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

FLORIDA DECIDES HEALTHCARE, INC., et al.,

Plaintiffs,

v. Case No. 4:25-cv-211-MW-MAF

CORD BYRD, in his official capacity as Secretary of State of Florida, et al.,

Defendants.
_____/

THE SECRETARY AND ATTORNEY GENERAL'S RESPONSE IN OPPOSITION TO PLAINTIFFS' THIRD SET OF PRELIMINARY INJUNCTION MOTIONS

I. Introduction

This Court should deny Plaintiffs' third set of preliminary injunction motions. There's been a motion for a temporary restraining order, a first set of preliminary injunction motions, and a second set of preliminary injunction motions. The relief now being sought could have been sought sooner. It wasn't. Plaintiffs' do-over creates jurisdictional problems that Plaintiffs have yet to resolve. And the do-over fails to show how the relief sought is timely or would otherwise remedy any irreparable harm. The only thing that Plaintiffs' *third set of preliminary injunction motions* makes clear is this: the federal courts are right in strongly disfavoring successive, piecemeal requests for preliminary relief.

II. Background

The Florida Legislature passed, and the Governor of Florida signed into law, House Bill 1205 on May 2, 2025. Plaintiffs challenged HB 1205 on May 4, 2025. Doc.1.

Plaintiffs sought preliminary relief on three prior occasions. This Court denied a motion for a temporary restraining order on May 13, 2025. Doc.70. This Court then issued a narrow preliminary injunction order on June 4, 2025, after considering Plaintiffs' first set of preliminary injunction motions, together with reams of supporting material. Doc.189. And this Court issued another preliminary injunction order on July 8, 2025, after considering Plaintiffs' second set of preliminary injunction motions, more supporting material, and a full day of live testimony. Doc.283.

Among other things, in the July 8, 2025 order, this Court enjoined the State's requirement that petition circulators for certain Plaintiffs be Florida residents and U.S. citizens. As to the residency requirement, this Court granted the Smart & Safe Plaintiffs' relief against the Secretary, Attorney General, and the supervisors of elections—though not the state attorneys, because Smart & Safe never sought relief against them. Doc.283 at 36-37. The Poder Latinx Plaintiffs were denied relief on the citizenship requirement, because they failed to establish standing. Doc.283 at 14 n.12.

The Secretary and Attorney General appealed the July 8, 2025 order. Doc.284. They then filed a time-sensitive motion for a stay with the Eleventh Circuit, so that they could continue enforcing HB 1205's prohibitions on non-resident and non-citizen petition circulators. Briefing on that appellate motion finished on July 28, 2025.

The Smart & Safe Plaintiffs and the Poder Latinx Plaintiffs now ask for a do-over when it comes to the residency and citizenship requirements in HB 1205. The Smart & Safe Plaintiffs' third motion for a preliminary injunction challenges the same non-resident prohibition as the one challenged in the second preliminary injunction motion, under the same First Amendment theory, and using mostly the same evidence as before. Doc.291. This time, though, they seek relief against the state attorneys. Doc.291. And the Poder Latinx Plaintiffs challenge the same non-citizen ban as the one they challenged before and under the same theories as before; however, this time, they hope to perfect their standing against all relevant Defendants. Doc.303.

III. Argument

The Secretary, as the appropriate *Ex parte Young* defendant, *Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1348 (11th Cir. 2019), and the Secretary and Attorney General, as the officers with standing to *defend* the state law at issue, *League of Women Voters of Fla., Inc. v. Fla. Sec'y of State*, 66 F.4th 905, 945 (11th Cir. 2023), ask this Court to deny Plaintiffs' third set of motions for preliminary injunctions. The Secretary and Attorney General incorporate by reference their substantive arguments from the previous rounds of preliminary injunction briefing. They further note that Plaintiffs have neither resolved the jurisdictional issues their motions create, nor have they demonstrated that the *third* set of preliminary injunction motions are necessary to prevent irreparable harm.

A. The Jurisdictional Issues Remain

At base, the appeal of the second preliminary injunction order "divest[ed]" this Court "of its control over th[e] aspects of the case involved in the appeal." *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982); *accord Coinbase, Inc. v. Bielski*, 599 U.S. 736, 740 (2023). The aspects of the case involved in the appeal are whether HB 1205's residency and citizenship requirements violate the First Amendment.

But it's the residency and citizenship requirements that are the focus of Plaintiffs' third set of motions. The Smart & Safe Plaintiffs ask to extend the order on appeal to twenty other parties (the state attorneys). And the Poder Latinx Plaintiffs want to afford three additional parties (two individual plaintiffs and an organizational plaintiff)

preliminary relief and put additional restrictions on eighty-nine parties (the Secretary, Attorney General, sixty-seven supervisors, and twenty state attorneys).

Say that this Court grants the third set of preliminary injunction motions, and the Eleventh Circuit subsequently grants the Secretary and Attorney General's motion to stay the second preliminary injunction order. It's unclear whether there would need to be an appeal of the third set of motions and another round of stay papers before the appellate court, or whether the stay of the second injunction would also stay the third, or whether the second preliminary injunction order is subsumed within the third, or vice versa. *See also* Doc.298.

Avoiding such complications is the reason why there's a jurisdictional bar. *See generally Coastal Corp. v. Tex. E. Corp.*, 869 F.2d 817, 819 (5th Cir. 1989). The one-court-at-a-time rule prevents the kind of mischief Plaintiffs' motions create. *See Wright v. Sumter Cnty. Bd. of Elections & Registration*, 1:14-cv-42, 2018 U.S. Dist. LEXIS 236668, at *8 (M.D. Ga. June 21, 2018) (when the Eleventh Circuit "is considering both the" district "[c]ourt's underlying liability order and its" injunctive "decision to move the May election to November," the district court can't simultaneously "deci[de] on whether to and how to establish the boundaries for the next election").

Even so, the Smart & Safe Plaintiffs argue that Federal Rule of Civil Procedure 62 allows for the modification they seek. Put aside that the Smart & Safe Plaintiffs are effectively conceding that they're seeking a "do-over"—a modification of the order resulting from the second round of preliminary injunction briefing. Such a modification

is the exception, not the rule. It's only proper when it "preserve[s] the status quo of the case as it [sits] before the court of appeals." *Coastal Corp.*, 869 F.2d at 820. And it should not be allowed where the subsequent district court order would "alter the status of the case as it rests before the court of appeals." *Id.* But, here, the Smart & Safe Plaintiffs fail to explain what status quo needs to be maintained, or how a state attorney—absent additional relief from this Court—intends to alter that status quo.

Nor is the Poder Latinx Plaintiffs' new motion jurisdictionally appropriate. The Poder Latinx Plaintiffs argue that they're "not seek[ing] to modify or expand in any way the Court's previously issued preliminary injunctive relief on July 8, 2025 . . . [r]ather, Poder Plaintiffs seek an entirely new injunction based on new facts and additional parties." Doc.303 at 2. Again, put aside that this is another "do-over" concession. What these Plaintiffs want is to enjoin government officials (whom they could have sued sooner) from enforcing HB 1205's citizenship requirement, even though the Eleventh Circuit is considering the requirement's permissibility. *Griggs*, 459 U.S. at 58; *Coinbase*, 599 U.S. at 740. That's a modification of an existing injunction—an extension of the relief provided after the second motion for preliminary injunction—without a showing that such a modification is necessary to maintain the status quo.

B. The Motions Are Untimely and Don't Show Irreparable Harm

More fundamentally, even if Plaintiffs resolve their jurisdictional hurdles, their motions should still be denied. A "preliminary injunction is an extraordinary remedy" and is "never awarded as of right." *Winter v. NRDC, Inc.*, 555 U.S. 7, 24 (2008). A

plaintiff carries a heavy burden to establish that he's entitled to such relief. The plaintiff must establish the four elements of preliminary relief, including irreparable harm. Irreparable harm is the "sine qua non of injunctive relief." *Ne. Fla. Chapter of the Ass'n of Gen. Contractors v. City of Jacksonville*, 896 F.2d 1283, 1285 (11th Cir. 1990). But when the plaintiff delays his filing of a preliminary injunction motion—even for "a few months"—it gravely "militates against a finding of irreparable harm." *Wreal, LLC v. Amazon.com, Inc.*, 840 F.3d 1244, 1248 (11th Cir. 2016).

Here, Plaintiffs can no longer show irreparable harm. This case began in early May. Plaintiffs knew (or should have known) whom to sue and what evidence was needed to prove their harm when they sought a temporary restraining order, their first preliminary injunction, or their second preliminary injunction. Indeed, for the second preliminary injunction, they argued that the very provisions they now seek to enjoin were the source of their harm. It's now too late for them to claim irreparable harm.

Numerous, successive, piecemeal requests for injunctive relief are inappropriate, especially when the provisions sought to be enjoined were already the subject of an earlier round of motions. *See, e.g.*, *F.W. Kerr Chemical Co. v. Crandall Assoc., Inc.*, 815 F.2d 426, 429 (6th Cir. 1987) ("Parties should not be allowed to harass their adversaries and the courts with a barrage of successive motions for extraordinary, preliminary injunctive relief, secure in the knowledge that they can take an interlocutory appeal when it becomes apparent that they cannot win their war of attrition."); *IBM Corp. v. Johnson*, 09-cv-4826, 2009 U.S. Dist. LEXIS 66851, at *6 (S.D.N.Y. July 30, 2009) (such motions

are "vexatious and do[] a great disservice to the interests of" the defendants "and of the Court in the orderly conduct of this litigation"); *see also Siemens Westinghouse Power Corp. v. Dick Corp.*, 219 F.R.D. 552, 554 (S.D.N.Y. 2004) ("parties ought to be 'held to the requirement that they present their strongest case for [relief] when the matter is first raised'" (quoting *Allstate Fin. Corp. v. Zimmerman*, 296 F.2d 797, 799 (5th Cir. 1961))).

IV. Conclusion

For these reasons, Plaintiffs' motions should be denied. As another docket entry indicates, the Secretary and Attorney General are requesting in-person oral argument on these motions. Doc.334 at 2.

Dated: August 4, 2025

Respectfully submitted,

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LOCAL RULES CERTIFICATIONS

As required by Local Rule 5.1 and 7.1(J), I certify that this response contains 1,667 words and complies with this Court's word count, spacing, and formatting requirements.

/s/ Mohammad O. Jazil
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CERTIFICATE OF SERVICE

I certify that on August 4, 2025, I electronically filed the foregoing with the Clerk of Court by using CM/ECF, which automatically serves all counsel of record for the parties who have appeared.

/s/ Mohammad O. Jazil
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