

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

FLORIDA DECIDES HEALTHCARE,  
INC., *et al.*,

*Plaintiffs-Intervenors,*

v.

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

*Defendants.*

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

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' THIRD  
MOTION FOR PRELIMINARY INJUNCTION**

This motion challenges HB 1205's imposition of crushing signature verification fees that apply only to statewide ballot initiatives and not to candidates or local initiatives. Since July 1, Florida's county supervisors of elections ("Supervisors" or "Defendants") have been posting and requesting significantly higher verification fees for statewide ballot initiatives. When HB 1205's 90-day verification moratorium expires on October 1, Plaintiff Florida Decides Healthcare ("FDH") will be on the hook for the backlog of fees and all fees going forward, causing it irreparable damage.

FDH seeks to expand Medicaid in Florida by qualifying a proposed constitutional amendment for the ballot and supporting its passage. It has until

February 1 to convince at least 880,062 Floridians to sign its petition. Petition circulation is First Amendment-protected speech and a voter's act of signing a petition is protected association. But absent an injunction, FDH will not be able to engage in this protected activity without paying millions of dollars in fees—the more protected speech and association, the greater fees.

HB 1205 as enforced by the Supervisors subjects FDH to an impossible choice and, unless enjoined, will likely sound the death knell for FDH's campaign. If FDH uses any paid circulators, it must pay astronomical verification fees (likely upwards of *\$4.5 million*), reducing the number of circulators it can hire and the quantum of its speech. But if it forgoes paid circulators to avoid verification fees, it must rely entirely on volunteers, and, as explained below, cannot meaningfully and effectively communicate its message. Either way, the free exchange of ideas is vastly diminished. What's worse, Florida does not put the same choice to other groups, like local initiative sponsors.

For these reasons, as applied to FDH, HB 1205 violates both the First and Fourteenth Amendments. The Court should preliminarily enjoin Defendants from enforcing the relevant provisions against FDH.

## BACKGROUND

### **I. HB 1205 subjects only statewide initiative sponsors to a new, expansive formula to calculate signature verification fees for petitions.**

Under Florida law, Supervisors may only verify and count as valid a petition after comparing the signature on the petition with the voter's signature on file in the voter registration system, if (a) "the supervisor is able to determine that the petition signer is the same as the registered voter" and (b) "all other requirements for the petition are met." Fla. Stat. § 99.097(3)(a).

Supervisors calculate and collect the signature verification fee that a person or organization submitting a petition form must pay before verification. Fla. Stat. §§ 100.371(14)(b), (f), 99.097(4)(a); Ch. 2025-21, § 7(3), at 23, Laws of Fla. Prior to HB 1205, Florida required statewide initiative sponsors to pay "the actual cost of signature verification incurred by the supervisor." Fla. Stat. § 100.371(11)(a) (2022). Candidates and local initiatives were—and still are—required to pay the lesser of ten cents or the actual cost. Fla. Stat. § 99.097(4)(a).

HB 1205 redefines the "actual cost" of signature verification and authorizes Supervisors to calculate the new per-petition cost, update and post it online, and collect it from statewide ballot initiatives. *See* Ch. 2025-21, § 5, at 8, Laws of Fla. (indicating statewide initiative sponsors must pay the cost that Supervisors calculate under Fla. Stat. § 100.371(14)(f)); Ch. 2025-21, § 7, at 23, Laws of Fla. (authorizing Supervisors to "increase the cost of signature verification" pursuant to Fla. Stat.

§ 100.371(14)(f) “[n]o later than October 1, 2025”); Ch. 2025-21, § 6, at 18, Laws of Fla. (authorizing Supervisors to increase costs annually and setting out the new definition of “actual cost”) (collectively, the “Verification Fee provisions”).

HB 1205’s definition of “actual cost” includes three inputs that are resulting in dramatically higher fees for statewide initiatives. These inputs are: “[1] operating and personnel costs associated with comparing signatures, [2] printing and all postage costs related to the verification notice required by paragraph (e), [3] and transmitting petition forms to” Florida’s Division of Elections. Fla. Stat. § 100.371(14)(f)). These latter two inputs reflect processes created by HB 1205. HB 1205 provides that after a Supervisor verifies—via handwriting comparison—that a voter signed a petition, the Supervisor must mail a notice asking the voter to return a form, by prepaid-postage, if they believe their verified signature was “forged” or otherwise misrepresented (“Verification Notice”). *See* Fla. Stat. § 100.371(14)(e)(1). HB 1205 also requires Supervisors to “electronically transmit” and physically deliver all received petition forms to the Division of Elections. Fla. Stat. § 100.371(14)(d)(1)-(2).

Florida law purports to offer relief to petition sponsors who would suffer an undue burden due to signature verification fees, but for most sponsors, that route is a dead end. Section 99.097(4)(b) provides that if an initiative sponsor “cannot pay [signature verification fees] without imposing an undue burden on personal

resources or upon the resources otherwise available to such . . . organization,” the sponsor, “upon written certification of such inability given under oath to the supervisor, is entitled to have the signatures verified at no charge.”

This waiver was extended to initiative sponsors in the wake of *Clean-up '84 v. Heinrich*, which enjoined an earlier version of Section 99.097 that did not provide an effective alternative to payment of signature verification charges. 590 F. Supp. 928, 932-33 (M.D. Fla. 1984). The Legislature subsequently, however, tied the availability of the waiver not to the sponsor’s ability to pay the required fees but, instead, its ability to pay “any person . . . to solicit signatures on a petition.” Fla. Stat. § 99.097(6)(a) (emphasis added). And if a sponsor uses a fee waiver but later pays even one petition circulator, the fee waiver “is no longer valid and a fee for all signatures previously submitted to the supervisor of elections and any that are submitted thereafter shall be paid” by the sponsor. *Id.* § 99.097(6)(b).

What’s more, a sponsor using paid circulators who determines it cannot afford the verification fees cannot avoid those fees by choosing not to submit signed petitions. Once a voter engages in the expressive act of signing a petition and associating with the sponsor’s opinion that the electorate should consider the subject of the petition, *see John Doe No. 1 v. Reed*, 561 U.S. 186, 195 (2010), under Florida law, a sponsor is legally obligated to return the petition for verification, Ch. 2025-

21, § 6, at 14, Laws of Fla. In other words, Florida charges a fee each and every time a voter associates with FDH by signing its petition.

**II. The Verification Fee provisions require FDH to pay *millions* of dollars to express its views, associate with voters and, ultimately, access the ballot.**

**A. Supervisors recently began posting massively higher petition verification fees.**

Starting on June 30, the day of this Court’s most recent preliminary injunction hearing, Supervisors began notifying FDH of increased signature verification rates. ECF 355-1. Since then, at least thirty-seven Supervisors have increased verification fees. *See* ECF 355-2.<sup>1</sup>

Many newly posted fees are dramatically higher. For example, Lee County raised fees from \$0.95 to \$4.40 per petition, a 363% increase, while Gilchrist County raised fees from \$0.10 to \$2.77 per petition, a 2,670% increase. *Id.* On average, Florida’s three largest counties—which are key targets in Plaintiffs’ circulation strategy—have increased fees to more than \$3.78 per signature:

County	New Per-Petition Fee
Miami-Dade	\$3.88
Broward	\$3.50

<sup>1</sup> ECF 355-2 is a copy of a spreadsheet posted on the Florida Division of Elections website. Supervisors may have raised fees beyond what is reflected in the spreadsheet. For example, Collier County has raised its fee to \$3.53, *see* ECF 355-12, though ECF 355-2 lists the fee as \$0.47.

Palm Beach	\$3.98 (before December 1) or \$4.50 (after December 1)
<b>Average</b>	<b>\$3.78-\$3.96</b>

ECF 355-3 at ¶ 8.

Discovery to date reveals why posted costs have skyrocketed under HB 1205. HB 1205 expansively defines the “actual cost” of petition verification for statewide initiatives to include operating and personnel costs, and the cost of sending the Verification Notice and transmitting petition forms to the Division of Elections. Some Supervisors are now allocating to sponsors as a part of these “actual costs” such expenses as a percentage of employee health insurance and retirement benefits. *See* ECF 355-4 at 2-3; ECF 355-5; ECF 355-6. Supervisors are also passing along office overhead costs, such as paper, printing, envelopes, postage, and even the “[a]nnual cost of [a] business reply permit.” ECF 355-4 at 5. Finally, for costs related to transmitting petition forms, some Supervisors are including staff time, equipment leases, postage, and other materials. *Id.* at 2; *see also* ECF 355-7 (including “software” and “hardware” costs). As two Defendants agreed in a recent text exchange, this definition of cost is “expensive as hell” for sponsors. ECF 355-8.

To Plaintiffs’ knowledge, no other state imposes per-petition verification costs—much less passes on operating costs like health care and retirement benefits—to sponsors engaging in core First Amendment-protected rights. Only a handful of states even impose filing fees, which are markedly lower than the

aggregate costs of signature verification needed to qualify for the ballot in Florida. For example, the filing fee in Washington State is \$156. Wash. Admin. Code § 434-379-005(1)(c). In California, it is \$2,000—which is refunded if the measure qualifies for the ballot. Cal. Elec. Code § 9001(c). The largest filing fee FDH is aware of is Montana’s fee of \$3,700, which a court promptly struck down as unconstitutional under state law. *See* ECF 355-9 at 11.

**B. HB 1205 does not impose the same costs on local or candidate petitions.**

HB 1205 drastically magnifies the disparate treatment of statewide initiative sponsors vis-à-vis candidates and local initiative sponsors. HB 1205 provides that Section 100.371(14)’s expanded definition of “actual cost” applies only to statewide initiatives. Neither local initiatives nor candidates must fund Supervisors’ operating or personnel costs, printing and mailing of verification notices (which the State does not require for local initiatives or candidates), or transmittal of forms to the Division of Elections.

Because Supervisors also verify petition signatures for candidates and local initiatives, some of Defendants’ employees have expressed confusion on this point. *See* ECF 355-10. In any event, Florida law provides that efforts other than statewide initiatives are charged “10 cents for each signature checked or the actual cost of checking such signature, *whichever is less.*” Fla. Stat. § 99.097(4)(a) (emphasis



added). Given this ten-cent cap, candidates and local initiatives are not impacted by the Verification Fee provisions.

**C. FDH cannot afford to pay the fees imposed by the Supervisors under the Verification Fee provisions.**

The Verification Fee provisions constrain FDH’s expressive and associational activity. FDH previously “budgeted \$910,000 for petition verification over the course of [its] campaign.” ECF 355-3 ¶ 7. This estimate was based on the average cost of FDH’s petition verification before HB 1205 (about \$0.70/petition) and its informed estimate that it would need to submit approximately 1.3 million petitions to reach the ballot qualification threshold. *Id.*<sup>2</sup> But due to the Verification Fee provisions, “the average cost for FDH, conservatively . . . of verifying each petition is roughly \$3.50,” “quintupling the cost.” *Id.* ¶ 8.<sup>3</sup> Thus, the cost of verifying the bare minimum petitions to qualify (880,062) is now expected to top \$3 million. *Id.* And verifying the 1.3 million signatures FDH anticipates it will need to have

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<sup>2</sup> Based on 2024 voter turnout, sponsors must collect at least 880,062 valid signatures to qualify a statewide initiative for the 2026 election. Fla. Stat. § 15.21(1)(c); Fla. Const. art. XI, § 3. To account for routine errors in petitions, sponsors must collect considerably more signatures than the eight percent minimum. *See* ECF 355-3 ¶ 8.

<sup>3</sup> This calculation is conservative because FDH does not know exactly how many petitions it will gather in each county, but it focuses on the most populous counties where it can gather the most petitions—and those counties now charge on average at least \$3.78 per petition. *See* ECF 355-3 ¶ 8.

“enough valid petitions to qualify” will cost more than \$4.55 million—many multiples of its \$910,000 budget. *See id.*

FDH cannot afford these new rates. This is not just a question of the total resources the campaign will have over its lifetime, but also of cash-on-hand. FDH must raise money as its campaign continues, and it must spend money as quickly as it can to collect 880,062 valid petitions in a limited period. Thus, even the \$910,000 FDH budgeted for signature verification “is not fully available in cash at any given time,” because “funds raised are spent almost immediately to advance the needs of the campaign.” *Id.* ¶ 10. “At any given time, [FDH’s] available cash on hand is approximately \$100,000,” which, “coupled with [its] fundraising projections, would provide [it] sufficient cash flow to cover petition verification costs at the previous rates.” *Id.* ¶ 11. This amount, however, is a drop in the ocean toward the new signature verification fees. Assuming (conservatively) “an average verification cost of around \$3.50 per petition, and given the need to submit petitions within 10 days of collection,” FDH would “need cash on hand of about \$38,500 per day” or “\$269,500 per week to be able to afford to pay signature verification costs alone.” *Id.* ¶ 13. In total, FDH is facing—at minimum—a \$3.6 million shortfall for its petition verification budget. *See id.* ¶ 9. “This is financially unsustainable and would effectively halt [FDH’s] campaign.” *Id.*

FDH “do[es] not have either the cash on hand or overall resources to pay [these] fees, in addition to paying for staff, circulators, and other campaign expenses.” *Id.* ¶ 13. If forced to pay the higher verification costs, it would need to “divert funds from other essential campaign operations,” including paid petition circulation, which “compromises the bulk of” its expenditures. *Id.* ¶ 12. Because FDH “operate[s] [its] paid circulation program at a size needed to qualify [its] measure for the ballot,” the only way it can “currently afford to pay for signature verification at the increased rates is to gather fewer signatures than [needed] to qualify for the ballot.” *Id.* And given the extreme jump in fees, “if FDH is particularly successful in collecting signatures during a short time window (for example, over a holiday weekend), it risks not having enough cash on hand to pay for the verification of those petitions, given the ten-day return window required by HB 1205.” *Id.* ¶ 14. For example, during the week of April 25, FDH gathered more than 20,000 petitions. *Id.* ¶ 15. Under the new fees, it would owe “\$70,000 on top of [its] normal operating expenses,” which at that point “would have been impossible without suspending operations.” *Id.* FDH would also need to cut its “planned speech activities” for “voter education” to instead fund verification costs. *Id.* ¶ 21.

The blunt reality is this: If FDH must pay the increased verification costs starting October 1—when verification resumes—it “will likely need to suspend its campaign to qualify for the ballot in 2026 entirely.” *Id.* ¶ 24. HB 1205 has already

devastated FDH's volunteer program, halted its reported progress toward qualification via the 90-day moratorium, and otherwise severely impeded FDH's campaign. Absent an extraordinary change in circumstances, the verification cost increase is likely to end FDH's campaign to qualify for the ballot in 2026.

**D. FDH cannot utilize a fee waiver because it cannot collect enough signatures to qualify for the ballot without using paid circulators.**

Although Florida allows some sponsors to receive a waiver of verification fees, the waiver is profoundly limited and inapplicable to FDH. Only a sponsor that does not pay *anyone* to circulate petitions may apply for a waiver; if the sponsor makes any payment to any person to solicit signatures, the waiver is no longer valid, and the sponsor must pay the verification fees for all previously submitted signatures. *Id.* § 99.097(6)(b). The waiver is thus not tethered to the ability to pay verification fees but, rather, the ability to pay circulators. For example, the waiver is unavailable to sponsors who can afford to pay the forthcoming \$14/hour minimum wage to one full-time circulator (\$29,120 per year), but not millions of dollars in verification costs.

FDH has no path to the ballot without paid circulators. FDH designed its campaign “around a paid circulation program with a goal of having volunteers contribute about 20% of the total signatures.” ECF 355-3 ¶ 16. To qualify for the ballot, FDH “need[s] to collect approximately 11,000 petitions per day between October 1 and December 1.” *Id.* ¶ 20. That target is not attainable with volunteer

circulators alone because “[v]olunteers typically collect signatures on weekends only, and don’t follow a strict schedule, so they aren’t routinely available.” *Id.* FDH cannot recruit enough part-time volunteers to replace the work of its full-time paid circulators—especially considering that FDH has had to dramatically recast its volunteer efforts given the chilling effect of HB 1205’s volunteer registration requirement. *See id.* ¶ 18; *see also* ECF 168-2 ¶ 20, 35-36.

In short, the State now places campaigns like FDH between a rock and a hard place. On the one hand, the fee waiver is tied to use of paid circulators rather than ability to pay fees. On the other, HB 1205’s burdensome volunteer registration requirements kneecap campaigns’ ability to rely heavily on volunteers. The result is that the State has completely hollowed out the efficacy of the fee waiver it created in response to *Clean-up ’84*, which now offers FDH no relief from the harm the new fee structure imposes.

### **III. Supervisors will begin charging statewide initiatives like FDH massively higher fees beginning on October 1.**

HB 1205 provides that Supervisors “*may* increase the cost of signature verification” by no later than October 1, Ch. 2025-21, § 7, at 23, Laws of Fla. (emphasis added). Prior to the argument on FDH’s last preliminary injunction motion, FDH did not know whether and to what extent any Supervisor *would* raise rates under the Verification Fee provisions. Plaintiffs moved to amend their complaint to challenge those provisions on July 22, ECF 304, after the extent of the

Supervisors’ increases to verification fees—and the corresponding harm to FDH—became apparent, and after Plaintiffs’ request that the Supervisors defer rate increases until 2026 failed, ECF 355-3 ¶ 6.<sup>4</sup>

Given HB 1205’s 90-day moratorium on verifying petitions, Ch. 2025-21, § 20, at 28, Laws of Fla., the Supervisors are currently holding the petition forms submitted prior to October 1, 2025, and will begin signature verification on or after that date, if they have received payment of the applicable fee. *See* ECF 326 ¶ 5. FDH “has continued to enclose the previous verification fee with submitted petitions, rather than the newly-increased amount.” ECF 355-3 ¶ 22. In response, Supervisors have advised FDH that it “owe[s] them more money and they will not verify [its] petitions beginning October 1 unless they receive the outstanding balances.” *Id.* The meter is running. Based on already-submitted and anticipated petitions, FDH anticipates it will owe hundreds of thousands in verification costs on October 1. *Id.* ¶ 19. For that reason, Plaintiffs seek to preliminarily enjoin the Supervisors from enforcing the Verification Fee provisions against FDH. Again, absent an injunction, FDH anticipates it will have no choice but to suspend its campaign.

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<sup>4</sup> FDH therefore acted diligently to bring its claims as soon as they ripened, when the Supervisors first began demanding higher fees pursuant to the Verification Fee provisions, thereby severely burdening FDH’s constitutional rights.

## ARGUMENT<sup>5</sup>

### I. FDH has standing.

FDH has standing to seek preliminary relief against the Verification Fee provisions because it can “demonstrate a substantial risk that, in the near future, [it] will suffer an injury that is traceable to a Government defendant and redressable by the injunction [it] seek[s].” *HM Florida-ORL, LLC v. Governor of Fla.*, 137 F.4th 1207, 1215 (11th Cir. 2025) (quoting *Murthy v. Missouri*, 603 U.S. 43, 49-50 (2024)).

The Verification Fee provisions threaten FDH with two concrete, imminent injuries: First, they threaten to saddle FDH with *millions* of dollars in additional fees—funds FDH does not have. Dozens of Supervisors have posted higher fees pursuant to the authority granted under HB 1205, *quintupling* FDH’s expected per-petition cost. ECF 355-3 ¶ 8 & Ex. A. In Florida’s largest counties, which are “key target counties” for FDH’s petition-collection efforts, the average per-petition cost is even higher. *Id.* ¶ 8. As a result, FDH conservatively estimates that the cost of verifying enough petitions to qualify for the ballot will increase by more than \$3.6 *million*. *Id.* ¶ 9. This sort of “[f]inancial loss . . . is a paradigmatic example of an injury in fact that is redressable by a favorable judicial decision.” *Pincus v. Am.*

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<sup>5</sup> Past briefing shows the parties agree on the applicable standard. *Compare* ECF 92-1 at 11, *with* ECF 105 at 14. And this Court has, in turn, applied that standard many times.

*Traffic Solutions, Inc.*, 986 F.3d 1305, 1310 n.7 (11th Cir. 2021). Second, as explained *infra* Section II, the Verification Fee provisions dramatically infringe on FDH's First Amendment rights to speech and association and its Fourteenth Amendment Equal Protection rights. "Constitutional injuries are prototypical concrete injuries." *Polelle v. Fla. Sec'y of State*, 131 F.4th 1201, 1209 (11th Cir. 2025). These injuries, too, confer standing.

FDH's financial and constitutional injuries are directly traceable to the Supervisors' enforcement of the Verification Fee provisions and can be redressed by an order enjoining Defendants from enforcing those provisions against FDH. FDH's injury is "traceable only to [the] Supervisors of Elections and redressable only by relief against them" because "Florida law tasks the Supervisors, independently of the Secretary" of State or any other entity, with posting the so-called actual cost of petition verification for statewide initiatives and receiving fees from sponsors before conducting verification. *See Jacobson v. Fla. Sec'y of State*, 974 F.3d 1236, 1253-54 (11th Cir. 2020) ("Because the Supervisors are independent officials not subject to the Secretary's control, their actions to implement the ballot statute may not be imputed to the Secretary [to] establish[] traceability."). An order enjoining the Supervisors from enforcing the Verification Fee provisions against FDH would redress FDH's financial and constitutional injuries and maintain the status quo.



## **II. FDH is likely to succeed on the merits.**

### **A. The Verification Fee provisions violate the First Amendment as applied to FDH.**

The Verification Fee provisions, coupled with Florida’s existing law on fee waivers, present FDH with two options, both of which violate its First Amendment rights. FDH must either forgo its use of paid circulators, despite the First Amendment protections recognized in *Meyer v. Grant*, 486 U.S. 414, 416 (1988), and the centrality of paid circulators to FDH’s campaign, or it must pay millions in heightened verification fees levied because of—and in direct proportion to—the extent of its political speech and association with voters. FDH cannot pay these exorbitant fees and maintain its campaign. Enforcement of the Verification Fee provisions will preclude FDH from campaigning to put its initiative before voters, even if it sacrificed other protected First Amendment activities and spent every available dollar on verification costs. This severe burden on protected speech and association is not tailored to any legitimate government objective and fails exacting scrutiny. The Verification Fee provisions violate the First Amendment as applied to FDH’s circumstances.

#### ***1. The Verification Fee provisions exact a severe burden on First Amendment rights.***

The Verification Fee provisions are precisely the sort of ballot-initiative process regulations that so severely burden protected speech that they must survive exacting, or strict, scrutiny. As this Court has now twice recognized, “the circulation

of petitions amounts to ‘core political speech,’ as it ‘involves both the expression of a desire for political change and a discussion of the merits of the proposed change.’” Order at 18, ECF189 (quoting *Meyer*, 486 U.S. at 421-22). And while states have discretion in regulating the initiative process, restrictions that “significantly inhibit communication with voters about proposed political change” and “severe[ly] burden . . . speech” must satisfy exacting, or strict, scrutiny. *Id.* (quoting *Buckley v. ACLF, Inc.*, 525 U.S. 182, 191, 192 n.12 (1999)); *see also Biddulph v. Mortham*, 89 F.3d 1491, 1500-01 (11th Cir. 1996) (indicating strict scrutiny applies when “a state impermissibly burden[s] the free exchange of ideas about the objective of an initiative proposal”); *SD Voice v. Noem*, 60 F.4th 1071, 1078-79 (8th Cir. 2023) (holding initiative sponsor’s First Amendment rights were impermissibly burdened by state law altering filing deadline for petitions because new deadline reduced the quantum of speech). As this Court recognized, “process” regulations that “impos[e] a truly severe burden on the exchange of protected speech” must survive heightened scrutiny. Order at 21, ECF189. Were it otherwise, the First Amendment’s protections would ebb and flow with a legislature’s skill in disguising speech restrictions as process regulations.

The Verification Fee provisions are just such regulations: they “burden the exchange of ideas with respect to the objective of [FDH’s] initiative proposal” by forcing FDH to pay millions of dollars in unexpected petition verification fees—

thereby curbing its speech dramatically—or to entirely halt its use of all paid circulators in order to attempt to obtain Section 99.097’s fee waiver.<sup>6</sup> Neither option is viable: As FDH’s Executive Director and Campaign Manager explains, the new verification fees would be “financially unsustainable and would effectively halt [FDH’s] campaign,” and switching to a volunteer-only circulator team at this point in the cycle is “impractical if not impossible.” ECF 355-3 ¶¶ 9, 19. Even if FDH stopped associating with paid circulators, it still owes verification fees from petitions already circulated by paid circulators. *Id.* ¶ 22; *see* Fla. Stat. § 99.097(4)(a). Neither option preserves FDH’s First Amendment rights to express its political views and associate with voters, including through the use of paid circulators.

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<sup>6</sup> It is unclear whether a fee waiver is even still available to FDH. Section 99.097(6)(a) states that after a circulator is paid, the fee waiver “may not subsequently be filed in lieu of paying the fee to have *signatures verified for that petition.*” (emphasis added) *See also* Fla. Stat. § 106.191 (“[I]f payment is made to any person to solicit signatures . . . an undue burden oath may not be filed in lieu of paying the fee to have signatures verified.”); Fla. Dept. of State Div. of Elections, Initiative Petition Handbook at 11 (Jan. 2022), <https://files.floridados.gov/media/705249/final-updated-20220124-initiative-petition-sponsoring-political-committee-user-guide.pdf> (adding uncertainty by stating that sponsor may apply for a waiver with either a Supervisor or the Division of Elections). If the State interprets “petition” in Section 99.097(6)(a) to refer to the initiative as a whole rather than an individual petition form, then FDH *cannot* now seek a fee waiver, and relief is all the more warranted under the First Amendment because its circumstances match precisely the plaintiff in *Clean-up ’84 v. Heinrich*, 590 F. Supp. 928 (M.D. Fla. 1984), discussed below.

No other state has a remotely similar law. Indeed, no other state charges petition verification fees at all. And when Florida previously attempted to impose signature-verification fees for ballot initiatives without providing an adequate alternate route to qualification, a federal court properly found that it intruded upon First Amendment protections. *Clean-up '84 v. Heinrich*, 590 F. Supp. 928 (M.D. Fla. 1984), considered an earlier iteration of one of the statutes at issue here. At the time, Section 99.097 required both candidates and initiative sponsors to pay the Supervisors ten cents per signature verification. *Id.* at 931. The law allowed major party candidates for whom the fee would “impos[e] an undue burden on [their] resources” to “make an oath to that effect and have the signatures verified at no charge,” but did not allow the same waiver for ballot initiative sponsors. *See id.* The court concluded that, without the option for a fee waiver, the verification fee requirement “impermissibly infringe[d] upon” First Amendment rights, because it “foreclose[d] access to the ballot for a large group of citizens and render[ed] ineffective their advocacy of the issue they desire[d] to put before the voters.” *Id.* at 933. In that way, *Clean-up '84* forecasted *Meyer*, which likewise held a restriction on petition circulation impermissible where it “limit[ed] [the sponsor’s] ability to make the [initiative] the focus of statewide discussion.” *Meyer*, 486 U.S. at 423.

Following *Clean-up '84*, the Legislature amended Section 99.097 to allow sponsors to apply for fee waivers. Ch. 1989-338, Laws of Fla. That fixed the problem

identified by the *Clean-up* '84 court—until the Legislature later created the problem anew by conditioning the availability of fee waivers on a candidate or sponsors' commitment to foregoing paid petition circulators, rather than on its ability to pay otherwise-applicable verification fees. Ch. 2011-40, Laws of Fla. Now, if a sponsor pays a single person to circulate petitions, it *must* pay signature verification fees, regardless of the burden on its resources. *See* Fla. Stat. § 99.097(6)(a). And if the sponsor files a fee waiver and then pays even one circulator, the fee waiver is void, and the sponsor must pay all past and future verification fees. *Id.* § 99.097(6)(b). The fee waiver is no longer accessible to a sponsor for whom fees “impos[e] an undue burden on his resources,” *id.* § 99.097(4)(b), because it is unavailable to a sponsor who can pay a single dollar to a single circulator.

Given this fee waiver scheme, the Verification Fee provisions leave initiative sponsors with an impossible—and impermissible—choice. If a sponsor exercises its First Amendment right, under *Meyer*, to associate with voters via paid circulators, it will be saddled with exorbitant expenses. A sponsor must forgo using even a single paid circulator to avoid the consequent multimillion dollar fees, making the Verification Fee provisions functionally equivalent to the paid-circulator ban the Supreme Court struck down in *Meyer*. A choice between First Amendment rights is no choice at all—and certainly not one the Constitution tolerates. *See Ariz. Free Enter. Club's Freedom Club PAC v. Bennett*, 564 U.S. 721, 739 (2011) (striking

down public funding scheme because it “forc[ed] a choice” for donors to “trigger matching funds [for opponents], change your message, or do not speak,” which “contravene[ed] the fundamental rule of protection under the First Amendment, that a speaker has the autonomy to choose the content of his own message”).

For FDH, the constitutional dilemma is even more stark. If FDH attempts to continue using paid circulators, it will face an estimated \$3.6 million in *additional* fees—beyond the roughly \$910,000 it had already budgeted under the old rates—levied in direct proportion to FDH’s expressive and associational activities; the more signatures FDH collects, the more it will owe. Because of those fees, FDH will need to reduce its budget for paid circulators, which means it will engage in less speech, and associate with fewer voters by “gather[ing] fewer signatures than [needed] to qualify for the ballot.” ECF 355-3 ¶ 12. FDH will likely also need to cut its “planned speech activities” for “voter education” to instead cover verification costs. *Id.* ¶ 21.

If FDH takes the other route available to it under the challenged law and attempts to use Section 99.097’s fee waiver, it will lose the ability to use paid circulators and thus lose “access to the most effective, fundamental, and perhaps economical avenue of political discourse.” *Meyer*, 486 U.S. at 424. And it will still be obligated to pay the increased fee for any petitions collected using paid circulators from July 1 onward, *see* Fla. Stat. § 99.097(4)(a), resulting in hundreds of thousands

of dollars in cost that will likely impact FDH's other expressive activities. *See* ECF 355-3 ¶ 19.

The harm caused to FDH by the Verification Fee provisions is further exacerbated because the fee increases are occurring in the midst of FDH's campaign when it could not attempt to preplan around them. FDH has no realistic path to the ballot without using paid circulators. Its "campaign was designed . . . with a goal of having volunteers contribute about 20% of the total signatures." ECF 355-3 ¶ 16. It is far too late to change course now—especially given the chilling effect HB 1205 has already had on volunteers. *See id.* ¶¶ 17-20. FDH's signature collection targets are simply not possible with exclusively volunteer circulators, who "typically collect signatures on weekends only." *Id.* ¶ 20.

In sum, whatever road FDH travels, it cannot escape the severe burden on its First Amendment rights that the Verification Fee provisions impose.

## **2. *The Verification Fee provisions fail the exacting scrutiny test.***

Because the Verification Fee provisions severely burden protected speech, "Defendants must demonstrate that the [provisions are] narrowly tailored to furthering a compelling government interest." Order at 23, ECF 283 (citing *Buckley*, 525 U.S. at 206). Defendants cannot do so.

The Verification Fee provisions are not tailored to any compelling State interest. FDH is unsure what supposed interest Defendants will advance. However,

it cannot be any State interest in “requiring some preliminary showing of a significant modicum of support,” *Libertarian Party of Fla. v. State of Fla.*, 710 F.2d 790, 793 (11th Cir. 1983), because any such interest is already more than adequately served by the requirement that statewide initiative sponsors submit 880,062 valid petitions to access the ballot. And while sponsors may “incur some expenses in accumulating the necessary signatures to qualify for the ballot,” the Eleventh Circuit has looked to whether qualification procedures are “impermissibly burdensome as to cost.” *Id.* at 794-95. In *Libertarian Party*, the court considered a minor party’s challenge to an earlier version of Section 99.097 that capped per-petition verification at ten cents and further mitigated cost through the use of “random sampling techniques which reduce the number of signatures checked and therefore the cost.” *Id.* at 794. In contrast, under the provisions challenged here, FDH must pay rates that dwarf a \$0.10 per signature charge, and under current Florida law *cannot* ask that Supervisors use random sampling to reduce costs, *see* Fla. Stat. § 99.097(1)(b). Instead, the Verification Fee provisions outsource to initiatives sponsors *government operations costs* such as office overhead and personnel costs. *Forsyth Cnty., Ga. v. Nationalist Movement*, 505 U.S. 123, 136 (1992) (rejecting State’s argument that “raising revenue for [government] services” justified ordinance authorizing local officials to charge certain demonstrators more based on officials’ perception of the cost of security necessary for the demonstration).



The Verification Fee provisions also pass along State-created costs related to new *post-verification* processes. For example, HB 1205 provides that after verifying a signature on a petition as valid, a Supervisor must mail the voter a Verification Notice that prompts the voter to return the form “if [they] believe [their] signature has been misrepresented or forged on a petition.” Fla. Stat. § 100.371(14)(e) and Supervisors are authorized to include in their calculation of the “actual cost” of verification “printing and all postage costs related to” this notice. *See* Fla. Stat. § 100.371(14)(f). What State interest, if any, Defendants will assert this notice serves is unknown to FDH. Presumably, the Supervisors do not believe their personnel are incompetent, or bad actors, such that they are verifying petitions that were not actually signed by the voter in question (or that the entire project of verification is so faulty that the Supervisors do not know if they are accurately verifying signatures).

If past is prologue, Defendants may argue these notices are necessary to protect a State interest in preventing fraud. But the evidence offered to date shows that forcing *millions of dollars* in new fees on *every* statewide sponsor is not a tailored remedy to address what is, at most, a rare problem not unique to statewide initiatives and already addressed through various other existing means. *See Riley v. Nat’l Fed. of the Blind of N.C., Inc.*, 487 U.S. 781, 795 (1988) (striking down state statute aimed at regulating fraud in charitable contributions, noting state could

enforce its existing antifraud law and observing, “[i]f this is not the most efficient means of preventing fraud, we reaffirm simply and emphatically that the First Amendment does not permit the State to sacrifice speech for efficiency”).

Because Defendants cannot justify the significant burden on FDH’s First Amendment rights here, the Court should enjoin the Supervisors from enforcing the Verification Fee provisions against FDH.

**B. The Verification Fee provisions violate the Equal Protection Clause.**

Separate and apart from the First Amendment violation, the Verification Fee provisions also violate the Fourteenth Amendment’s Equal Protection Clause.

Under Florida law, statewide initiatives sponsors are not the only parties that must circulate petitions to qualify for the ballot. Candidates and local initiative sponsors must do so too. And, as with statewide initiatives, Supervisors are tasked with verifying petition signatures for those efforts. *See* Fla. Stat. § 99.097(3)(a). Nevertheless, HB 1205 imposes on statewide initiatives—and statewide initiatives only—a new, more expansive definition of the “actual cost” of petition signature verification that makes it all but impossible for grassroots campaigns like FDH to express their political message and associate with voters. HB 1205’s imposition of

higher costs on petitions for statewide initiatives as compared to petitions for local initiatives or candidates violates the Equal Protection Clause.

“[W]here fundamental rights and liberties are asserted under the Equal Protection Clause, classifications which might invade or restrain them must be closely scrutinized and carefully confined.” *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 670 (1966). “As the Supreme Court has recognized, to the extent that ballot-access requirements draw a distinction, the ‘State must establish that its classification is necessary to serve a compelling interest.’” *Cowen v. Ga. Sec’y of State*, 960 F.3d 1339, 1346 (11th Cir. 2020) (quoting *Ill. State Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979)) (discussing state law that imposed different signature thresholds for candidates for different offices). “This Circuit considers equal protection challenges to ballot-access laws under the *Anderson* test.” *Cowen v. Ga. Sec’y of State*, 22 F.4th 1227, 1235 (11th Cir. 2022) (first citing *Indep. Party of Fla. v. Sec’y of Fla.*, 967 F.3d 1277, 1283-84 (11th Cir. 2020); and then *Fulani v. Krivanek*, 973 F.2d 1539, 1543-44 (11th Cir. 1992)). Under that test, courts “assess the character and magnitude of the asserted denial of equal

treatment, identify the precise interests put forward by the state to justify its rule, and determine the legitimacy and strength of each interest.” *Id.* (cleaned up).<sup>7</sup>

Here, the magnitude of the disparity is extreme. The Verification Fee provisions single out statewide initiatives like FDH to pay significantly higher signature verification costs, “forc[ing] [Plaintiffs] to bear an unequal burden in order to gain access to the ballot.” *Fulani*, 972 F.2d at 1544. As explained, these higher fees will require FDH to reduce its paid circulation activity, curtail planned speech, and divert resources from other critical operations. ECF 355-3 ¶¶ 12, 21. And FDH “will likely need to suspend its campaign” if, on October 1 it must begin paying the higher verification fees for the backlog of petitions submitted from July 2025

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<sup>7</sup> *Cowen* addressed an Equal Protection challenge to a state law that imposed laxer qualification requirements for candidates seeking statewide office as compared to those seeking non-statewide office. The classification challenged here implicates not only ballot access, but also FDH’s fundamental freedoms of association and expression. FDH and other statewide initiatives are charged a verification fee every time a voter associates with them by signing their petitions, and that fee is far higher than what any other petition effort is charged. Strict scrutiny is therefore appropriate given the Verification Fee provisions’ impact on FDH’s “fundamental rights and liberties.” *See Harper*, 383 U.S. at 670; *see also Fulani*, 973 F.2d at 1543 (explaining that the Court might use “strict scrutiny analysis . . . when considering an equal protection challenge to a state election law” but was bound to use the *Anderson* test for “equal protection challenges to state ballot-access laws”); *Biddulph*, 89 F.3d at 1499 n.8 (acknowledging that “strict scrutiny might apply” in ballot initiative case if “association and equal protection rights” had been directly burdened); *id.* at 1500 n.10 (rejecting application of the *Anderson* standard in part because plaintiff had not raised freedom of association claim). That said, HB 1205’s Verification Fee provisions fail under either strict scrutiny or *Anderson-Burdick*.

through September 2025 as well as for all new petitions going forward. *Id.* ¶ 24; *see Fulani*, 972 F.2d at 1544 (finding Equal Protection violation where Section 99.097’s unequal treatment of minority versus majority candidates as to signature verification fees “forced [the plaintiff] to part with funds that are needed for an effective campaign”). The Verification Fee provisions will effectively bar FDH from expressing its political views and associating with voters.

The provisions are particularly noxious because they preference the political views of wealthy sponsors and those backed by wealthy interests over others. As recognized by the *Clean-up* ’84 court, charging initiatives ten cents per petition without an effective alternative “for a group that cannot afford to have all the signatures verified” violated the Equal Protection Clause because it “unquestionably render[ed] access to the ballot by petitioners seeking to amend the Florida constitution dependent upon the wealth of those petitioners and the voters who support them.” 590 F. Supp. at 931-32. Here, the State is imposing charges that are vastly greater than those at issue in *Clean-up* ’84, and FDH has no meaningful alternative. In this way, at least as applied to FDH, the State is violating the Fourteenth Amendment.

To the extent the Supervisors may argue the injury to statewide initiatives is slight because Section 99.097 provides a verification fee waiver for volunteer-only campaigns, the Eleventh Circuit rejected a similar argument in *Fulani v. Krivanek*,

explaining that the injury caused by denying minority party candidates access to the fee waiver was not minimized merely because the State provided an alternate method of signature verification that purported to be cheaper but still imposed significant costs. *See Fulani*, 972 F.2d at 1545. And the fees at issue in this case dwarf those at issue in *Fulani*. There, the Court considered whether minority candidates should have the ability to obtain a fee waiver or should always be charged “10 cents for each signature checked or the actual costs of checking such signature whichever is less.” *Fulani*, 973 F.3d at 1540 (citing Fla. Stat. § 99.097(4)(a)). At the highest end, then, the Court considered whether plaintiffs should pay today’s equivalent of \$0.23 per signature in 2025 dollars—a fraction of the per-petition fees that FDH is facing now. *See* ECF 355-11. Moreover, FDH *cannot* viably switch to a volunteer-only campaign at this point in the campaign cycle, particularly given the stringent requirements that HB 1205 places on volunteers for statewide initiative campaigns. ECF 355-3 ¶ 18.

The State has no legitimate interest in disfavoring statewide initiatives by imposing an expansive new definition of “actual costs” on only those initiatives. While the State may have an interest in “protect[ing] the integrity and reliability of the initiative process,” *Buckley*, 525 U.S. at 183, such an interest cannot possibly justify the Verification Fee provisions, because there is no rational basis, let alone a compelling justification, for including capital costs such as employees’ wages and

benefits in the calculation of the “actual cost” of petition verification for statewide initiatives but not for local initiatives or candidates. *See supra* Section I.A To the extent Defendants may argue the cost is justified due to the new Verification Notice and requirement to transmit petitions to the Division of Elections, there is no evidence that statewide initiatives are more subject to fraud than other types of initiatives, or that the State can justify shifting the costs of its own administrative burdens on that score to initiative sponsors. *See Ariz. Free Enter. Club’s Freedom Club PAC*, 564 U.S. at 747 (rejecting, in First Amendment context, state’s justification that matching-funds scheme might “help the State in finding the sweet-spot or fine tuning its financing system to avoid a drain of public resources” (cleaned up)).

The Verification Fee provisions violate the Equal Protection Clause because they single out statewide initiatives and subject them to an unjustified and burdensome definition of “actual costs” that will dramatically curtail FDH’s ability to associate and express its message.

### **III. The remaining preliminary injunction factors favor FDH.**

Each of the remaining factors favors issuing FDH’s requested preliminary injunction. FDH will suffer irreparable harm beginning October 1, 2025, unless the Court enjoins the Supervisors from enforcing the Verification Fee provisions against it. “[B]ecause counties are not verifying petitions until October 1, they are holding

petitions [FDH] submit[s] until that date.” ECF 355-3 ¶ 22. FDH has continued to timely submit petitions to the Supervisors along with payment of the previous verification fee—but not the increased amount it cannot afford. *Id.* Supervisors have made clear that FDH “owe[s] them more money and they will not verify [its] petitions beginning October 1 unless they receive the outstanding balances.” *Id.* Thus, FDH must remit the balance as soon as it comes due and, if it cannot, it must suspend its operations.

Because HB 1205 also requires FDH to submit petitions within ten days of collection, FDH “need[s] cash on hand of about \$38,500 per day/\$269,500 per week to be able to afford to pay signature verification costs alone.” *Id.* ¶ 13. FDH cannot afford to timely pay verification fees without “divert[ing] funds from other essential campaign operations,” including most specifically “paid petition circulation, which is [FDH’s] largest budget item.” *Id.* ¶ 12. In other words, FDH cannot pay the increased fees without sacrificing the expressive activity that is its entire current purpose—circulating petitions to qualify its supported measure for the ballot. And “[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” Order at 31, ECF 283 (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)).

Moreover, each day FDH cannot fully fund its petition-circulation efforts is a lost opportunity to engage in First Amendment activity that it will never recover.



Courts in this circuit generally recognize that stymied progress toward a time-sensitive goal, as well as the loss of unique opportunities, constitute irreparable harm. *See Doe I v. Bondi*, No. 1:25-cv-01998-VMC, 2025 WL 1482733, at \*9 (N.D. Ga. May 2, 2025) (“The loss of timely academic progress alone is sufficient to establish irreparable harm.”); *Advanced Polymer Tech. Corp. v. Textile Mgmt. Assocs., Inc.*, No. 4:08-CV-0018-HLM, 2008 WL 11333234, at \*21 (N.D. Ga. Apr. 23, 2008) (“[L]oss of a unique opportunity may constitute irreparable harm.”). To meet its deadline to qualify for the ballot in 2026, FDH must “collect approximately 11,000 petitions per day between October 1 and December 1.” ECF 355-3 ¶ 2. If FDH cannot fully fund its petition-circulation efforts to meet these benchmarks, it may lose unrecoverable progress toward its 1.3 million-petition goal.

The balance of equities and public interest also favor Plaintiffs. The Court considers these factors jointly when a plaintiff seeks emergency relief against the government. *Otto v. City of Boca Raton*, 981 F.3d 854, 870 (11th Cir. 2020). “The irreparable injuries Plaintiffs face are ‘not outweighed by any threatened harm to Florida because the government has no legitimate interest in enforcing an unconstitutional law,’ and ‘an injunction is not contrary to the public interest because it is in the public interest to protect First Amendment rights.’” Order at 31, ECF 283 (quoting *Honeyfund.com v. Governor of Fla.*, 94 F.4th 1272, 1283 (11th Cir. 2024)). The same holds true for an injunction protecting Equal Protection rights. *See KH*

*Outdoor, LLC v. City of Trussville*, 458 F.3d 1261, 1272 (11th Cir. 2006) (holding that, in weighing the equities, the government “has no legitimate interest in enforcing” and “[t]he public has no interest in enforcing an unconstitutional” law).

### **CONCLUSION**

For all these reasons, Plaintiffs respectfully request that the Court enter a preliminary injunction enjoining Defendants from enforcing the Verification Fee provisions, Fla. Stat. § 100.371(14)(f), Fla Stat. § 99.097(4)(a) as amended by HB 1205, and Ch. 2025-21, § 7, at 23, Laws of Fla., against Plaintiff FDH.

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DATED: August 11, 2025

Respectfully submitted,

/s/ Frederick S. Wermuth

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**LOCAL RULE 7.1(F) CERTIFICATION**

The undersigned counsel certifies that this memorandum contains 7,981 words, excluding the case style, signature block, and certifications.

**CERTIFICATE OF SERVICE**

I hereby certify that on August 11, 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

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