

No. 26-11906

**UNITED STATES COURT OF APPEALS FOR THE
ELEVENTH CIRCUIT**

Florida Decides Healthcare, *et al.*,

Plaintiffs-Appellants,

v.

Florida Secretary of State, *et al.*,

Defendants-Appellees.

On Appeal from the United States District Court for the
Northern District of Florida, Case No. 4:25-cv-00211-MW-MAF

**PLAINTIFFS-APPELLANTS' INITIAL BRIEF FOR FLORIDA DECIDES
HEALTHCARE, MITCHELL EMERSON, AND JORDAN SIMMONS**

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**CERTIFICATE OF INTERESTED PERSONS AND CORPORATE
DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rule 26.1-1, Plaintiffs-Appellants certify that Florida Decides Healthcare, Mitchell Emerson, and Jordan Simmons, have no parent corporations, and no publicly held corporation owns 10% or more of its stock.

Pursuant to Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rule 26.1-1, Plaintiffs-Appellants adopts and incorporates by reference the Certificate of Interested Persons and Corporate Disclosure filed on June 11, 2026, and is unaware of any additional persons, entities, associations of persons, firms, partnerships, corporations (including parent corporations and publicly held companies that own 10% or more of the corporation's stock), or other identifiable legal entities that have an interest in the outcome of this appeal and that have not already been disclosed.

Dated: August 12, 2026

/s/ Avner Shapiro
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STATEMENT REGARDING ORAL ARGUMENT

Plaintiffs-Appellants respectfully request oral argument. Oral argument will assist the Court in resolving this appeal both because of the large amount of evidence introduced into the record over the course of a two-week trial and because of the importance and complexity of the constitutional issues involved.

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INTRODUCTION

At its root, this appeal is about whether the State of Florida may enact regulations that prevent millions of people from circulating petitions to place citizen-initiated constitutional amendments before the voters. As such, the appeal presents fundamental constitutional questions about the limits of a state's ability to regulate both core political speech and people's freedom to associate with one another to advance political initiatives they care about.

This appeal arises from Florida's enactment of House Bill 1205, a sweeping package of restrictions targeting the citizen initiative process that had, in recent election cycles, produced several successful ballot measures opposed by the state's governing majority. Among its most draconian provisions, HB 1205 categorically prohibits noncitizens, nonresidents, and individuals with felony convictions whose rights have not been restored from circulating petitions ("the Circulator Eligibility Restrictions"). The law also subjects volunteer petition circulators to mandatory registration, training, and testing requirements previously imposed only on paid professionals, backed by criminal penalties that further chill grassroots political participation ("the Registration Regulations").

The constitutional stakes could not be higher. As this Court has recognized, petition circulation represents "core political speech" deserving the strongest First Amendment protections. The Supreme Court's landmark decisions in *Meyer v.*

Grant, 486 U.S. 414 (1988) and *Buckley v. American Constitutional Law Foundation*, 525 U.S. 182 (1999) establish that restrictions on petition circulation must satisfy exacting scrutiny precisely because they burden this most protected category of political expression. *Meyer* at 420; *Buckley* at 204.

When reviewing the Circulator Eligibility Restrictions, the district court disagreed with the analysis and conclusions of a panel of this Court staying the district court's own preliminary injunction pending appeal ("the stay panel"). See App.Doc.679 at 41 n.29 ("[W]ere this Court writing on a blank slate, it would have held to its prior analysis . . . and concluded that the bans on non-residents and non-citizens from circulating ballot initiative petitions severely burden core political speech and fail exacting scrutiny."). Inexplicably, though, the district court elected to defer to the panel's non-binding and preliminary decision rather than conducting the searching constitutional analysis demanded by the extensive trial record and the importance of the issues involved.

This deference was both procedurally improper and substantively misguided. By uncritically adopting the stay panel's preliminary intermediate scrutiny analysis of the Circulator Eligibility Restrictions, the district court failed to subject those provisions to the correct standard of review and to address the Plaintiffs-Appellants' properly pleaded freedom of association claims challenging both the Circulator Eligibility Restrictions and the Volunteer Registration Requirement.

The district court also erred when it characterized HB 1205's Registration Restrictions as merely "inconvenient" and "not pos[ing] the sort of severe burden on core political speech that runs afoul of *Meyer* and *Buckley*." App.Doc.679 at 6710. At trial, the Plaintiffs-Appellants' expert witness, initiative sponsors, and volunteer petition circulators all testified as to how these provisions and their associated fines and criminal sanctions both deterred would-be petition circulators from participating in the petition process and created insurmountable compliance hurdles for sponsors.

The Florida Legislature's asserted justification for HB 1205—preserving the integrity of the initiative process by combating petition fraud—finds no support in the extensive trial record. Indeed, the evidence suggests the opposite: Florida's existing regulations already provide robust protections against fraud, while the new restrictions do nothing to address actual problems and everything to suppress legitimate political participation.

The State identified only fourteen petition-related fraud cases out of millions of signatures collected for the 2024 election cycle, with no evidence that any involved individuals from the excluded categories. Meanwhile, the restrictions have shuttered volunteer petition programs and banned roughly four million Floridians from participating in one of the state's primary avenues of political expression.

Moreover, the cumulative effect of HB 1205's interlocking provisions creates what can only be described as a severe burden on fundamental constitutional rights.

The categorical exclusions eliminate entire categories of potential circulators, the registration requirements discourage volunteer participation through bureaucratic hurdles and criminal penalties, and the associated fines—up to \$50,000 per excluded circulator—create overwhelming liability risks for citizen initiatives. Together, these provisions have effectively dismantled the volunteer petition circulation that has long been the backbone of Florida’s citizen initiative process.

The broader implications extend well beyond Florida’s borders. Should this Court affirm the district court’s application of diminished constitutional scrutiny to these types of statutory provisions, states nationwide would receive a roadmap to gut citizen initiative processes and other endeavors in direct democracy that are protected by the First Amendment to the U.S. Constitution.

STATEMENT REGARDING ADOPTION

FDH Plaintiffs adopt the legal arguments located in the brief of the RTCW Plaintiffs-Appellants, explaining why the district court erred when it concluded that the Registration Regulations do not violate the First Amendment. Those arguments are located on pages 30–38 in Section III.A.ii of the RTCW Plaintiffs’ Opening Brief in this Court under the following heading: “The Registration Requirement violates the First Amendment.”

The FDH Plaintiffs also adopt the legal arguments located in the brief of the League/LULAC Plaintiffs-Appellants, explaining why the district court erred when

it failed to consider the cumulative effect of HB 1205 on Plaintiffs’ First Amendment rights. Those arguments are located on pages 51–53 in Section I.D of the League/LULAC Plaintiffs’ Opening Brief under the following heading: “The Court Erred By Failing to Review the Challenged Provisions Together to Determine their Cumulative Impact on Speech.” The FDH Plaintiffs also adopt the arguments in its post-trial brief, App.Doc.667.

JURISDICTIONAL STATEMENT

This Court has jurisdiction to review the district court’s final order and judgment under 28 U.S.C. § 1291. That final order and judgment disposed of all claims on April 30, 2026. Timely notices of appeal were filed in all consolidated cases on June 1, 2026.

STATEMENT OF THE ISSUES

Florida Decides Healthcare, Mitchell Emerson, and Jordan Simmons (“FDH Plaintiffs”) challenged multiple provisions of House Bill 1205 (“HB 1205”). Relevant here are **(1)** the Circulator Eligibility Restrictions (Fla. Stat. § 100.371(4)(b)); **(2)** the Volunteer Registration Restrictions (Fla. Stat. § 110.371(4)(a)); and **(3)** the associated Fines and Criminal Penalties (Fla. Stat. § 100.371(4)(g), (7)(a)1–3, (8), and (10); Fla. Stat. §§ 100.371(9), 895.02(8)(d)). This Court must decide:

1. Whether the district court erred in subjecting HB 1205’s Circulator Eligibility Restrictions to only intermediate scrutiny rather than exacting or strict scrutiny when evaluating the FDH Plaintiffs’ First Amendment freedom of speech claim.
2. Whether—even assuming intermediate scrutiny applied to HB 1205’s Circulator Eligibility Restrictions—the district court improperly applied it by giving excessive deference to the Defendants’ claimed interests.
3. Whether the district court erred in dismissing properly pleaded free-association claims challenging HB 1205’s Circulator Eligibility Restrictions and Registration Requirements without addressing them.
4. Whether the district court erred in dismissing the FDH Plaintiffs’ First Amendment freedom of speech challenge to the Registration Requirements.

STATEMENT OF THE CASE

I. Factual and Procedural Background

For nearly sixty years, Floridians have used the citizen initiative process to amend their state constitution. Fla. Const. art. XI, § 3.

The initiative process brings together several types of participants. Initiative sponsors propose measures and lead campaigns to qualify those measures for the ballot. App.Doc.640, Transcript of Trial Proceedings held on Feb. 9, 2026, at 4016:2–4, 4021:19–4022:24, 4023:9–22 (FDH Executive Director Mitchell

Emerson).¹ Petition circulators, both paid and volunteer, working on behalf of sponsors, engage directly with voters to educate them about the subject of the ballot initiative while collecting the signatures needed to qualify for the ballot. *See* App.Doc.640 at 3919:12–18; App.Doc.639, Transcript of Trial Proceedings held on Feb. 10, 2026, at 4155:11–4158:18. And finally, by signing petitions, voters, in turn, express support for and associate themselves with the sponsor and its efforts to place the initiative on the ballot. *See, e.g.,* App.Doc.640 at 4055:14–4057:19; App.Doc.639 at 4158:19–4159:17.

Florida has steadily added hurdles to the initiative process following the success of several citizen-led initiatives that advanced policies opposed by the majority party controlling the Governorship and the Legislature. App.Doc.667, FDH’s Post Trial Brief at 6461-64. This has culminated in House Bill 1205, enacted by the Legislature and signed into law by the Governor in 2025. App.Doc.596, at 1894 ¶1. HB 1205 imposes sweeping new restrictions on the initiative process, including restrictions targeting the circulation of petitions. *Id.* at 1899–1916 at ¶¶21–57; App.Ex.166, HB 1205, at 6732–60.

¹ Citations to the record are formatted as App.Doc.XX at YY, where XX identifies the Appendix document number and YY identifies the Appendix page number. For transcripts and pleadings containing numbered lines or paragraphs, the relevant line or paragraph numbers follow the Appendix page number.

Relevant to this appeal are two categories of provisions. First, HB 1205 categorically prohibits noncitizens, nonresidents, and persons convicted of felonies who have not had their rights restored from circulating petitions or otherwise possessing petitions (“the Circulator Eligibility Restrictions”). App.Ex.166 at 6743 § 100.371(4)(b), Fla. Stat. These individuals are not permitted to “collect signatures or initiative petitions,” and there is no exception for personal use for any of the categories. *Id.*

Second, HB 1205 requires all circulators, regardless of whether they are acting in a paid or volunteer capacity, to comply with registration requirements if they “collect, deliver, or otherwise physically possess” more than twenty-five petition forms, excluding their own or that of an immediate family member (“Registration Requirements”). App.Ex.166 at 6743 § 100.371(4)(a), Fla. Stat. While Florida has never before required volunteer circulators to register with the State, *see* App.Doc.596 at 1901 ¶¶27–28, HB 1205 now subjects volunteers to extensive registration, training, testing, and disclosure requirements. App.Ex.166 at 6743–6745 § 100.371(4), Fla. Stat.

HB 1205 imposes significant penalties on sponsors and petition circulators for failing to comply with the Circulator Eligibility Restrictions and the Registration Restrictions. A sponsor may be fined \$50,000 for each person the sponsor “knowingly allows to collect petition forms” in violation of the Circulator Eligibility

Restrictions and Registration Requirements. Individual circulators who violate the Circulator Eligibility Restrictions and Registration Requirements face a second-degree misdemeanor, App.Ex.166 at 6758 § 104.187, Fla. Stat., and third-degree felony, *id.* at 6758 § 104.188(2), Fla. Stat., respectively. App.Doc.596 at 1913 ¶¶49–50.

II. Procedural Background

A. Lawsuit and Prior Proceedings

Florida Decides Healthcare (“FDH”) is an initiative sponsor and political committee that seeks to expand eligibility for Medicaid in Florida through the passage of a statewide ballot initiative; Mitchell Emerson is FDH’s Executive Director and Campaign Manager; and Jordan Simmons is a Missouri resident who worked for FDH’s paid circulation vendor (collectively, “FDH Plaintiffs”). App.Doc.596 at 1916–17 ¶¶58–62; App.Doc.413, FDH’s Third Amended Complaint, at 1346–48 ¶¶14–22.

Shortly after the Governor signed HB 1205 into law, the FDH Plaintiffs filed a complaint challenging several of HB 1205’s provisions as unconstitutional burdens on core political speech and expressive association. App.Doc.413 at 1336–1424. Among the provisions FDH Plaintiffs challenged are the two categories of provisions discussed above: HB 1205’s Circulator Eligibility Restrictions and its Registration Requirements.

Early in the litigation, several other plaintiffs intervened: Smart & Safe Florida, League of Women Voters of Florida, League of Women Voters of Florida Education Fund, Inc., League of United Latin American Citizens, Cecile Scoon, Debra Chandler (“League/LULAC Plaintiffs”), and FloridaRightToCleanWater.org (“RTCW”) (collectively with the FDH Plaintiffs, “the Plaintiffs”). The Republican Party of Florida (“RPOF”) later intervened as a Defendant.

After the Plaintiffs filed a series of preliminary injunction motions, on July 8, 2025, the district court partly granted the Plaintiffs’ second set of preliminary injunction motions, enjoining the non-citizen and non-resident Circulator Eligibility Restrictions. App.Doc.283, Order on Motions for Preliminary Injunction. In striking down the restrictions, the district court subjected them to heightened scrutiny because they burdened Plaintiffs’ “core political speech.” *Id.*

The Defendants appealed, moving to stay the injunction. On September 9, 2025, the stay panel granted the stay motion and vacated the district court’s judgment, holding that HB 1205’s Circulator Eligibility Restrictions were not subject to heightened scrutiny because they regulated “who can collect signatures or initiative petitions,” but did not prohibit speech. *Florida Decides Healthcare Inc. v. Florida Secretary of State*, No. 25-12370, 2025 WL 3738554 (11th Cir. 2025).

In September 2025, the FDH Plaintiffs filed a Third Amended Complaint, referred to here as the “FDH Operative Complaint.” App.Doc.413, *see also*

App.Doc.413-1 (appendix setting out provision challenged under each Count). As relevant to this appeal, FDH Plaintiffs alleged that the Circulator Eligibility Restrictions and the Registration Requirements violated their First Amendment rights to freedom of speech (Count I). *Id.* at 1402 ¶¶190–206, and freedom of association (Count II). *Id.* at 1402 ¶¶207–25. The district court denied Defendants’ summary judgment motion on November 5, 2025. App.Doc.529, Order on Motions for Summary Judgment.

B. Bench Trial

The case proceeded to a bench trial held from February 9 to 20, 2026. At trial, the district court heard testimony from twenty-eight witnesses, including initiative sponsors, paid and volunteer petition circulators, voters, election officials, subject-matter experts, and State officials responsible for investigating and prosecuting petition circulation fraud. The parties introduced, and the court admitted, more than 150 exhibits. App.Doc.667, FDH’s Post Trial Brief, at 6264.

1. The trial evidence established that petition circulation involves political advocacy and organizing intertwined with signature gathering.

The evidence established that petition circulation is a form of political advocacy and an act of political expression, assembly, and participation. FDH Plaintiffs’ expert witness, Dr. Dan Smith, testified that petition circulation fosters public discussion, grassroots organizing, and civic engagement, regardless of

whether a proposed amendment ultimately qualifies for the ballot. App.Doc.644, Transcript of Trial Proceedings held on Feb. 13, 2026, at 5069:2–5072:13; *Id.* at 5079:16–5081:10.

Dr. Smith further explained that initiative campaigns are particularly significant in states where one political party dominates the legislative process because they enable citizens to advance issues that elected officials have declined to address. App.Doc.644 at 5081:11–5086:24. Florida, he testified, exemplifies that phenomenon, where—prior to enactment of HB 1205—a few initiatives with strong public support opposed by the party controlling the legislature and the governorship qualified for the ballot after legislative inaction. *Id.*

Initiative sponsors and circulators testified that petition circulation facilitates political advocacy and organizing. These witnesses spoke to the centrality of petition circulation to sharing information and organizing around an issue. *See e.g.*, App.Doc.640 at 3844:18–3846:13; *id.* at 3848:18–23 (Dr. Acosta testifying that “initial everyday interaction with voters was really, really crucial” to building public support for Medicaid expansion); *id.* at 4019: 4–17.

Witnesses described instances in which voters initially declined to sign but changed their minds after speaking to a circulator. App.Doc.640 at 3848:4–17 (Dr. Acosta testifying that people have changed their minds and signed a petition when they learn Medicaid expansion saves rather than costs them money); App.Doc.639

at 4157:6–4158:2 (Petition Circulator Juan Ardilla testifying “it’s really common for us to see someone go from no interest or never heard of it to excited to sign it and excited to see it hopefully be on the ballot”).

Voters testified that they viewed signing a petition as an opportunity to participate more directly in the democratic process. *See e.g.*, App.Doc.640 at 4055:14–4057:19 (Emerson testifying that signing the Medicaid expansion petition was “an opportunity to participate in democracy and affect policy on a very direct level”); *see also* App.Doc.639 at 4158:19–4159:17.

Sponsors and circulators described signature gathering as inseparable from advocacy and movement building, explaining that every interaction with a voter serves both to qualify an initiative for the ballot and to educate, persuade, and organize supporters around an issue. *See, e.g.*, App.Doc.637 at 4570:23–4571:3 (Cindy Haller, organizer for RTCW, “used the petition as a way to initiate conversation with voters”); App.Doc.640 at 3919:3–18 (Simmons testifying that approximately ninety-nine percent of the petition-circulation encounters he observed as the Project Director for FDH’s paid circulation vendor involved substantive conversations with voters about Medicaid expansion before the collection of signatures); App.Doc.639 at 4155:11–4158:18 (Juan Ardilla, testifying “almost every single time, people had a follow-up question of what [] is Medicaid expansion?”).

2. The trial evidence showed that the Circulator Eligibility Restrictions severely burden petition circulation.

The trial evidence demonstrated that the Circulator Eligibility Restrictions prevent millions of people from participating in petition circulation related activities. Dr. Smith testified without contradiction that these restrictions outright ban more than four million people with ties to Florida from circulating petitions. App.Doc.644 at 5112:2–15. Those excluded include approximately two million noncitizens, roughly one million Floridians with felony convictions whose voting rights have not been restored, and about a million students, seasonal residents, and other individuals who spend extended periods of time in Florida but are not residents of the State. App.Doc.644 at 5109:1–5110:23.

Dr. Smith's testimony was consistent with the testimony of witnesses who provided first-hand knowledge of how the Circulator Eligibility Restrictions prevent Floridians from participating in petition circulating activities. *See, e.g.* App.Doc.646, Transcript of Trial Proceedings held, on Feb. 17, 2026, at 5534:11–20 (Karen Patricio, non-citizen, testifying she stopped circulating petitions because of the ban on non-citizens); App.Doc.646 at 5306:6–24 (Christine Poff, a non-resident, testifying she stopped circulating petitions because of the ban on non-residents).

The record also demonstrated that the impact of these restrictions extends well beyond the individuals who are expressly prohibited from circulating petitions. Dr.

Smith explained that the restrictions create significant “friction” throughout the initiative process by discouraging participation and requiring initiative sponsors to devote substantial resources to determining eligibility and ensuring compliance. App.Doc.644 at 5112:18–5114:22.

Dr. Acosta testified that the Circulator Eligibility Restrictions “completely killed” FDH’s volunteer circulation program and severely undermined its paid circulation program. *See* App.Doc.640 at 3867:3–6. The Circulator Eligibility Restrictions created significant financial risk for FDH if it continued to use volunteer circulators because of the risk of inadvertent violations resulting in hefty fines. App.Ex.166 at 6745, § 100.371(4)(g), Fla. Stat. With limited access to verification tools, FDH and its vendors could not realistically verify volunteers’ compliance to confirm residence, citizenship, or felony status. App.Doc.639 at 4167:11–24, 4168:6–25; App.Doc.640 at 3866:9–3867:2; App.Doc.278, Transcript of Preliminary Injunction Proceedings, June 30, 2025, at 905:8–906:13. Moreover, as Dr. Acosta explained, verification processes are “very invasive” and deter volunteerism. *See* App.Doc.640 at 3865:14–3866:17.

After HB 1205 forced FDH to shut down its volunteer circulation program, it struggled to convey its message to the public. The sponsor attempted to get the word out about its campaign through volunteers distributing blank petitions to voters, but

this effort could not forestall a precipitous drop in public engagement. App.Doc.640 at 3868:11–13; *see also, id.* at 4013:9–4014:1.

3. The trial evidence demonstrated that the Registration Regulations severely burden volunteer petition circulation.

The Registration Regulations require completion of a mandatory registration process that functions as a prerequisite to engaging in petition circulation for any volunteer intending to circulate more than twenty-five petitions. Prospective volunteers must disclose personal identifying information, complete a mandatory training that emphasizes criminal penalties, and pass a written examination. App.Doc.596 at 1901 ¶¶28–29; App.Ex.166 at 6744, § 100.371(4)(c)(2), Fla. Stat.; *id.* at 6745. § (4)(f), Fla. Stat. The statute imposes no deadline for processing applications or responding to applicants’ questions. App.Doc.654, Transcript of Trial Proceedings held on Feb. 19, 2026, at 5835:9–5836:3.

The registration process discourages participation. The mandatory examination is provided in English only. App.Doc.644 at 5127:2–5128:2; App.Doc.654 at 5819:20–23, 5845:4–14. Also, although the training repeatedly warns applicants about criminal liability, the testing module does not explain which answers are incorrect, providing no meaningful guidance to applicants seeking to comply with the law. App.Doc.638, Transcript of Trial Proceedings held on Feb. 12, 2026, at 4799:4–18; App.Doc.654 at 5846:6–18.

Trial evidence established that—together with the Circulator Eligibility Restrictions—the Registration Regulations torpedoed FDH’s volunteer circulator program. App.Doc.640 at 3874:6–17. (Dr. Acosta). App.Doc.640 at 3869:15–22. FDH could not determine whether the twenty-five-petition threshold applied at a particular moment or over the course of an entire campaign, or whether it encompassed only petitions personally collected or any petitions a volunteer happened to handle. App.Doc.640 at 3870:2–3871:21; App.Doc.639 at 4163:14–4164:13. Unable to determine when the twenty-five petition threshold had been reached or to verify that volunteers satisfied the statutory requirements, FDH concluded it could not expose itself or its volunteers to the risk of criminal liability. App.Doc.640 3874:6–17; App.Doc.639 at 4164:18–4165:10.

4. Nothing in the record showed that the Circulator Eligibility Restrictions or the Registration Regulations would meaningfully address a legitimate state interest.

Here, the trial record is at odds with the State’s claim that it enacted HB 1205 to safeguard the integrity of the initiative process by combatting fraud, App.Ex.166 at 6736-38. While Floridians have signed millions of petitions over the last couple of election cycles, Defendants identified just fourteen fraud-related petition circulation convictions, and not even a single conviction involving a volunteer petition circulator. App.Doc.620-2, SOS & AG’s Amended Counter Designations of Jillian Pratt Deposition, at 3145:14–3146:5.

That's not surprising given that Florida already maintained exceptionally strong protections against petition fraud prior to the enactment of HB 1205. App.Doc.644 at 5167:17–5168:17 (Dr. Smith testifying that prior to HB 1205's enactment, Florida already regulated sponsors and petition gatherers more than any of the other states with procedures for amending their constitutions through an initiative process).

The ban on nonresidents voting is yet another example of a solution in search of a problem. Florida has failed to adduce any evidence that it has been unable to investigate or prosecute nonresident circulators accused of petition fraud. Further, under existing Florida law, paid circulators are already required to provide Florida their addresses and consent to the State's jurisdiction. *See Fla. Stat. § 100.371(4)(c)–(d)* (2024).

Additionally, nothing in the record suggests that the Circulator Eligibility Restrictions will meaningfully combat petition fraud. The State failed to identify any empirical evidence demonstrating that noncitizens, nonresidents, or individuals with felony convictions are more likely than other circulators to engage in fraudulent petition activity, App.Doc.654 at 5941:23–5942:25; App.Doc.620-3, SOS & AG's Amended Counter Designations of Maria Mathews Deposition, at 3668:17–3670:22.

The same holds true for the Registration Requirements. As Dr. Smith emphasized and Florida's witnesses admitted, the requirements discourage those

who intend to follow the law from volunteering as circulators but do nothing to dissuade potential bad actors interested in submitting fraudulent petitions. They can easily avoid the Registration Requirements entirely by submitting as many fraudulent personal-use petition forms as they like without providing any accurate identifying information. *See* App.Doc.620-2, SOS & AG's Amended Counter Designations of Jillian Pratt Deposition, at 3263:23–3264:14; App.Doc.644 at 5128:13–5129:19; App.Doc.652 at 5700:7–5703:11; App.Doc.654 at 5967:6–25.

Finally, the trial evidence establishes that Florida's approach is unprecedented. Dr. Smith testified that Florida does not impose comparable categorical exclusions on circulators for local initiatives or candidate petitions. App.Doc.644 at 5132:11–20. Nor do other states with citizen initiative processes exclude such broad categories of individuals from participating in petition circulation. App.Doc.644 at 5114:23–5122:4. Based on his comparative analysis, Dr. Smith concluded that, as compared to other states with a citizen-initiative-amendment process, Florida is an outlier because it burdens and regulates the process much more aggressively than any of the other states. App.Doc.644 at 5066:14–5068:2, 5107:12–5108:2.

C. Post-Trial Proceedings

Following trial, the parties submitted written closing arguments on March 19, 2026. App.Doc.667, FDH's Post-Trial Brief. In an order dated April 30, 2026, the

trial court resolved all claims in favor of the State and the Republican Party of Florida. With respect to FDH Plaintiffs, the district court held that they had standing to challenge the Circulator Eligibility Restrictions and Registration Requirements. On the merits, the district court adopted the decision of the stay panel with respect to the Circulator Eligibility Restrictions—despite its express disagreement—holding that the provision survives intermediate scrutiny. App.Doc.679, Final Order on Merits, at 6714–15. As for the Registration Requirements, the district court held, that while inconvenient, it did not “pose the sort of severe burden on core political speech that runs afoul of *Meyer* and *Buckley*.” *Id.* at 1610. This appeal follows.

SUMMARY OF ARGUMENT

The district court committed four errors of law, warranting reversal in three instances and vacatur and remand in one.

First, the district court applied intermediate instead of exacting or strict scrutiny to the FDH Plaintiffs’ claim that HB 1205’s Circulator Eligibility Restrictions violate their First Amendment free-speech rights. App.Doc.679 at 6714. In doing so, it disregarded binding Supreme Court precedent—*Meyer v. Grant*, 486 U.S. and *Buckley*—that applied a highly protective and demanding exacting scrutiny standard when assessing analogous laws. *Meyer v. Grant*, at 420; *Buckley*, at 204.

Second, even assuming, *arguendo*, that the district court did not err by applying intermediate scrutiny, it failed to correctly apply that standard. When applying intermediate scrutiny, the fact-finder must assess whether the challenged statutory provision advances important governmental interests without substantially burdening more speech than necessary to further those interests. *Free Speech Coal., Inc. v. Paxton*, 606 U.S. 461, 471, 495–96 (2025) (citation omitted). The district court did not do that. Instead, it deferred to a preliminary stay panel decision written months before the plaintiffs adduced a mountain of relevant evidence at trial. App.Doc.679 at 6714–15.

That evidence showed that the state had no reason to believe either that safeguarding the integrity of its citizen-initiative process required enacting such draconian measures or that these restrictions constituted an effective way of combating petition fraud. Unrefuted evidence also established just how severe the burden on speech was. At trial, Plaintiffs’ expert witnesses testified that the restrictions banned millions of Floridians from circulating petitions. App.Doc.644 Transcript of Trial Proceedings held on February 13, 2026 at 5112:11–15. Other witnesses testified that—together with the Registration Regulations—the Circulator Eligibility Restrictions effectively killed off most, if not all, of Florida’s volunteer petition circulation. *See* App.Doc.640 at 3867:3–6, 3996:23–3998:5; App.Doc.636 at 5484:22–5485:15.

Third, the district court completely disregarded the FDH Plaintiffs' associational claims under the First Amendment as to both the Circulator Eligibility Requirements and the Registration Restriction. While circulation cases rely heavily on free speech claims under the First Amendment, free association claims are distinct and require a separate analysis. If appropriately reviewed, the district court would have found that under heightened scrutiny, the State's attempts to bar categories of people from circulating petitions and to condition all circulators' participation on state registration violate the associational test articulated in *Boy Scouts of Am. v. Dale*, 530 U.S. 640 (2000). Under this test, the district court was required to analyze (1) whether there is an associational relationship and (2) whether the State burdened that relationship. *Id.* at 656. If so, it should have applied strict scrutiny. Petition circulators associate with initiative campaigns and voters to affect political and social change. HB 1205 clearly burdened that relationship in two ways: by barring whole categories of people from engaging in the process at all through the Circulator Eligibility Requirements, and by conditioning every remaining circulator's entry into that associational relationship on state-mandated disclosure, training, and revocable registration through the Registration Restriction. Strict scrutiny is therefore required under *Roberts v. U.S. Jaycees*, 468 U.S. 609 (1984) and *Dale*, and on this basis alone the district court should have struck down the law.

Fourth and finally, the district court erred when it dismissed FDH’s First Amendment free-speech challenge to the Registration Requirement. In this appeal, we adopt by reference the arguments in Plaintiff-Appellant Right to Clean Water’s (“RTCW”) Opening Brief in Section III.A.ii, beginning on page 30 under the heading “The Registration Requirement Violates the First Amendment.” Each of the arguments made on behalf of RTCW apply with equal force to FDH.

STANDARD OF REVIEW

Generally, the Eleventh Circuit “review[s] a district court’s legal conclusions de novo,” and “its factual findings for clear error.” *United States v. Villarreal*, 613 F.3d 1344, 1349 (11th Cir. 2010). “[R]ulings on issues of law . . . that apply law to fact,” are reviewed de novo. *United States v. Shamsid-Deen*, 61 F.4th 935, 944 (11th Cir. 2023). Where the First Amendment Free Speech Clause is involved, however, the Eleventh Circuit’s review of the district court’s findings of *constitutional* facts is de novo. *Am. C.L. Union of Fla., Inc. v. Miami-Dade Cnty. Sch. Bd.*, 557 F.3d 1177, 1206 (11th Cir. 2009). In a First Amendment case challenging a statute as a burden on core political speech, the constitutional facts include: whether the statute actually burdens core political speech; the severity of that burden; and whether the statute actually and materially advances the asserted governmental interest. *See Flanigan’s Enters., Inc. of Georgia v. Fulton Cnty., Ga.*, 596 F.3d 1265, 1283 (11th

Cir. 2010). The Eleventh Circuit must find these constitutional facts as though they “were never reached by the district court.” *Id.* at 1283.

ARGUMENT

I. The District Court Erred by Failing to Subject HB 1205’s Circulator Eligibility Requirements to Exacting or Strict Scrutiny.

The district court erred by deferring to the stay panel’s preliminary and non-binding assessment that the Circulator Eligibility Restrictions are not subject to exacting or strict scrutiny. Restrictions on petition circulation—a form of “core political speech”—trigger a highly demanding constitutional review.

In *Meyer* and *Buckley*, the Supreme Court applied “exacting scrutiny” to state laws that severely burdened sponsors’ ability to use petition circulators during the citizen-initiative process. Florida’s Circulator Eligibility Restrictions impose strikingly similar burdens: they categorically prohibit millions of people from participating in petition circulation, which drastically reduces the pool of available circulators and severely limits the ability of sponsors to communicate with voters. Because—like the provisions in *Meyer* and *Buckley*—these restrictions burden core political speech, they too must be subjected to exacting or strict scrutiny.

Here, the district court erred by adopting the stay panel’s flawed, non-binding analysis which (1) improperly deconstructed the process of petition circulation into protected speech and unprotected conduct, (2) misinterpreted the Eleventh Circuit’s

decision in *Biddulph v. Mortham*, 89 F.3d 1491 (11th Cir. 1996), and (3) ignored the cumulative impact of HB 1205’s provisions.

Because the Circulator Eligibility Restrictions cannot survive exacting or strict scrutiny, the district court’s failure to apply the correct standard of review is reversible error.

A. Because the Circulator Eligibility Restrictions burden core political speech at least as much as the provisions invalidated by the Supreme Court in *Meyer* and *Buckley*, they too must be subjected to exacting or strict scrutiny.

In *Meyer*, the Court struck down a Colorado provision prohibiting the use of paid circulators after subjecting it to “exacting scrutiny.” 486 U.S. at 420. In applying this standard, the Court focused on the practical effect of the challenged statute, noting that it “acts as a limitation on [the sponsor’s] ability to circulate petitions.” *Id.* at 423. The Court explained that petition circulation “involves the type of interactive communication concerning political change that is appropriately described as ‘core political speech,’” where First Amendment protection is “at its zenith.” *Id.* at 422–425 (internal citations omitted); *See also Biddulph*, 89 F.3d at 1498 (noting that “the [*Meyer*] Court . . . applied strict scrutiny to the Colorado law”).

In *Buckley*, the Court struck down three Colorado provisions that “unjustifiably inhibit[ed] the circulation of ballot-initiative petitions.” *Buckley*, 525 U.S. at 205. Each of the three provisions affected different aspects of the petition

circulation process. The first required petition circulators to be registered voters (“Colorado’s registration restriction”); the second required petition circulators to wear an identification badge bearing their name; and the third required initiative sponsors to report the names and addresses of all paid circulators and the amount paid to each circulator. *Id.* at 186. Before overturning these provisions as violative of the First Amendment, the *Buckley* majority subjected each to highly demanding scrutiny—expressly calling the standard “exacting scrutiny” in one instance. *Id.* at 194–204.

As to Colorado’s registration requirement—the restriction most like the Circulator Eligibility Restrictions—the Court held that it produced “a speech diminution of the very kind produced by the ban on paid circulators at issue in *Meyer*.” *Id.* at 194. The Court explained:

The requirement that circulators be . . . registered voters . . . decreases the pool of potential circulators as certainly as the pool is decreased by the prohibition of payment to circulators [in the *Meyer* case]. Both provisions limit the number of voices who will convey the initiative message and, consequently, cut down the size of the audience proponents can reach.

Id. at 194–95.

Here, uncontested evidence established that the Circulator Eligibility Restrictions burden Plaintiffs’ core political speech at least as much as the registration restriction at issue in *Buckley*. In fact, after reviewing evidence presented at the preliminary injunction hearing (which became part of the trial record), the

district court concluded that the Circulator Eligibility Restrictions resulted in sponsors “lo[sing] entire swaths of potential employees and volunteers.” App.Doc.283 Order on Motions for Preliminary Injunction at 1170; *see also id.* at 1169–71 (detailing burdens at preliminary injunction stage).

As compelling as the burden evidence was at the preliminary injunction phase, at trial, Plaintiffs adduced substantially more, largely uncontested evidence that the Circulator Eligibility Restrictions severely limited sponsors’ ability to convey their messages by drastically reducing the pool of petition circulators. For instance, Plaintiffs’ expert, Dr. Smith, testified that the nonresidents, noncitizens, and felony convictions Circulator Eligibility Restrictions prohibit approximately four million people with Florida ties from engaging in petition circulation. App.Doc.644 at 5112:2–15.

The trial record further underscored how much damage the Nonresident Ban alone does to the ability of sponsors to convey their messages. Not only did Dr. Smith testify that the restriction prohibits roughly a million people in Florida who are either nonresident students or nonresidents with a home in Florida from circulating petitions, App.Doc.644 at 5110:6–23, senior managers of organizations involved in circulating petitions testified that the ban would prevent sponsors and their partner organizations from using experienced, effective out-of-state circulators and managers to connect with voters and train in-state circulators through live

demonstration. *See* App.Doc.640 at 3955:9–3957:10; *see also id.* at 3974:21–22 (Walsh testimony that approximately 75% of FDH’s paid circulation program managers were non-Florida residents); *id.* at 3982:12–3983:10; 3989:1–18; *see also* 3933:24–3936:24 (multiple witnesses detailing the negative impact of nonresident ban on operating an effective campaign).

The unrefuted trial record also established that the Noncitizen Ban has drastically reduced the number of voices available to convey the sponsors’ messages. Dr. Smith testified that the ban prohibits roughly two million noncitizens in Florida (or roughly 9% of Florida’s population) from circulating or otherwise physically possessing petitions. App.Doc.644 at 5109:10–5110:5. He emphasized that the Noncitizen Ban would make it especially difficult for sponsors to engage with voters in certain parts of the state, like South Florida, where the noncitizen rate is “much higher than 20 percent.” App.Doc.644 at 5111:2–9; *see also* App.Doc.640 at 3865:1–4, 3929:11–19; App.Doc.639 at 4168:2–5, 4243:9–16. Permanent residents who previously engaged in petition circulation and were now banned from doing so corroborated this testimony. *Id.* at 4201:23–25. Likewise, the leaders of sponsors like FDH and organizations like the Florida League of Women Voters testified that many of their paid and volunteer circulators were not citizens. *Id.* at 4198:1–2; 4211:4–6, 4219:11–13; 4245:20–22, 4246:7–15.

Similarly, uncontroverted testimony demonstrated the far-reaching consequences of the Felony Ban on the ability of sponsors to communicate with voters, especially in certain minority communities with higher felony conviction rates. Dr. Smith testified that approximately a million people in Florida are prohibited from circulating petitions because of the Felony Ban, App.Doc.644 at 5111:10–18, and that the ban interferes with political communications, preventing sponsors like FDH from “talk[ing] to people from . . . various backgrounds.” See App.Doc.640 at 3930:6–18.

The trial evidence also showed that, as applied, HB 1205’s Circulator Eligibility Restrictions impose burdens on sponsors and circulators that are even more severe than the registration restriction struck down in *Buckley*. There, the record showed that the restriction prevented sponsors from enlisting a significant percentage of volunteer circulators; whereas here, the record demonstrates that the restrictions completely eliminate sponsors’ use of volunteer circulators. Senior staff at FDH and the other Plaintiff organizations testified that, given the difficulty of verifying compliance with the restrictions and the resulting risk of criminal and financial liability, they had no choice but to terminate their volunteer petition circulator program. App.Doc.640 at 3867:3–6; App.Doc.646 at 5484:22–5485:15 (Cecile Scoon of the League of Women Voters testifying that they ended their program). Without that program, the ability of FDH, other organizations, and their

volunteers to speak to voters suffered dramatically. *Id.*; *Cf. Am. Const. L. Found., Inc. v. Meyer*, 870 F. Supp. 995, 1003–04 (D. Colo. 1994), *aff'd in part, rev'd in part*, *Cf. Am. Const. L. Found., Inc. v. Meyer*, 120 F.3d 1092 (10th Cir. 1997), *aff'd sub nom. Buckley*, 525 U.S. (where there were no findings or even allegations that Colorado's circulator provisions eliminated sponsors' volunteer petition circulator program).

Instead of analyzing or discussing any of this trial evidence, the district court deferred to the stay panel's preliminary assessments about the extent of the burden these restrictions imposed on the Plaintiffs and applied intermediate scrutiny. App.Doc.679 at 6714. The district court's unsupported, declaratory statements about burden severity are both erroneous and subject to de novo review. *See Burns v. Town of Palm Beach*, 999 F.3d 1317, 1330–31 (11th Cir. 2021).

B. The district court erred in adopting, against its own better judgment, the stay panel's analysis, which was both non-binding and incorrectly reasoned.

In applying intermediate scrutiny to the Circulator Eligibility Restrictions, the district court wrongly believed it had to defer to the stay panel's non-binding, preliminary conclusions rather than its own assessment of what the law required. In doing so, the district court adopted an analysis containing three significant errors. *First*, the stay panel's analysis improperly sliced and diced the process of petition circulation into protected speech and unprotected conduct—a distinction that cannot

be squared with either the trial record or *Meyer* and *Buckley*, which treat petition circulation as a single, inseparable act of core political speech. *Second*, it deferred to the stay panel’s overbroad reading of *Biddulph*—a case unrelated to petition circulation. The panel stretched that ruling to the point of bringing it into direct conflict with *Meyer* and *Buckley*. *Third*, the district court erred by failing to review the challenged provisions together to determine their cumulative impact on speech and association.

These legal errors—which this Court should review *de novo*—establish that the Circulator Eligibility Restrictions should have been subjected to exacting or strict scrutiny. The district court’s failure to do just that is reversible error.

1. The district court should not have treated the stay panel opinion, which had no *res judicata* effect, as controlling.

Had the district court been “writing on a blank slate,” it would have hewed to the analysis in its preliminary injunction decision, and “concluded that the bans on non-residents and non-citizens from circulating ballot initiative petitions severely burden core political speech and fail exacting scrutiny.” App.Doc.679 at 6714 n. 29. Further, the district court’s opinion makes clear in its critique of the stay panel’s analysis that it was unpersuaded by the panel’s understanding of what constituted the correct legal standard of review. Nonetheless, it applied a lesser intermediate standard because it believed it had no choice but to follow “the collective voice” of the stay-panel judges. *Id.* at 6713; *see also id.* at 6714 n.28–29.

That was legal error. Because the stay panel’s decision has no res judicata effect, the district court should not have applied a standard it believed to be misguided. *See Hand v. Desantis*, 946 F.3d 1272, 1275 (11th Cir. 2020).

Perhaps the district court deferred to the stay panel against its better judgment because it believed the merits panel would follow the stay panel’s lead. But district courts may not base their decisions on predictions of how higher courts may someday change the law; their obligation is to apply the law as they believe it currently stands. *See Brazill v. Jones*, No. 5:21-CV-99-TKW-MJF, 2023 WL 2872449, at *7 (N.D. Fla. Feb. 3, 2023), *report and recommendation adopted*, *Brazill v. Jones*, No. 5:21-CV-99-TKW-MJF, 2023 WL 2870706 (N.D. Fla. Apr. 10, 2023); *Tamada v. Pulte Home Corp.*, No. 613CV283ORL22GJK, 2013 WL 12155828, at *7 (M.D. Fla. Sept. 5, 2013) (“This Court is obligated to apply the law as it is, not as it may become, and will base its decision on binding Eleventh Circuit precedent before any attempt to read Supreme Court tea leaves.”). The district court committed legal error when it refused to apply what it believed the law required simply to bring itself into alignment with the stay panel’s decision.

In sum, the district court erred when it subjected the Circulator Eligibility Restrictions to less than exacting or strict scrutiny. Had it applied the correct standard, it would have readily concluded that—for the reasons discussed in Argument Section II.A. below—Florida’s purported interests in enacting the

restrictions do not justify such a severe infringement on the FDH Plaintiffs’ First Amendment rights to freedom of speech. Given the gravity of the court’s error, this Court should reverse.

2. The district court should not have adopted a stay panel analysis that sliced and diced the core political speech of petition circulation.

The stay panel erred in concluding that the Circulator Eligibility Restrictions escape exacting scrutiny because they “do not restrict any speech elements of the petition-circulation process,” but instead “only regulate who can ‘collect signatures or initiative petitions.’” *Fla. Decides Healthcare Inc. v. Fla. Sec’y of State*, No. 25-12370, 2025 WL 3738554, at *4 (11th Cir. Sept. 9, 2025) (internal quotations omitted). As the district court itself recognized:

[This] slicing and dicing of the core political speech of petition circulation into speech plus conduct (i.e., collecting a signed petition) fails to take cognizance of the reality of petition circulation and imposes a new layer to the analysis that the Supreme Court never previously imposed when it determined that initiative petition circulation constitutes core political speech.

App.Doc.679 at 6713 n.28.

The Supreme Court’s decision to apply exacting scrutiny to the restrictions at issue in *Meyer* rests on this very point. The Colorado law banned payment for “the circulat[ing] of an initiative or referendum petition,” and—just like the Circulator Eligibility Restrictions here—they said nothing about whether sponsors could pay individuals to discuss the merits of a petition with voters. 486 U.S. 414, 416 n.1 (quoting Colo. Rev. Stat. § 1-40-110 (1980)).

Though Colorado and the Tenth Circuit dissent made the same argument the stay panel adopted here—that the restriction only prohibited individuals from “tak[ing] the final step of obtaining the listener’s signature” and thus, regulated “conduct, not speech” (*Grant v. Meyer*, 828 F.2d 1446, 1459 (10th Cir. 1987) (en banc) (Logan, J., dissenting); see also State Appellant’s Opening Brief at 12, *Meyer*, 486 U.S. 414 (No. 87–920), 1987 WL 880992, at *12—the Supreme Court disagreed. The Court highlighted the connection between signature gathering and political speech, noting that a circulator had testified about “the nature of his conversations with voters in an effort to get them to sign the petition,” *Meyer* at 421 n.4, before holding that “the circulation of a petition involves the type of interactive communication concerning political change that is appropriately described as ‘core political speech.’” *Id.* at 421–22.

In *Meyer*, the Court explained that its conclusions concerning what constitutes core political speech “follow[ed]” from *Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620 (1984) a case that held “that any attempt to regulate [charitable] solicitation would necessarily infringe [protected] speech.” *Meyer* at 422 n.5 (citing *Schaumburg*) (emphasis added). This is because “solicitation is characteristically intertwined with” protected speech; “without solicitation the flow of such information and advocacy would likely cease.” *Id.* (quoting *Schaumburg* at 632); see also *Riley v. Nat’l Fed’n of the Blind of N.C., Inc.*, 487 U.S. 781, 796

(1988) (citing *Meyer* at 422 n.5) (noting that because “the component parts of a single speech are inextricably intertwined, we cannot parcel out the speech, applying one test to one phrase and another test to another phrase.”)

Buckley drives the point home. There, Colorado once again argued that the challenged provisions affected only “the procedural aspects of the initiative process” and did not constitute a “prohibition[] on core expression.” Petitioner’s Opening Brief at 16–17, *Buckley*, 525 U.S. 182 (No. 97–930), 1998 WL 221384, at *16–17. The Court again rejected this purported distinction between protected and non-protected aspects of petition circulation. Instead, it asked whether “the restrictions in question significantly inhibit[ed] communication with voters about proposed political change,” and if so, whether they were “warranted by the state interests . . . alleged to justify those restrictions.” *Buckley*, 525 U.S. at 192.

Heeding the Supreme Court’s approach of treating the entirety of the act of petition circulation—including the obtaining and collecting of signatures—as protected speech, five other circuits have applied exacting or strict scrutiny to state prohibitions on nonresident petition circulators. *See, e.g., Yes On Term Limits, Inc. v. Savage*, 550 F.3d 1023, 1027–28 (10th Cir. 2008) (applying strict scrutiny to residency requirement); *Pierce v. Jacobsen*, 44 F.4th 853, 862–63 (9th Cir. 2022) (same); *We the People PAC v. Bellows*, 40 F.4th 1, 19–21 (1st Cir. 2022) (same); *Wilmoth v. Sec’y of N.J.*, 731 F. App’x 97, 102 (3d Cir. 2018) (same); *Libertarian*

Party of Va. v. Judd, 718 F.3d 308, 316–17 (4th Cir. 2013) (same); *Krislov v. Rednour*, 226 F.3d 851, 866 (7th Cir. 2000) (applying exacting scrutiny); *Chandler v. City of Arvada*, 292 F.3d 1236, 1244 (10th Cir. 2002) (same); see *Initiative & Referendum Institute v. Jaeger*, 241 F.3d 614, 618 (8th Cir. 2001) (applying less than strict scrutiny and upholding North Dakota’s residency requirement for petition circulators where there was “no evidence in the record” of a severe burden).

Other circuits have also rejected the slicing and dicing of the core political speech of petition circulation when state actors have imposed other types of restrictions on how petitions are circulated and who gets to circulate them. *Perez-Guzman v. Gracia*, 346 F.3d 229, 242 (1st Cir. 2003) (rejecting Puerto Rico’s argument that a notarization requirement for petition signatures applied “only after the voter has agreed to subscribe a petition and, thus, does not have First Amendment implications”); see also *Initiative & Referendum Inst. v. U.S. Postal Serv.*, 417 F.3d 1299, 1311–12 (D.C. Cir. 2005) (citing *Meyer* for the proposition that protected “interactive communication comprises both the request for the signature and the signature itself”). Simply put, petition circulation consists of a single “encounter” in which a “petitioner advocates” and “the signer expresses his support” by signing the petition. *Walker-Serrano ex rel. Walker v. Leonard*, 325 F.3d 412, 418 (3d Cir. 2003) (citing *Meyer*, 486 U.S. at 421–22).

Consistent with the Supreme Court’s holdings, the trial record confirms that the obtaining and collecting of signatures cannot be separated from the core political speech that occurs when circulators interact with voters. Witnesses testified that petition circulation is comprised of a singular, interactive communication that includes signature collection. *See e.g.*, App.Doc.640 at 3916:12–24, 3918:22–23 (FDH circulator Plaintiff Simmons describing the conversation and signature gathering as a “whole process” and requires conversations with voters); *see also supra* II.B.1.

Witnesses also testified that circulators cannot effectively speak about a ballot initiative’s merits by just handing voters blank petitions with instructions on how to complete and submit them. *See e.g.*, App.Doc.640 at 4013:9–4014:1 (Campaign Field Strategist Marc Walsh explained that you lose the natural conversation that organically happens with voters when you simply hand out blank petitions); *id.* at 3840:25–3841:6, 3847:15–3848:3, 3872:22–3873:7 (Dr. Christina Acosta, FDH’s Organizing Director, explained that she could not effectively engage voters in conversations about their healthcare experiences when she was just handing out blank forms). When Florida’s enforcement of the Circulator Eligibility Restrictions (along with the Registration Restrictions) forced FDH to end its volunteer petition circulator program and transition to a volunteer program involving just distributing petitions, the level of public engagement with FDH’s campaign dropped

precipitously. App.Doc.640 at 3868:11–13 (Dr. Acosta testifying that the return rate of distributed petitions was below ten percent); App.Doc.639 at 4170:9–11 (Petition Circulator Juan Ardilla testifying that a distributive model is less effective).

Even if the quality and quantity of the speech had not been so severely compromised, the fact that Plaintiffs “remain free to employ other means to disseminate their ideas does not take their speech through petition circulators outside the bounds of First Amendment protection.” *Meyer*, 486 U.S. at 424. That’s because “[t]he First Amendment protects [Plaintiffs’] right not only to advocate their cause but also to select what they believe to be the most effective means for so doing.” *Id.*; see also *Riley*, 487 U.S. at 789 n.5.

3. The district court should not have relied on the stay panel’s overbroad reading of *Biddulph*.

Against its better judgment, the district court deferred to a stay panel standard of review analysis that misjudged the extent to which the Supreme Court’s conclusions in *Buckley* and *Meyer*, as well as this Circuit’s merits decisions in *Delgado v. Smith*, 861 F.2d 1489 (1988), *Clean Up ‘84 v. Heinrich*, 759 F.2d 1511 (11th Cir. 1985), and *Citizens for Police Accountability Pol. Com. v. Browning*, 572 F.3d 1213 (11th Cir. 2009) cabin the reach of this Court’s decision in *Biddulph*, 89 F.3d at 1500.

In *Biddulph*, the challenged law regulated the way Florida reviewed the legal sufficiency of initiative language prior to ballot placement. 89 F.3d at 1496. Unlike

the Circulator Eligibility Restrictions and the restrictions at issue in *Meyer* and *Buckley*, the challenged provision in *Biddulph* was not geared toward regulating petition circulation. *Id.* at 1498.

Despite that, the stay panel’s conclusion that less than exacting or strict scrutiny applied here rested almost entirely on statements made by this Court in *Biddulph*. For instance, the stay panel highlighted the statement in *Biddulph* that regulations protecting the integrity of the initiative process are “subject to strict scrutiny only in certain narrow circumstances.” *Fla. Decides Healthcare Inc. v. Fla. Sec’y of State*, No. 25-12370, 2025 WL 3738554, at *3–4 (11th Cir. Sept. 9, 2025) (citing *Biddulph* to claim that “[m]ost restrictions a state might impose on its initiative process would not implicate First Amendment concerns” and that heightened scrutiny is only required where the restriction “substantially restricts political discussion of the issue.”).

The stay panel’s expansive reading of this and other statements in *Biddulph* failed to adequately consider the following principles of judicial interpretation: First, courts “must look to precedent that is factually similar to the case at hand.” *Corey Airport Services, Inc. v. Decosta*, 587 F.3d 1280, 1287 (11th Cir. 2009). Second, “judicial decisions cannot make law beyond the facts of the cases in which those decisions are announced.” *Watts v. BellSouth Telecomms., Inc.*, 316 F.3d 1203, 1207 (11th Cir. 2003). Third, courts should follow directly applicable Supreme Court

precedent, even if that precedent is in tension with the decision of an appellate court. *Rodriguez de Quijas v. Shearson/American Exp., Inc.*, 490 U.S. 477, 484 (1989). And fourth, under this Circuit’s prior panel precedent rule, courts have an affirmative duty to harmonize their analyses of an Eleventh Circuit decision with pre-existing Eleventh Circuit decisions where possible. *In re Hubbard*, 803 F.3d 1298, 1306–07 (11th Cir. 2015). *See also Edwards v. U.S. Attorney General*, 97 F.4th 725, 736 (11th Cir. 2024).

The district court erred when it relied on a stay panel analysis that failed to follow these well-established principles of judicial interpretation. For starters, its expansive reading and application of dicta in *Biddulph* stretched the case’s applicability well past its factual predicate. Because *Biddulph* did not directly regulate petition circulation, *Biddulph*’s holdings are generally inapplicable here. *See United States v. Aguillard*, 217 F.3d 1319, 1321 (11th Cir. 2000) (per curiam) (“holdings of a prior decision can reach only as far as the facts and circumstances presented to the Court in the case which produced that decision.”) (citation and internal marks omitted).

In contrast, *Meyer* and *Buckley* are far more factually analogous. Like Florida’s Circulator Eligibility Restrictions, the statutory provisions in Colorado placed direct burdens on the petition circulation aspect of the initiative process. In *Meyer*, the challenged statute prohibited paying petition circulators, while the

provisions in *Buckley* banned nonregistered voters from circulating petitions, required circulators to wear badges, and required sponsors to report the names and addresses of circulators. *Meyer*, 486 U.S. at 416; *Buckley*, 525 U.S. at 186.

Because this case's facts are much closer to *Meyer*'s and *Buckley*'s than *Biddulph*'s, instead of departing from the teachings of those two Supreme Court cases, the stay panel—and by extension, the district court—should have sought to align *Biddulph* with them. The court should have been especially attuned to the possibility that *Buckley* limited *Biddulph*'s reach. *Buckley* was an intervening Supreme Court case decided three years *after Biddulph*, that, like the challenged Circulator Eligibility Restrictions, involved a statute limiting who could circulate petitions. Had the district court simply followed *Buckley* rather than impermissibly stretching *Biddulph*'s reach, it would have subjected the circulator eligibility provisions to the exacting scrutiny standard the Supreme Court applied there.

Moreover, the stay panel and district court entirely overlooked this Court's opinions in *Clean-Up '84 v. Heinrich*, 759 F.2d 1511 (11th Cir. 1985), *Citizens for Police Accountability*, 572 F.3d, and *Delgado*, 861 F.2d, three valid, more factually analogous precedents that predate *Biddulph*.

Clean Up '84 and *Citizens for Police Accountability* involved challenges to a statute preventing petition circulation within 100 yards of a polling place. *Clean-Up '84*, 759 F.2d. at 1511-12; *Citizens for Police Accountability*, 572 F.3d at 1215–16.

Delgado concerned the potential imposition of a two-language requirement on Florida's initiative petition circulation process. *Delgado*, 861 F.2d at 1491–92Sub. Like the Circulator Eligibility Restrictions at issue here, all three dealt with statutes that placed burdens on the petition circulation aspect of the initiative process.

In all three cases, this Court opined that the intrusions on petition circulation triggered demanding First Amendment protections akin to either exacting or strict scrutiny. In *Clean-up '84*, this Court found that preventing petition circulators from circulating petitions within 100 yards of a polling place violated the First Amendment. The Court explained that “asking a voter to sign a petition is protected speech and gathering at the polls to solicit signatures is protected association. Both activities involve the communication of ideas to voters.” *Clean-Up '84*, 759 F.2d at 1513 (internal citation omitted).

In *Citizens for Police Accountability*, this Court again applied strict scrutiny when evaluating the constitutionality of burdening petition circulators with a “no Approach Zone” of 100 feet from the entrance of a polling place. 572 F.3d at 1219. This Court also indicated that it understood the protected political speech of petition circulation to include “solicit[ing] signatures.” 572 F.3d at 1221.

Though not decided on First Amendment grounds, the *Delgado* court questioned whether a statute could impose a two-language requirement on the circulation of petitions without impermissibly burdening protected First Amendment

rights. 861 F.2d 1489, 1494 (11th Cir. 1988). *Delgado* emphasized that “circulation of a petition involves activity protected as core political speech.” *Id.* at 1498.

Because neither the Supreme Court nor the *en banc* Eleventh Circuit have abrogated the principles enunciated in *Clean Up '84*, *Citizens for Police Accountability*, and *Delgado*—three much more factually analogous decisions—the district court and stay panel should have construed *Biddulph* in a way that did not bring it into conflict with these three pre-existing decisions. See *United States v. Archer*, 531 F.3d 1347, 1352 (11th Cir. 2008) (acknowledging the binding nature of prior panel precedent).

That the stay panel read *Biddulph* too broadly is all the more apparent because *Biddulph* itself took pains to emphasize that its application of a lesser standard was based on its review of a statute unrelated to petition circulation activities. 89 F.3d at 1498–1500 (noting that “the [*Meyer*] Court indicated that a state, though generally free to regulate its own initiative process, is limited in the extent to which it can permissibly burden the communication of ideas about the political change at issue in an initiative proposal that occurs *during petition circulation*”) (emphasis added). In fact, the *Biddulph* court pointed out that the sponsor challenging the initiative language statute never even argued that it limited what circulators could say or discuss during petition circulation. *Id.* at 1498.

To conclude, the district court erred by deferring to a stay panel analysis that ignored Supreme Court and Eleventh Circuit precedent and improperly stretched *Biddulph*'s holding to apply the wrong standard of review.

4. The district court erred by failing to review the challenged provisions together to determine their cumulative impact on speech and association.

As the district court emphasized in its order granting plaintiffs' motion to preliminarily enjoin the Circulator Eligibility Provisions, in the one outlier case where a Circuit applied less than exacting or strict scrutiny to a provision restricting who can circulate petitions—*Initiative & Referendum Institute*, 241 F.3d—a salient reason for applying a more forgiving standard was that getting an initiative on the ballot was relatively easy in North Dakota. App.Doc.283 at 24. In contrast, because of HB 1205's, Florida has the most challenging landscape in the country for enacting constitutional amendments through citizen-initiatives. App.Doc.644 at 5066:14–5068:2, 5107:12 –5108:2.

The FDH Plaintiffs adopt the arguments located in the brief of the League/LULAC Plaintiffs, explaining why the district court erred when it failed to consider the cumulative effect of HB 1205 on Plaintiffs' First Amendment rights. Those arguments are located on pages 51–53 under heading I.D.

II. The District Court Erred When it Applied Intermediate Scrutiny with Excessive Deference to the State’s Claimed Interests.

Even assuming the district court’s decision to apply intermediate scrutiny to the Circulator Eligibility Restrictions was not in error, it should not have deferred to a stay panel analysis that wrongly applied the standard. Properly applied, the evidence demonstrates that the Circulator Eligibility Restrictions also fail intermediate review.

Under intermediate scrutiny, courts will sustain a content-neutral regulation “if it advances important governmental interests unrelated to the suppression of free speech and does not burden substantially more speech than necessary to further those interests.” *Paxton*, 606 U.S. at 471, 495–96 (internal citations omitted). Intermediate scrutiny “is deferential but not toothless” and “plays an important role in ensuring that legislatures do not use ostensibly legitimate purposes to disguise efforts to suppress fundamental rights.” *Id.* at 463, 495.

A. The district court failed to properly examine whether the Circulator Eligibility Restrictions advance important governmental interests unrelated to the suppression of free speech.

Here, Florida asserted that it had enacted the Circulator Eligibility Restrictions to combat fraud that allegedly threatened the integrity of its initiative process. *See* App.Ex.166 at 6737–38. When assessing whether these restrictions actually advanced an important governmental interest, it was incumbent on the district court to ask whether the restrictions “were designed to address a real harm, [] whether

[they] will alleviate it in a material way,” and whether the legislature has “drawn reasonable inferences based on substantial evidence.” *Turner Broad. Sys., Inc. v. FCC*, 520 U.S. 180, 195 (1997) (internal citations omitted). In answering these questions, the district court should have ensured that the State was not “rely[ing] on shoddy data or reasoning.” *Flanigan’s Enters., Inc. v. Fulton County*, 596 F.3d 1265, 1279 (11th Cir. 2010).

But the district court did none of that. Instead, it primarily deferred to the stay panel’s preliminary assessment of the evidence, stating that it was “hard pressed to ignore” the panel’s preliminary intermediate-scrutiny analysis. App.Doc.679 at 6714. The court found this “particularly true now that Defendants have introduced additional evidence at trial concerning past instances of fraud in the initiative petition process . . . which further supports the panel’s conclusion that the petition circulator eligibility requirements satisfy intermediate scrutiny.” *Id.*

Notwithstanding the invocation of “additional evidence,” the trial court failed to independently reweigh whether that evidence actually clears intermediate scrutiny—essentially treating the stay panel’s preliminary assessment as controlling. In fact, the trial court credited the State’s rationale even though its own order signaled skepticism as to the quality and nature of the fraud evidence. *See id.* at n.30 (noting that the court made its concerns with the State’s fraud evidence known on the record and declined to admit some of it).

Had it conducted a proper examination of the trial evidence, it would have concluded that there is no real threat to the integrity of Florida's citizen-initiative process, and that the restrictions would, in any case, do virtually nothing to meaningfully alleviate any potential harm.

1. The record includes only a negligible amount of marginally relevant petition-related fraud.

Of the millions of ballot petitions collected in recent years, the State's admitted fraud evidence was scant, as OECS Director Jillian Pratt testified that in 2024 just fourteen petition-related cases were referred for prosecution. App.Doc.620–2, SOS & AG's Amended Counter Designations of Jillian Pratt Deposition, at 3145:14–3146:5. Those cases consisted of four guilty pleas, two unspecified pleas, two no-contest pleas, and six pending cases. *Id.* The record contains no evidence that any of these fourteen individuals are noncitizens, nonresidents, or were previously convicted of a felony. *See* App.Doc.620–2 at 3145:14–3146:5; App.Doc.654 at 5869:13–5930:20 (Director Pratt direct examination); App.Doc.652 at 5657:8–5692:21 (Bridges direct examination); *id.* at 5693:23–5694:2.

Further, the State provided no evidence that nonresidents, noncitizens, or individuals convicted of felonies are more likely than the general population to commit petition fraud. App.Doc.654 at 5869:13–5930:20; App.Doc.652 at 5657:8–5692:21; App.Doc.654 at 5941:23–5942:25; App.Doc.620-3 at 3668:19–3669:22.

Nor has it provided any evidence that fining sponsors \$50,000 for using circulators in those categories will deter fraud. *See* App.Doc.654 at 5943:1–15.

Relating to the noncitizen eligibility category specifically, the State failed to provide *any* evidence that a noncitizen has ever been convicted of petition fraud in Florida, and its primary law enforcement witness—Jonathan Bridges of the Office of Statewide Prosecution—testified that his office had never filed any petition related charges against a noncitizen. App.Doc.620-1, SOS & AG’s Amended Counter Designations of Jonathan Bridges Deposition, at 2695:12–18. *See also* App.Doc.654 at 5941:6–5943:10 (Pratt testifying that her office has *no evidence* that, as compared to U.S. citizens, noncitizens are more likely to commit fraud).

Likewise, although the State sought to justify its nonresident eligibility restriction by arguing that “it’s easier to investigate individuals or entities that are within the state of Florida,” *See* App.Doc.652 at 5660:23–5661:21, the record does not contain a single example of Florida law enforcement failing to assert jurisdiction over a nonresident individual accused of petition fraud. The mere fact that the State might need to enforce a foreign or out-of-state subpoena when seeking to prosecute a nonresident or noncitizen cannot, on its own, justify banning millions of nonresidents and noncitizens from engaging in First Amendment speech. *See Honeyfund.com Inc. v. Governor*, 94 F.4th 1272, 1281 (11th Cir. 2024) (cleaned up)

(“‘[B]road prophylactic rules’” like the Circulator Eligibility Restrictions “are generally disfavored and cannot survive.”).

That the State managed to adduce only a negligible amount of petition fraud is hardly surprising. As the Supreme Court has noted, “the risk of fraud or corruption, or the appearance thereof, is more remote at the petition stage of an initiative than at the time of balloting.” *Meyer*, 486 U.S. at 427.

2. Nothing in the record suggests the State has any reason to believe the integrity of its initiative process is under threat.

While the State claims that the Circulator Eligibility Restrictions are fraud-preventing measures geared toward protecting the integrity of the initiative process, the record establishes that the State’s initiative process is not genuinely under threat.

The State’s only discernable interest in developing anti-fraud measures at the petition circulation stage is to ensure that initiatives actually have sufficient voter support before appearing on the ballot. But here, there is no evidence that fraud has caused an influx of unpopular issues onto the ballot. Indeed, at trial, Dr. Smith explained that, even before HB 1205’s enactment, very few measures made it onto the ballot in Florida. *See* App.Doc.644 at 5103:6–9. The few that did have been widely supported—of the six citizen-initiated measures that made the ballot in the

last two election cycles, one received close to 50%, three received over 55% of the vote, and two passed with over 60% of the vote.²

In sum, because no legitimate purpose is furthered by ratcheting up Florida’s regulations against petition-related fraud, Florida has no justification for a set of restrictions that burden protected speech.

B. Even assuming Florida actually seeks to advance a genuine governmental interest, the district court failed to properly examine whether the restrictions burden substantially more speech than is necessary to further the interest.

In its opinion, the district court failed to address whether the Circulator Eligibility Restrictions “burden substantially more speech than is necessary” to further any claimed interest in prohibiting specific populations from circulating petitions. *See Paxton*, 606 U.S. at 471 (citation omitted). Under intermediate scrutiny, the district court should not have countenanced the State’s argument that, so long as any nonresident, noncitizen, or person with a felony conviction could conceivably create additional enforcement concerns, the State may categorically bar all such individuals from circulating petition. *See Avitabile v. Beach*, 368 F. Supp. 3d 404, 420–21 (N.D.N.Y. 2019) (citation omitted) (“[A] mere generalized appeal to public safety and crime prevention as the justification for a total and complete ban

² Div. of Elections, *November 5, 2024, General Election, Official Results*, Fla. Dep’t of State <https://results.elections.myflorida.com/Index.asp?ElectionDate=11/5/2024&DATAMODE=> (last visited Aug. 11, 2026). The Court may take judicial notice of this official state website. *See Fed. R. Evid.* 201.

. . . is precisely the kind of ‘shoddy reasoning’ that even intermediate scrutiny forbids.”).

The State had “an abundance of targeted alternatives” to banning broad categories of individuals from petition circulation. *Fort Lauderdale Food Not Bombs v. City of Fort Lauderdale*, 11 F.4th 1266, 1296 (11th Cir. 2021). For example, the State could have required sponsors to keep records in Florida or limited its eligibility ban to just those with past petition fraud convictions. “[T]he government is obliged to demonstrate that it actually tried or considered less-speech-restrictive alternatives and that such alternatives were inadequate to serve the government’s interest.” *Billups v. City of Charleston*, 961 F.3d 673, 688 (4th Cir. 2020). The State made no such showing.

III. The District Court Erred by Failing to Address FDH’s Free Association Claim.

Both the district court and the stay panel whose analysis the district court adopted failed to address the FDH Plaintiffs’ claim that HB 1205’s challenged provisions—including the Circulator Eligibility Restrictions and Volunteer Registration Requirement—violate their right to expressive association. In fact, while the district court opined that HB 1205’s regulations “do not restrict any speech elements of the petition-circulation process,” App.Doc.679 at 6713, at no point did the court even mention the word “association.” The court’s failure to address the

FDH Plaintiffs’ distinct free-association claims requires vacatur and a remand for the court to resolve these claims in the first instance.

Alternatively, to the extent this Court concludes the district court implicitly resolved the FDH Plaintiffs’ association claims with its free speech claims, doing so was an error because these two types of claims involve distinct analyses for determining the appropriate standard of review. The district court should have evaluated infringements on associational rights using the test promulgated by the Supreme Court in *Dale*, 530 U.S., discussed below.

A. The FDH Plaintiffs’ properly pleaded free-association claim (Count II) was separate and distinct from their free-speech claim (Count I).

The rule is well-established: courts are required to address properly pleaded claims. *Osborne v. Folmar*, 735 F.2d 1316, 1317–18 (11th Cir. 1984). Here, the FDH Plaintiffs properly pleaded “Infringement on [their] First Amendment Rights to Free Association” as a stand-alone count entirely separate from their free-speech claim in their original and amended complaints. App.Doc.308, FDH’s Second Amended Complaint, at 1266. They also devoted a significant portion of their closing brief to discussing why the three-part test articulated by the Supreme Court in *Dale*, 530 U.S. at 640, constitutes the appropriate standard for assessing their association claims, and why the evidence establishes that HB 1205’s provisions fail to satisfy that standard. App.Doc.667 at 6352–70.

The FDH Plaintiffs’ claims are legally distinct from their free-speech claims. *See O’Loughlin v. Palm Beach Cnty*, 30 F.4th 1045, 1050–55 (11th Cir. 2022) (analyzing free speech and free association claims separately and applying different standards to each); *Mcabe v Sharett*, 12 F.3d 1558 (11th Cir. 1994) (discussing the distinct analytical framework used to analyze freedom of association claims). The district court’s failure to in any way analyze or address these claims warrants vacatur and remanding for further review.

B. Assuming the district court addressed the FDH Plaintiffs’ free-association claims together with their free-speech claims, doing so was in error because their free-association claims should have been subjected to the *Dale* test, which would have resulted in applying strict scrutiny.

If this Court concludes that the district court—without directly addressing or mentioning the FDH Plaintiffs free-association claims—nonetheless resolved them when it held that “Plaintiffs’ evidence at trial has not persuaded this Court that the merits of Plaintiffs [Registration Regulation] claims have gained strength since the preliminary injunction stage,” App.Doc.679 at 6709, and that “Plaintiffs have not demonstrated a First Amendment violation with respect to the petition circulator eligibility requirements,” App.Doc.679 at 6715, then the district court erred by failing to appropriately evaluate distinct infringements on Plaintiffs’ associational rights.

The initiative process and petition circulation implicate the First Amendment right to association because they involve “associat[ing] with others in pursuit of . . . political . . . ends.” *See Roberts* 468 U.S. at 622 (1984), *see also Lerman v. Bd. of Elections in City of New York*, 232 F.3d 135, 146 (2d Cir. 2000) (“[P]etition circulation bears an intimate relationship to the right to political or expressive association.”); *Clean-up ’84*, 759 F.2d at 1513 (internal quotation marks and citation omitted) (“gathering . . . to solicit signatures is protected association”). In addition to the individuals who are either volunteering or working for sponsor organizations, a voter joins this associational relationship by signing a petition. *Voting for Am., Inc. v. Andrade*, 488 F. App’x 890, 898 n.13 (5th Cir. 2012) (“[T]he very nature of a petition process requires association between the third-party circulator and the individuals agreeing to sign.”). Indeed, here, uncontested testimony established that for the voter, signing a petition in front of a circulator and then providing the form to the circulator is a form of engaging in political solidarity with a circulator and a campaign over a shared political cause. *See, e.g., App.Doc.644* at 5071:13–19, 5075:9–14. Witnesses credibly testified that circulating rather than merely distributing petitions provided circulators—and through them sponsors—with a much more effective means of connecting with and associating with voters over core political ideas. *See supra* Statement of the Case Sections II.B.1–2; *App.Doc.644* at 5073:4–22, 5074:8–5075:3.

Where either the Supreme Court or this Court have evaluated expressive association challenges to provisions that interfere with the petition process, they have applied strict scrutiny. *See, e.g., Buckley*, 525 U.S. at 212, 214 (Thomas, J., concurring) (explaining that although a registration requirement did not directly regulate speech, it nonetheless “encroached on association rights” and warranted strict scrutiny); *Clean-Up ’84 v. Heinrich*, 590 F.Supp. 928 (M.D. Fla. July 19, 1984) at 930 (holding restriction on petition circulators near polling places violated First Amendment speech and association rights), *aff’d*, 759 F.2d 1511 (11th Cir. 1985); *Delgado*, 861 F.2d at 1494 (emphasizing that “any degree of governmental hindrance upon the freedom of a given group of citizens to pursue the initiative petition process with whomever, and concerning whatever they choose must be viewed with some suspicion”). When other circuits have evaluated associational protections in the petition process, they too have applied strict scrutiny. *Lerman*, 232 F.3d at 146–47 (applying strict scrutiny to New York’s residency requirement for candidate-petition circulators because it “bears an intimate relationship to the right to political or expressive association.”); *see also Krislov*, 226 F.3d at 862.³

³Electoral-process free-association claims have a different analytical framework, *see, e.g., Norman v. Reed*, 502 U.S. 279, 280 (1992), or “exacting scrutiny,” *see, e.g., Davis v. Fed. Election Comm’n*, 554 U.S. 724, 744 (2008) because this Court distinguishes petition-circulation association claims from electoral-process association claims. *Biddulph*, 89 F.3d at 1499 n.8 (“strict scrutiny indeed might apply” if directly burdened); *see also Delgado*, 861 F.2d at 1496–97.

Most associational claims involving significant infringements on the petition circulation process trigger strict scrutiny under the test articulated by the Supreme Court in *Dale*, 530 U.S. at 640. The *Dale* test has three parts: First, a court must assess whether the group making the claim engaged in expressive association. *Id.* at 648. Second, the court must assess whether the state action at issue significantly affected or burdened the group's ability to advocate its viewpoints. *Id.* at 650. Third and finally, should a court find a significant effect or burden on the right to association, it must apply strict scrutiny and require both a compelling interest to justify the governmental practice and narrow tailoring. *Id.* at 659.

C. Had the district court correctly applied the *Dale* test, it would have subjected both the Circulator Eligibility Restrictions and the Registration Regulations to strict scrutiny.

The district court did not properly analyze the FDH Plaintiffs free-association claims. Had it done so, under *Dale*, it would have been required to determine whether the Circulator Eligibility Restrictions and the Registration Restrictions would survive strict scrutiny, an inquiry that would have led the court to find HB 1205 unconstitutional. Here, the first element of the *Dale* test—whether the group making the claim engaged in expressive association—has clearly been met because the Plaintiffs—sponsors, circulators, and individuals involved in the petition process—are all engaged in expressive association geared toward advancing shared political goals.

The second element of the test has also been met because, as discussed above, the evidence established that the Circulator Eligibility Restrictions and Registration Regulations significantly affected or burdened the group’s ability to communicate its viewpoints. *See supra* Statement of the Case, II.B.2-3; Argument, Section I.A.1; *See App.Doc.644 at 5126:16–18, 5127:9–15, 5130:11–22; App.Doc.640 at 3871:19–23, 3873:21–3874:7; Fla. Stat. §§ 100.371(4)(g), (14)(h)100.371(4)(g).*

The stay panel’s primary rationale for applying less than exacting or strict scrutiny in the speech context—adopted by the district court—is close to nonsensical in the expressive association context. Separating “speech” portions of petition circulation from “conduct” makes no sense in the expressive association context because association requires action, i.e. “conduct,” yet courts still apply strict scrutiny in free-association cases. *See Dale*, 530 U.S. at 655 (“[A]ssociations do not have to associate for the ‘purpose’ of disseminating a certain message in order to be entitled to the protections of the First Amendment. An association must merely engage in expressive activity that could be impaired in order to be entitled to protection.”). Expressive association straddles the constitutional protections for free speech and assembly and can embrace actions not tied to communication. *See Ashutosh Bhagwat, Associational Speech*, 120 Yale L.J. 978, 984–88 (2011). For this reason, when courts have examined associational protections, the issue comes down to whether the challenged provision either directly or indirectly burdens the

common venture of advancing a shared political goal or value, irrespective of whether the burden impacted a particular form of communication.

Because the second element of the *Dale* test has been met, the Court should have applied strict scrutiny. For the reasons discussed in Argument Section II above, the record established that the purported state interest in enacting the Circulator Eligibility Restrictions cannot survive intermediate scrutiny, much less strict scrutiny. As discussed in Section III.A.ii of the RTCW’s brief, the Registration Restrictions also cannot survive strict scrutiny.

To conclude, here, the district court’s failure to address the FDH Plaintiffs associational claims in any way, let alone using the correct standard, warrants vacatur and remanding for review in the first instance.

IV. The District Court Erred by Failing to Subject HB 1205’s Petition Circulator Registration Requirements to Exacting or Strict Scrutiny.

FDH Plaintiffs maintain that the Registration Requirement violates their First Amendment free-speech rights. FDH incorporates by reference the legal arguments concerning the Registration Requirements set forth in its post-trial brief, App.Doc.667 at 6325–29, and the arguments found in Section III.A.ii on pages 30–38, under the heading, “The Registration Requirement Violates the First Amendment,” of the RTCW Plaintiffs-Appellants’ Opening Brief. Rather than repeat those arguments, FDH focuses on the harm the Registration Requirements independently inflicted on its speech—harm detailed extensively at trial and set forth

in its post-trial brief, *see* App.Doc.667 at 6268–69, and as discussed above at Statement of Facts Section II.B.3.

CONCLUSION

For the foregoing reasons, the FDH Plaintiffs-Appellants respectfully ask this Court to reverse the district court’s decision.

DATED this 12th day of August, 2026.

Respectfully submitted,

/s/ Avner Shapiro

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g), I hereby certify that the foregoing Opening Brief contains 12,878 words, consistent with the length limitation in Fed. R. App. P. 32(a)(7)(B)(i). This motion has been prepared using a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman, consistent with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type styles requirements of Fed. R. App. P. 32(a)(6).

Dated: August 12, 2026

/s/ Avner Shapiro
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CERTIFICATE OF SERVICE

I hereby certify that on August 12, 2026, I served a true and correct copy of the foregoing document via electronic notice by the CM/ECF system on all counsel or parties of record.

/s/ Avner Shapiro
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