at 15:41-15:50, 16:28-17:00, YouTube (Feb. 24, 2022), <https://www.youtube.com/watch?v=f0Ba47MLw14>.

¹⁰ Press Release, Florida Office of the Governor, *Governor Ron DeSantis Signs Legislation to Protect Floridians from Discrimination and Woke Indoctrination* (Apr. 22, 2022), <https://www.flgov.com/2022/04/22/governor-ron-desantis-signs-legislation-to-protect-floridians-from-discrimination-and-woke-indoctrination/>.

underscored that pursuant to the Stop WOKE Act, “that is a violation of your civil rights.”¹¹

Governor DeSantis has repeatedly demonstrated a penchant for targeting businesses that express opinions contrary to his own. As he explained at a keynote speech to the Florida Chamber of Commerce in October 2021, “If you’re using your power as a corporation, and you’re leveraging that to try and advance any ideology, I think that it’s very dangerous for this country, and I’m not just gonna sit idly by.”¹² In criticizing businesses that opted to take a stand against bills restricting voting rights, for example, he asked the members of the Chamber, “Do you want to be more of a political actor or more of a business actor?”¹³ And he frankly warned businesses that if they engaged in political speech advancing viewpoints contrary to his, those businesses would be more likely to face scrutiny from the Governor and state agencies:

You know, if you do it [engage in political speech opposing the Governor’s policies], you are also going to come by some people on the other side, like me, who are going to say well, wait a minute, if you’re going to criticize what we’re doing I may criticize some of the things you are doing. I may look under the hood and not like some things. I got a podium. I got cameras that will follow me around. Maybe I’ll go

¹¹ *Gov. DeSantis holds news conference in South Florida*, *supra* n.1 at 5:08-5:26, 11:31-11:53.

¹² Mary Ellen Klas, *DeSantis blasts corporate ‘wokeness’ in talk with business leaders*, Tampa Bay Times (Oct. 29, 2021), <https://www.tampabay.com/news/florida-politics/2021/10/29/desantis-blasts-corporate-wokeness-in-talk-with-business-leaders/>.

¹³ *Id.*

talk about that a little bit. And so, I think it's something that's very damaging.¹⁴

Not only has he threatened to use the levers of the state to punish businesses that have advanced opinions with which he disagrees, but the Governor has in fact carried out these threats. In one major example, after the Walt Disney Corporation expressed opposition to Florida's H.B. 1557, nicknamed the "Don't Say Gay" bill, another of the Governor's priorities during the last legislative session, the Governor targeted the business for retaliatory action. When the company approached the Governor about changes to the legislation, the Governor put out a fundraising email with the headline "Woke Disney Falls to the Media Pressure,"¹⁵ and then gave multiple speeches chastising Disney for daring to express its political opinions on whether Florida teachers should be able to discuss LGBTQ+ issues with students:

[B]ut then for Disney to come out and put a statement and say that the bill should have never passed, and that they are going to actively work to repeal it. I think, one, was fundamentally dishonest, but, two, I think that crossed the line. This state is governed by the interests of the people of the state of Florida. It is not based on the demands of California corporate executives. They do not run this state, they do not control this state. . . . I think they crossed the line.¹⁶

¹⁴ *Id.*

¹⁵ Tarik Minor, *DeSantis' feud with Disney appears to be paying off in the form of campaign donations*, News4JAX (Apr. 27, 2022), <https://www.news4jax.com/news/2022/04/27/desantis-feud-with-disney-appears-to-be-paying-off-in-the-form-of-campaign-donations/>.

¹⁶ LiveNOW from FOX, *DeSantis: Disney "crossed the line" over so-called "Don't Say Gay" bill*, at 0:32-1:01, 1:30-1:32, YouTube (Mar. 29, 2022), <https://www.youtube.com/watch?v=aXC8Wr5O-4k>.

A few weeks later, the Governor announced a special legislative session to eliminate the special taxing district the state had established in the 1960s for Disney.

In a fundraising email about the retaliation from the Governor’s campaign, he wrote,

I will not allow a woke corporation . . . to run our state. . . . It took a look under the hood to see what Disney has become to truly understand their inappropriate influence. . . . They even tried to attack me to advance their woke agenda And now is the time to put power back in the hands of Floridians and out of the pockets of woke executives.¹⁷

At the bill signing abolishing the special district carve-out for Disney, Governor DeSantis made clear that he was punishing the company for its advocacy against a bill that he supported: “You’re a corporation based in Burbank, California, and you’re going to martial your economic might to attack the parents of my state? We view that as a provocation, and we’re going to fight back against that.”¹⁸ There are still over 1,800 special districts in the state of Florida¹⁹—presumably some for organizations that have not expressed policy disagreements with the Governor. And the Governor has continued to boast about his retaliation against Disney, describing the company as a “subcontract[or]” for “the Left” who “has the right to say this stuff,” criticizing the Don’t Say Gay Bill, but that “if that’s the direction you’re going

¹⁷ A.G. Gancarski, *Ron DeSantis Dunks on Disney in Donor Pitch*, Florida Politics (Apr. 20, 2022), <https://floridapolitics.com/archives/517962-ron-desantis-dunks-on-disney-in-donor-pitch/>.

¹⁸ *Gov. DeSantis holds news conference in South Florida*, *supra* n.1 at 54:15-54:30.

¹⁹ See Florida Association of Special Districts, Inc. webpage, <https://www.fasd.com/>.

to go in—if you’re going to say you’re going to try to get our bill repealed . . . we can also make sure that we’re not putting any company on a pedestal,”²⁰ referring to the retaliatory elimination of Disney’s special district.

Another recent incident of retaliation against a corporation with which Governor DeSantis disagrees occurred after the mass shootings in Buffalo and Uvalde. The Tampa Bay Rays tweeted a call to “actionable change” to prevent gun violence, announced a financial contribution to Everytown for Gun Safety, a gun violence prevention group, posted a number of tweets with statistics about gun violence, and called for public advocacy to combat gun violence.²¹ In response, the following week, Governor DeSantis, who has opposed stricter gun laws, used his line-item veto to strike \$35 million in state funding for a new Rays training and youth sports facility.²² When asked whether the veto had to do with the team’s political statements, which were contrary to the Governor’s opposition to gun control measures, Governor DeSantis confirmed that his decision was motivated in part by the team’s decision to engage in political speech: “Now, companies are free to

²⁰ Charlie Kirk, *Gov. Ron DeSantis On-Stage at Student Action Summit 2022—Powered by Turning Point Action*, at 23:27-24:50,

YouTube (Jul. 22, 2022), <https://www.youtube.com/watch?v=V888AvJcV0E>.

²¹ Tampa Bay Rays @RaysBaseball, May 26, 2022, 5:23 p.m. tweet, Twitter, <https://twitter.com/RaysBaseball/status/1529951434682339328>.

²² Steve Contorno, *DeSantis blocks state money for Tampa Bay Rays training facility after team tweets against gun violence*, CNN Politics (Jun. 3, 2022), <https://www.cnn.com/2022/06/03/politics/ron-desantis-tampa-bay-rays-gun-violence/index.html>.

engage or not engage with whatever discourse they want, but clearly, it's inappropriate to be doing tax dollars for a special sports stadium. It's also inappropriate to subsidize political activism of a private corporation.”²³

And in yet another example, last year, after then-President Trump was banned or suspended from a number of social media platforms—including Twitter, Facebook, and YouTube—for encouraging the January 6 attack on the Capitol, Governor DeSantis announced the Stop Social Media Censorship Act to punish those companies for their content moderation and curation policies. In announcing the bill, the Governor described large social media companies as “enforcers of preferred narratives” who exercise “viewpoint discrimination” against conservative voices.²⁴ The Florida Legislature quickly passed the bill, which the Governor signed.²⁵ The law would have imposed fines on social media companies for banning candidates for office and would have prevented the companies from hiding or suppressing from view content that was by or about a candidate or removing any

²³ Forbes Breaking News, *DeSantis Celebrates Vetoing Tampa Bay Rays Baseball Stadium*, at 1:09-1:23, YouTube (Jun. 3, 2022), <https://www.youtube.com/watch?v=tB8hxquZ6a4>.

²⁴ *Gov. DeSantis announces legislation to crack down on big tech, online censorship*, WXTL (Feb. 2, 2021), <https://www.wtxl.com/news/local-news/gov-desantis-announces-legislation-to-crack-down-on-big-tech-online-censorship>.

²⁵ Press Release, Florida Office of the Governor, *Governor Ron DeSantis Signs Bill to Stop the Censorship of Floridians by Big Tech* (May 24, 2021), <https://www.flgov.com/2021/05/24/governor-ron-desantis-signs-bill-to-stop-the-censorship-of-floridians-by-big-tech/>.

content posted by a journalistic enterprise. The U.S. Court of Appeals for the Eleventh Circuit recently upheld a preliminary injunction blocking most provisions of the bill as a likely violation of the First Amendment. *NetChoice, LLC v. Att’y Gen., Fla.*, 34 F.4th 1196 (11th Cir. 2022).

The Governor’s vindictive streak against companies who voice opinions contrary to his own has time and again manifested as state policy designed to punish those entities because of their speech. And he has repeatedly announced his intention to engage in viewpoint discrimination against so-called “corporate wokeness” through the Stop WOKE Act. In this context, some Plaintiffs have had contracts with government entities, including state entities. *See* Orrin Supp. Decl. ¶¶ 2-4. Given Governor DeSantis’s pattern of retaliatory behavior to punish “woke” companies and Plaintiffs’ outspokenness about their commitment to DEI trainings and advancing ways to combat implicit bias and white privilege in the workplace, Margulis Decl. (ECF 18-1) ¶¶ 5-8, 23-24; McBroom Decl. (ECF 18-2) ¶¶ 7, 9-15; Orrin Decl. (ECF 18-3) ¶¶ 8-10, 16, 19-20, they reasonably fear that their businesses may be targeted next for punishment by the Governor using the levers of state power, *see* Orrin Supp. Decl. ¶ 9—regardless of whether the Governor has the explicit power to enforce the Stop WOKE Act under the terms of the bill.

STANDARD OF REVIEW

In considering a motion to dismiss, “all well-pleaded facts are accepted as true, and the reasonable inferences therefrom are construed in the light most favorable to the plaintiff.” *MSP Recovery Claims, Series LLC v. Metro. Gen. Ions. Co.*, No. 21-11547, 2022 WL 2800850, at *4 (11th Cir. Jul. 18, 2022). In response to a motion to dismiss under Rule 12(b)(1) for lack of subject matter jurisdiction, the party seeking to invoke jurisdiction must prove it by a preponderance of the evidence. *Alliant Tax Credit 31, Inc. v. Murphy*, 924 F.3d 1134, 1143 (11th Cir. 2019). To determine whether the burden has been met, the court may consider evidence outside of the pleadings. *Velasco v. Gov’t of Indonesia*, 370 F.3d 392, 398 (4th Cir. 2004).

“To withstand a motion to dismiss under Rule 12(b)(6), a complaint must include ‘enough facts to state a claim to relief that is plausible on its face.’” *G.H. v. Marsteller*, 424 F. Supp. 3d 1109, 1113 (N.D. Fla. 2019) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Facial plausibility means that “the plaintiff [has pled] factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). This must be something more than “a formulaic recitation of the elements of a cause of action.” *Id.* (quoting *Twombly*, 550 U.S. at 555).

ARGUMENT

I. The Governor is a Proper Defendant.

Although Governor DeSantis protests that he is not a proper defendant because he does not have “direct authority” to enforce the Stop WOKE Act, ECF 50-1, at 8, he clearly has “some connection” with this law and has repeatedly exercised his authority to retaliate against businesses that have expressed opinions contrary to his own in other contexts. Because of the Governor’s pattern of retaliation and Plaintiffs’ reasonable fear that they, too, will be targeted for vocally supporting the Governor’s “corporate wokeness” boogeyman, he is a proper defendant and should stay in the case to defend the indefensibly unconstitutional act he championed.

Ex parte Young requires that “[a] state officer, by virtue of his office, has some connection with the enforcement of the act . . . and whether it arises out of the general law or is specially created by the act itself is not material, so long as it exists.” *Ex parte Young*, 209 U.S. 123, 157 (1908). As the Eleventh Circuit has explained, “personal action” by a state defendant is not required, just that they have “some connection with the unconstitutional act or conduct complained of.” *Luckey v. Harris*, 860 F.2d 1012, 1015-16 (11th Cir. 1988). Applying this standard in a challenge to a state indigent defense system, the court concluded that the governor of Georgia—who had the constitutional responsibility for law enforcement, a duty

to execute laws faithfully, the residual power to commence criminal prosecutions, and the final authority to direct the attorney general to prosecute—was a proper defendant. *Id.* at 1016. *See also Bd. of Pub. Educ. for the City of Savannah v. Georgia*, No. CV 490-101, 1990 WL 608208, at *4 (S.D. Ga. 1990) (in constitutional challenge seeking funding for school desegregation plan, finding governor a proper defendant because he was required to submit an annual budget to fund the state department of education, had the authority to appoint members of the state board of education, and issued warrants to the state treasury to pay education expenses); *Dream Defenders v. DeSantis*, 559 F. Supp. 3d 1238, 1261 (N.D. Fla. 2021) (in challenge to anti-protest law, finding governor a proper defendant because he had the power to order sheriffs to suppress riots and command Florida Highway Patrol to do the same, the power to suspend sheriffs who disobeyed his orders, and the power to order the Florida Department of Law Enforcement to investigate sheriffs before suspending them).

Numerous courts in other jurisdictions have similarly concluded that a governor is a proper defendant in like circumstances. *See, e.g., Kitchen v. Herbert*, 755 F.3d 1193, 1203-04 (10th Cir. 2014) (in marriage equality suit, affirming that governor was a proper defendant where he coordinated the response of state agencies to a court order enjoining enforcement of a constitutional amendment invalidating same-sex marriages, was vested with executive power, and appointed and could

initiate termination of state officers who would carry out the challenged law); *League of Women Voters v. Blackwell*, 432 F. Supp. 2d 723, 732 (N.D. Ohio 2005) (in challenge to election law seeking injunctive relief, finding governor to be proper defendant, as the state's chief executive); *Raven v. Polis*, 479 P.3d 918, 921 (Colo. 2021) (in challenge to treatment of incarcerated transgender women in state prisons, holding that governor was proper defendant because the suit challenged the actions of an executive agency under the governor's control).

In contrast, it is not enough for subject matter jurisdiction where a plaintiff points only to a governor's general executive authority. *See, e.g., Women's Emergency Network v. Bush*, 323 F.3d 937, 949-50 (11th Cir. 2003) (affirming that governor's general executive authority, action in signing the bill, and shared authority over the agency administering the challenged action were not enough to make the governor a proper defendant).

Based on this precedent, the Governor is a proper defendant here. In addition to being vested with "supreme executive power" and the duty to "take care that the laws be faithfully executed," Fla. Const. Art. IV, § 1(a), the Governor has substantial authority over the Florida Commission on Human Relations which handles employment discrimination claims, including such claims brought pursuant to the Stop WOKE Act. In addition, Section 1(b) of Article IV of the Florida Constitution grants the Governor direct power to "initiate judicial proceedings in the name of the

state” against members of the Florida Commission on Human Relations for any perceived failure to enforce the Act. He also has the unilateral power to appoint all twelve of its Commissioners, as well as the power to suspend them for cause. *See* Fla. Stat. § 760.03(1), (4). Further, the Commission notes on its website that it “may refer” employment complaints “to another agency” including the “Governor’s office.”²⁶

More fundamentally, however, the Governor holds outsized power over corporations in Florida and has shown repeatedly that he will exert this power to punish businesses who express, in his words, “corporate wokeness.” He did this by calling a special session to eliminate Disney’s special taxing district to “fight back against” the provocation of Disney advocating against the Don’t Say Gay Bill,²⁷ by line-item vetoing the Tampa Bay Rays’ proposed training and youth sports facility because they engaged in “political activism” by tweeting about gun violence,²⁸ and by pushing through a law to financially penalize social media platforms for their

²⁶ *Employment*, Florida Commission on Human Relations, <https://fchr.myflorida.com/employment>.

²⁷ *Gov. DeSantis holds news conference in South Florida*, *supra* n.1 at 54:15-54:30.

²⁸ *Gov. DeSantis Celebrates Vetoing Tampa Bay Rays Baseball Stadium*, *supra* n.23 at 1:09-1:23.

content moderation policies because they banned or suspended President Trump for violating those policies.²⁹

The Governor's executive authority and power to appoint and suspend commissioners and the fact that the Florida Commission on Human Relations lists his office as an agency to which to refer employment complaints, in tandem with his repeated pattern of retaliating against "woke" companies who publicly express opposition to his policies and announced intention to retaliate against such businesses through the Stop WOKE Act, make him a proper defendant in this case. Unlike the cases cited by Defendants, ECF 50-1, at 9-10, the Governor is not connected to the challenged law only by virtue of his general executive authority and some degree of supervision over the relevant agency. Rather, he has an ongoing practice of punishing businesses for their speech and has made explicit statements that he aims to continue doing so through the Stop WOKE Act. In this context, Governor DeSantis has crossed the threshold of having some connection with the enforcement of the Stop WOKE Act such that he should remain a defendant in the case.

²⁹ *Gov. DeSantis announces legislation to crack down on big tech, online censorship, supra* n.24.

II. Plaintiffs Have Pled More Than Enough Facts to State a Claim for Relief Under Rule 12(b)(6).

Although Defendants suggest that Plaintiffs' claims be dismissed under Rule 12(b)(6), Plaintiffs have amply satisfied facial plausibility in the amended complaint. As laid out in greater detail in Plaintiffs' Motion for Preliminary Injunction, ECF 18 at 15-31, as well as in Plaintiffs' Reply in Support of their Motion for Preliminary Injunction, ECF 51, the "Stop WOKE Act"—designed to ban and impose liability on private employers for promoting, endorsing, or advancing certain concepts related to race and sex with which the state disagrees—amounts to viewpoint discrimination in violation of the First Amendment and is void for vagueness and overbroad.

Defendants' argument that the Stop WOKE Act regulates conduct and not speech is unpersuasive because violations of the Act turn squarely on *speaking words* that espouse prohibited and not on whether an employer holds a mandatory DEI training session. Even assuming the Act regulated conduct and not speech by targeting the act of making trainings mandatory, this in and of itself is expressive, communicating the employer's commitment to the content of those trainings. Defendants also fail to demonstrate that reduced scrutiny is warranted under the captive audience doctrine, because not only is that doctrine inapplicable here, but the Act's prohibition on endorsing the concepts is also a blatant viewpoint-based attack that is virtually per se unconstitutional. Further, while Defendants try to

frame the Stop WOKE Act as an anti-discrimination measure, existing federal and state laws already prohibit discriminatory employment practices—including speech that creates a hostile work environment—based on race, sex, and other immutable characteristics resulting in an adverse employment action. This law, by contrast, solely targets disfavored speech. As such, Plaintiffs have alleged sufficient facts to make out a First Amendment claim under any standard.

CONCLUSION

For the foregoing reasons, Defendants’ motion to dismiss should be denied.

Local Rule 7.1(F) Certification

The undersigned hereby certify that Plaintiffs’ Opposition to Defendants’ Motion to Dismiss contains 4,971 words.

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Respectfully submitted,

By: /s/ Shalini Goel Agarwal

Shalini Goel Agarwal
Fla. Bar No. 90843
THE PROTECT DEMOCRACY PROJECT
Pennsylvania Ave., NW, Suite 163
Washington, DC 20006
(202) 579-4582
shalini.agarwal@protectdemocracy.org

Sara Chimene-Weiss
THE PROTECT DEMOCRACY PROJECT

7000 N. 16th St., Suite 120, #430
Phoenix, AZ 85020
Tel: (202) 934-4237
sara.chimene-weiss@protectdemocracy.org

John Langford
Rachel Goodman
THE PROTECT DEMOCRACY PROJECT
82 Nassau St., #601
New York, NY 10038
Tel: (202) 579-4582
john.langford@protectdemocracy.org
rachel.goodman@protectdemocracy.org

Douglas Hallward-Driemeier
ROPES & GRAY LLP
2099 Pennsylvania Ave., NW
Washington, DC 20006-6807
Tel: (202) 508-4776
Douglas.Hallward-Driemeier@ropesgray.com

Amy Jane Longo
ROPES & GRAY LLP
10250 Constellation Blvd.
Los Angeles, CA 90067
Tel: (310) 975-3269
Amy.Longo@ropesgray.com

Counsel for Plaintiffs