**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF FLORIDA**

CASE NO.: 25-CV-81406-MIDDLEBROOKS

REBEL A. COLE

Plaintiff,

v.

ADAM HASNER, et al.,

Defendant.
_____/

**ORDER ON MOTION TO DISMISS**

THIS CAUSE comes before the Court upon Defendants' Motion to Dismiss Plaintiff's Amended Complaint, filed on March 9, 2026. (DE 24). The Motion is fully briefed. (DE 28, DE 29). For the reasons stated, the Motion is denied.

## I. BACKGROUND

Plaintiff Rebel A. Cole initially brought this action on November 12, 2025. (DE 1). Plaintiff filed an Amended Complaint on January 26, 2026. (DE 17). Plaintiff Cole alleges that Defendants, Adam Hasner, Russell Ivy, Stephen Engle, Anita Pennathur, Donald Neubaum and Chee Ostinelli violated his constitutional right to free speech under the U.S. Constitution and the Florida Constitution. (DE 17 at 18, 20).

Plaintiff Dr. Rebel A. Cole is a tenured faculty and Lynn Eminent Scholar Chaired Professor of Finance at Florida Atlantic University (FAU), a public university in Boca Raton, Florida. As part of his position at FAU, Dr. Cole is required to teach one class each semester. For each executive education class over that required course, Dr. Cole would receive an additional $12,000 above his salary. (DE 17 at ¶ 13). As of September 2025, Dr. Cole was teaching two classes, a regular Ph.D. class (FIN7811) and Corporate Finance 1 (FIN6406) as part of the

Executive MBA program. He was scheduled to teach two classes in the spring semester at FAU, an Executive Ph.D. Finance course (FIN7808) as well as Executive Education MBA Corporate Finance II (FIN6808) (*Id.* at ¶ 14). Additionally, Dr. Cole was also serving as a Ph.D. advisor to six Ph.D. students. For each Ph.D. student whose dissertation he chairs, he received an additional $8,000 upon the student's graduation. (*Id.* at ¶ 15).

The controversy that underlies this case arises in the aftermath of the murder of conservative political commentator, Charlie Kirk. (*Id.* at ¶ 18). His murder inspired wide-ranging dialogue on social media, including "X" (formerly "Twitter"). Some users expressed outrage and sadness, while others openly celebrated his murder. (*Id.* at ¶¶ 19, 20). Dr. Cole engaged in this dialogue by responding to others who commented on a video depicting people chanting "we got Charlie in the neck." (*Id.* at ¶¶ 20—23). Specifically, Dr. Cole responded to X User, @MagarSydney's comments that "[n]o one is afraid of you" by telling her to be "very afraid. We are going to hunt you down. We are going to identify you. Then we are going to make you radioactive to polite society. And we will make you both unemployed and unemployable." (*Id.* at ¶ 25).

On September 14, 2025, FAU received an email from an anonymous iCloud account containing screenshots of Dr. Cole's relevant X posts. (*Id.* at ¶ 30). The next morning Defendant Pennathur sent Dr. Cole a letter via email notifying him that, in light of his recent posts, he was "being placed on administrative leave with pay, effective immediately and until you receive further notice from a university official." (*Id.* at ¶ 31).

As part of its investigation into the matter, FAU enlisted Alan Lawson, former Justice of the Florida Supreme Court as its independent investigator. (*Id.* at ¶¶ 33, 39). Mr. Lawson eventually concluded his investigation into Dr. Cole's social media posts and submitted an Investigative

Report and Recommendation to the university on November 18, 2025. (*Id.* at ¶ 54). Mr. Lawson ultimately found that Dr. Cole's conduct "addressed politically and socially charged topics of interest," and "occurred in a private capacity" with no evidence of disruption. (*Id.* at ¶¶ 56, 57). The report therefore recommended "no formal disciplinary action" because Dr. Cole's speech was "protected speech by a private citizen on matters of public concern" and "disciplinary sanctions would not withstand judicial scrutiny under either the First Amendment or Article I, Section 4 of the Florida Constitution." (*Id.* at ¶ 59). Following Mr. Lawson's Report and Recommendation, Defendants lifted Dr. Cole's administrative leave without pay on November 18, 2025. (*Id.* at ¶ 60).

Dr. Cole is still prohibited from teaching one of his scheduled classes during the spring semester and has been unable to work with all but one of his doctoral students on their theses for over four months, all resulting in financial harm to Dr. Cole.

In light of these events, Plaintiff has filed two counts against the Defendants. As an initial matter, Plaintiff asserts his claims against Defendants Adam Hasner, Russell Ivy, Stephen Engle, Anita Pennathur in both their official and individual capacities, whereas he asserts claims against Defendants Donald Neubaum and Chee Ostinelli in their individual capacities. (DE 17 at 3, 4). Plaintiff first asserts a violation of the First Amendment to the U.S. Constitution against all Defendants in their official and individual capacities. (DE 17 at 18). Plaintiff also asserts a violation of Article I, Section 4 to the Florida Constitution.

## II. LEGAL STANDARD

A motion to dismiss under Rule 12(b)(6) challenges the legal sufficiency of the allegations in a complaint. *See* Fed. R. Civ. P. 12(b)(6). In assessing legal sufficiency, the Court is bound to apply the pleading standard articulated in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). That is, the complaint "must … contain sufficient

factual matter, accepted as true, to 'state a claim to relief that is plausible on its face,'" *Am. Dental Ass'n v. Cigna Corp.*, 605 F.3d 1283, 1289 (11th Cir. 2010) (quoting *Twombly*, 550 U.S. at 570). "Dismissal is therefore permitted when on the basis of a dispositive issue of law, no construction of the factual allegations will support the cause of action." *Glover v. Liggett Grp., Inc.*, 459 F.3d 1304, 1308 (11th Cir. 2006) (internal quotations omitted) (citing *Marshall Cty. Bd. of Educ. V. Marshall Cty. Gas Dist.*, 992 F.2d 1171, 1174 (11th Cir. 1993)). When reviewing a motion to dismiss, a court must construe the complaint in the light most favorable to the plaintiff and assume the truth of the plaintiff's factual allegations. *See Erickson v. Pardus*, 551 U.S. 89, 93 (2007); *Christopher v. Harbury*, 536 U.S. 403, 406 (2002); *Brooks v. Blue Cross & Blue Shield of Fla., Inc.*, 116 F.3d 1364, 1369 (11th Cir. 1997). However, pleadings that "are no more than conclusions, are not entitled to the assumption of truth. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations," *Iqbal*, 556 U.S. at 678.

The Supreme Court has urged courts to apply qualified immunity at the earliest possible stage of litigation because the defense is immunity from the burdens of defending a lawsuit, not just immunity from damages or liability. See *Hunter v. Bryant*, 502 U.S. 224, 228, 112 S.Ct. 534, 116 L.Ed.2d 589 (1991). Accordingly, "[a]lthough the defense of qualified immunity is typically addressed at the summary judgment stage of a case, it may be ... raised and considered on a motion to dismiss." *Corbitt v. Vickers*, 929 F.3d 1304, 1311 (11th Cir. 2019) (citation omitted). "Unless the plaintiff's allegations state a claim of violation of clearly established law, a defendant pleading qualified immunity is entitled to dismissal before the commencement of discovery." Mitchell v. Forsyth, 472 U.S. 511, 526, 105 S.Ct. 2806, 86 L.Ed.2d 411 (1985) (citation omitted).

## III. DISCUSSION

"[T]he law is well-established that the state may not demote or discharge a public employee in retaliation for" exercising his First Amendment rights. *See Bryson v. City of Waycross*, 888 F.2d 1562, 1565 (11th Cir. 1989). But a public employee's First Amendment rights are "not absolute." *Id. See also Jarrard v. Sheriff of Polk Cnty.,* 115 F.4th 1306, 1316 (11th Cir. 2024), *cert. denied sub nom. Moats v. Jarrard,* 145 S. Ct. 2702 (2025) ("In particular, the Court said, when the state is acting as an employer—as opposed to a regulator more generally—it has a special interest in "promoting the efficiency of the public services it performs through its employees."). As a government employee, Plaintiff's First Amendment claim is subject to the balancing test articulated in *Pickering v. Board of Education of Township High School District* 205, 391 U.S. 563 (1968), and its progeny.

The Eleventh Circuit has interpreted *Pickering's* standard as requiring an employee to show the following:

> (1) the speech involved a matter of public concern; (2) the employee's free speech interests outweighed the employer's interest in effective and efficient fulfillment of its responsibilities; and (3) the speech played a substantial part in the adverse employment action. If an employee satisfies her burden on the first three steps, the burden then shifts to the employer [4] to show by a preponderance of the evidence that it would have made the same decision even in the absence of the protected speech.

*Labriola v. Miami-Dade Cnty.*, 142 F.4th 1305, 1309 (11th Cir. 2025) (internal citation omitted).

### A. Sufficiency of the Complaint Allegations

Defendants do not dispute that Plaintiff's comments involved a matter of public concern thereby satisfying the first factor. (DE 24 at 7). Instead, Defendants challenge factor two, asserting that their interest in effective and efficient fulfillment of their institutional responsibilities outweighed the Plaintiff's interests.

With respect to the third factor, Defendants argue that Plaintiff faced no adverse employment action, thereby leaving him with no plausible First Amendment claim. . Plaintiff was placed on administrative leave with pay beginning on September 15, 2025, and ending on November 18, 2025. (DE 17 at ¶ 8). Because no pay was docked, no training mandated, and no disciplinary actions were taken against Plaintiff, Defendants contend that he could not have suffered an adverse employment action. I'll address each of these arguments in turn.

The second prong of the *Pickering* test requires that the Plaintiff demonstrate that his speech interests outweighed the university's interest in effective and efficient fulfillment of its institutional responsibilities. The Eleventh Circuit has provided several factors that court must use in balancing these competing interests, including "(1) whether the speech at issue impedes the government's ability to perform its duties efficiently, (2) the manner, time and place of the speech, and (3) the context within which the speech was made." *Labriola*, 142 F.4th at 1309. The disposition of these issues is better suited to after discovery rather than on the narrow set facts of available before me at the motion to dismiss stage. Upon review, however, Plaintiff's allegations plausibly support weighing his free speech interests above FAU's, especially given that the facts in the Complaint do not suggest any impediment to FAU's ability to perform its duties. Although the Defendants explained to Plaintiff in their suspension letter that they "had reason to believe that the employee's presence on the job will adversely affect the operation of the University," the Complaint alleges that there were no documented disruptions involving the University and no evidence existed to suggest disruption to student welfare or internal governance. (DE 17 at ¶¶ 35, 57). The Defendants may have reasonably been concerned with the threat level of the tweets. However, it is telling that none of the individuals who complained about Plaintiff's online speech

were associated with FAU as students, faculty, or staff. (*Id.* at ¶ 42). At this stage, Plaintiff's free speech interests, on balance, outweighed the University's interests.

Turning to the third prong, the Plaintiff must demonstrate that his speech played a substantial role in the adverse employment action. The Eleventh Circuit has previously held that "a public employee's suspension with pay pending an investigation does not constitute adverse employment action for purposes of a First Amendment retaliation claim." *Bell v. Sheriff of Broward Cnty.*, 6 F.4th 1374, 1379 (11th Cir. 2021). In support, the Eleventh Circuit noted that a "temporally-limited suspension pending an investigation into alleged misconduct" would not deter "a reasonable person from exercising his First Amendment rights." *Id.* However, the additional facts of the instant case sufficiently distinguish it from other cases where paid leave or reprimands were the only result of that plaintiff's speech. Plaintiff Cole alleges that he was first denied an opportunity to attend a conference that he founded and organized, resulting in reputational harm. (DE 17 at ¶ 49, DE 28 at 9). Moreover, even though Plaintiff continues to teach the one class that he is required to teach this semester, Defendant downplays the significance of the opportunity to teach more than one class. (DE 24 at 9). Plaintiff was scheduled to teach Corporate Finance II before these incidents arose, which would have been accompanied by an additional $12,000. (DE 17 at ¶ 5). It is entirely plausible that this could result in a deterrence to any person from exercising their First Amendment rights. Additionally, Defendants removed Plaintiff from serving as an advisor to six students. For each of those students, Plaintiff would have received $8,000 at graduation. (*Id.* at ¶ 15). Plaintiff has been unable to work with all but one of his doctoral students on their theses for over four months, all resulting in financial harm. (*Id.* at 62). Each of these, especially when taken together, could deter a reasonable person from engaging in speech.

Therefore, I reject Defendants' assertion that his suspension and its implications do not amount to an adverse employment action.

Refuting the "substantial role" element of the third prong, Defendants further suggest that their decision to adjust Plaintiff's schedule was not related to his tweets. (DE 24 at 9). Here, a plaintiff must show that the speech at issue "played a substantial part in the government's decision." *Akins v. Fulton Cnty., Ga.*, 420 F.3d 1293 (11th Cir. 2005) (internal quotation omitted). To refute any causal relationship, Defendants point to the Amended Complaint, which suggests that the University's decision "was based on a preference to have the same professor teach Corporate Finance I and II." *Id.* Defendants additionally note that one student graduated in December while the other four found different advisors, despite the fact that those students "*could* have returned to his mentorship after his reinstatement." (*Id.*). Of course, it was the Defendants who changed the status quo by placing Plaintiff on administrative leave—leaving students to find other advisors, even if temporarily, and to change the active professor for Corporate Finance I. To argue that the new status quo was not the product of their own decision to place the Plaintiff on leave ignores the reality of the situation and downplays the impact it had on the Plaintiff. Therefore, Defendants are not entitled to dismissal on the grounds that the adverse employment action was not attributable to Plaintiff's speech.

**B. Qualified Immunity**

Defendants' Motion to Dismiss asserts the defense of qualified immunity, which Plaintiff faces a substantial burden in overcoming. "Under the qualified immunity doctrine, government officials performing discretionary functions are immune not just from liability, but from suit, unless the conduct which is the basis for suit violates clearly established federal statutory or constitutional rights of which a reasonable person would have known." *Gaines v. Wardynski*, 871

F.3d 1203, 1206-07 (11th Cir. 2017) (citing *Sanders v. Howze*, 177 F.3d 1245, 1249 (11th Cir. 1999)). The Eleventh Circuit has held that "[t]o be entitled to qualified immunity, the defendant must first establish that he was acting within the scope of his discretionary authority. Once that is shown … the burden shifts to the plaintiff to establish that qualified immunity is not appropriate. To do that, the plaintiff must demonstrate the following two things: (1) that the defendant violated [his] constitutional rights, and (2) that, at the time of the violation, those rights were clearly established ... in light of the specific context of the case, not as a broad general proposition." *Id.* at 1208 (cleaned up).

In light of the above analysis, I have found that Plaintiff's complaint states a viable claim for violation of his free speech rights under *Pickering*. Therefore, I now turn to whether those rights were "clearly established" by controlling law. "For a constitutional right to be clearly established so that qualified immunity does not apply, the contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Williams v. Alabama State University*, 102 F. 3d 1179, 1183 (11th Cir. 1997). In determining whether Plaintiff has alleged a violation of a clearly established right, I look to prevailing First Amendment law at the time of the Defendants' alleged conduct. The Eleventh Circuit, in no uncertain terms, has held that a "state employer could not retaliate against a state employee for engaging in constitutionally protected speech." *Id.* (citing *Rankin v. McPherson*, 483 U.S. 378, 383 (1987); *Bryson v. City of Waycross*, 888 F. 2d 1562, 1565 (11th Cir. 1989)). "[T]he employer is entitled to immunity except in the extraordinary case where *Pickering* balancing would lead to the inevitable conclusion that the discharge of the employee was unlawful." *Id.* (citing *Dartland v. Metropolitan Dade County*, 866 F. 2d 1321, 1323 (11th Cir. 1989). The instant matter is one such extraordinary case. Whereas in *Williams*, the Court rejected the plaintiff's contention that their speech constituted

a matter of public concern, both Parties here do not even contest that point. Commentary in the aftermath of the murder of Charlie Kirk, however, indubitably constitutes a matter of public concern, given the increasing political violence in this country, such that a reasonable official would understand that their actions violate the First Amendment. On the facts of the Complaint, the individual administrators could have been aware that their actions, as explicitly described by the Plaintiff in his Complaint, violated Plaintiff's constitutional rights. (DE 17 at 3, 4). Moreover, *Williams* rejected plaintiff's claim because it did not find that the plaintiff, who had "some interest" in the academic and administrative decisions of the university had shown that those interests outweighed the university's interests. However, drawing all inferences in the Plaintiff's favor, it is not clear to me why four anonymous reports, without any connection to the University, created a level of interest for the University that would outweigh the political speech of one of its professors.

**C. Injunctive Relief**

The Complaint seeks injunctive relief in addition to damages including reinstatement to his teaching, mentoring, and research. (DE 17 at 23). As previously mentioned, Defendants prevented Plaintiff from teaching his spring 2026 course and several of his graduate students turned to other mentors in light of Plaintiff's suspension. Given that his administrative leave was revoked on November 18, 2025 (DE 17 at ¶ 60), and the fall semester has presumably concluded, it is unclear to me why injunctive relief is not moot. Besides the monetary costs associated to Plaintiff's inability to teach the overload course and supervise graduate students, Plaintiff appears to be in a position where his future constitutional rights are not threatened.

**CONCLUSION**

Accordingly, it is hereby **ORDERED AND ADJUDGED** that:

1. Defendant's Motion to Dismiss (DE 24) is **DENIED.**
2. Plaintiff shall **SHOW CAUSE**, in writing, as to why his claim for injunctive relief is not moot by no later than June 17, 2026.

**SIGNED** in Chambers, at West Palm Beach, Florida this 10th day of June, 2026.

DONALD M. MIDDLEBROOKS
UNITED STATES DISTRICT JUDGE

cc.

Counsel of Record