

No.

IN THE
Supreme Court of the United States

WILBUR S. VEASY, WILL S. TWIGG

and JERMAINE T. DAVIS,

Petitioners,

v.

FRATERNAL ORDER OF POLICE

JIM FOGLEMAN LODGE #50, INC.,

Respondent.

**On Petition for a Writ of Certiorari
to the Florida Fourth District
Court of Appeal**

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Standing is the fundamental concept that determines if a litigant is afforded access to court, and thereby be entitled to the meaningful opportunity to redress their grievances that is promised by the United States Constitution. Here the appellate court, in affirming the order of the trial court *per curiam* in finding a lack of standing, improperly and unfairly abrogated the right to access court and the right to due process that should have been afforded.

This Petition presents the following issues:

Whether, by affirming that Petitioners lack standing, in the face of evidence to the contrary and procedural improprieties, the Florida Fourth District Court of Appeal's decision unfairly deprives citizens of their Constitutional rights to access to court and due process.

Whether, by affirming that Petitioners lack standing, in the face of evidence to the contrary and procedural improprieties, the Florida Fourth District Court of Appeal fundamentally erred.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners respectfully petition for a writ of certiorari to review the order of the Florida Fourth District Court of Appeal in this case.

OPINIONS BELOW

The order of the Florida Fourth District Court of Appeal is included in the Appendix (“A.”) at A.0001. The order of the Circuit Court for the Fifteenth Judicial Circuit in and for Palm Beach County, Florida is included in the Appendix at A.0005.

JURISDICTION

The Fifteenth Judicial Circuit of Florida entered final judgment on September 12, 2019. A.0003. Petitioners timely appealed to the Florida Fourth District Court of Appeal, which entered an order affirming the Fifteenth Judicial Circuit *per curiam* on May 14, 2020. A.0001. Petitioners timely moved for rehearing en banc, which was denied on July 7, 2020. A.0002. This Petition is timely pursuant to the March 19, 2020 Order of this Court extending the time to submit petitions for certiorari.

This Court's jurisdiction rests on 28 U.S.C. § 1257(a) as the Florida Fourth District Court of Appeal entered its order *per curiam* without opinion, rendering it the highest court of the State in which a decision could be had on this matter. *See Nash v. Florida Indus. Commission*, 389 U.S. 235, 237, 88 S.Ct. 362, 19 L.Ed.2d 438; *Jenkins v. State*, 385 So.2d 1356 (Fla. 1980).

CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS INVOLVED

U.S. Const. Amend. V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same

offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. Amend. XIV, § 1

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Fla. Stat. § 617.0607

Termination, expulsion, and suspension.—

(1) A member of a corporation may not be expelled or suspended, and a membership in the corporation may not be terminated or suspended, except pursuant to a procedure that is fair and reasonable and is carried out in good faith.

...

Fla. R. Civ. P. 1.510

Summary Judgment

...

(c) Motion and Proceedings Thereon. The motion must state with particularity the grounds upon which it is based and the substantial matters of law to be argued and must specifically identify any affidavits, answers to interrogatories, admissions, depositions, and other materials as would be admissible in evidence ("summary judgment evidence") on which the movant relies The judgment sought must be rendered immediately if the pleadings and summary judgment evidence on file show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

...

INTRODUCTION

Petitioners, WILBUR S. VEASY, WILL S. TWIGG and JERMAINE T. DAVIS, are all individuals who were officers with the Palm Beach County Sheriff's Office in Palm Beach County, Florida. Each was a dues-paying member of Respondent, FRATERNAL ORDER OF POLICE JIM FOGLEMAN LODGE #50, INC., an organization primarily composed of former and current officers of the Palm Beach County Sheriff's Office. Petitioners were improperly expelled from their memberships in manners that were in derogation of the Respondent's bylaws, and that were in bad faith. Petitioners therefore had a right to sue Respondent for the damages caused by the improper expulsions.

On summary judgment in this matter, the trial court stated, without explanation, that Petitioners did not have standing to proceed against Respondent. Petitioners ultimately appealed the entry of summary judgment against them, however the appellate court affirmed the trial court's summary judgment, again without explanation.

Such summary judgment was entered, and then affirmed, over multiple procedural and substantive improprieties that thereby deprived Petitioners of a real opportunity to protect their rights. The state courts therefore are failing to afford citizens due process, as required by the Constitution. Further, as it was acceptable to declare without proper supporting evidence that Petitioners lacked standing,

the state courts are also thereby depriving citizens of their right to access courts. Certiorari is warranted to assure that such state courts are not entitled to summarily take liberties with the rights of citizens, such as Petitioners.

STATEMENT OF THE CASE

I. The Complaint and Answer.

On August 1, 2014, this case was initiated by Plaintiff Edward Manak, the former treasurer of Respondent. On August 18, 2017, the Complaint was amended with Petitioners, Jermaine Davis, Wilbur Veasy, and Will Twigg as Plaintiffs in the First Amended Verified Complaint for Damages, Injunctive Relief, and an Accounting (Amended Complaint). A.0007. The Amended Complaint is the operative pleading.

The Amended Complaint alleged that Petitioners were unlawfully removed as members of Respondent in retaliation for objecting to misappropriations of the nonprofit's funds and for improperly removing Mr. Manak from his position as treasurer. *Id.* at ¶ 3. The expulsions were performed in violation of Respondent's bylaws. *Id.* at ¶ 6. The theory behind the Complaint was based on the Florida not-for-profit corporation statute that states that:

“A member of a corporation may not be expelled or suspended, and a membership in the corporation may not be terminated or suspended, except pursuant to a procedure

that is fair and reasonable and is carried out in good faith.”

Fla. Stat. § 617.0607

As a result of the unlawful expulsions, Petitioners suffered damages including loss of benefits, and damage to their reputations. *Id.* at ¶ 7. The Amended Complaint requested an award for such damages along with injunctive relief to reverse the improper expulsions as members of Respondent.

After unsuccessfully attempting to have the Amended Complaint dismissed, Respondent filed its Answer and Affirmative Defenses (Answer) on December 11, 2017. A.0011. The Answer firstly admitted that Petitioners were dues-paying members of Respondent, while largely denying the other allegations. *Id.* at ¶¶ 1-8. Respondent then asserted twelve (12) affirmative defenses essentially alleging in different manners that Petitioners failed to state a claim upon which relief could be granted. *Id.* Notably, Respondent did not assert that Petitioners lacked standing in its numerous affirmative defenses.

II. Discovery.

On May 21, 2018, Petitioners propounded their First Set of Interrogatories to Respondent. A.0063. Also on May 20, 2018, Petitioners propounded their First Request to Produce to Respondents. A.0058. The First Request to Produce sought several integral documents to Petitioner’s claims. Most importantly Petitioners’ first request was for:

“Any and all documents that constitute

Plaintiffs' membership status(es) with the FOP for all years in which Plaintiffs were members, and any other document which you have pertaining to the Plaintiffs, including any records relating to their claims in this case.”

A.0060 ¶ 1. Petitioners secondly requested that Respondent produce:

“Any and all documents that constitute the policies, regulations, and bylaws of the Defendant including but not limited to a personnel handbook, FOP Constitutions and Bylaws, including national, state, and local.”

Id. at ¶ 2.

Despite the clear requests, Respondent refused to produce any documents or respond to the interrogatories, instead filing on June 22, 2018 a Motion for Summary Judgment and Motion for Protective Order. A.0014. The portion of the motion entitled “Protective Order” asserted in a single paragraph that Petitioners were not entitled to any discovery in a circular argument that because Petitioners were no longer members, the very loss Petitioners complained of, they were not entitled to any membership information. A.0020. Respondent’s request for a protective order impliedly admitted that it had failed to respond to the propounded discovery. Respondent thereafter ignored any efforts to coordinate depositions necessary to Petitioners’ case. No discovery was therefore allowed to Petitioners in

this case.

III. Summary Judgment.

Summary judgment is permitted in Florida under the Florida Rules of Civil Procedure which state in pertinent part:

The judgment sought must be rendered immediately if the pleadings and summary judgment evidence on file show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Fla. R. Civ. P. 1.510

Respondent's summary judgment motion essentially alleged that Petitioners were no longer members, were supposedly unqualified to be members of the organization, and could never be members again. A.0014. Missing from Respondent's motion were any rebuttals to the Amended Complaint's allegations that but for Petitioners' improper removal against Respondent's bylaws, Petitioners would still be members of the organization. There was also no rebuttal to Petitioners' allegations that they had been damaged by the unlawful removal.

Following the filing of the summary judgment motion, the trial court held a hearing on the matters set forth. As no discovery had been permitted or performed by Respondent, the evidence submitted in support of and against the motion was minimal.

A. Respondent's Evidence.

Of the items submitted by Respondent with its summary judgment motion, only two documents referenced the Petitioners; the Affidavit of Patrick Yoes (A.0023) and the Declaration of Thomas Hannigan (A.0027).

The Yoes affidavit asserted that each of the Petitioners was “not a member in good standing” with Respondent. A.0025 ¶12-17. Specifically it asserted that Petitioner Davis had not been a member since 2012 (*Id.* at ¶ 12), and that Petitioner Veasy had not been a member since 2013 (*Id.* at ¶ 14), but it did acknowledge that Petitioner Twigg had been expelled from membership on July 8, 2014 (*Id.* at ¶ 16).

Contrastingly, the Hannigan declaration stated that both Petitioners Davis and Twigg had been expelled from membership on July 8, 2014, (A.0029) but that Petitioner Veasy “subsequently had personally resigned” his membership (A.0030). The Hannigan declaration essentially asserted that the Respondent would not take the Petitioners back as members as they were no longer employed as officers, as supposedly required to be a member.

The contradictory statements of Yoes and Hannigan at the very least established that all of Petitioners were members of Respondent, as alleged in the Amended Complaint. The statements established that Petitioner Twigg had been expelled as alleged in the Amended Complaint, and created a genuine issue of material fact on their face regarding

the membership termination of Petitioners Davis and Veasy. Missing from Respondent's evidence completely was any documentary support rebutting the allegations in the Amended Complaint that Respondent had failed to follow the procedures set forth in its bylaws when expelling the Petitioners.

B. Petitioners' Evidence.

The Petitioners, in opposition to the summary judgment motion, submitted a declaration of Petitioner Jermaine Davis. A.0040. The Davis declaration again asserted that Petitioners had been damaged by the unlawful expulsion from their memberships with Respondent, and controverted the Hannigan declaration's version of events. The Davis declaration specifically asserted that both Davis and Twigg had their memberships reinstated by Respondent's governing organization, but were improperly blocked from reinstatement in derogation of Respondent's bylaws. The declaration further stated that Petitioner Veasy was expelled from membership without notice and hearing as required by the Respondent's bylaws. The Davis declaration thereby rebutted the Respondent's evidence, and reiterated the basis of Petitioners' suit, the wrongful expulsion from membership that caused them damage.

Petitioners also submitted a declaration of Mark Johnson, their counsel's paralegal, affirming that Respondent had refused to answer the discovery propounded by Petitioners, and that Respondent had

refused to allow him to coordinate depositions. A.0055 This declaration demonstrated to the trial court that Petitioner's had not had a meaningful opportunity for discovery prior to the summary judgment hearing.

IV. Events Subsequent to the Summary Judgment Hearing.

At the summary judgment hearing, the trial court stated that it would be entering summary judgment against Petitioners. Recognizing the error in that decision, Petitioners filed their Emergency Motion to Not Enter Summary Judgment Against Veasy, Davis, and Twigg (Emergency Motion). A.0104 The Emergency Motion asserted that Respondent mislead the trial court regarding the Petitioners no longer being able to be members, which Respondent relied on to claim that the Petitioners did not have standing to sue Respondent.

In further support of their position, Petitioners submitted with the Emergency Motion an affidavit of Edward Manak, and letters from Thomas Hannigan to Petitioners Davis and Twigg. The Manak affidavit stated that the termination of Petitioners' memberships was not due to them being allegedly ineligible to be members, and that the ineligibility argument made by Respondent was false as the organization historically had members with the same employment status as Petitioners. A.0108. The Hannigan letters affirmed that Petitioners Davis and Twigg had been terminated from Respondent's membership in 2014, as alleged in the Amended Complaint, and for reasons other than lack of

employment as officers. A.0113.

The trial court declined to consider the Emergency Motion as an emergency and stated that it would consider it as a motion for rehearing/reconsideration. A.0120. To that end, Respondent filed a Supplement to the Motion for Summary Judgment and Response to Motion for Rehearing (Supplement). A.0122. The Supplement for the first time asserted that Petitioners were not entitled to any judicial review of their expulsions whatsoever.

Petitioners then filed a Response to Court's Order Requiring Parties to Address Whether or Not §617.0607, F.S. Permits a Private Right of Action (Response). A.000. The Response stated that Fla. Stat. §617.0607 did create a private right of action if an organization failed to follow its fair and reasonable rules for expulsion. The Response also pointed out that the issue raised by the Amended Complaint was whether Respondent complied with its bylaws in expelling Petitioners, and that Respondent never filed its bylaws in support of its motion for summary judgment to establish such compliance.

V. The Summary Judgment Order.

The order granting the Respondent's summary judgment motion was entered following the Emergency Motion but prior to the Supplement and Response. A.0005. There was no subsequent order regarding Petitioners, and it therefore appeared that the trial court did not reconsider its position on the

entry of summary judgment.

Regarding Petitioners, the summary judgment order only stated that it was:

“ORDERED and ADJUDGED that Defendant’s Motion for Summary Judgment is GRANTED as to Plaintiffs JERMAINE DAVIS, WILBURY VEASY and WILL S. TWIGG based upon the Court having found that there are no genuine issues of material fact as to these Plaintiffs not having standing to proceed with the claims against Defendant.”

Id. The trial court did not elaborate in any way on how Petitioners lacked standing to bring the claims against Respondent. Petitioners subsequently attempted again to have the order reconsidered due to the intentionally misleading information presented to the court by Respondent, however their motion was denied without hearing. A.00191 and A.202.

VI. The Appellate Court Decision.

Petitioners appealed to the Florida Fourth District Court of Appeal, arguing that the trial court erred in granting summary judgment by finding that Petitioners did not have standing, as standing simply means that the Petitioners were the correct parties to assert the rights and damages alleged in the Amended Complaint. A.0203 Petitioners further argued that the issue of standing was not properly before the court as Petitioners had waived asserting standing in their affirmative defenses. Petitioners

argued, more importantly, that summary judgment was wholly inappropriate where Respondent had admittedly refused to complete any propounded discovery, as the facts could not have been sufficiently developed in this matter in order to enter summary judgment for Defendant on any disputed issue, including the matter of standing.

Petitioners also argued that even if Respondent's standing argument had been properly before the trial court, the court did not draw all inferences in favor of the Petitioners, as required. Instead it improperly weighed the competing written testimony submitted by the parties and made a determination in favor of Defendant even though Defendant's own evidence demonstrated conflicting information on Plaintiffs' memberships.

Petitioners lastly argued that the trial court abused its discretion in failing to rehear the summary judgment motion in light of evidence presented that Respondent had misled the trial court.

Following the parties' briefing, the Florida Fourth District Court of Appeal entered an order affirming the trial court's ruling *per curiam*, and did not present any written opinion explaining why it agreed with the lower court that Petitioners allegedly lacked standing.

VII. Motion for Rehearing En Banc.

Petitioners timely moved the Florida Fourth

District Court of Appeal for rehearing in their Motion for Issuance of a Written Opinion, Rehearing, Rehearing en Banc, and Certification (Motion for Rehearing). A.0229 Essentially, Petitioners argued that the affirmance of the lower court's order finding a lack of standing conflicted with established case law in the jurisdiction and served to improperly abrogate Petitioners' right of access to court.

Petitioners asserted that the appellate court's order conflicted with its own precedent, the precedent of other districts, and the precedent of the Supreme Court of Florida on procedural rules regarding determination of standing and entry of summary judgment. Namely that the appellate order improperly allowed the trial court to permit a defendant to assert lack of standing at summary judgment when it had been waived at the pleading stage. More importantly, Petitioners argued that the order allowed the trial court to enter summary judgment when discovery had not been complied with by the moving party.

Petitioners further asserted that the appellate order conflicted with lower court and Florida Supreme Court precedent on substantive rulings regarding standing and summary judgment. Petitioners again pointed to the conflicts in the evidence presented by the parties. Additionally, Petitioners pointed to the substantive law that specifically allowed similar causes of action to be brought in Florida courts.

The Petitioners' Motion for Rehearing was denied, again without explanation or opinion. A.0002

REASONS FOR GRANTING THE PETITION

I. THE DECISION BELOW DEPRIVED CITIZENS OF MEANINGFUL ACCESS TO COURT AND DUE PROCESS IN VIOLATION OF THE UNITED STATES CONSTITUTION.

A. Affirming that Petitioners lacked standing to sue Respondent for their damages improperly precluded Petitioners from access to court

It is well-established that the right of access to court is a fundamental right protected by the Constitution. This Court has held that it is one of the highest and most essential privileges of citizenship, and that it is the right that lies at the foundation of organized society and orderly government. *Chambers v. Baltimore & Ohio Railroad*, 207 U.S. 142, 28 S.Ct. 34, 52 L.Ed. 143 (1907). It can therefore be seen as one of the privileges and immunities accorded citizens under Article 4 of the Constitution and the Fourteenth Amendment.

Additionally, the right of access to court is an aspect of the right to petition for redress of grievances found in the First Amendment. *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 92 S.Ct. 609, 30 L.Ed.2d 642 (1972). Further the Due Process Clause of the Fourteenth Amendment has been construed to require access to court. *Boddie v. Connecticut*, 401

U.S. 371, 91 S.Ct. 780, 28 L.Ed.2d 113 (1971). Such access must be adequate, effective and meaningful. *Bounds v. Smith*, 430 U.S. 817, 97 S.Ct. 1491, 52 L.Ed.2d 72 (1977).

Here, Petitioners sued relying on Fla. Stat. § 617.0607 which specifically provides that the expulsion from a membership of a Florida non profit organization, such as Respondent, must be fair and reasonable and carried out in good faith. As the state has provided citizens the right to such fair, reasonable, and good faith proceedings, the state must also provide reasonable access to redress a violation of this right.

Summary judgment rendered as a result of a failure to entertain a valid legal theory should be reversed. *See Trevino v. Celanese Corp.*, 701 F.2d 397 (5th Cir.1983). The appellate court, rather than allowing the Petitioners to proceed with their valid claims, summarily prevented them from redressing their grievance in court without explanation.

B. Due process required that Petitioners be given a meaningful opportunity for discovery prior to summary judgment.

The Due Process Clause of the Fifth and Fourteenth Amendment requires that citizens be given meaningful opportunity to present their case in court. *Mathews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976). In order for the opportunity to be meaningful, it is axiomatic that a

party must have access to information necessary to support their position.

To that end, a party should have a full opportunity to conduct discovery if the requisite information is in the possession of the other party. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). To enter summary judgment without such an opportunity for discovery would deprive a citizen of a meaningful opportunity to present their case in court.

In the present case, it is undisputed and even admitted that Respondent refused to answer any of Petitioners' discovery requests prior to the hearing on summary judgment. Petitioners had no opportunity to properly obtain pertinent membership records that would have been invaluable for rebutting the claims made by Respondents in the Yoes and Hannigan affidavits regarding Petitioners' memberships, and the termination of such memberships. Elementary principles of procedural fairness required that Petitioners have an opportunity to obtain and present such evidence on a challenge to their standing. *See Alabama Legislative Black Caucus v. Alabama*, 575 U.S. 254, 271, 135 S. Ct. 1257, 191 L. Ed. 2d 314 (2015).

C. The failure of the appellate court to follow its own precedent unfairly denied Petitioners due process and access to court.

The Due Process Clause of the Fourteenth

Amendment requires that laws be administered in an orderly manner to ensure fairness. *See World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 294, 100 S. Ct. 559, 62 L. Ed. 2d 490 (1980); *Int'l Shoe Co. v. State of Wash., Office of Unemployment Comp. & Placement*, 326 U.S. 310, 319, 66 S. Ct. 154, 90 L. Ed. 95 (1945). Courts therefore employ the principle of *stare decisis* as a foundation of the rule of law, as maintaining the court's prior decisions ensures the evenhanded, predictable, and consistent application of legal principles. *Kimble v. Marvel Entm't, LLC*, 576 U.S. 446, 455, 135 S. Ct. 2401, 192 L. Ed. 2d 463 (2015). When a court arbitrarily fails to follow its controlling precedent, a citizen is deprived of the fairness ensured by due process.

In this matter, the order of the Fourth District Court of Appeal affirming the lower court conflicted with existing controlling precedent in the appellate court and the Florida Supreme Court on both substantive and procedural matters. Firstly, the determination by this the appellate court that Petitioners did not have standing was in derogation of the prevailing case law in the district, that standing exists where a party has established an injury that may be redressed by the requested relief. *Westport Recovery Corp. v. Midas*, 954 So. 2d 750, 752 (Fla. 4th DCA 2007). A determination of lack of standing also went against the standard held by the Supreme Court of Florida that standing simply requires parties to demonstrate that they reasonably expect to be affected by the outcome of the proceedings, either directly or indirectly. *Pub. Def., Eleventh Judicial Circuit of Fla. v. State*, 115 So. 3d 261, 282 (Fla. 2013). A change from or constraint on

the prevailing definitions of standing was a significant departure from the fundamental right to access to court as delineated in Art. I, § 21, Fla. Const., which guarantees broad accessibility to the courts for resolving disputes. *See Westphal v. City of St. Petersburg*, 194 So. 3d 311 (Fla. 2016).

There was no dispute here that Respondent did not plead a lack of standing with its affirmative defenses, and it was well-established in the jurisdiction that lack of standing is an affirmative defense that if not pled, is waived. *See Alexopoulos v. Gordon Hargrove & James, P.A.*, 109 So.3d 248 (Fla. 4th DCA 2013); *Cong. Park Office Condos II, LLC v. First-Citizens Bank & Tr. Co.*, 105 So.3d 602, 607 (Fla. 4th DCA 2013); *Jaffer v. Chase Home Fin., LLC*, 155 So.3d 1199 (Fla. 4th DCA 2015); *Kissman v. Panizzi*, 891 So.2d 1147 (Fla. 4th DCA 2005); *Glynn v. First Union Nat. Bank*, 912 So.2d 357 (Fla. 4th DCA 2005); *Schuster v. Blue Cross & Blue Shield of Fla., Inc.*, 843 So.2d 909, 912 (Fla. 4th DCA 2003); and *Krivanek v. Take Back Tampa Political Comm.*, 625 So.2d 840, 842 (Fla. 1993).

In addition to the due process considerations that should have been made, the Fourth District Court of Appeal precedent also established that a court should not enter summary judgment when the opposing party has not completed discovery. *Singer v. Star*, 510 So.2d 637, 639 (Fla. 4th DCA 1987). Further, as the only available evidence that was presented by Respondent regarding Petitioners was clearly conflicting on its face, affirming summary judgment was in derogation of the controlling law that prohibits resolving summary judgment adversely to

the nonmoving party under that circumstance. *Bogatov v. City of Hallandale Beach*, 192 So.3d 600, 602 (Fla. 4th DCA 2016); *Heithmeyer v. Sasser*, 664 So.2d 358 (Fla. 4th DCA 1995). As the parties had competing sworn statements, affirming summary judgment effectively permitted the trial court to improperly weigh the witnesses' credibility, again in derogation of the controlling law. *Coquina Ridge Properties v. E. W. Co.*, 255 So.2d 279, 280 (Fla. 4th DCA 1971); *Jones v. Stoutenburgh*, 91 So.2d 299 (Fla. 1956).

Affirming the lower court order on the basis of standing further went against the prevailing case law, as alleging that an expulsion from membership done with fraud or bad faith, as Petitioners did, states a proper cause of action, and the party is entitled to a court determination of whether the procedure was carried out properly and in good faith. *Boca W. Club, Inc. v. Levine*, 578 So.2d 14 (Fla. 4th DCA 1991) and *Everglades Protective Syndicate, Inc. v. Makinney*, 391 So.2d 262 (Fla. 4th DCA 1980); *McCune v. Wilson*, 237 So.2d 169 (Fla. 1970).

II. THE DECISION BELOW WAS WRONG.

Fundamentally, the appellate court erred in affirming that the Petitioners did not have standing to pursue this action against Respondent. In Florida, standing is that sufficient interest in the outcome of litigation which will warrant the court's entertaining it. *3709 N. Flagler Drive Prodigy Land Tr. v. Bank of Am., N.A.*, 226 So.3d 1040, 1041 (Fla. 4th DCA 2017). A party's standing is determined at the time the lawsuit is filed. *McLean v. JP Morgan Chase Bank Nat'l Ass'n*, 79 So.3d 170, 173 (Fla. 4th DCA 2012); *Reynolds v. Nationstar Loan Services, LLC*, 190 So.3d 219, 221 (Fla. 4th DCA 2016). Generally, standing requires a would-be litigant to demonstrate that he or she reasonably expects to be affected by the outcome of the proceedings, either directly or indirectly. *Pub. Def., Eleventh Judicial Circuit of Fla. v. State*, 115 So.3d 261, 282 (Fla. 2013). To have standing, a party must establish an injury that may be redressed by the requested relief. *Westport Recovery Corp. v. Midas*, 954 So.2d 750, 752 (Fla. 4th DCA 2007).

Standing in Florida is therefore a simple concept of whether the party requesting relief is the party that is entitled to relief. In the present case, Petitioners were asserting that their own memberships were illegally terminated by Respondent, that they personally were damaged by the improper termination, and that they are seeking injunctive relief and damages for the loss of their memberships. Petitioners clearly were asserting their own rights and were the parties that would benefit from the relief requested if they were to

prevail. Petitioners therefore very clearly had standing to pursue their claims against Respondent in this action, and the final judgment on those grounds should have been remanded by the Fourth District Court of Appeal.

CONCLUSION

Although summary judgment is available in Florida courts pursuant to Fla. R. Civ. P. 1510, in this case the rule was applied in a manner that created injustice to Petitioners. A statute or rule may be held constitutionally invalid as applied when it operates to deprive an individual of a protected right. *Boddie v. Connecticut*, 401 U.S. at 379. As Petitioners were not afforded due process or proper access to court in the summary judgment proceeding affirmed by the Florida Fourth District Court of Appeal, and as Petitioners did have standing to pursue their claims against Respondent, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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