

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

WILLIAM A. LINK, et al.,

Plaintiffs,

v.

Case No.: 4:21cv271-MW/MAF

RICHARD CORCORAN, et al.,

Defendants,

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ORDER DENYING MOTION TO DISMISS

This is a First Amendment case. Plaintiffs challenge various provisions of Florida House Bill 233. HB 233 requires postsecondary institutions to conduct “an annual assessment of . . . intellectual freedom and viewpoint diversity.” § 1001.03(19)(b), Fla. Stat. It also bars those institutions from shielding “students, faculty, or staff from expressive activities,” § 1004.097(3)(f), Fla. Stat., and creates a cause of action for any student “injured by a violation of this section” that may be brought against their institution. *Id.* § 1004.097(4)(a). Finally, HB 233’s recording provision authorizes students to “record video or audio of class lectures . . . in connection with a complaint to the public institution of higher education where the recording was made, or as evidence in, or in preparation for, a criminal or civil proceeding.” § 1004.097(3)(g), Fla. Stat. Plaintiffs challenge these provisions as violative of their First Amendment rights to speech and association.

Asserting that Plaintiffs lack standing, that their claims are not ripe, and that Plaintiffs fail to state a claim, Defendants move to dismiss Plaintiffs' Amended Complaint. *See generally* ECF No. 40. This Court has carefully considered Defendants' motion, Plaintiffs' response, ECF No. 43, and the parties' supplemental briefing, ECF Nos. 65 and 66. Having done so, Defendants' motion is **DENIED**.

First, accepting Plaintiffs' allegations as true and drawing all reasonable inferences in Plaintiffs' favor, Plaintiffs have sufficiently alleged standing. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992) ("At the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice . . ."). But Plaintiffs should take note that "[i]n response to a summary judgment motion," they "can no longer rest on such 'mere allegations,' but must 'set forth' by affidavit or other evidence 'specific facts,' which for purposes of the summary judgment motion will be taken to be true." *Id.* (quoting Fed. R. Civ. P. 56(e)).

Similarly, as explored in part at the hearing on Plaintiffs' motion for a preliminary injunction, Plaintiffs have alleged at least one cognizable theory under which HB 233's provisions may violate the First Amendment. *See* ECF No. 90 at 3.

Accordingly,

IT IS ORDERED:

Defendants' motion to dismiss, ECF No. 40, is **DENIED**.

SO ORDERED on April 5, 2022.

s/Mark E. Walker

Chief United States District Judge