

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

FLORIDA RISING TOGETHER, INC. and
FLORIDA RISING, INC.

Plaintiffs,

v.

CORD BYRD, in his official capacity as
Secretary of State for the State of Florida, et al.,

Defendants.

CIVIL CASE NO. 6:24-cv-01682

ORAL ARGUMENT REQUESTED

**PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO
DEFENDANT SECRETARY OF STATE'S MOTION TO DISMISS**

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Defendant Secretary of State Cord Byrd (the “Secretary”) challenges the standing of Florida Rising Together (“FRT”) and Florida Rising, Inc. (“Florida Rising”) (collectively, “Plaintiffs”) and asserts that Plaintiffs fail to state a claim under the U.S. Constitution, the National Voter Registration Act (“NVRA”), and the Voting Rights Act (“VRA”). The Secretary’s motion should be denied.

INTRODUCTION

The Secretary’s suggestion that Plaintiffs lack standing ignores U.S. Supreme Court decisions, an unbroken chain of Eleventh Circuit precedent, and the Amended Complaint’s allegations that Plaintiff Florida Rising’s membership includes nearly 150 voter registration applicants currently in “unverified” status as a direct result of Defendants’ implementation of Florida’s voter registration verification protocol (the “Match Protocol”)—injuries that are traceable to and redressable by an order enjoining Defendants. The Amended Complaint further alleges that FRT has diverted resources to combat the effects of the Match Protocol, that more than 5,800 otherwise eligible applicants who FRT has attempted to register to vote are in “unverified” status—and not on Florida’s voter rolls—solely due to the Match Protocol, that Florida Rising members and constituents have sustained injury, and that the interests Plaintiffs seek to protect are germane to its mission of increasing access to voting. The Amended Complaint’s well-pled allegations of both associational and organizational standing—which must be taken as true at this stage—are more than sufficient.

Plaintiffs have also adequately pled constitutional and statutory violations. The Secretary misstates Supreme Court and Eleventh Circuit precedent concerning the

requirements to show an undue burden under the First and Fourteenth Amendments, the scope of the NVRA's uniform and nondiscriminatory provision, and the proper legal standard under Section 2 of the VRA. The Court must reject these erroneous interpretations of the applicable law. This Court should also reject the Secretary's request to make factual findings as to the degree of burden imposed by the Match Protocol at this early stage in contravention of Plaintiffs' well-pled allegations. The Amended Complaint precisely alleges how the Match Protocol violates federal law and the U.S. Constitution under the applicable pleading standards.

The Secretary's motion to dismiss should be denied in its entirety.

BACKGROUND

This case concerns the "Match Protocol, a process that has resulted in the rejection of approximately 188,000 otherwise *valid* voter registration applications since 2018. Am. Compl. ¶ 115. Nearly 80,000 Florida voter registrants are currently ineligible to vote solely due to the Match Protocol, including more than 5,800 applicants who were registered by FRT, and nearly 150 applicants who are members of Florida Rising. *Id.* ¶ 9. The Match Protocol is plagued with errors. *Id.* ¶¶ 4-5. The transposition of a single letter or number, deletion or addition of a hyphen or initial in an applicant's name, or the accidental entry of an extra character or space can cause an applicant's identifying information to be "unmatched" or not verified, even when the lack of verification is caused through no fault of the applicant. *Id.* The verification issues and subsequent rejections of voter registration applications overwhelmingly impact Black registrants and other registrants of color. *Id.* ¶ 9. In many Florida

counties, Black voter registration applicants have been rejected or deemed “unverified” at a rate nearly three times their share of the registrant pool, while white applicants are denied registration and deemed “unverified” at a small fraction of their share of the comparable electorate. *Id.* ¶ 10.

LEGAL STANDARD

“In determining whether to dismiss under Rule 12(b)(6), a court accepts the factual allegations in the complaint as true and construes them in a light most favorable to the non-moving party.” *Batayeh v. Eisai, Inc.*, 2022 WL 22866937, at *1 (M.D. Fla. Mar. 25, 2022) (citing *United Techs. Corp. v. Mazer*, 556 F.3d 1260, 1269 (11th Cir. 2009)). “To survive dismissal, the factual allegations must be ‘plausible’ and ‘must be enough to raise a right to relief above the speculative level.’” *Cincinnati Indem. Co. v. Evanston Ins. Co.*, 2024 WL 5010138, at *5 (M.D. Fla. Dec. 6, 2024) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Smith v. Ceres Marine Terminals, Inc.*, 2021 WL 12303396, at *1 (M.D. Fla. July 16, 2021) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

ARGUMENT

I. FLORIDA RISING HAS ADEQUATELY PLED STANDING

“An organization can establish standing in two ways: (1) through its members (i.e., associational standing) and (2) through its own injury in fact that satisfies the traceability and redressability elements.” *Ga. Ass’n of Latino Elected Offs., Inc. v. Gwinnett*

Cnty. Bd. of Registration & Elections, 36 F.4th 1100, 1114 (11th Cir. 2022) (“*GALEO*”). Plaintiffs have sufficiently pled both types of standing. The Secretary’s briefing ignores the Eleventh Circuit’s decision in *Florida State Conference of NAACP v. Browning*, 522 F.3d 1153, 1160-66 (11th Cir. 2008), even though it is binding, controlling, and dispositive. The court in *Browning* held that voter registration organizations similarly situated to Plaintiffs had associational and organizational standing to challenge an earlier iteration of the same Florida law—and the same data matching procedure—that Plaintiffs now challenge. If anything, Plaintiffs’ standing here is stronger than in *Browning*. First, the organizational plaintiffs in *Browning* had not identified a specific impacted member; here, however, Florida Rising has identified nearly 150 individual impacted members. *Cf. Browning*, 522 F.3d at 1160, *with* Am. Compl. ¶¶ 27, 161. Second, *Browning* was decided at the preliminary injunction stage, where the plaintiffs’ burden was higher, as opposed to the motion to dismiss stage, where the court must accept well-pleaded factual allegations as true. *GALEO*, 36 F.4th at 1112-23.

A. FLORIDA RISING HAS ASSOCIATIONAL STANDING

An organization asserting associational standing “must show that (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization’s purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” *Am. All. for Equal Rights v. Fearless Fund Mgmt., LLC*, 103 F.4th 765, 771 (11th Cir. 2024) (citation modified). As the Secretary acknowledges, Plaintiffs need not “identify affected members by their legal names.” *Id.* at 773; SOS Br. at 5.

Organizations instead must make “specific allegations establishing that at least one identified member had suffered or would suffer harm.” *Summers v. Earth Island Inst.*, 555 U.S. 488, 498 (2009).

Plaintiff Florida Rising more than clears this threshold. The Amended Complaint explicitly states that Florida Rising’s membership includes “nearly 150 members” who are otherwise eligible voter registration applicants but are currently in “unverified” status due to the Match Protocol. Am. Compl. ¶ 27. Plaintiffs also provide a county-by-county numerical breakdown of those currently impacted members. *Id.* Finally, Plaintiffs also identify an additional 289 members of Florida Rising who were previously in “unverified” status due to the Match Protocol. *Id.* ¶ 27. These allegations must be accepted as true and construed in the light most favorable to Plaintiffs. *GALEO*, 36 F.4th at 1112-13.

Because numerous Florida Rising members are directly and currently impacted by the Match Protocol, the associational standing analysis here parallels the analysis conducted by the U.S. Supreme Court in *Students for Fair Admissions v. President and Fellow of Harvard College*, 600 U.S. 181, 200-01 (2023) (“*SFFA*”), and the Eleventh Circuit’s analysis in *Greater Birmingham Ministries v. Secretary of State for Alabama*, 992 F. 3d 1299 (11th Cir. 2021) (“*GBM*”). In *SFFA*, the Supreme Court found that because “SFFA is indisputably a voluntary membership organization with identifiable members” and “represents them in good faith, [the Court’s] analysis does not require further scrutiny into how the organization operates.” 600 U.S. at 201. In *GBM*, the Eleventh Circuit held that Greater Birmingham Ministries’ and the Alabama

NAACP's members included "minority voters in Alabama" who "would otherwise have standing to sue" in a case involving a voter identification requirement, thereby conferring standing. 992 F.3d at 1316-17; *see also Ne. Fla. Chapter of Assoc. Gen. Contractors of Am. v. City of Jacksonville, Fla.*, 508 U.S. 656, 666 (1993) (holding that the injury in fact is "the denial of equal treatment resulting from the imposition of the barrier").

As stated above, the Secretary's brief also ignores *Browning*, even though the Eleventh Circuit squarely rejected the same types of arguments as those raised by the Secretary here. *See* 522 F.3d at 1160-64. In *Browning*, Judge Tjoflat discounted the argument that plaintiffs lacked associational standing because they "have not identified any specific members who have had their registration denied due to a typographical or clerical error." *Id.* at 1160, 1163. Instead, the *Browning* Court endorsed a more forgiving standard: "[t]o satisfy the requirements of associational standing, all that plaintiffs need to establish is that at least one member faces a realistic danger of having his or her application rejected due to a mistaken mismatch." *Id.* at 1163; *see also Fearless Fund*, 103 F.4th at 773 ("An organization need only 'make specific allegations' based on 'specific facts . . . that one or more of [its] members would be directly affected.'") (quoting *Summers*, 555 U.S. at 498); *Arcia v. Fla. Sec'y of State*, 772 F.3d 1335, 1342 (11th Cir. 2014) (same). Plaintiffs' detailed allegations of nearly 150 currently impacted and 289 formerly impacted Florida Rising members, and nearly 80,000 impacted registrants statewide demonstrate that Florida Rising's members will continue to suffer harm. *See id.*

Rather than grapple with cases like *SFFA*, *GBM*, and *Browning*, the Secretary muddies the waters with inapt comparisons. The Secretary suggests that Florida Rising “do[es] not have formal members,” SOS Br. at 5. This is false. Florida Rising repeatedly alleged it has members throughout the Amended Complaint. Am. Compl. ¶¶ 1 n.1, 9, 26 (“Florida Rising has more than 100,000 members”), 27, 28, 31-43, 125, 161, 168, 178, 184, 190. Courts have recognized Florida Rising’s membership in past litigation. *See, e.g., Jacksonville Branch of the NAACP v. City of Jacksonville*, 635 F. Supp. 3d 1229, 1272 (M.D. Fla. 2022); *Caicedo v. DeSantis*, 2024 WL 4729160, at *1 (M.D. Fla. Nov. 8, 2024).

The Secretary argues Florida Rising must provide more information about its impacted members. *See* SOS Br. at 6-7. No such requirement exists; disregarding Florida Rising’s allegations would violate binding precedent. *GALEO*, 36 F.4th at 1112-13. The cases the Secretary cites were decided at later stages of litigation when plaintiffs must provide evidence, not at the pleadings stage. *See Summers*, 555 U.S. at 500; *Jacobson*, 974 F.3d at 1245-46; *Georgia Republican Party v. SEC*, 888 F.3d 1198, 1201 (11th Cir. 2018).

The Secretary’s suggestion that 501(c) corporations cannot have “formal ‘members,’” SOS Br. at 5, also fails. The Supreme Court rejected a similar argument in *SFFA*, holding that Students for Fair Admissions was “a validly incorporated 501(c)(3) nonprofit” with associational standing. 600 U.S. at 200-01; *see also Speech First, Inc. v. Cartwright*, 32 F.4th 1110, 1114, 1119-21 (11th Cir. 2022) (holding that a “voluntary member organization” has associational standing).

Finally, the Secretary argues that an “indicia of membership” test *from Hunt v. Washington State Apple Advertising Comm’n*, 432 U.S. 333 (1977), should apply. The Supreme Court rejected this argument in *SFFA*:

The indicia of membership analysis employed in *Hunt* has no applicability . . . Here, SFFA is indisputably a voluntary membership organization with identifiable members—it is not, as in *Hunt*, a state agency that concededly has no members . . . *Where, as here, an organization has identified members and represents them in good faith, our cases do not require further scrutiny into how the organization operates.* Because SFFA complies with the standing requirements demanded of organizational plaintiffs in *Hunt*, its obligations under Article III are satisfied.

600 U.S. at 201 (emphasis added). Here, the Court should similarly reject the Secretary’s attempt to distort *Hunt* beyond recognition.

The Amended Complaint alleges that Florida Rising’s members “include individuals who have been impacted or are at risk of being impacted by the . . . Match Protocol,” Am. Compl. ¶ 27, that Florida Rising “educate[s], register[s], and mobilize[s] voters,” *id.* ¶ 26, and that the relief requested does not require individual members’ participation. *See Browning*, 522 F.3d at 1160. Florida Rising therefore satisfies the three prongs for associational standing set forth in cases like *Hunt*, *SFFA*, and *Fearless Fund*.

B. FRT HAS ORGANIZATIONAL STANDING

An organization may establish standing due to a diversion of its resources “if the defendant’s illegal acts impair its ability to engage in its projects by forcing the organization to divert resources to counteract those illegal acts.” *Jacobson*, 974 F.3d at 1250 (citation modified); *GALEO*, 36 F.4th at 1113-17. To establish organizational

standing, an organization “must explain where it would have to divert resources away *from* in order to spend additional resources on combating the effects of the defendant’s alleged conduct.” *GALEO*, 36 F.4th at 1114 (citation modified). Organizations need not itemize, line-by-line, the drain on their organization’s resources incurred by the challenged provision in the complaint. *Id.* at 1115 (“GALEO’s broad allegation of diversion of resources is enough at the pleading stage”). “At the pleading stage, ‘general factual allegations of injury’ . . . may suffice.” *Georgia Republican Party*, 888 F.3d at 1201.

FRT has alleged a direct organizational injury. First, Floridians who registered with FRT’s assistance or whom its staff contacted as part of its get-out-the-vote work had their voter registration applications rejected due to the Match Protocol. *Id.* ¶ 19. Specifically, “more than 5,800 otherwise eligible applicants who FRT attempted to register to vote are in “unverified” status—and not on Florida’s voter rolls—solely due to the [] Match Protocol.” *Id.* ¶ 23. This direct injury to FRT’s core business activity—the Match Protocol thwarting its voter registration work—confers organizational standing. *Food & Drug Admin. v. All. For Hippocratic Medicine*, 602 U.S. 367, 395 (2024) (observing that “Havens’s actions directly affected and interfered with HOME’s core business activities”) (citing *Havens Realty Corporation v. Coleman*, 455 U.S. 363, 379 (1982)).

FRT’s direct injury causes a second, and distinct, diversion-of-resources injury. Assisting the applicants whom FRT previously registered but are blocked from the voter rolls by the Match Protocol requires the organization to expend additional

resources it would not have otherwise had to spend. To contact impacted applicants and help them get registered, FRT must divert resources away from its core business activities: voter registration, voter education, and get-out-the-vote program. Am. Compl. ¶¶ 20, 21. This diversion of resources injury is also sufficient by itself to confer standing under binding precedent.

The Eleventh Circuit has routinely held that the sort of diversion-of-resource allegations made by FRT here are sufficient to establish standing. The organizational plaintiffs in *Browning* asserted they had to “divert scarce time and resources from registering additional voters to helping applicants correct the anticipated myriad of false mismatches due to errors either by the Department of State or by the applicant,” and that the Match Protocol would make it more difficult for eligible individuals to register, undermining the organizations’ goals. 522 F.3d at 1164-65. These are the same injuries FRT has alleged. See Am. Compl. ¶¶ 20-24. The Eleventh Circuit held that the *Browning* plaintiffs would have less time for traditional voter registration, education, and election monitoring as a result, creating a cognizable injury. *Browning*, 522 F.3d at 1165-66. *Browning* remains good law; in fact, it has been cited approvingly by the Eleventh Circuit and its core holdings have been reaffirmed in recent years.¹

In *GALEO*, the Circuit held that an organizational plaintiff’s “broad allegation of diversion of resources is enough at the pleading stage” to establish standing.

¹ The Eleventh Circuit cited the *Browning* plaintiffs’ diversion of resources as exemplifying the concept of “concrete harm,” *City of S. Miami v. Governor*, 65 F.4th 631, 639 (11th Cir. 2023); see *Jacobson*, 974 F.3d at 1249-50; *GALEO*, 36 F.4th at 1114-16.

GALEO, 36 F.4th at 1115 (citing *Havens*, 455 U.S. at 379). The *GALEO* court vacated a district court's erroneous holding that an organization, which, like FRT, engages in voter registration and get-out-the-vote activities, failed to allege a diversion of resources. *Id.* at 1117. The court reasoned that it was more than sufficient for the organization to allege that it diverted resources from those core activities to combat defendants' failure to provide bilingual election materials by assisting voters who might need help using English-only election materials. *Id.* at 1115.

Similarly, in *Arcia*, the Eleventh Circuit held that organizations engaging in voter registration, public education, and get-out-the-vote work suffered an injury in fact by diverting resources to address a database-matching program seeking to identify potential noncitizen registrants. 772 F.3d at 1341-42; *see also Common Cause/Ga. v. Billups*, 554 F.3d 1340, 1350 (11th Cir. 2009) (concluding that the NAACP established an injury in fact by "divert[ing] resources from its regular activities to educate voters about the requirement of a photo identification and assist[ing] voters in obtaining free identification cards").

The Secretary argues that there is no diversion of resources because the Match Protocol "promotes" FRT's core business activities and because standing cannot be "manufacture[d]" by gathering information and engaging in advocacy. SOS Br. at 9-11. The Court should reject this argument. *First*, accepting these arguments would require the Court to weigh facts and discount allegations of resource diversion, including FRT creating a new program to assist Match Protocol-impacted applicants previously registered by FRT, which required diverting resources from its traditional

voter registration and get-out-the-vote work. Am. Compl. ¶ 21. The Eleventh Circuit rejected this approach in *GALEO*. 36 F.4th at 1115.

Second, the Secretary's argument is logically incoherent: any restriction that prevents individuals registered by FRT from making it onto the voter rolls and voting plainly frustrates the organization's mission of increasing access to voting. *See* Am. Compl. ¶¶ 19, 23. FRT is harmed when its staff needs to double back and help registrants that the organization previously assisted with filling out a voter-registration application because they are in "unverified" status due to the Match Protocol.² Eleventh Circuit precedent confirms this commonsense approach. Its decisions do not consider whether the various organizations' diversion of resources benefit their core business activities or whether they align with their respective missions. Rather, the Eleventh Circuit has uniformly concluded that meaningful diversions constitute an injury in fact. *See, e.g. Arcia*, 772 at 1341; *GALEO*. 36 F.4th at 1115; *Billups*, 554 F.3d at 1350; *Browning*, 522 F.3d at 1165-66.

Finally, the Secretary claims that FRT "does not plausibly allege a credible threat that the voter-verification statute applies to their applications," and that the organization's injuries are speculative or self-imposed. SOS Br. at 11-12 (citations omitted). The Secretary's argument is flawed for several reasons. First, it ignores that, under Florida law, third-party voter registration organizations must register applicants

² *Cf. Markadonatos v. Vill. of Woodridge*, 739 F.3d 984, 996 (7th Cir. 2014) (requiring a person arrested by mistake to pay a booking fee because he benefitted from the "services" of being photographed and fingerprinted "surely qualifies as Orwellian") (Hamilton, J., dissenting), *reh'g en banc granted, opinion vacated*, (Mar. 17, 2014).

using paper voter-registration applications. Fla. Stat. § 97.0575(1)(e)-(f); Fla. Admin. Code Rule 1S-2.042; Am. Compl. ¶ 146. The Amended Complaint alleges that the Match Protocol specifically and disproportionately impacts paper applicants, while applicants who register online or at a motor vehicle office are unaffected. Am. Compl. ¶¶ 8, 141-47. Plaintiffs therefore allege that the exact sort of voter registration methods used by FRT are thwarted by the Match Protocol.

The Secretary's argument is inconsistent with *Browning* and other Eleventh Circuit decisions. In *Browning*, the court did not consider how the plaintiffs' members plan to register as part of its analysis; it analyzed whether organizations would "divert personnel and time to educating volunteers and voters on compliance." 522 F.3d at 1165-66. The Amended Complaint alleges concrete, ongoing harm requiring resource diversion. Am. Compl. ¶¶ 8, 9, 23. Plaintiffs have adequately pled injury in fact.

C. ALLIANCE FOR HIPPOCRATIC MEDICINE DOES NOT ALTER THE INJURY IN FACT ANALYSIS

Relying on *AHM*, the Secretary asserts that FRT alleges "simply a setback to [its] abstract social interests." SOS Br. at 10. This reliance is misplaced. In *AHM*, the Supreme Court rejected standing for plaintiffs who were "concerned bystanders" with merely ideological objections to FDA decisions, distinguishing *Havens Realty* where the plaintiff's core business activities were "perceptibly impaired." 602 U.S. at 382, 395. The *AHM* plaintiffs did not allege a similar injury; they disagreed with FDA's decisions as "concerned bystanders" without a concrete stake. *Id.* at 382.

FRT, by contrast, directly provides voter-registration services and works to

increase voting power of marginalized communities. Am. Compl. ¶¶ 18-19. The Match Protocol has “perceptibly impaired” FRT’s ability to provide these services—over 5,800 applicants it registered are blocked from the voter rolls. *Id.* ¶¶ 20-23. FRT’s allegations fit comfortably within *Havens Realty*, which *AHM* left undisturbed.

D. FLORIDA RISING’S INJURY IS TRACEABLE TO AND REDRESSABLE BY AN ORDER AGAINST DEFENDANTS

In *Browning*, the Eleventh Circuit held that organizational injuries stemming from the Match Protocol were traceable to, and redressable by, an order against the Secretary. 522 F.3d at 1159 n.9 (holding that “causation is apparent” and “[a]n injunction against the enforcement of Subsection 6 would also redress this injury”). Notwithstanding this dispositive holding, the Secretary maintains that Plaintiffs’ injuries are not traceable to him because the Match Protocol is mandated by the federal Help America Vote Act (“HAVA”). SOS Br. at 15.³ The Court should reject this argument, as did the *Browning* Court.

HAVA requires the chief state election official and the head of a state’s motor vehicle authority to match information in their respective databases “to the extent required to enable each such official to verify the accuracy of the information provided on applications for voter registration.” 52 U.S.C. § 21083(a)(5)(B)(i). Nothing in HAVA requires election officials to reject voter-registration applications—or even flag them for additional scrutiny—because the information provided by the applicant does

³ The Secretary misapplies *Walters v. Fast AC, LLC* when claiming that HAVA is the “independent source” that causes Plaintiffs’ injuries. 60 F.4th 642 (11th Cir. 2023). In *Fast AC*, the “independent source” in question was a third party, not another law. *Id.* at 651.

not exactly match the applicant's information as contained in state or federal databases. Rather, HAVA permits each state, "in accordance with State law," to "determine whether the information provided by an individual is sufficient" for verification purposes. *Id.* § 21083(a)(5)(A)(iii). HAVA is directed at voter *identification*, not *eligibility*. *Browning*, 522 F.3d at 1168 ("Assuming that plaintiffs are right that section 303(a)(5) of HAVA does not impose matching as a requirement of voter registration, it also does not seem to prohibit states from implementing it.").

Courts have repeatedly recognized that HAVA does not mandate rejection of voter-registration applications for database mismatches like those contemplated by the Match Protocol. *Browning*, 522 F.3d at 1169 n.16, 1171-72; *Washington Ass'n of Churches v. Reed*, 492 F. Supp. 2d 1264, 1268-69 (W.D. Wash. 2006); *Morales v. Handel*, 2008 WL 9401054, at *7-8 (N.D. Ga. Oct. 27, 2008). Critically, the vast majority of states do not reject voter-registration applications if the applicant's information fails to match fields in the DHSMV or SSA databases. Am. Compl. ¶¶ 51-55. The Amended Complaint includes detailed allegations about the voter-verification practices of Georgia, Ohio, and Pennsylvania, which the Secretary has not contradicted and, in any event, must be accepted as true at this stage. *Id.* ¶¶ 52-54.

The Secretary also misunderstands the scope of the relief Plaintiffs seek. Plaintiffs are not seeking to "invalidate" all of Section § 97.053(6); they are specifically seeking to keep eligible Florida Rising members and voter applicants registered by FRT on the voter rolls. Plaintiffs do not seek to prevent Defendants from complying with HAVA and verifying applicants' information. But Defendants have drastically

exceeded HAVA's requirements by prohibiting voters flagged through the database matching process from registering to vote and casting a regular ballot.

The Secretary also argues that traceability and redressability are not satisfied because the County Supervisors of Elections ("SOEs") "perform the 'matching' and verification—not the Secretary." SOS Br. at 14. This position is not shared by the County SOEs, who stated in prior briefing that the Secretary alone is capable of redressing Plaintiffs' injuries. Dkt. No. 67 at 17-18.

Indeed, the Match Protocol flows directly from the Secretary's exercise of his responsibilities under Florida law and relevant administrative rules. Fla. Stat. § 97.053(6) ("A voter registration application . . . may be accepted as valid only after the *department* has verified the authenticity or nonexistence of the driver license number . . .") (emphasis added); F.A.C. Rule 1S-2.039(4)-(5). It also flows from the Secretary's signed memoranda of understanding with other agencies to share driver license and social security information, and information contained in the statewide voter registration database. Am. Compl. ¶ 29. The Secretary admits in his briefing that his staff is involved in the Match Protocol at several key junctures, reviews unverified applications, and flags unverified records. SOS Br. at 14 (citation modified).

E. FLORIDA RISING HAS THIRD-PARTY STANDING

The Secretary argues that Plaintiffs lack standing to challenge the voter-verification statute on behalf of third parties. SOS Br. at 16-17. This argument is unsupported by the cases the Secretary cites and is directly contradicted by *Browning*, which is controlling law. The *Browning* Court held that where plaintiffs have met

Article III's standing requirements "as representatives of their members and as organizations directly injured," the court need not consider "whether plaintiffs have standing to litigate the claims *of* nonmembers in a representative capacity." 522 F.3d at 1158 n.7. *Browning* forecloses any argument that Plaintiffs must demonstrate third-party standing for this case to proceed.

Regardless, Plaintiffs satisfy the third-party standing test set forth in *Powers v. Ohio*, 499 U.S. 400, 410-11 (1991): (1) injury-in-fact to itself; (2) a close relationship to the third-party; and (3) hindrance to the third-party's ability to assert its own interests. *See Fla. St. Conf. of the NAACP v. Browning*, 2007 WL 9697660, at *3 (N.D. Fla. Dec. 18, 2007). Like the *Browning* plaintiffs, Plaintiffs are "dedicated to advancing economic and racial justice across Florida by building power in historically marginalized communities," and have a mission "to build independent political power that centers historically marginalized communities." Am. Compl. ¶¶ 18, 25. As in *Browning*, because of the Match Protocol, "registrants are hindered from protecting their own interests." 2007 WL 9697660, at *3.

II. THE CONSTITUTIONAL CLAIMS

A. THIS IS AN AS-APPLIED CHALLENGE

The Secretary erroneously asserts that the Amended Complaint presents a facial challenge to § 97.053(6), thereby requiring Plaintiffs to demonstrate its unconstitutionality in all circumstances. SOS Br. at 19-21. This argument misunderstands the distinction between facial and as-applied challenges and it mischaracterizes this lawsuit, as Plaintiffs bring an as-applied challenge to Defendants'

implementation of the Match Protocol. The Eleventh Circuit has described the facial versus as-applied distinction as follows:

A facial challenge is one that seeks to invalidate a law “even though [the law’s] application in the case under consideration may be constitutionally unobjectionable.” Where, as here, plaintiffs seek to vindicate their own rights, the challenge is as-applied.

Jacobs v. The Florida Bar, 50 F.3d 901, 905-06 (11th Cir. 1995) (citing *Forsyth County, Georgia v. The Nationalist Movement*, 505 U.S. 123, 129 (1992)). That standard is more than satisfied here. See, e.g., *Abramson v. Gonzalez*, 949 F.2d 1567, 1573-74 (11th Cir. 1992) (persons who had not applied for a psychologist’s license were entitled to bring an as-applied challenge against a Florida law mandating licenses as a prerequisite).

First, Plaintiffs do not seek to invalidate the entirety of § 97.053(6)—or any other Florida statute. Instead, Plaintiffs challenge the Match Protocol, which is not required by any Florida statute. Florida law provides that “a voter registration application . . . may be accepted as valid only after the department has verified the authenticity or nonexistence of the driver license number, the Florida identification card number, or the last four digits of the [SSN] provided by the applicant.” Fla. Stat. § 97.053(6). While this language authorizes data matching, it does not mandate that Floridians be denied registration due to a failure to match. In other words, the Match Protocol is an administrative creation.

Second, the Amended Complaint asserts that the Match Protocol, as applied to Florida Rising members and to voter applicants registered by FRT, is unconstitutional. See Am. Compl. ¶¶ 1, 1 n.1, 12, 13, 152, 159, 166, 179, 188, 194. The Amended

Complaint’s proposed relief is tailored to those individuals. *Compare id.* ¶ 194(a)-(c), *with Citizens United v. Fed. Election Comm’n*, 558 U.S. 310, 331 (2010).

When raising an as-applied challenge, a plaintiff need not show that a statute is unconstitutional in all contexts, but must allege that the “application of the statute in the particular context” in which it is implemented is unconstitutional. *Doe v. Rausch*, 382 F. Supp. 3d 783, 800 (E.D. Tenn. 2019); *see also Williams v. Pryor*, 240 F.3d 944, 955 (11th Cir. 2001). Here, the question is whether the Match Protocol’s actual implementation burdens the right to vote of the nearly 150 members of Florida Rising and the more than 5,800 applicants registered by FRT, the overwhelming majority of whom are persons of color. Am. Compl. ¶¶ 1, 9, 12, 114-40.

1. The Match Protocol Creates an Undue Burden on the Right to Vote

Under the *Anderson-Burdick* framework, courts must balance the “character and magnitude” of the burden against the “precise interests put forward by the State as justifications for the burden imposed” and consider whether less restrictive means exist. *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983); *Burdick v. Takushi*, 504 U.S. 428, 434 (1992); *Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1318 (11th Cir. 2019). The Amended Complaint plausibly alleges a claim under *Anderson-Burdick*.

Plaintiffs allege that the Match Protocol burdens the right to vote of roughly 80,000 otherwise-eligible Floridians who are in “unverified” status. Am. Compl. ¶ 9. By conflating a failure to match with an inability to verify an applicant’s first name, last name, date of birth, address, or PIN, *see Fla. Stat. § 97.053(6)*, Defendants convert trivial discrepancies—typos, spacing errors, misplaced hyphens, or accent marks—into

a presumption of ineligibility to vote. Am. Compl. ¶¶ 4-5. The Secretary’s office admits these comparisons routinely generate “false negatives.” *Id.* ¶ 94.

Once flagged as “unverified,” otherwise qualified voters cannot cast a regular ballot unless they cure the deficiency. *Id.* ¶¶ 82-84. Plaintiffs allege burdens that fall disproportionately on Black voters and other citizens of color. *Id.* ¶¶ 121-22. The experience of Duval County voter Suzan Hammack Bach further crystallizes the undue burden faced by impacted voters. Ms. Bach—a senior over 65, living overseas, and statutorily exempt from standard ID requirements—submitted multiple rounds of identification, only to be repeatedly marked “unverified” and ultimately barred from voting in the November 2024 election. *Id.* ¶¶ 104-13.

Taken together, these allegations sufficiently state a constitutional undue burden claim under the Supreme Court’s *Anderson-Burdick* framework and defeat a motion to dismiss. *See Anderson*, 460 U.S. at 789; *Burdick*, 504 U.S. at 434.

2. An Undue Burden Claim Need Only Invoke the Rights of Rejected Applicants to Allege a Severe Burden Under *Anderson-Burdick*

Citing Justice Scalia’s concurrence in *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008), the Secretary asserts Plaintiffs’ *Anderson-Burdick* claim should be dismissed because it “seek[s] to vindicate only the rights of rejected applicants, rather than the rights of all Florida voters.” SOS Br. at 22-23. Reliance on Justice Scalia’s concurrence is misplaced because (1) *Crawford* involved a facial constitutional challenge (not an as-applied challenge), and (2) Justice Scalia wrote only on behalf of three Justices. In *Crawford*, a majority of justices rejected his approach and concluded

that *Anderson-Burdick* requires consideration of whether a statute “imposes ‘excessively burdensome requirements’ *on any class of voters.*” *Crawford*, 553 U.S. at 202 (plurality op.) (quoting *Storer v. Brown*, 415 U.S. 724, 738 (1974) (emphasis added)); *see also id.* at 199 (assessing the “somewhat heavier burden [that] may be placed on a limited number of persons” by the challenged law); *id.* at 212-14 (Souter, J., dissenting) (describing the burdens faced by “[p]oor, old, and disabled voters” and those who do not own cars); *id.* at 239 (Breyer, J., dissenting) (similar). A majority of justices therefore affirmed the Court’s approach in *Anderson*, which similarly focused on the challenged law’s “burden on an identifiable segment of Ohio’s independent-minded voters”—not on Ohioans generally. 460 U.S. at 792.

The Secretary further argues *Crawford* requires dismissal of this matter. SOS Br. at 23 n.10. But *Crawford* is inapposite; the photo ID requirement at issue there is categorically different from the Match Protocol at issue here. The Secretary ignores the fact that Florida has a separate voter identification requirement on the books that Plaintiffs are not challenging in this case. Fla. Stat. § 101.043(1)(a) (listing IDs that a voter must present at the polls to vote a regular ballot). And in *Crawford*, “[n]o photo identification [was] required in order to register to vote.” 553 U.S. at 186. The Match Protocol operates at the registration stage, where applicants are left off the rolls through no fault of their own but due to data entry errors, typos, glitches, and database mismatches—factors outside of voter control. Am. Compl. ¶¶ 4, 78-80. Here it is the matching process—not an ID requirement—that results in applicants being moved to

“unverified” status. The *Crawford* plaintiffs also failed to identify any burdened voters or provide evidence of harm. Plaintiffs identified burdened voters like Suzan Bach, nearly 150 Florida Rising members, and more than 5,800 applicants registered by FRT. *Id.* ¶¶ 9, 23, 27, 104-13.

The Secretary’s other authorities are factually distinguishable. Neither *Timmons* nor *Clingman* foreclose consideration of burdens on specific classes of voters; both involved candidate ballot access rather than voter registration. *See Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 359 (1997); *Clingman v. Beaver*, 544 U.S. 581, 586-87. Further, *Billups*, *Gonzalez*, and *Greidinger*, all involved voter ID requirements under which voters could readily obtain the required documentation. 554 F.3d at 1346; 485 F.3d 1041, 1047 (9th Cir. 2007); 988 F.2d 1344, 1345 (4th Cir. 1993).

The Match Protocol keeps applicants off the voter rolls based on discrepancies entirely outside their control. Am. Compl. ¶¶ 4, 78-80.

3. No State Interests Outweigh the Undue Burden

It is “impossible for [a court] to undertake the proper review required by the Supreme Court” under *Anderson-Burdick* on a motion to dismiss because no factual record has been developed. *Duke v. Cleveland*, 5 F.3d 1399, 1405 (11th Cir. 1993); *Bergland v. Harris*, 767 F.2d 1551, 1555 (11th Cir. 1985) (remanding and ordering district court “to develop the factual record necessary to follow the weighing process dictated by *Anderson*”); *League of Women Voters of Fla. v. Lee*, 566 F. Supp. 3d 1238, 1258 (N.D. Fla. 2021) (“Because the *Anderson-Burdick* test ‘emphasizes the relevance of context and specific circumstances,’ it is particularly difficult to apply at the motion to

dismiss stage.”) (quoting *Cowen v. Ga. Sec’y of State*, 960 F.3d 1339, 1346 (11th Cir. 2020)).

The Secretary nonetheless asks this Court to weigh evidence, resolve factual disputes, and perform an *Anderson-Burdick* analysis now—despite the absence of any evidence on key factual questions: how many disenfranchised voters were actually ineligible; whether less restrictive alternatives exist; the Match Protocol’s actual fraud-prevention efficacy; and the real costs imposed on voters attempting to cure. *See* SOS Br. at 23-29. Such questions cannot be resolved at the pleading stage.

The Secretary’s reliance on *Polelle v. Florida Sec’y of State*, 131 F.4th 1202 (11th Cir. 2025), SOS Br. at 24-25, is misplaced. There, the Eleventh Circuit found that Florida’s closed primary system, which prohibits unaffiliated voters from voting in primary elections, imposed minimal burdens because voters can temporarily affiliate with a party to vote in a primary and any burdens were outweighed by legitimate state interests. 131 F.4th at 1230-41. The court emphasized that Florida may reasonably believe that closed primaries further the interests of strengthening political parties and empowering voters. *Id.* at 1238-40. A challenge to a closed primary system, a fundamental feature of our democratic system, is irrelevant to cases like this one that require factual development.

The Secretary then invites this Court to engage in a burden-shifting analysis, suggesting that the State’s interests of preventing voter registration fraud and boosting electoral integrity should override all other considerations and that Section 97.053(6) “imposes little, if any, burden on voter registration applicants.” *Id.* at 25-29. Resolving

the case at this stage would require the Court to weigh these arguments against the allegations of the Amended Complaint, which details the chaos that the Match Protocol injects: tens of thousands of notices, surges of provisional ballots cast and rejected, and election officials overwhelmed with cure requests. *Id.* ¶¶ 9, 95-103, 154-55. It further alleges that the Match Protocol is not supported by any state interest sufficient to justify the burdens it imposes, that it disrupts orderly administration and undermines election integrity, and that the Secretary already has other tools that perform verification functions without mass disenfranchisement. *Id.* ¶¶ 152-55.

These allegations, taken as true, are more than sufficient to survive a motion to dismiss. *See Lee*, 915 F.3d at 1321-26 (rejecting argument that Florida's interests in preventing fraud, regulating its elections, and protecting public confidence in legitimacy of elections justify Florida's signature-match scheme); *Fish v. Schwab*, 957 F.3d 1105, 1132-36 (10th Cir. 2020) (rejecting argument that protecting integrity of electoral process, ensuring accuracy of voter rolls, safeguarding voter confidence, and preventing voter fraud justify burdens imposed by Kansas law requiring documentary proof of citizenship for voter registration); *Sixth Dist. of Afr. Methodist Episcopal Church v. Kemp*, 574 F. Supp. 3d 1260, 1278 (N.D. Ga. 2021) ("Here, the Amended Complaint contains detailed allegations of burdens that Plaintiffs assert the challenged provisions will impose on Georgia voters. Plaintiffs also maintain that there are no legitimate state interests that would support such burdens. *Anderson* and *Burdick* do not require more from Plaintiffs at the motion to dismiss stage."); *League of Women Voters of Fla., Inc. v. Detzner*, 354 F. Supp. 3d 1280, 1288 (N.D. Fla. 2018) ("It is sufficient for a

12(b)(6) motion that Plaintiffs have alleged the lack of early-voting sites on public university campuses have burdened their voting rights.”).

Tellingly, the cases on which the Secretary relies do not involve rulings on motions to dismiss. *See Purcell v. Gonzalez*, 549 U.S. 1, 5-6 (2006) (vacating lower court’s granting of interlocutory injunction); *Billups*, 554 F.3d at 1354-55 (affirming denial of permanent injunction); *Greidinger*, 988 F.2d at 1355 (reversing and remanding summary judgment); *Gonzalez*, 485 F.3d at 1052 (affirming denial of preliminary injunction); *Fla. State Conf. of N.A.A.C.P. v. Browning*, 569 F. Supp. 2d 1237, 1259 (N.D. Fla. 2008) (denying renewed motion for preliminary injunction).

The Secretary has not shown that this Court should deviate from established principle and perform the *Anderson-Burdick* balancing test now. The arguments for dismissing the *Anderson-Burdick* claim should be rejected.

B. SECTION 8 OF THE NATIONAL VOTER REGISTRATION ACT

1. Section 8(b) Applies to the Front End of the Registration Process

Section 8(b) requires that “[a]ny State program or activity to protect the integrity of the electoral process by ensuring the maintenance of an accurate and current voter registration roll for elections for Federal office—shall be uniform, nondiscriminatory, and in compliance with the Voting Rights Act[.]” 52 U.S.C. § 20507(b)(1).⁴ The Match Protocol is the exact sort of program or activity that must comply with this provision.

⁴ Section 8(b)’s language parallels, and must be read in tandem with, HAVA’s requirement that “each State . . . shall implement, in a uniform and nondiscriminatory manner, a single, uniform, official, centralized, interactive computerized statewide voter registration list . . . that contains the name and registration information of every legally registered voter in the State[.]” 52 U.S.C. § 21083(a)(1)(A).

The Secretary, however, argues that the Match Protocol is not a voter removal or purge program and therefore need not comply with Section 8(b). SOS Br. at 30-32. This argument misreads Section 8(b)'s plain language and the relevant statutory context.

First, Section 8(b)'s plain language compels its application here. The text of the statute, 52 U.S.C. § 20507(b)(1), does not mention voter removal or purge programs, much less confine its protections to them. And the Secretary's attempt to read a "purge program" limitation into the word "maintenance" defies the word's plain meaning. The Match Protocol involves precisely the sort of "maintenance of an accurate and current voter registration roll" because it determines who is on Florida's voter list—and thus whether that list is "accurate and current." In other words, the Match Protocol is part of Florida's process to keep their voter rolls in good order.⁵ The Match Protocol's purpose is to ensure the accuracy of Florida's voter rolls and to protect electoral integrity. *See* SOS Br. at 25. Yet, the Match Protocol has the practical effect of preventing otherwise eligible Floridians from joining the voter rolls (as the Amended Complaint alleges). Florida officials cannot maintain an accurate list if eligible voters are kept off the rolls. Because the Match Protocol determines the makeup and accuracy—or the lack thereof—of the statewide voter list maintained by the Secretary, the Match Protocol must comply with Section 8(b).

⁵ *See Maintenance*, THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (3D ED. 1992) ("The work of keeping something in proper condition; upkeep."); *Maintenance*, WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE UNABRIDGED (1993) ((a) to "[p]reserve from failure or decline" and (b) "to sustain against opposition or danger."); *Maintenance*, BLACK'S LAW DICTIONARY (6th ed. 1990) ("The upkeep or preservation of condition of property, including cost of ordinary repairs necessary and proper from time to time for that purpose.").

Second, the Match Protocol's statutory placement confirms its coverage. Section 8(b)'s uniform and nondiscriminatory provision is titled "Confirmation of voter registration"—not "Voter removal programs" (Section 8(c)) or "Removal of names from voting rolls" (Section 8(d)). The Match Protocol's purpose as described by the underlying statute is to "verify"—that is, to *confirm*—applicants' identities before adding them to the rolls. *See* Fla. Stat. § 97.053(6). Thus, the Match Protocol falls squarely within Section 8(b) of the NVRA.

This straightforward reading of Section 8(b)'s plain language is consistent with NVRA's twin purposes to (1) increase the number of eligible citizens who register to vote and participate in the electoral process, and (2) ensure that accurate and current voter registration rolls are maintained. *See* 52 U.S.C. § 20501(b). By contrast, the Secretary's proposed construction divorces Section 8(b) from its statutory context and leads to absurd results. *See Harrison v. Benchmark Elecs. Huntsville, Inc.*, 593 F.3d 1206, 1213 (11th Cir. 2010); *United States v. Velez*, 586 F.3d 875, 879 (11th Cir. 2009) ("We do not believe Congress intended such an absurd result, which nullifies the provision and divorces it from its statutory context, thereby violating basic canons of statutory construction.").

Legislative history supports this reading. First, the Senate Report suggests that Congress contemplated "activities" in addition to and other than purge programs as falling within Section 8(b)'s ambit. S. Rep. No. 103-06, at 31 (1993) (referring to a "purge program *or activity* based on lists provided by other parties where such lists were compiled as the result of a selective, non-uniform, or discriminatory program or

activity”) (emphasis added). Second, the Senate Report states that “registration is complete upon submitting the form to the voter registrar, motor vehicle office, designated agency or office, or on date of postmark, if mailed.” *Id.* at 30-31. Because the Match Protocol matches information from registrants’ timely-submitted applications, it fits comfortably within this definition. *Cf. United States Student Ass’n Found. v. Land*, 546 F.3d 373, 386 (6th Cir. 2008).

The Secretary’s reliance on *Husted v. A. Philip Randolph Institute*, 584 U.S. 756 (2018), is misplaced. The plaintiffs there did not bring a uniform and nondiscriminatory claim, and the Court’s passing reference to Section 8(b)(1) as one of the NVRA’s “two general limitations that are applicable to state removal programs” was dicta that did not purport to define or limit Section 8(b)’s scope. 584 U.S. at 764. To the extent that *Mi Familia Vota v. Fontes* misreads *Husted* and mistakenly concludes that this dicta was “[b]inding authority,” 691 F. Supp. 3d 1077, 1095 (D. Ariz. 2023), the district court’s holding is not binding here, its reasoning is not persuasive, and this Court should not follow suit.

2. Plaintiffs Adequately Allege Non-Uniform and Discriminatory Implementation of the Match Protocol

Next, the Secretary erroneously contends that Plaintiffs fail to allege that the Match Protocol is non-uniform or discriminatory. SOS Br. at 32. This argument ignores the Amended Complaint’s well-pled factual allegations, misreads key terms in the NVRA, and contradicts on-point authority.

The Secretary's first error lies in his narrow construction of "uniform." Other sources used at the time of the NVRA's enactment define "uniform" far more expansively. Webster's Third New International Dictionary of the English Language Unabridged (1993) defines "uniform" as (i) "marked by lack of variation, diversity, change in form, manner, worth or degree"; (ii) "marked by complete conformity to a rule or pattern or by similarity in salient detail or practice"; (iii) "consistent in conduct, character, or effect: lacking in variation, deviation, or unequal or dissimilar operation"). Moreover, courts interpreting Section 8(b) have held that a voting restriction can be non-uniform if the law is theoretically applicable to all potential registrants but, as a practical matter, only impacts a subset of them. *See, e.g., Mi Familia Vota*, 129 F.4th at 714-15; *United States v. Florida*, 870 F. Supp. 2d 1346, 1350-51 (N.D. Fla. 2012) (holding a requirement to provide proof of citizenship, that was applicable to all voters, was non-uniform because it was more likely to have discriminatory impact on new citizens); *Project Vote v. Blackwell*, 455 F. Supp. 2d 694, 703-04 (N.D. Ohio 2006).

Even under the Secretary's narrow definition, his argument still fails. The Amended Complaint alleges that the Match Protocol is not uniform because it does not apply to at least three groups of people: (1) applicants who register to vote at the DHSMV; (2) applicants who register online; and (3) applicants who do not have a PIN. *See Am. Compl.* ¶¶ 60 n.3, 142-46. The Secretary concedes that, per regulation, applicants who register electronically through DHSMV are exempt from the Match Protocol. SOS Br. at 12 (citing F.A.C. Rule 1S-2.039(5)). The fact that the Match

Protocol does not apply to all voter registration applicants is alone sufficient to defeat the Secretary's argument.

Finally, the Amended Complaint alleges that the Match Protocol is discriminatory. The Amended Complaint alleges that Black citizens, who account for approximately 12% of Florida's registered voters, constitute 31.6% of applicants in "unverified" status. Am. Compl. ¶¶ 35, 121. By contrast, white citizens, who account for 55% of Florida's registered voters, only make up 9% of applicants in "unverified" status. *Id.* Stark racial disparities prevail statewide and in each of the individual counties. *Id.* ¶¶ 121-40.

The Secretary instead argues that Section 8(b) "nondiscriminatory" claims require proof of discriminatory purpose *and* effect. SOS Br. at 33. This argument mischaracterizes the *Husted* decision. The plaintiffs in *Husted* did not bring a Section 8(b)(1) "nondiscriminatory" claim. *Husted*, 584 U.S. at 789. Justice Alito was responding to an argument in Justice Sotomayor's dissent that evidence of a racially discriminatory effect was relevant to the Court's analysis of a separate section of the NVRA—Section 8(b)(2), the NVRA's "failure to vote" provision—that is not at issue in this case. *Compare* 52 U.S.C. § 20507(b)(1), *with* § 20507(b)(2); *Husted*, 584 U.S. at 789. Courts that have ruled on this question have found that a "discriminatory impact" is alone sufficient to constitute a Section 8(b) violation. *Mi Familia Vota*, 129 F.4th at 714-15; *Florida*, 870 F. Supp. 2d at 1350.

The Amended Complaint alleges that the Match Protocol is both non-uniform (exempting DHSMV registrants and those without PINs) and discriminatory in its

application (disproportionately burdening Black and non-white applicants). *See* Am. Compl. ¶¶ 60, 121-22. Such allegations are more than sufficient to state a claim under Section 8(b)(1). The Court should therefore deny the Secretary’s motion to dismiss Count II.

C. SECTION 2 OF THE VOTING RIGHTS ACT

The Secretary confuses and inaccurately describes the legal standard that applies to Section 2 claims. *Compare* SOS Br. at 34 (arguing that Section 2(a) “requires only proof of discriminatory ‘results’”), with *id.* at 36-39 (suggesting Section 2 requires proof of racial bias). Under Section 2, Plaintiffs must merely set forth plausible allegations that the Match Protocol results in the denial or abridgement of the right to vote on account of race by making the political process not equally open to participation by voters of color. *See* 52 U.S.C. § 10301(a)-(b).

“The essence of a [Section] 2 claim . . . is that a certain electoral law, practice, or structure interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by” white voters and voters in the relevant minority group. *Allen v. Milligan*, 599 U.S. 1, 17 (2023) (quoting *Thornburg v. Gingles*, 478 U.S. 30, 47 (1986) (citation modified)); *see also Brnovich v. Democratic Nat’l Comm.*, 594 U.S. 647, 660 (2021). In *Brnovich*, the Supreme Court emphasized that “[t]he key requirement is that the political processes leading to nomination and election (here, the process of voting) must be ‘equally open’ to minority and non-minority groups alike,” which can be understood as “without restrictions as to who may participate.” *Brnovich*, 594 U.S. at 667-68 (citation modified). Or, in the words of Section 2 itself, “in that its members

have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.” *Id.* at 668 (quoting 52 U.S.C. § 10301(b)). Section 2 does not ask whether a practice denies voters the ability to vote: instead, it asks whether a practice or procedure results in “a denial *or abridgement* of the right . . . to vote.” 52 U.S.C. § 10301(a) (emphasis added). “Abridgement is defined as ‘[t]he reduction or diminution of something,’ while the [VRA] defines ‘vote’ to include ‘all action necessary to make a vote effective including . . . *registration* or other action required by State law prerequisite to voting” *Veasey v. Abbott*, 830 F.3d 216, 259-60 (5th Cir. 2016) (cleaned up) (emphasis added).

The Secretary urges dismissal for failure to plead causation supporting the statistical disparities alleged. SOS Br. at 34-39. But Section 2 claims are evaluated under the “totality of the circumstances,” and any circumstance bearing on whether voting is “equally open” is relevant. *Brnovich*, 594 U.S. at 668-69 (concluding that Section 2 “requires consideration of the totality of the circumstances” and that “any circumstance that has a logical bearing on whether voting is equally open and affords equal opportunity may be considered”). This fact-intensive inquiry is ill-suited to resolution at this stage, as doing so “puts the cart before the horse.” *See Fla. State Conf. of NAACP v. Lee*, 566 F. Supp. 3d 1262, 1291 (N.D. Fla. 2021) (concluding that the *Brnovich* decision did not support dismissing a Section 2 results claim). District courts in this Circuit accordingly routinely deny dismissal of well-pled Section 2 claims. *See, e.g., Kemp*, 574 F. Supp. 3d at 1276-77 (concluding that the defendants’ arguments

regarding extent of burdens placed on voters by challenged provisions “are not appropriate at the motion to dismiss stage” and explaining that FRCP 8(a)(2) requires only “a short and plain statement of the claim showing that the pleader is entitled to relief”); *Greater Birmingham Ministries v. Merrill*, 250 F. Supp. 3d 1238, 1243-44 (N.D. Ala. 2017) (denying motion to dismiss Section 2 claim); *see also Georgia Coal. for the Peoples’ Agenda, Inc. v. Raffensperger*, 2022 WL 22866291, at *9-11 (N.D. Ga. Sept. 29, 2022) (denying summary judgment motion in Section 2 case because of disputed issues of material fact).

The Amended Complaint explicitly ties the stark, statistically supported racial disparities in the Match Protocol’s impact, Am. Compl. ¶¶ 120-40, to express allegations of causation, *id.* ¶¶ 76-80, 141-47. The concrete causal mechanism is straightforward. First, the Match Protocol does not ensnare applicants registering online or at driver’s licenses offices; instead, it principally captures individuals registering through third-party voter registration organizations that must use paper applications. Second, the disproportionate use of third-party voter registration organizations by Black and non-white applicants causes them to be disparately impacted by the Match Protocol compared to white voters. *Id.* ¶¶ 78, 141-47. This is not some abstract theory. Broward County’s data confirms that approximately 99.6% of applicants in the county placed in “unverified” status due to the Match Protocol completed a paper voter registration application. *Id.* ¶ 144. According to information provided by Duval County, approximately 76.4% of their applicants who are in “unverified” status due to the Match Protocol registered through a third-party voter

registration organization, while less than 1% registered at a driver license office and none registered online. *Id.* ¶ 145.

The Match Protocol predominantly harms Black and non-white voters because it preys on a method of registration they disproportionately use. Justice Scalia recognized this sort of harm as a paradigmatic violation of Section 2:

If, for example, a county permitted voter registration for only three hours one day a week, and that made it more difficult for blacks to register than whites, blacks would have less opportunity ‘to participate in the political process’ than whites, and § 2 would therefore be violated—even if the number of potential black voters was so small that they would on no hypothesis be able to elect their own candidate

Chisom v. Roemer, 501 U.S. 380, 408 (1991) (Scalia, J., dissenting) (citation omitted).

Additional features compound the harm imposed by the Match Protocol: (1) not all registrants are run through or practically impacted by the Match Protocol (including certain DHSMV registrants, online registrants, and applicants lacking a PIN), *id.* ¶¶ 60 & n.3, 142-46; (2) county officials exercise discretion, *id.* ¶¶ 72-75; and (3) manual entry of paper applications increases error risk, *id.* ¶ 78. The Amended Complaint further alleges that, due to the continuing effects of discrimination, Black and non-white voters face different burdens in overcoming these hurdles. *Id.* ¶¶ 120-40, 147-51.

Several cases the Secretary relies on have no bearing because they involve appeals of post-trial rulings where the plaintiffs had specific proof problems that are wholly irrelevant at the motion to dismiss stage. *See, e.g., Gonzalez v. Arizona*, 677 F.3d 383, 406 (9th Cir. 2012) (observing that “not a single expert testified to a causal

connection between Proposition 200's requirements and the observed difference in the voting rates of Latinos"); *Smith v. Salt River Project Agr. Imp. & Power Dist.*, 109 F.3d 586, 595 (9th Cir. 1997) (plaintiffs "effectively stipulated to the nonexistence of virtually every circumstance which might indicate that landowner-only voting results in racial discrimination"); *Salas v. Sw. Texas Jr. Coll. Dist.*, 964 F.2d 1542, 1556 (5th Cir. 1992) (plaintiffs offered no evidence linking low Hispanic voter turnout with past discrimination); *Irby v. Virginia State Bd. of Elections*, 889 F.2d 1352, 1357-59 (4th Cir. 1989) (no racial disparity exists on a statewide basis). *Wesley v. Collins*, 791 F.2d 1255, 1261-62 (6th Cir. 1986), is irrelevant because the Sixth Circuit held that felon disenfranchisement laws are explicitly permitted by Section 2.

The Secretary's *Brnovich* arguments cherry-pick a single factor—purported other opportunities within Florida's registration system. But the availability of other means of registration does not immunize a voting barrier that specifically impacts registration through third-party voter registration organizations, the method disproportionately used by large numbers of Black and non-white voters. To borrow again from Justice Scalia's dissent in *Chisom*, if Black applicants are not registering within the available means provided by the jurisdiction, that does not end the Section 2 inquiry. *Chisom*, 501 U.S. at 408 (1991). The Secretary's *Brnovich* arguments further ignore the totality of the circumstances analysis, the magnitude and scope of the harm currently wrought by the Match Protocol, and the relevance of history and the ongoing socioeconomic effects of discrimination. SOS Br. at 36-39; see Am. Compl. ¶¶ 9, 114-27, 148-51; *Brnovich*, 594 U.S. at 672-74; *Gingles*, 478 U.S. at 46-47. *Brnovich*'s non-exhaustive

factors are not equally weighted and no one factor is dispositive, 594 U.S. at 668-69, and two *Gingles* factors are particularly relevant in vote denial cases: (i) the history of voting discrimination against the minority group within the state and (ii) the ongoing effects of such discrimination. *Brnovich*, 594 U.S. at 673; *Gingles*, 478 U.S. at 36-37. Plaintiffs plead both. Am. Compl. ¶¶ 81-89, 114-40.

The Amended Complaint also addresses the Match Protocol's departure from prior practice, the asserted state interests, as well as alternative registration channels provided by the state. It states that the Match Protocol imposes burdens far greater than those in place when Section 2 was amended in 1982, *id.* ¶¶ 45-61; and that the Match Protocol's requirements are not narrowly drawn to advance a compelling state interest, *id.* ¶¶ 152-55. These factors weigh in Plaintiffs' favor.

Finally, the Secretary relies on *Browning*, SOS Br. at 38, but its Section 2 ruling involved speculative, unsupported, and conclusory allegations about "[t]he ***hypothetical possibility*** that a significant number of minorities would be disenfranchised by enactment of [the Match Protocol.]" *Browning I*, 2007 WL 9697653, at *7 (emphasis added). There was no concrete evidence of harm, in part because the Match Protocol had just taken effect at the time. *Id.* at *1-2. Here, Plaintiffs' detailed allegations describe the harm the Match Protocol has wrought, including nearly 80,000 voters being prevented from joining the voter rolls and significant voter disenfranchisement. *See* Am. Compl. ¶¶ 1, 114-40.

For these reasons, Plaintiffs have adequately stated a claim challenging the Match Protocol under Section 2 of the VRA's results test.

CONCLUSION

For these reasons, Plaintiffs respectfully submit that the Secretary's motion to dismiss be denied in its entirety.⁶

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⁶ If the Court grants the motions to dismiss, Florida Rising respectfully requests an opportunity to replead its complaint.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Angela M. Liu, certify that on February 17, 2026, I caused the foregoing document to be electronically filed with the Clerk of Court using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

/s/ Angela M. Liu

Angela M. Liu

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