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

| | |
|---|---|
| FLORIDA DECIDES HEALTHCARE, INC., *et al.*,<br><br>*Plaintiffs-Intervenors*,<br><br>v.<br><br>CORD BYRD, in his official capacity as Secretary of the State of Florida, *et al.*,<br><br>*Defendants-Intervenors.* | Case No.: 4:25-cv-211-MW/MAF |



**REPLY IN SUPPORT OF PLAINTIFFS' SECOND PRELIMINARY INJUNCTION MOTION**

## I. Petition circulation is speech.

Plaintiffs start with a threshold error in Defendants' response—contrary to Defendants' arguments, petition circulating *is* speech because it "involves both the expression of a desire for political change and a discussion of the merits of the proposed change." *Fla. Decides Healthcare, Inc. v. Byrd*, No. 4:25-cv-211-MW/MAF, 2025 WL 1581267, at *7 (N.D. Fla. June 4, 2025) (*FDH*) (quoting *Meyer v. Grant*, 486 U.S. 414, 421–22 (1988)). Defendants ignore that persuading someone to sign a petition *requires* "an explanation of the nature of the proposal and why its advocates support it." *Meyer*, 486 U.S. at 421; *see also We the People PAC v. Bellows*, 40 F.4th 1, 14 (1st Cir. 2022) ("[I]nteractive communication designed to bring about

political change . . . accompanies that *collection* of signatures.") (emphasis added). Beyond that, the act of signing and giving a petition to the sponsor is itself expressive, as the voter associates with the sponsor's opinion that the electorate should consider the issue. *See John Doe No. 1 v. Reed*, 561 U.S. 186, 195 (2010).

Were it otherwise, the State could criminalize paid initiative circulation because it is payment, not speech, that is regulated. *But see Meyer*, 486 U.S. at 428. So too, there would be no problem with allowing only registered voters to circulate petitions because, after all, non-registrants can still speak about a petition's merits. *But see Buckley v. ACLF*, 525 U.S. 182, 194–95 (1999). Indeed, in this alternative world, the State could ban petition circulation, limiting sponsors to handing out blank petitions. But these examples would curtail the natural, protected speech stemming from interaction between a circulator and voter.



That's why *Meyer* said, "[t]he *circulation* of an initiative petition *of necessity* involves both the expression of a desire for political change and a discussion of the merits of the proposed change." 486 U.S. at 421 (emphasis added); *see also Buckley*, 525 U.S. at 199 (noting that, because it requires obtaining a signature, petition circulation entails more speech than the also-protected activity of circulating handbills); *Biddulph v. Mortham*, 89 F.3d 1491, 1498 (11th Cir. 1996). Simply put, petition circulation is speech "at the core of our electoral process." *Meyer*, 486 U.S. 425 (cleaned up).

## II. The nonresident ban violates the First Amendment.

The State will soon ban nonresidents from physically possessing or circulating petitions. As a result, Plaintiff Simmons cannot advocate for a policy that he is "particularly passionate about," ECF No. 14-3 ¶¶ 3, 6; 77% of those managing FDH's circulation process cannot associate with it, ECF No. 168-4 ¶ 7. Nor can nonresidents who currently circulate petitions, *id.* ¶ 12; ECF No. 168-5 ¶¶ 1–10. This is a sweeping ban on speech and association.

Most, if not all, circuits addressing categorical bans on groups of circulators have thus applied heightened scrutiny. *See* ECF No. 169-1 at 15–16. Depending on their assessment of the burden on speech imposed, these courts—consistent with *Meyer*/*Buckley*—applied heightened scrutiny. *See id.* Defendants outrageously suggest that a law prohibiting hundreds of millions of Americans from associating with FDH and circulating petitions on its behalf does not severely burden speech or trigger even exacting scrutiny. That's just wrong. *See Bellows*, 40 F.4th at 14. Exacting scrutiny applies.



To pass exacting scrutiny, Defendants must demonstrate that the law is narrowly tailored to the State's asserted compelling interest. *Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595, 607 (2021) (citations and quotations omitted). But the State has no legitimate interest in preventing nonresidents from promoting Medicaid expansion in Florida. *See Krislov v. Rednour*, 226 F.3d 851, 866 (7th Cir. 2000) (state

discrimination against nonresidents' speech is "harmful to the unity of our Nation"). Nor have Defendants shown that banning nonresident circulators is narrowly tailored to any anti-fraud interest.

All but one Circuit to consider the issue has invalidated similar residency requirements defended on similar grounds, *see* ECF No. 169-1 at 15–16, largely because a state can address such concerns in less restrictive ways, such as making nonresident circulators consent to jurisdiction. *See, e.g.*, *Nader v. Brewer*, 531 F.3d 1028, 1037 (9th Cir. 2008); *Bellows*, 40 F.4th at 20. In fact, Florida already does. Fla. Stat. § 100.371(4)(c)3–5. Defendants say that didn't work, pointing to a supposed problem with an out of state contractor. *See* ECF No. 246 at 17. But "Florida law does not require . . . contractors . . . to comply with demands for accounting." ECF No. 103-2 at 8. HB 1205 doesn't either. Beyond that, Defendants point to issues with two *Florida* residents. ECF No. 103-2 at 609–10. But there's *no* evidence that nonresident circulators have ever engaged in fraud, or that a nonresident circulator has circumvented a subpoena. The nonresident ban is not narrowly tailored.



The Court should enjoin Defendants from enforcing this provision.

### III. The volunteer registration requirement violates the First Amendment.

Next, the ban on unregistered volunteer circulators also violates FDH's First Amendment rights. Defendants cite no case finding a similar restriction

constitutional. And Plaintiffs are unaware of any state that requires all volunteers to register before circulating petitions—likely because doing so is flagrantly unconstitutional.

The registration requirement's real-world application highlights its unconstitutionality. The current registration process is more literacy test than guardrail. To circulate more than 25 petitions, volunteers must first undergo State-mandated training. ECF No. 259-1 ¶ 12. Second, they must score at least 80% on a difficult multi-question test. *Id.* ¶ 13. The process can take an hour. *Id.* ¶ 12. And in a state where almost one in three households primarily speak a language other than English, *see* Geovany Dias, *'It's a Victory': Florida Leads the Country in Number of Bilingual Households*, WFTV9 (Aug. 20, 2024), https://tinyurl.com/Florida-Lead-Country, the training and test are only available in English, ECF No. 259-1 ¶ 12.



Defendants claim their registration regime isn't a prior restraint. But yet again, their argument rests on the erroneous premise that petition *circulation* isn't speech. Because circulation *is* speech, *supra*, § II, the registration requirement is a classic prior restraint: A volunteer cannot engage in speech without government permission. *See Indigo Room, Inc. v. City of Fort Myers*, 710 F.3d 1294, 1299 (11th Cir. 2013). And though the State's registration process states that registering "currently" takes 1-2 business days, Doc.171-8 at 21, Defendants don't dispute that the State has no *deadline* by which it *must* approve a registration. *See FW/PBS, Inc. v. City of Dallas*,

493 U.S. 215, 226 (1990) ("[A] prior restraint that fails to place limits on the time within which the decisionmaker must issue the license is impermissible."); *see also United States v. Frandsen*, 212 F.3d 1231, 1236 (11th Cir. 2000) ("A form of unbridled discretion is the failure to place brief, specific time limits on the decision-making process.") (quoting *Nightclubs, Inc. v. City of Paducah*, 202 F.3d 884, 889 (6th Cir. 2000)); *see also Dakotans for Health v. Noem*, 52 F.4th 381, 384, 389 (8th Cir. 2022) (applying exacting scrutiny to pre-circulation disclosure requirement).

And though the State currently may delay registration for "only" a few days, that does not save the registration requirement. *Cf. United States v. Stevens*, 559 U.S. 460, 480 (2010) ("We would not uphold an unconstitutional statute merely because the Government promised to use it responsibly."). Rather, the State must overcome the heavy presumption against prior restraints. *Frandsen*, 212 F.3d at 1237. But beyond claiming that the registration requirement isn't a prior restraint, Defendants offer nothing. For this reason alone, the registration requirement fails. *See Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 429 (2006) ("[T]he burdens at the preliminary injunction stage track the burdens at trial.").



Next, the registration requirement squelches spontaneous speech. *Compare Watchtower Bible & Tract Soc'y of N.Y., Inc. v. Village of Stratton*, 536 U.S. 150, 154 (2002), *with* ECF No. 168-1 ¶ 10. Consider a person who meets a friend on the Fourth of July weekend who convinces them to circulate FDH's petition. But they

can't; they must first go online, do the training, take and pass the test, print and sign the necessary paperwork, scan and submit it to the State, and wait for the State's office to open Monday. That's precisely what *Watchtower* combats.

Third, the registration requirement fails under *Meyer*/*Buckley*. To start, it plainly restricts the "who" of petition circulation. No surprise, Defendants again argue that circulating petitions is not speech. To the contrary—for all the reasons discussed above, *supra* § II—the restriction severely limits who can carry FDH's message to the public. And "[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." *Meyer*, 486 U.S. at 424. Because it's unrealistic to expect hundreds of thousands of voters to mail their own signed petition forms, FDH relies on circulators to collect and submit the petitions, including many volunteers. But the registration requirement limits FDH to volunteers who are willing and able to complete the arduous process described above. Again, *Meyer*/*Buckley* precludes this kind of restriction on petition circulation because it limits the universe of persons who may discuss petition initiatives with the public without anything that approaches a compelling justification. *See Buckley*, 525 U.S. at 194–95.



Under every doctrine described above, the registration requirement triggers some form of heightened scrutiny. And Defendants haven't shown that the requirement is narrowly tailored to a compelling interest. To the extent Defendants suggest

the State has a compelling interest in providing "oversight" to volunteers or "training" them, it does not. *Krislov*, 226 F.3d at 864 ("[T]here is no per se bar to paternalistic laws, but they are highly suspect when they also burden speech.").

And to the extent Defendants rest on "fraud," they fare no better. Defendants identify no evidence of volunteer petition fraud—probably because they cannot, for all the reasons Plaintiffs explained. *See* ECF No. 169-1 at 24. Moreover, Defendants suggest the rationale for the volunteer restrictions mirrors the nonresident restrictions, ECF No. 246 at 24, but those arguments turn on purported extraterritoriality concerns and are not at all tailored to restrictions on Floridian volunteers.



## IV. The Moratorium violates the First Amendment.

Plaintiffs have standing to challenge the moratorium and have shown they are likely to succeed on their claim that it violates their First Amendment rights.

### a. FDH has standing.

Defendants argue that FDH lacks standing to challenge the moratorium because it "doesn't change Plaintiffs' obligations" and doesn't prevent FDH from speaking. *See* ECF No. 246 at 12. Not so.

First, FDH has standing because the moratorium "disparately impact[s]" its "particular political viewpoints." *Biddulph*, 89 F.3d at 1493. Such First Amendment injuries are per se "concrete." *See Polelle v. Fla. Sec'y of State*, 131 F.4th 1201, 1209 (11th Cir. 2025). This is so regardless of whether Plaintiffs ultimately prevail on their

claim. *See Wooden v. Bd. of Regents*, 247 F.3d 1262, 1280 (11th Cir. 2001) ("[Standing] is a threshold determination that is conceptually distinct from whether the plaintiff is entitled to prevail on the merits.").

Setting that aside, FDH offers ample facts establishing standing, including that the moratorium deters supporters from associating with it by obscuring FDH's success and progress. For example, FDH will "lose the motivational factor with volunteers if we have a 90-day period where we can't provide firm numbers and reach milestones like Supreme Court review." ECF No. 168-2 ¶ 31. That's not speculative—volunteers have told FDH that. ECF No. 259-2 ¶¶ 3–6. A three-month pause on verification will cause FDH to lose pools of volunteers. *Id.* ¶ 7; *See also* ECF No. 162-2 ¶ 30. So too for donors, experience in "previous statewide ballot measures in Florida," shows that "many major donors will not contribute" until FDH collects enough verified petitions to demonstrate viability. ECF No. 168-1 ¶ 30.



Defendants' response underscores the verified petition count's importance. Arguing that FDH essentially has no chance to get on the ballot, Defendants cite FDH's total *verified signatures,* about 19,000. ECF No. 245-2 at 2. This figure, however, represents five times fewer signatures than FDH had actually collected more than seven weeks ago. *See* ECF No. 19-1 ¶ 19 ("[A]s of May 4, 2025," FDH has collected over 100,000 signed petitions."). The perception that FDH is doomed to fail (a perception obviously perpetuated by the State) causes FDH tangible harm by

reducing the number of volunteers who will carry FDH's message, and donors who will fund FDH's campaign. And because these harms are traceable to the Supervisors and Secretary, and redressable by an injunction against them, FDH has standing.[1]

**b. The moratorium is content based and has a disparate impact on certain viewpoints.**

The State's one-time moratorium on signature verification violates FDH's First Amendment rights because it (1) operates as a content-based restriction and (2) has a disparate impact on particular viewpoints.

Content based laws apply "to speech 'because of the topic discussed' or if, even though facially neutral, [they] 'cannot be justified without reference to the content' of the speech." *Speech First, Inc. v. Cartwright*, 32 F.4th 1110, 1126 (11th Cir. 2022) (quoting *Reed v. Town of Gilbert*, 576 U.S. 155, 163–64 (2015)). And when the State adopts a law "because of disagreement with the message the speech



[1] Defendants don't challenge FDH's standing vis-à-vis the nonresident ban or volunteer registration requirement. The nonresident ban injures FDH by denying it the right to associate with its nonresident circulators—like Plaintiff Simmons. And a direct ban on Plaintiff Simmons's speech (which carries criminal consequences) imposes a First Amendment injury. As for the volunteer registration requirement, "volunteers have explicitly stated they would no longer volunteer" for FDH if required to register. ECF No. 168-2 ¶ 15; *see also* ECF No. 168-3 ¶ 10 (a volunteer, stating they will not register); ECF 91-2 ¶ 9 ("Multiple individuals have told me that they will stop circulating if HB 1205 remains in effect . . . ."). And indeed, the two provisions work together. ECF No. 168-5 ¶ 7 (nonresident volunteer explaining that she can no longer circulate petitions). This satisfies Article III. *See Noem*, 52 F.4th at 387.

conveys," the law is likewise content based. *Henderson v. McMurray*, 987 F.3d 997, 1003 (11th Cir. 2021) (quotation omitted).

That's the case here. This one-time moratorium is content based because it targets a handful of campaigns conveying messages the government disagrees with. That Florida's political establishment bitterly opposes Medicaid expansion requires no conjecture; it's public record. And the Republican party—whose standard bearers control Florida's political branches—intervened because it politically opposes the sponsor-plaintiffs' initiatives. ECF No. 147-1 at 6–7.

The Republican Party says it fights against citizen initiative petitions because they are "often placed on the ballot by groups affiliated with the Florida Democratic Party." *Id.* at 6. They also suggest that citizens' initiatives are a means of "turning out Democratic voters." *Id.* at 13. Accurate or not, the viewpoint is clear: citizens' initiatives are Democratic Party causes that only harm the Republican Party. And to ensure that the three existing causes with a chance of appearing on the 2026 ballot fail, the State has implemented a 90-day pause in verification activity during the heart of this year's initiative process.

The moratorium also "disparately impact[s] particular political viewpoints." *See Biddulph*, 89 F.3d at 1493. Defendants argue that there's no evidence of the Legislature's ill intent. But *Biddulph* deliberately created an independent "disparate impact" standard for viewpoint discrimination in the petition circulation context—

repeatedly using the term, *id.* at 1493, 1500, which already carried a specific meaning, *see, e.g.*, *Ramirez v. Hofheinz*, 619 F.2d 442, 446 (5th Cir. 1980).

Indeed, "[d]isparate impact" is a term of art and "does not require evidence of intentional discrimination." *Spivey v. Beverly Enters., Inc.*, 196 F.3d 1309, 1312 (11th Cir. 1999), *abrogated on other grounds Young v. United Parcel Serv., Inc.*, 575 U.S. 206 (2015); *see also Ashcroft v. ACLU*, 535 U.S. 564, 607 n.3 (2002) (Stevens, J., dissenting) (explaining that "a term of art" may "take[] on a particular meaning in light of . . . precedent"). If Defendants disagree with *Biddulph*, they can take it up with the en banc Eleventh Circuit. This Court, however, should follow *Biddulph*.

Here, there's no question that this one-time moratorium disparately impacts only three initiatives. Indeed, the Secretary (the one party with all the relevant data) does not deny that of the twenty petitions now active, only three have more than 1,000 verified signatures. ECF No. 169-1 at 10. And even accepting the reason the State needs a processing hold—because petitions are currently being submitted for verification—the only campaigns doing so are FDH, Smart & Safe, and Clean Water. The moratorium thus necessarily delays and impedes *only* the current campaigns while the State implements further restriction and regulation on the initiative process. The State could have easily avoided this issue by delaying implementation until *after* the current petitioning cycle (instead of imposing it during the cycle's most

critical phase), but it chose not to. Under *Biddulph*, the restriction disparately impacts a particular viewpoint and therefore merits strict scrutiny.

In turn, Defendants offer no compelling interest to which the moratorium is narrowly tailored, nor even a rational interest supporting it. The Secretary represents that the Legislature added this provision at the "behest of Florida's supervisors of elections" to "successfully implement the bill." ECF No. 246 at 9. But Defendants precisely explain the justification for the moratorium, and it has nothing to do with their *verification of petitions*—it's about Supervisors reporting information to the State. Supervisors must "(1) accurately and efficiently scan petitions, (2) extract data from the petitions into useable formats (like spreadsheets), and (3) securely transfer material to the Florida Department of State." *Id.*



Even if the State has a compelling interest in improving data collection, the moratorium is not narrowly tailored to, or rationally related to, this interest. For starters, Defendants fail to explain why Supervisors cannot verify petitions for three months as they have been in months prior. They seem to suggest that Supervisors should spend their time "[t]esting," ECF No. 246 at 9, new reporting processes rather than verifying petitions. Fla. Stat. § 100.371(14)(d)1. But that bears no relation to the moratorium, because HB 1205 *does not defer reporting obligations until the moratorium's end*. Instead, it forces Supervisors to implement these processes *immediately*—"on the last day of each month" after HB 1205's effective date. *Id.* In

other words, the State requires the Supervisors to have the system they say justifies the moratorium in place *before* the moratorium starts.

Further, the State could advance these interests through alternative means, like giving supervisors more time to verify petitions while implementing new systems or providing a one-time extended verification deadline to campaigns affected by the moratorium. Instead, the State chose to implement its new system at FDH's expense.

## CONCLUSION

For the reasons stated above, the Court should grant Plaintiffs' motion.

Dated: June 24, 2025

Respectfully submitted,

*s/ Frederick S. Wermuth*
Frederick S. Wermuth
Florida Bar No. 0184111
Quinn B. Ritter
Florida Bar No. 1018135
King, Blackwell, Zehnder
& Wermuth, P.A.
25 E. Pine Street
Orlando, FL 32801
Telephone: (407) 422-2472
Facsimile: (407) 648-0161
fwermuth@kbzwlaw.com
qritter@kbzwlaw.com

Matletha Bennette, Fla. Bar No. 1003257
Krista Dolan, Fla. Bar No. 1012147
SOUTHERN POVERTY LAW CENTER
PO Box 10788
Tallahassee, FL 32302-2788
Telephone: (850) 408-4840
Matletha.bennette@splcenter.org

Avner Shapiro*
Bradley E. Heard*
Nicholas Taichi Steiner*
SOUTHERN POVERTY LAW CENTER
1101 17th St NW Ste 550
Washington, DC 20036
Avner.shapiro@splcenter.org
bradley.heard@splcenter.org
nick.steiner@splcenter.org

Ben Stafford*
ELIAS LAW GROUP LLP
1700 Seventh Ave., Suite 2100
Seattle, Washington 98101
Telephone: (206) 656-0177
bstafford@elias.law

Emma Olson Sharkey*
ELIAS LAW GROUP LLP
250 Massachusetts Ave. NW, Suite 400
Washington, D.C. 20001
Telephone: 202-968-4490
eolsonsharkey@elias.law

*Admitted *Pro hac vice*

*Attorneys for Plaintiffs*

## LOCAL RULE 7.1(F) CERTIFICATION

Undersigned counsel, Frederick Wermuth, certifies that this reply contains 3,164 words, excluding the case style, signature block and certifications.

## CERTIFICATE OF SERVICE

I hereby certify that on June 24, 2025, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing to the counsel of record in this case.

*s/ Frederick S. Wermuth*
Frederick S. Wermuth
Florida Bar No. 0184111