

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF FLORIDA  
TALLAHASSEE DIVISION**

FLORIDA DECIDES HEALTHCARE,  
INC., et al.,  
*Plaintiffs/Intervenor-Plaintiffs,*

v.

CORD BYRD, in his official capacity as  
Secretary of State of Florida, et al.,  
*Defendants/Intervenor-Defendant.*

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

**THE SECRETARY AND ATTORNEY  
GENERAL'S MOTION TO DISMISS THE  
PODER LATINX PLAINTIFFS' OPERATIVE COMPLAINT**

## INTRODUCTION

The Secretary and Attorney General move to dismiss Plaintiffs’ operative complaint filed on July 23, 2025. Doc.309. All three Plaintiffs lack standing to challenge House Bill 1205. But even if they have standing, they fail to state claims on three of their four counts. This Court should therefore grant the State’s motion to dismiss under Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6).

## BACKGROUND

Plaintiffs challenge only one category of HB1205 provisions: the **Petition Circulator Eligibility** provisions for non-citizens.

The State uses the category naming conventions from its two preliminary injunction responses. Doc.105; Doc.246. Plaintiffs’ challenges break down like this:

Count	Claim	Challenged Provisions
Count One	First Amendment Free Speech and Association	<b>Petition Circulator Eligibility</b> provisions for non-citizens
Count Two	Overbreadth	<b>Petition Circulator Eligibility</b> provisions for non-citizens
Count Three	Vagueness	<b>Petition Circulator Eligibility</b> provisions for non-citizens
Count Four	Equal Protection – Differential Treatment of Non-Citizens	<b>Petition Circulator Eligibility</b> provisions for non-citizens

## LEGAL STANDARD

Under Federal Rule of Civil Procedure 12(b)(1), a complaint may be dismissed when a plaintiff lacks standing to sue. *Gesten v. Stewart Law Grp., LLC*, 67 F. Supp. 3d 1356, 1357 (S.D. Fla. 2014). And under Rule 12(b)(6), a complaint, or a count in the complaint, may be dismissed for a failure to state a claim upon which relief can be afforded. *Hunt v. Aimco Props., L.P.*, 814 F.3d 1213, 1221 (11th Cir. 2016).

On a motion to dismiss, a court must accept well-pleaded factual allegations as true and make reasonable inferences in a plaintiff's favor. *Support Working Animals, Inc. v. DeSantis*, 457 F. Supp. 3d 1193, 1202-03 (N.D. Fla. 2020). That's different from conclusory allegations, formulaic recitations of legal elements, and labels—those aren't well-pleaded factual allegations and shouldn't be accepted as true. *Id.*

## ARGUMENT

Plaintiffs lack standing to challenge HB1205's **Petition Circulator Eligibility** provisions for non-citizens. Three of their four counts also fail to state claims.

### **I. Plaintiffs Lack Standing**

All three Plaintiffs—Poder Latinx, Yivian Lopez Garcia, and Humberto Orjeula Prieto—lack standing to sue.

**A. Poder Latinx.** Poder Latinx has engaged in barely any petition-circulation activities. The operative complaint alleges that Poder Latinx engaged in such activities for only one month and in one county: “[i]n April 2025” (the month before HB1205 became law) “Poder Latinx launched a petitioning program during a series of public

events in Orange County.” Doc.309 ¶ 10. But because of HB1205, the complaint says, Poder Latinx “suspend[ed] all of its petitioning work.” Doc.309 ¶ 10.

Poder Latinx was “plann[ing] to continue collecting signatures for the Medicaid expansion petition at future events and scale up into a substantial petitioning operation with paid canvassers, including veteran non-citizen canvassers.” Doc.309 ¶ 10. The complaint includes no allegations concerning what those plans were, what those events would look like, or where those events would take place. *E.g.*, Doc.309 ¶ 10 (not explained), ¶ 19 (same), ¶ 46 (same). In fact, it’s not even clear whether Poder Latinx has members (or planned events) in every county and judicial circuit in Florida.

In other words, Plaintiffs contend that Poder Latinx has standing to sue governmental officials throughout the State, based on “a series of” past “public events” in one county, and based on nebulous intentions for non-specific future activities. That’s not good enough for standing. *See LaCroix v. Lee County*, 819 F. App’x 839, 842-43 (11th Cir. 2020) (“speculative” plans that lack “expected times, topics, locations, or surrounding context” isn’t good enough for standing); *Gale Force Roofing & Restoration v. Brown*, 4:21-cv-246, 2021 U.S. Dist. LEXIS 206848, at \*5 (N.D. Fla. June 29, 2021) (“In short, the complete absence of factual allegations showing Plaintiff’s ‘unambiguous intention at a reasonably foreseeable time to engage in a course of conduct arguably affected with a constitutional interest,’ requires this Court to dismiss Plaintiff’s Complaint.”).

**B. Yivian Lopez Garcia.** The operative complaint alleges that Ms. Lopez Garcia “participated” in one specific citizen-initiative campaign: the campaign for “Amendment 4,” concerning felon voting. Doc.309 ¶ 22. That was back in 2018. The complaint then alleges that but for HB1205, “Ms. Lopez Garcia planned to be employed as a petition circulator.” Doc.309 ¶ 22.

What this means isn’t clear. The complaint includes no allegations concerning Ms. Lopez Garcia’s supposedly guaranteed future employment: the name of her future employer, the location of this employer and where she would work, or any details about the canvassing activities she would undertake. Such speculative allegations can’t establish constitutional standing. They are merely “‘some day’ intentions—without any description of concrete plans, or indeed even any specification of *when* the some day will be”—that “do not support a finding of the ‘actual or imminent’ injury.” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 564-65 (1992); *LaCroix*, 819 F. App’x at 842-43. And “this Court neither assumes nor speculates about facts that are not alleged.” *Gale Force*, 2021 U.S. Dist. LEXIS 206848, at \*7.

**C. Humberto Orjeula Prieto.** Unlike Ms. Lopez Garcia, Mr. Orjeula Prieto never participated in a citizen-initiative campaign or worked as a paid citizen-initiative canvasser. Doc.309 ¶ 21 (he “has worked as a paid canvasser for *voter registration campaigns*”). That said, the complaint alleges that “he planned to be employed as a petition circulator.” Doc.309 ¶ 21. Again, what this means isn’t clear, and such

speculative allegations can't establish constitutional standing. *LaCroix*, 819 F. App'x at 842-43.

## II. Plaintiffs Fail to State Claims

Plaintiffs also fail to state claims. Although the State maintains that the **Petition Circulator Eligibility** provisions don't implicate the First Amendment (or garner heightened scrutiny), the State recognizes that this Court disagrees. The State, therefore, won't challenge Plaintiffs' speech and association claim (count one) in this motion.

**A. Count Two (Overbreadth).** To establish a facial overbreadth claim, a plaintiff must establish that a law "prohibits a substantial amount of protected speech relative to its plainly legitimate sweep." *United States v. Hansen*, 599 U.S. 762, 770 (2023) (cleaned up). In other words, the plaintiff must present a "lopsided ratio"—identifying unconstitutional applications of the law, compared to constitutional applications. *Id.*

Plaintiffs' complaint doesn't do that. Their complaint identifies no constitutional applications of challenged provisions, nor does the complaint weigh them against the purportedly unconstitutional applications. Instead, Plaintiffs merely gesture, and then conclude, that "[t]o the extent any of the conduct proscribed by" the challenged provisions "can be lawfully prohibited under the First Amendment, the Law is unconstitutionally overbroad, as it regulates a substantial amount of constitutionally protected expression." Doc.309 ¶ 80.

That's insufficient to state an overbreadth claim. *See, e.g., Yellowhammer Fund v. Marshall*, 733 F. Supp. 3d 1167, 1198 (M.D. Ala. 2024) (dismissing an overbreadth claim,

noting that the complaint didn't allege any constitutional applications of the challenged law); *Ala. State Conf. of the NAACP v. Marshall*, 746 F. Supp. 3d 1203, 1241-42 (N.D. Ala. 2024).

**B. Count Three (Vagueness).** Plaintiffs allege only one vagueness argument: that they don't know what "collecting," "physically possess[ing]," and "deliver[ing]" mean in House Bill 1205. Doc.309 ¶ 89.

This isn't a persuasive contention. Collecting a signed petition means retrieving a signed petition from a voter. Physically possessing a signed petition means just that—physically handling a signed petition. And delivering a signed petition means moving a signed petition from one place (likely from the voter's hands) to another (hopefully the right supervisor's office).

The second preliminary injunction order reflects that the parties, and this Court, know what these terms mean. *See, e.g.*, Doc.283 at 19 n.17 ("Petition circulation necessarily involves collecting a voter's signature on an issue petition and delivering the signed petition to the appropriate official so that it may be verified."); Doc.283 at 36 ("the Attorney General and State Attorneys are enjoined from seeking civil or criminal penalties to enforce the prohibition on non-residents and non-citizens collecting signed petitions as applied to FDH, Right to Clean Water, Melissa Martin, the League of Women Voters, and LULAC").

With this in mind, it's easy to answer Plaintiffs' hypotheticals. Under HB1205, (1) no, a non-citizen can't physically handle and review signed petitions; (2) yes, a non-

citizen can “supervis[e] other canvassers who are physically collecting petitions”; (3) yes, a non-citizen can “encourag[e] an eligible citizen to sign a petition without physically touching it”; and (4) yes, a non-citizen can be “present in an office where initiative petitions and signatures are being processed.” Doc.309 ¶ 90.

The challenged provisions, therefore, aren’t vague.

**C. Count Four (Equal Protection).** To the extent Plaintiffs allege an as-applied challenge to HB1205’s **Petition Circulator Eligibility** provisions for non-citizens, the provisions fall under the Equal Protection Clause’s political function exception. The exception “applies to laws that exclude aliens from positions intimately related to the process of democratic self-government.” *Bernal v. Fainter*, 467 U.S. 216, 220 (1984). As the Supreme Court put it, the “rationale behind the political-function exception is that within broad boundaries a State may establish its own form of government and limit the right to govern to those who are full-fledged members of the political community.” *Id.* at 221.

Here, “[b]allot initiatives are the quintessential form of direct democracy.” *OPAWL v. Yost*, 118 F.4th 770, 777-78 (6th Cir. 2024). Plaintiffs agree: “[c]ollecting signatures and circulating initiative petitions are themselves political and philosophical statements, signaling that Plaintiffs value the democratic process and believe in the capacity of the popular will to shape the composition and direction of the government.” Doc.309 ¶ 3.

In other words, petition circulators are “nonelective” “positions” that “participate directly in the formulation, execution,” and “review” of “public policy.” *Sugarman v. Dougall*, 413 U.S. 634, 647 (1973). Thus, “excluding non-citizens from certain activities can advance a compelling interest when those activities form part of the process of democratic self-government.” *OPAWL*, 118 F.4th at 777-78 (cleaned up); *see also Bluman v. FEC*, 800 F. Supp. 2d 281, 287 (D.D.C. 2011) (Kavanaugh, J.) (upholding restrictions on foreign nationals contributing to political campaigns).

The non-citizen prohibition also makes sense. True, non-citizens who work for the government may collect and handle sensitive voter information. But those workers undergo background checks. *E.g.*, Fla. Stat. § 448.09. Plaintiffs haven’t clearly alleged that they conduct background checks of its workers or volunteers. Doc.309 ¶ 52.

Given that the political function exception applies, Plaintiffs’ claim should be dismissed. *Bluman*, 800 F. Supp. 2d at 283 (granting a motion to dismiss).

### **CONCLUSION**

For these reasons, the State’s motion should be granted.

Dated: August 12, 2025

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### **LOCAL RULES CERTIFICATIONS**

As required by Local Rule 5.1 and 7.1, I certify that this response contains 1,713 words and complies with this Court's word count, spacing, and formatting requirements.

/s/ Mohammad O. Jazil  
Mohammad O. Jazil

### **CERTIFICATE OF SERVICE**

I certify that on August 12, 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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