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

FLORIDA DECIDES HEALTHCARE, INC., et al.,

Plaintiffs,

Case No.: 4:25-cv-00211-MW-MAF

v.

CORD BYRD, et al.,

Defendants.
_____/

SMART & SAFE FLORIDA,
a registered Florida Political Committee,

Plaintiff,

v.

CORD BYRD, et al.,

Defendants.
_____/

PLAINTIFF SMART & SAFE FLORIDA'S
REPLY IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

"[T]he circulation of initiative petitions and the concomitant exchange of political ideas constitutes 'core political speech.'" *Biddulph v. Mortham*, 89 F.3d 1491, 1498 (11th Cir. 1996) (quoting *Meyer v. Grant*, 486 U.S. 414, 423 (1988)). HB 1205's Non-Resident Circulator Prohibition simultaneously infringes on Smart

& Safe's core political speech and its right to freely associate with the petition circulators of its choosing. Yet, the Secretary fails to articulate how this prohibition is narrowly tailored—or even remotely related—to the State's purported interest in gaining out-of-state entities' compliance with investigations into alleged petition fraud. Accordingly, Smart & Safe is likely to succeed on the merits, and the Motion for Preliminary Injunction should be granted.

1. *The Non-Resident Circulator Prohibition Restricts Smart & Safe's Political Expression and Association.*

First, the Secretary takes the position that no speech is being regulated, and the Non-Resident Circulator Prohibition is merely regulation of conduct. The Secretary is wrong as the Supreme Court addressed this matter squarely in *Meyer v. Grant.* Comparing the circulation of petitions to solicitation of charitable contributions, the Court explained that "the solicitation of signatures for a petition involves protected speech . . . and [] any attempt to regulate solicitation would necessarily infringe that speech." *Meyer v. Grant*, 486 U.S. 414, 422 (1988). Like the solicitation of charitable appeals for funds, circulation of petitions "involve[s] a variety of speech interests—communication of information, the dissemination and propagation of views and ideas, and the advocacy of causes—that are within the protection of the First Amendment." *Id.* Thus, any prohibition on the circulation of petitions is "characteristically intertwined with informative and perhaps persuasive speech seeking support for particular causes or for particular views on economic,

political, or social issues, and … without solicitation the flow of such information and advocacy would likely cease." *Id.* (quoting *Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620, 632 (1980)); *see also Buckley v. Am. Constitutional Law Found., Inc.,* 525 U.S. 182, 207 (1999) (even when a law does not "directly regulate core political speech," speech is at issue). Thus, the Secretary cannot prohibit the collection of petitions without infringing on the advocacy concurrent with the conduct of collecting petitions.

The *Meyer* Court went on to explain,

> The refusal to permit appellees to pay petition circulators restricts political expression in two ways: First, it limits the number of voices who will convey appellees' message and the hours they can speak and, therefore, limits the size of the audience they can reach. Second, it makes it less likely that appellees will garner the number of signatures necessary to place the matter on the ballot, thus limiting their ability to make the matter the focus of statewide discussion.

Meyer, 486 U.S. at 422–23. The Non-Resident Circulator Prohibition has the same impact. Because non-residents are prohibited from collecting petitions, Smart & Safe is constrained to communicating its message to fewer voters, and it will not be able to gather as many signatures for placement on the ballot. Before HB 1205 was signed into law, non-residents collected on average 37,885 petitions for Smart & Safe per week. Cox Decl. ¶ 15. It is reasonable to anticipate that over the twenty-six weeks between July 1, 2025 (when the Non-Resident Circulator Prohibition goes into effect) and January 1, 2026 (the deadline to submit petitions to be verified prior to

the February 1, 2026), Smart & Safe's non-resident circulators could collect approximately 985,010 signed petitions. This demonstrates the massive scale of speech the State infringes on by prohibiting non-residents from collecting and processing petitions.

The Non-Resident Circulator Prohibition prohibits non-residents from collecting petitions, so even if each non-resident circulated alongside a resident circulator (present merely to collect the signed petitions), the number of conversations being had will be cut in half, making it less likely that the Initiative will be placed on the ballot.[1] Furthermore, "[t]hat [sponsors] remain free to employ other means to disseminate their ideas does not take their speech through [paid] petition circulators outside the bounds of First Amendment protection." *Meyer*, 486 U.S. at 424.

The Non-Resident Circulator Prohibition not only infringes on Smart & Safe's speech, it also directly infringes on the sponsor's right to associate with non-residents. Freedom of expressive association, the "right to associate for the purpose of engaging in those activities protected by the First Amendment—speech,

[1] The collection and delivery of the signed petitions by petition circulators in and of itself is protected speech to the same extent "driving voters to the polls . . . . implicates core First Amendment Rights." *See Coley-Pearson v. Martin*, 689 F. Supp. 3d 1339, 1355–56 (S.D. Ga. 2023) (citing *Guffey v. Mauskopf*, 45 F.4th 442, 451 (D.C. Cir. 2022); *Priorities USA v. Nessel*, 462 F. Supp. 3d 792, 819 (E.D. Mich. 2020) (finding diminution of "rides-to-the-polls" efforts and opportunities unconstitutional under *Meyer* and *Buckley*)).

assembly, petition for the redress of grievances, and the exercise of religion," is a fundamental right. *Roberts v. United States Jaycees*, 468 U.S. 609, 617–18, 104 S.Ct. 3244, 82 L.Ed.2d 462 (1984). The Non-Resident Circulator Prohibition is a total ban on a class of people with which Smart & Safe can associate as petition circulators, including who it can hire to collect petitions, violating Smart & Safe's freedom of association. *See Krislov v. Rednour*, 226 F.3d 851, 860–61 (7th Cir. 2000) ("Although the [] provision does not go so far as to specifically prohibit candidates from associating with individuals who are not residents… it still substantially burdens this right of association by preventing the candidates from using signatures gathered by these circulators… [inhibiting] the expressive utility of associating with these individuals.").

2. *The State Must Demonstrate that the Non-Resident Circulator Prohibition is Narrowly Tailored to Serve a Compelling State Interest.*

As the Eleventh Circuit explained in *Biddulph,* a state cannot "impermissibly burden the free exchange of ideas about the objective of an initiative proposal." *Biddulph v. Mortham*, 89 F.3d 1491, 1500 (11th Cir. 1996). So, when a restriction "significantly inhibit[s] communication with voters about proposed political change," *Buckley*, 525 U.S. 192, and poses a "severe burden on speech," *id*. at 192 n.12, it must be narrowly tailored to serve a compelling state interest to avoid

violating the First Amendment.[2] The Non-Resident Circulator Prohibition, much like the prohibition against paid circulators in *Meyer*, prohibits Smart & Safe from engaging an entire class of speakers to communicate its message to Florida voters, significantly inhibiting Smart & Safe's communication with voters. Again, qualified, non-resident circulators are Smart & Safe's preferred method of communications. ECF No. 166-5, ¶¶ 5-10. Before HB 1205 was signed into law, non-residents collected approximately 37,885 petitions for Smart & Safe per week. Cox Decl. ¶ 15. Now, if Smart & Safe were to hire non-residents, they would have to be accompanied by a resident circulator in order to collect the signed petitions, effectively cutting the volume of speech in half. This total ban, thus, severely burdens Smart & Safe's speech.

Should the Court determine that either "strict" or "exacting" scrutiny do not apply, the next appropriate test is a case-by-case balancing test. *See Pest Comm. v. Miller*, 626 F.3d 1097, 1113 (9th Cir. 2010); *see also Campbell v. Buckley*, 203 F.3d

[2] While the Secretary goes on about "strict scrutiny" versus "exacting scrutiny," the question is whether the law is narrowly tailored. Each Circuit Court that determined non-resident prohibitions violated the First Amendment did so by determining that the law was not narrowly tailored to serve the purported government interest. *See We the People PAC v. Bellows*, 40 F.4th 1 (1st Cir. 2022); *Wilmoth v. Sec'y of New Jersey*, 731 Fed. Appx. 97 (3d Cir. 2018); *Libertarian Party of Virginia v. Judd*, 718 F.3d 308 (4th Cir. 2013); *Krislov v. Rednour*, 226 F.3d 851 (7th Cir. 2000); *Nader v. Brewer*, 531 F.3d 1028 (9th Cir. 2008); *Chandler v. City of Arvada, Colorado*, 292 F.3d 1236 (10th Cir. 2002); *Yes On Term Limits, Inc. v. Savage*, 550 F.3d 1023 (10th Cir. 2008).

738, 742 (10th Cir. 2000) ("In the pending case, we are persuaded that the balancing test is appropriate."); *Commn. to Impose Term Limits on Ohio Sup. Ct. & to Preclude Special Legal Status for Members & Emps. of Ohio Gen. Assembly v. Ohio Ballot Bd.*, 885 F.3d 443, 448 (6th Cir. 2018) ("Because Ohio's single-subject rule is content neutral, we apply the more flexible *Anderson–Burdick* framework which requires us to weigh the competing interests of Plaintiffs and Defendants.").[3] Under the flexible *Anderson-Burdick* framework, "a law that severely burdens" associational rights "must be narrowly drawn to serve a compelling state interest… And even when a law imposes only a slight burden on [associational rights], relevant and legitimate interests of sufficient weight still must justify that burden." *Democratic Executive Comm. of Florida v. Lee*, 915 F.3d 1312, 1318–19 (11th Cir. 2019). Thus, if the Court determines that the Non-Resident Circulator Prohibition

[3] *See Biddulph v. Mortham*, 89 F.3d 1491, 1501 n.10 (11th Cir. 1996). In *Biddulph*, the court did not weigh state interests against the voters' burden, because "Biddulph [had] not raised a right-to-vote or freedom-of-association claim." *Id.* Whereas here, Smart & Safe has raised a claim that the Non-Resident Prohibition violates its freedom to associate with non-resident petition circulators. Smart & Safe's association claim is similar to those furthered by voters, making the *Anderson/Burdick* balancing test appropriate. *See Democratic Executive Comm. of Florida v. Lee*, 915 F.3d 1312, 1319 (11th Cir. 2019) ("burdens on voters implicate fundamental First and Fourteenth Amendment rights. … Specifically, voters have a First Amendment right 'to associate for the advancement of political beliefs.'" (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 789, 103 S.Ct. 1564, 75 L.Ed.2d 547 (1983))).

does not severely burden Smart & Safe's rights to association, but rather imposes only a slight burden on associational rights, the Secretary must still demonstrate that legitimate state interests of sufficient weight justify that burden.

3. The Non-Resident Circulator Prohibition Fails Under Any Level of Scrutiny.

Under either a heightened level of scrutiny, or a more flexible balancing standard, the Secretary fails to demonstrate how the Non-Resident Circulator Prohibition serves any state interest. The Secretary points to the State's interests in ensuring circulators are subject to the State's subpoena power. ECF No. 246 at 15. However, the Secretary does not explain how the law prior to HB 1205, which required the circulators to provide their permanent address, temporary address, and an address in Florida at which they will accept service of process – as well as consent to the State's subpoena power – fails to address this interest. The Secretary vaguely claims "[i]t hasn't worked," "problems persist," and "non-resident circulators move around a lot," *id.* at 17, but saying something does not make it true.[4]

[4] The Eleventh Circuit will only reverse a grant of a preliminary injunction if the district court abused its discretion. *Johnson & Johnson Vision Care, Inc. v. 1-800 Contacts, Inc.*, 299 F.3d 1242, 1246 (11th Cir. 2002). In doing so, the Eleventh Circuit reviews "the district court's findings of fact under the clearly erroneous standard." Facts are considered clearly erroneous when "*although there is evidence to support it*, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *Id.* (citations omitted). Here, there is no evidence to support the Secretary's contentions, thus any finding that HB 1205 serves an important government interest would be clearly erroneous.

The **only** matter the Secretary cites to as a justification for a total ban on non-residents circulating petitions is **one** instance in which an out-of-state contractor—emphasis on contractor, not circulator—allegedly "stonewalled" state investigation efforts. *Id.* The Secretary cites not a single instance of a non-resident actually failing to comply with this State's subpoena power. Thus, the Secretary's claim that "tracking down alleged wrongdoers outside of Florida has proven difficult" rings hollow. The Secretary studiously avoids a circumstance cited in defense of HB 1205 wherein two Florida resident circulators committed petition fraud, traveled to Kansas and committed additional petition fraud there. ECF No. 103-2 at 609-10. They were returned to Florida and prosecuted accordingly. *Id*. This example illustrates two things: (i) resident circulators who commit petition fraud can leave the state just as easily as non-residents; and (ii) the State is perfectly capable of obtaining the return of alleged wrongdoers to Florida under the law as it existed prior to HB 1205.

Nor does the Secretary explain how the Non-Resident Circulator Prohibition addresses the alleged "daisy chain of out-of-state entities working with sponsors" to inhibit efforts to investigate issues with petition gathering. *Id.* at 18. "[T]he burdens at the preliminary injunction stage track the burdens at trial." *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 429 (2006). Since the

government fails to "show a likelihood of success under the compelling interest test," the Court should grant Smart & Safe's motion for preliminary injunction. *Id.*

The Secretary's reliance upon *Jaeger* to suggest that HB 1205 survives muster because non-residents can participate in activities other than physically collecting petitions is unavailing for all of the reasons discussed in Smart & Safe's motion. ECF No. 165 at 12, n. 6. In the end, as concluded in *Meyer*, the "burden on First Amendment expression" was not mitigated "because other avenues of expression remain[ed] open." The Constitution protects the right "not only to advocate the[ ] cause but also to select what [the sponsor] believe[s] to be the most effective means for so doing." 486 U.S. at 424. Here, the Secretary unreasonably and unrealistically tries to parse out the exercise of engaging in core political speech from the collection of petitions, but as *Myers* makes clear, the speech cannot be divorced from the conduct. A sponsor engages in speech when hiring circulators of its choosing to communicate its message and collect petitions to put an initiative on the ballot, circulators engage in speech when they have conversations with the voter to discuss the value of putting an initiative on the ballot, and the voters speak when signing a petition expressing his or her belief that the initiative should be up for a vote—without the petition circulator gathering and delivering the signed petition, the sponsor and petition signer's speech would be as meaningless as whispering into a

bucket. To say, "everything after is conduct," is an unsupported oversimplification of the matter.

For these reasons, Smart & Safe has shown it is likely to prevail on the merits. The Secretary does not offer any meaningful argument as to the remaining preliminary injunction elements, and Smart & Safe refers the Court to the motion, ECF No. 165, for discussion as to why it prevails on each of those as well.

Conclusion

The Supreme Court has made clear that any effort to regulate the solicitation of signatures for a petition infringes protected speech. It is equally clear that prohibiting Smart & Safe from engaging an entire class of speakers to communicate its message to Florida voters works a significant infringement on Smart & Safe's free association and communication with voters. No matter the standard that this Court applies, the Secretary has not demonstrated that any interest is served by the Non-Resident Circulator Prohibition. Accordingly, the Second Motion for Preliminary Injunction should be granted.

LOCAL RULE 7.1(F) CERTIFICATION

The undersigned certifies on this 24th day of June, 2025, that this document complies with word limits set forth in Rule 7.1(F), N.D. Fla. Loc. R., and contains 2,542 words which includes the headings, footnotes, and quotations, but does not include the case style, signature block or Certificates of Word Count and Service.

Respectfully submitted this 24th day of June, 2025.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 24, 2025, I electronically filed the foregoing through the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

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