No. 25-12370

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

Florida Decides Healthcare, Inc., et al.,
Plaintiffs-Appellees,

v.

Florida Secretary of State, et al.,
Defendants-Appellants.

U.S. District Court for the Northern District of Florida, No. 4:25-cv-211-MW-MAF
(Walker, J.)

DEFENDANTS-APPELLANTS FLORIDA SECRETARY OF STATE AND FLORIDA ATTORNEY GENERAL'S TIME-SENSITIVE MOTION FOR STAY PENDING APPEAL

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CERTIFICATE OF INTERESTED PERSONS
AND CORPORATE DISCLOSURE STATEMENT

Per Rule 26.1 and Circuit Rule 26.1, Defendants-Appellants Florida Secretary of State and Florida Attorney General certify that the following have an interest in the outcome of this case. Note that "Defendant(s)," as opposed to "Defendants-Appellants," refer to defendants in the case, other than the Florida Secretary of State and Florida Attorney General.

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246. Wilcox, Wesley, *Defendant*

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248. Williams, Kenya, *Defendant*

249. Worrell, Monique, *Defendant*

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Per Circuit Rule 26.1-2(c), Defendants-Appellants Florida Secretary of State and Florida Attorney General certify that the CIP contained herein is complete.

Dated: July 14, 2025

/s/ William H. Stafford, III
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Counsel for Defendant-Appellant Florida Attorney General

/s/ Mohammad O. Jazil
Mohammad O. Jazil
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PRELIMINARY STATEMENT

In this motion, "Doc." citations refer to docketed documents in the district court. The accompanying page numbers are the blue page numbers on the upper-right side of the docketed documents.

Several House Bill 1205 provisions are referenced in this motion. Bill line numbers are referred to as "ll." with the line numbers. A citation to a provision in HB1205 thus looks like this: "HB1205 ll.1-2." The full version of the bill can be viewed here: https://www.flsenate.gov/Session/Bill/2025/1205/BillText/er/PDF.

INTRODUCTION

Neither Californians nor Colombians have a First Amendment right to *collect* completed citizen-initiative petitions from Floridians who wish to change the Florida Constitution. The district court erred in saying that they do.

Florida's citizen-initiative process has problems. Circulators have stolen sensitive information from voter petitions. Some have tampered with petitions, filling in or changing voter information. Others have filled in petitions for the deceased.

Investigations have been conducted. Arrests made. Sentences imposed.

Yet the work of stamping out fraud is difficult. Among other things, that's because petition sponsors often pay out-of-state contractors to collect signed petitions. The out-of-state contractors go on to hire out-of-state subcontractors who then hire out-of-state petition circulators. Law enforcement must thus work through a nesting doll-like setup to investigate, arrest, and obtain a conviction for petition fraud.

The Florida Legislature recognized as much. *See* HB1205 ll.285-90. It passed House Bill 1205 to address the problems with the citizen-initiative process. The bill bars non-Florida residents and non-citizens from collecting signed petitions.

To be clear, non-residents and non-citizens remain free to *talk* to Florida voters about the issues. These out-of-staters just can't *collect* signed petition forms. Speech remains unencumbered. Certain conduct—the collecting of signed petitions—is all that's prohibited. For good reason.

The district court disagreed. Florida now seeks a stay **as soon as practicable**.

BACKGROUND

I. Floridians can amend their state constitution through the citizen-initiative process. Fla. Const. art. XI, § 3. Those who wish to propose changes can register as a petition sponsor. Fla. Stat. § 100.371(2). Their task is to collect signed petition forms from a significant portion of the Florida electorate, 880,062 voters. Fla. Const. art. XI, § 3 (detailing requirements).

Petition forms are presented to voters for their signatures. The forms include the "full text of the proposed amendment," the "name and address of the sponsor," and the "bar code or serial number associated with the initiative petition." HB1205 ll.530-36. If a voter wishes to sign the petition, the voter must provide a full name, "address and county of legal residence," "voter registration number or date of birth," and Florida "driver license number" or "identification card number" or "the last four digits of" a "social security number." HB1205 ll.537-46.

Once a signed petition is collected, it must be promptly delivered to the supervisor of elections in the voter's county of residence; the petition sponsor has a "fiduciary" duty to ensure that it happens. Fla. Stat. § 100.371(7)(a).

And with the citizen-initiative process, the election machinery never stops. The process goes on each election cycle, without end. Petition sponsors are constantly sending supervisors of elections signed petition forms, and supervisors are under a deadline to check and validate those petitions. Fla. Stat. § 100.371(11)(a). During this "validity check by the Supervisor of Elections," "much of the fraud is initially spotted—

some by mismatched signatures, some petitions include deceased Floridians, some include incorrect personal identifying information, etc." Doc.103-3 at 10.

II. To put it bluntly, citizen-initiative fraud is not rare. The Florida Legislature knows this because, under Florida law, the Office of Election Crimes and Security provides periodic reports to the legislature. Fla. Stat. § 97.022(7); Doc.103-2 (2024 report); Doc.103-3 (2023 report). The reports say that there's "widespread petition fraud in connection with a number of initiative petitions." Doc.103-2 at 8. Consider just a few highlights from the thousands of pages provided to the legislature:

- Petition circulators use "voters personal identifying information to complete the initiative petition." Doc.103-3 at 10; *see also* HB1205 ll.251-52, 304-09. Some bad actors "don't even attempt to hide the fraud, as the handwriting is the same for each voter; some names even appear to be in alphabetical order as if they were copied directly off a list or database." Doc.103-3 at 10.

- Circulators have "tampered with petition forms after they were signed and submitted by electors." Doc.103-2 at 9; *see also* HB1205 ll.304-09. One petition circulator stated that, after receiving a petition, the subcontractor he worked for would "use a website to verify personal identifying information" and "fill in the missing information" if "incomplete." Doc.103-2 at 9; *see also* HB1205 ll.304-09.

- Circulators have also "forged signatures, submitted duplicate signatures on behalf of voters, and signed for deceased voters." Doc.103-3 at 9; *see also* HB1205 ll.247-53. One bad actor "submitted petitions on behalf of 23 deceased individuals in at least four counties." Doc.103-2 at 12; *see also* HB1205 ll.291-95.

One instance of fraud is harmful. Thousands are devastating.

Take the actions from circulators associated with one petition sponsor, Smart & Safe, a group advocating for a constitutional right to recreational marijuana. The reports state that over 35,000 signed and *validated* petitions were collected and submitted by only thirty-five individuals known to be fraudsters who worked for Smart & Safe. Doc.103-2 at 6. One Smart & Safe circulator—a "lead" petition circulator, tasked with "training new team members"—put fictitious names on petition forms. Doc.103-2 at 16-17. She submitted 3,980 signed petitions on behalf of Smart & Safe. Doc.103-2 at 16. Supervisors of elections invalidated 2,064 of the petitions. Doc.103-2 at 16. Another circulator submitted 3,984 signed petitions, and supervisors of elections invalidated 2,438. Doc.103-2 at 18-19.

What's more, "the Duval County Supervisor of Elections reported" "that a member of his elections staff had her personal identification information misappropriated, and signature forged on petition forms submitted by a Smart & Safe circulator." Doc.103-2 at 10. So, election staff aren't immune from fraud, either.

III. The Office of Election Crimes and Security highlights a particular issue in the citizen-initiative process: out-of-state circulators and out-of-state entities. Its reports explain that petition sponsors are:

> able to delegate key aspects of its petition initiative activities to out-of-state entities, who then subcontracted with other individuals who were even further outside the reach of Florida authorities. These challenges made it incredibly difficult for investigators and law enforcement to investigate and prosecute subcontractors perpetuating petition fraud, let alone before the petition was certified for ballot placement.

Doc.103-2 at 8; *see also* HB1205 ll.285-90 (recognizing same).

The reports provide an example. Last election cycle, one petition sponsor hired an out-of-state entity, who hired another entity, who hired petition circulators. Doc.103-2 at 482. This made things difficult for law enforcement when they tried to obtain documents from that petition sponsor, which was accused of illegally compensating circulators. Doc.103-2 at 8. The sponsor simply claimed that it didn't have *any* of the requested documents; apparently, one of its hired entities had them. Doc.103-2 at 8. And when the State tried to get documents from the entity, it stonewalled behind its status as a California company. The reports lament that:

> The State's ability to execute the subpoena has been hampered by the fact that [the out-of-state entity] is not a registered business entity in Florida. Many of the subcontractors [the out-of-state entity] worked with are not registered to do business in Florida, either. And unlike other states where constitutional amendments can be proposed by initiative petition, Florida has no state residency requirement for paid petition circulators.
>
> Consequently, many [petition sponsor] paid circulators have few if any ties to Florida and list addresses in other, sometimes faraway, states. Some appear to be transient, going from state to state to do similar work. In fact, two paid circulators arrested for petition fraud . . . also face charges for petition fraud in Kansas after leaving Florida. The out-of-state residency of key suspects and witnesses has made for significant investigative challenges.

Doc.103-2 at 8 (citation removed, paragraph space added).

The harm continues. The statewide prosecutor's office explained to the district court that it's "aware of several petition circulator investigations that are still open and

pending[,] primarily because the circulator is not a Florida resident and is currently living outside of our jurisdiction." Doc.267-2 ¶ 15.

IV. Non-citizens pose problems, as well. Conceptually, they too are out-of-staters. "Just as non-resident circulators and petition gathering companies have proven difficult to locate and investigate," one prosecutor said, "the same would hold true for non-citizen petition circulators." Doc.267-2 ¶ 17.

And with non-citizens, there's always a risk that they can leave the State, given their strong ties to other countries, and not turn in election forms on time. The State knows, for example, that when non-citizens collect voter-specific forms—like voter registration forms—they can leave (and likely have left) the jurisdiction before delivering those forms. That's based on evidence produced in a Northern District of Florida trial. *NAACP v. Byrd,* 4:23-cv-215, Doc.311 at 13 (N.D. Fla. Apr. 29, 2024).

More broadly, there's a public integrity concern with the participation of non-citizens in Florida elections. The Office of Election Crimes and Security reports state that "Florida has continued to investigate and make criminal referrals through" the office "for instances of non-citizen voting." Doc.103-2 at 26.

V. The Florida Legislature stepped in to change things during the 2025 legislative session. It passed HB1205, an election-reform package aimed at cleaning up the citizen-initiative process. In HB1205's findings of fact, the legislature acknowledged the accounts of fraud detailed in the Office of Election Crimes and Security reports.

HB1205 234-357. It also highlighted the problems that transient actors pose to the citizen-initiative process and law enforcement. HB1205 ll.277-90, 336-41.

Relevant to this appeal, HB1205 prevents non-residents and non-citizens from "collect[ing]" signed petitions. *E.g.*, HB1205 ll.598-603. The bill states that:

> (b) A person may not collect signatures or initiative petitions if he or she:
> . . .
> 2. Is not a citizen of the United States.
> 3. Is not a resident of this state.

HB1205 ll.598-603. Signed petitions submitted by ineligible circulators are invalid. HB1205 ll.967-70. Registered circulators must also verify that they are residents of Florida and citizens of the United States. HB1205 ll.635-43.

Notably, the legislation focuses on the collection of signed petition forms. Any volunteer, resident, non-resident, citizen, or non-citizen circulator can speak for or against the objective of a petition. Anyone can encourage another to sign (or not sign) a petition. What's affected is the conduct that occurs after that speech: collecting a signed petition. That's it. The State decided that non-residents and non-citizens can't *collect* forms with a Florida voter's signature and other personal information, such as the driver license number or social security number.

THE INSTANT CASE

I. The underlying case concerns several aspects of HB1205. What started with one plaintiff group grew into a case with five. The Florida Decides Healthcare Plaintiffs originated this case, but four other groups—the Smart & Safe Plaintiffs, the Florida

Right to Clean Water Plaintiffs, the League of Women Voters of Florida Plaintiffs, and the Poder Latinx Plaintiffs—intervened. All five groups filed complaints and (in the second round of preliminary injunction briefing) sought preliminary relief.

Only three of the plaintiff groups include petition sponsors. Florida Decides Healthcare is sponsoring a petition to expand Medicaid access in Florida. Smart & Safe is again sponsoring a petition to legalize recreational marijuana in Florida. And Florida Right to Clean Water is sponsoring a petition concerning environmental rights.

The two remaining plaintiff groups—the League of Women Voters of Florida Plaintiffs and the Poder Latinx Plaintiffs—are merely third-party groups who wish to assist with citizen-initiative efforts. Specifically, they wish to collect and deliver signed petitions from Florida voters.

As revealed in this case so far, Plaintiffs are doing nothing to allay the Florida Legislature's fears. In fact, they're exasperating them. Plaintiffs rely on out-of-state circulators and entities. Florida Decides Healthcare is using an out-of-state entity, the Outreach Team, to assist with its efforts. Doc.168-1 ¶ 6. Smart & Safe uses an out-of-state vendor and out-of-state consulting group. Doc.105 at 11.

Circulators are coming into Florida from all over the country. Plaintiffs are using circulators who reside in places like California, Michigan, and Texas, and worked on petition campaigns in Arizona, Arkansas, California, Georgia, Illinois, Maryland, Michigan, Missouri, Nebraska, Nevada, North Carolina, Ohio, Oregon, Pennsylvania,

South Dakota, Texas, Washington, Wisconsin, and Wyoming—in addition to Florida. Doc.166-3 ¶¶ 2, 4-5; Doc.166-4 ¶¶ 2, 5; Doc.166-6 ¶¶ 3-4; Doc.168-3 ¶ 2.

Many of those circulators don't want to be in Florida for the long haul and don't intend to avail themselves of the constitutional changes they're seeking. One Smart & Safe declarant says, "I have no reason to be in Florida other than my desire to see the Initiative succeed on the ballot." Doc.166-4 ¶ 13. Another explains that non-resident circulators' "only reason for being in Florida is to collect petitions." Doc.166-1 ¶ 9.

Plaintiffs are also relying on non-citizens to collect petitions, though they don't know whether the non-citizens are in the country legally. That's so because Plaintiffs don't conduct background checks and have no intention to do so. For example, Florida Decides Healthcare says that "we do not have the ability to verify a circulator's citizenship." Doc.168-1 ¶ 15. Florida Right to Clean Water similarly says that it "does not have the resources or capacity to conduct citizenship verification checks and is concerned that despite its best efforts," it "will not be able to definitively ensure that non-U.S. citizens do not collect petitions for the campaign." Doc.171-1 ¶ 48.

II. All five plaintiff groups moved for preliminary relief, seeking to enjoin various HB1205 provisions, including the prohibition on non-residents and non-citizens collecting signed petitions. (There was an earlier round of preliminary-injunction proceedings, but none of those challenges concern the at-issue provisions here.)

The district court denied some of Plaintiffs' requested relief, but it enjoined the non-resident and non-citizen provisions. The court held that the provisions violated the

First Amendment. Doc.283 at 19-20. According to the district court, the provisions impaired speech, the "one-on-one communication between petition gatherers and voters." Doc.283 at 20. In doing so, the court rejected the State's argument that the provisions affected only conduct, not speech. Doc.283 at 19 n.17. The court grouped all petition-related activities together—the front-end speech with voters, along with back-end conduct of collecting and delivering signed petitions.

Under heightened scrutiny, the district court then held that the State's prohibitions on non-residents and non-citizens weren't narrowly tailored. Doc.283 at 23. The court suggested that the State must come forward with more (and more specific) instances of fraud before the State can enforce its non-resident and non-citizen provisions. Doc.283 at 26-27. The district court also concluded that Plaintiffs satisfied the other preliminary injunction elements, Doc.283 at 31-32, and enjoined the enforcement of the at-issue provisions as to the specific Plaintiff groups and their petition circulators. The court declined to stay its ruling pending appeal. Doc.283 at 33.

The State timely appealed, Doc.284, and now files this motion to stay.

LEGAL STANDARD

A stay pending appeal turns on four factors: (1) whether the movant has made a strong showing that he is likely to succeed on the merits, (2) whether the movant will be irreparably injured absent a stay, (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding, and (4) whether the public interest favors a stay. *League of Women Voters of Fla., Inc. v. Fla. Sec'y of State*, 32 F.4th 1363, 1370

(11th Cir. 2022). In election-related cases, the *Purcell* principle can also warrant a stay. *Purcell* requires courts to consider whether the appealed order will result in voter and administrative confusion. *Id.* at 1371-72.

ARGUMENT

All four factors favor a stay. The State is likely to prevail on the merits. The State is harmed when it can't enforce its laws. Plaintiffs haven't shown that they would be substantially injured by a stay. And the public interest favors the State enforcing its anti-fraud legislation. On top of that, *Purcell*-like concerns warrant a stay to avoid voter and administrative confusion, and an erosion in voter confidence.

I. The State Is Likely to Succeed on the Merits.

The State will prevail on the merits. HB1205's non-resident and non-citizen provisions affect conduct, not speech. The provisions are therefore analyzed under rational-basis review—and they easily satisfy it. Even if heightened scrutiny applies, the provisions are narrowly tailored to serve compelling governmental interests.

A. The citizen-initiative process involves a specific area of First Amendment law. Different citizen-initiative regulations undergo different constitutional scrutiny. As this Court put it, there's "an explicit distinction between" the regulation of "the initiative process in general," "and the power to regulate the exchange of ideas about political changes sought through the process." *Biddulph v. Mortham*, 89 F.3d 1491, 1498 n.7 (11th Cir. 1996). Because the State has "broad discretion in administering its initiative process," regulations that go to the process of collecting initiative petitions must satisfy

rational-basis review. *Id.* at 1500. Heightened scrutiny "only" applies "in certain narrow circumstances," namely instances where (1) the State enacts "regulations that [are] content based or ha[ve] a disparate impact on certain political viewpoints," (2) where the State "appl[ies] facially neutral regulations in a discriminatory manner," or (3) where the State "impermissibly burden[s] the free exchange of ideas about the *objective* of an initiative proposal." *Id.* (emphasis added).

Put another way, it matters whether there's a regulation on the free exchange of ideas—the "objective of an initiative proposal"—or just the process for collecting petitions. *Id.* And it was the objective of an initiative proposal that was being regulated in *Meyer v. Grant*, a case about Colorado's ban on paid petition circulators. 486 U.S. 414 (1988). That's because Colorado's ban was broad. The law was so broad, in fact, that it prevented paid circulators from even approaching voters, discussing petitions, and encouraging voters to sign:

> Any person, corporation, or association of persons who directly or indirectly pays to or receives from or agrees to pay to or receive from any other person, corporation, or association of persons any money or other thing of value in consideration of or as an inducement *to the circulation of an initiative or referendum petition* or *in consideration of or as an inducement to the signing of any such petition* commits a class 5 felony and shall be punished as provided in section 18-1-105, C. R. S. (1973).

486 U.S. at 416 n.1 (emphases added, quoting Colo. Rev. Stat. § 1-40-110 (1980)).

As one court within this circuit put it, "the statute at issue in *Meyer* directly regulated the conditions under which plaintiffs could *interact* with members of the public

regarding an issue of political concern." *League of Women Voters of Fla. v. Browning*, 575 F. Supp. 2d 1298, 1321 (S.D. Fla. 2008) (emphasis added). That is the lens through which any snippets from *Meyer* concerning the First Amendment law must be viewed.

The Supreme Court understandably found that the Colorado law at issue in *Meyer* violated the First Amendment. The law, in a real sense, "limit[ed] the number of voices who" would "convey" the petition sponsors' "message" and "therefore, limit[ed] the size of the audience they" could "reach," which "ha[d] the inevitable effect of reducing the total quantum of speech on a public issue." 486 U.S. at 422-23.

The same was true in a subsequent citizen-initiative case from Colorado, *Buckley v. American Constitutional Law Foundation*, 525 U.S. 182 (1999). The laws mentioned in the case were similarly broad and affected speech. The Court thus engaged in the same analysis. *See, e.g.*, *id.* at 188 n.2; Colo. Rev. Stat. § 1-40-112(1) (1998) ("[n]o section of a petition for any initiative or referendum measure *shall be circulated* by any person who is not a registered elector" (emphasis added)).

In both *Meyer* and *Buckley*, it mattered that the citizen-initiative laws touched speech and not just conduct. That comports with First Amendment case law, more generally. It's blackletter law that speech is afforded First Amendment protection. Conduct isn't. *Rumsfeld v. FAIR*, 547 U.S. 47, 60 (2006). A law that affects what a person "must do," as opposed to a law that affects what a person "may or may not say," is a law that regulates conduct. *Id.* Those laws get rational-basis review.

This plays out in other election contexts. Take third parties registering people to vote. There's a clear distinction between (1) a volunteer *speaking* to a voter, *talking* to the voter about the importance of voting, and *encouraging* the voter to register, and (2) a volunteer *possessing* the completed registration, *bringing* it to a supervisor of elections office, and *delivering* it on time. That's why "the collection and handling of" election forms, like "voter registration applications[,] is not inherently expressive activity" and not speech. *Browning*, 575 F. Supp. 2d at 1319. It's "simply" conduct, "an administrative aspect of the electoral process—the handling of voter registration applications by third-party voter registration organizations *after* they have been collected from applicants." *Id.* at 1322 (emphasis in the original).

The same applies here. Again, the non-resident and non-citizen provisions only affect conduct, not speech. The provisions in HB1205 look nothing like the provisions in *Meyer* and *Buckley*. Non-residents and non-citizens can still speak freely on any issue with anyone. They simply can't "collect signatures or initiative petitions" to then deliver those completed petitions to election officials. HB1205 ll.598-603.

Rational-basis review applies to Florida's process-specific provisions. As discussed above, the State offered more than enough rational reasons for the provisions.

B. But even if heightened scrutiny is warranted, the at-issue provisions still survive. As an initial matter, the appropriate kind of heightened scrutiny in the context of initiatives is "exacting scrutiny." That's what the Supreme Court said in *Meyer*: "this

case involves a limitation on political expression subject to exacting scrutiny." 486 U.S. at 420. Exacting scrutiny is different from strict scrutiny. The former only requires a "substantial relation between the" at-issue law "and a sufficiently important governmental interest." *Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595, 607 (2021) (cleaned up). That's different from the latter, which requires narrow tailoring and a compelling governmental interest. *Id.*

Even so, HB1205's bans serve compelling governmental interests—interests expressly mentioned in HB1205's findings of fact. HB1205 ll.234-357. Preventing election fraud, and ensuring the integrity of the ballot, are compelling governmental interests. *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006); *Brnovich v. DNC*, 594 U.S. 647, 685 (2021). So is "maintaining fairness, honesty, and order" in the election process. *Green v. Mortham*, 155 F.3d 1332, 1335 (11th Cir. 1998).

The evidence produced further shows that the provisions at issue are tailored to the State's compelling interests. It's undisputed that there's citizen-initiative fraud in Florida. *Supra*. And it should be undisputed that it's harder for the State to track down bad-acting non-residents, by virtue of their being out-of-staters. State prosecutors know this to be true: "several petition circulator investigations" are "still open and pending[,] primarily because the circulator is not a Florida resident and is currently living outside of our jurisdiction." Doc.267-2 ¶ 15. These concerns are magnified when petition sponsors hire out-of-state entities, who hire out-of-state entities, who hire out-of-state circulators. The State ran into these problems during the last cycle, and the Florida

Legislature sought to remedy these issues through HB1205. *Supra*. And "[j]ust as non-resident circulators and petition gathering companies have proven difficult to locate and investigate, the same would hold true for non-citizen petition circulators." Doc.267-2 ¶ 17. After all, there's an issue with non-citizens misbehaving in Florida elections. *Supra*.

C. The district court didn't see things this way. In ruling against the State, it (1) lumped all aspects of petition circulating together (speech *and* non-expressive conduct) and subjected it to heightened First Amendment protection, (2) relied on a collection of extra-circuit precedent which confronted non-resident circulator bans, and (3) concluded that more instances of fraud is necessary before the State can combat petition fraud. The problems here are threefold.

1. The district court relied on a few lines from *Meyer* to lump all aspects of petition circulation together. But the district court divorced those snippets from their context: the broad prohibition in the Colorado statute at issue. Unlike Colorado, Florida's non-resident and non-citizen provisions are more circumspect. They do *not* prohibit non-residents and non-citizens from talking to voters about the objective of any petition. All the Florida provisions do is affect conduct, the "collect[ion]" of completed petitions. The provisions don't touch speech like the laws in *Meyer* and *Buckley*.

Indeed, in First Amendment cases more generally, the Supreme Court requires courts to separate speech from conduct: "[w]e cannot accept the view that an apparently limitless variety of conduct can be labeled 'speech' whenever the person engaging in the

conduct intends thereby to express an idea." *United States v. O'Brien*, 391 U.S. 367, 376 (1968); *see also Rumsfeld*, 547 U.S. at 66. Otherwise, there's no limiting principle.

2. The district court also relied on a host of extra-circuit precedent that found non-resident circulator bans to be unconstitutional under the First Amendment. Doc.283 at 20-21. Granted, the court didn't properly account for the fact that at least some of those cases analyzed the bans under the wrong heightened scrutiny test (strict scrutiny), and not the right one (exacting scrutiny). *E.g.*, *Yes on Term Limits, Inc. v. Savage*, 550 F.3d 1023, 1029 (10th Cir. 2008) ("strict scrutiny applies"); *Nader v. Brewer*, 531 F.3d 1028, 1036 (9th Cir. 2008) ("strict scrutiny applies"). Nor did the court appreciate that five circuit courts, including this one, haven't opined on the issue, or that the Eighth Circuit sides with the State. *Initiative & Referendum Inst. v. Jaeger*, 241 F.3d 614, 617 (8th Cir. 2001). In sum, applying the wrong test gets the wrong result, and *Jaeger* proves more persuasive, because it comes closest to the rationale in this Court's decision in *Biddulph*.

3. Finally, the district court found that the HB1205 bans weren't narrowly tailored. The court held that more instances of fraud from non-residents and non-citizens were needed before the State could pass or enforce the at-issue provisions as targeted solutions. Doc.283 at 23. The district court erred badly.

For starters, the State produced evidence that there's fraud in its citizen-initiative process, generally, and with non-residents, specifically. *Supra*. It also produced evidence of non-citizens engaging in bad conduct in Florida's elections. *Supra*.

More isn't needed. The Supreme Court expressly disavowed the need for the State to wait until more bad acting harms its citizens or to provide targeted instances of fraud. "[I]t should go without saying that a State may take action to prevent election fraud without waiting for it to occur and be detected within its own borders" and persist. *Brnovich*, 594 U.S. at 686. The law "does not demand that a State's political system sustain some level of damage before the legislature can take corrective action." *Id.* (cleaned up). The State "should be permitted to respond to potential deficiencies in the electoral process with foresight rather than reactively." *Munro v. Socialist Workers Party*, 479 U.S. 189, 195-96 (1986).

All of this is to say that HB1205 solves a problem and is narrowly tailored. The State doesn't need to wait until more citizens are harmed to act or provide a perfect, snug solution (even if the strictest of scrutiny applies). *See, e.g.*, *Williams-Yulee v. Fla. Bar*, 575 U.S. 433, 447 (2015) (applying strict scrutiny, but *not* requiring "proof by documentary record" to support the "genuine and compelling" interest in "the concept of public confidence in judicial integrity").

II. The Remaining Factors Favor a Stay.

A. The other three factors favor a stay. The State will suffer irreparable harm absent a stay, and the public interest favors a stay. "Right now, the preliminary injunction disables" Florida "from vindicating its sovereign interest in the enforcement of initiative requirements that are likely consistent with the First Amendment." *Little v. Reclaim Idaho*, 140 S. Ct. 2616, 2617 (2020). "[T]he inability to enforce its duly enacted

plans clearly inflicts irreparable harm on the State." *Abbott v. Perez*, 585 U.S. 579, 602 n.17 (2018).

Plaintiffs won't be harmed with a stay. Indeed, it's unclear how many non-citizens are assisting them with their petition efforts, and aside from one petition sponsor, it's unclear how many non-residents aid in their efforts, either. What's more, Plaintiffs' theory of the case—that their speech is being stifled—is belied by the fact that HB1205's residency and citizenship provisions concern only conduct, not speech.

B. Finally, though it's not a neat fit, the *Purcell* principle helps underscore that the equities favor a stay. At its core, *Purcell* stands for a commonsense proposition: federal courts shouldn't enjoin a state's election-related laws when its election machinery is underway. Election administration "is a complicated endeavor." *DNC v. Wis. State Legis.*, 141 S. Ct. 28, 31 (2020) (Kavanaugh, J., concurring). When the machinery is in motion, the "rules of the road" should "be clear and settled." *Merrill v. Milligan*, 142 S. Ct. 879, 880-81 (2022) (Kavanaugh, J., concurring). That prevents "voter confusion" and prevents "election administrator confusion," which in turn "protects the State's interest in running an orderly, efficient election and in giving citizens" "confidence in the fairness of the election." *DNC*, 141 S. Ct. at 31 (Kavanaugh, J.).

To be sure, cases invoking *Purcell* concern judicial tinkering weeks or months before an election date. *See Purcell*, 549 U.S. at 4 ("weeks before an election"); *Milligan*, 142 S. Ct. at 888 (Kagan, J., dissenting) ("about four months"); *League of Women Voters of Fla.*, 32 F.4th at 1371 (same).

But with citizen initiatives, the machinery is always running. In Florida, voters (and sponsors) must submit signed petitions to supervisors of elections for verification by February 1 of a general election year. Fla. Stat. § 100.371(1). A voter can only sign a petition once. Fla. Stat. § 100.371(3)(a)5. Signatures expire after February 1. Fla. Stat. § 100.371(14)(a). And signatures submitted by ineligible circulators don't count toward the total needed to get an initiative on the ballot. Fla. Stat. § 100.371(14)(h).

Consider the problem caused by the district court's preliminary injunction. If the district court sides with the State after trial (or this Court sides with the State after an appeal in the regular course), then the signatures submitted by non-residents and non-citizens would no longer count toward the total needed to place an initiative on the ballot. And depending on the date of the subsequent judicial action, there might not be enough time for actual Floridians (not the deceased who've had their information misappropriated) to submit their signed petition forms for verification.

So, whether it's *Purcell*, a balance-of-the-equities analysis, or a need to maintain the status quo, staying the district court's order makes sense from an election administration perspective. A stay is the surest way of running the citizen-initiative process in an orderly manner that engenders trust in that process.

CONCLUSION

For these reasons, this Court should stay the district court's preliminary injunction and grant this **time-sensitive** motion **as soon as practicable**.

Dated: July 14, 2025

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CERTIFICATE OF COMPLIANCE

This motion complies with Rule 27(d)(2)(A) because it contains 5,166 words, excluding the parts that can be excluded. This motion also complies with Rule 32(a)(5)-(6) because it has been prepared in a proportionally spaced face using Microsoft Word 2016 in 14-point Garamond font.

Dated: July 14, 2025

/s/ Mohammad O. Jazil
Mohammad O. Jazil

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing certificate was filed on ECF. It was also emailed to Plaintiffs' counsel.

Dated: July 14, 2025

/s/ Mohammad O. Jazil
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