

**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 SMART & SAFE'S OPERATIVE COMPLAINT**

INTRODUCTION

The Secretary and Attorney General move to dismiss Plaintiff's operative complaint filed on July 16, 2025. Doc.293. The complaint engages in shotgun pleading. There are also problems with standing. And Plaintiff's challenges fail to state claims upon which relief can be granted. This Court should therefore grant the State's motion to dismiss under Federal Rules of Civil Procedure 8, 12(b)(1), and 12(b)(6).

BACKGROUND

Plaintiff challenges five categories of House Bill 1205 provisions. Its challenges break down like this:

Count	Claim	Challenged Provisions
Count One	First Amendment Political Speech	Petition Circulator Eligibility provisions for non-residents and volunteers Ten-Day Return Time provisions Financial Impact Statement provisions One Amendment provisions
Count Two	Free Association	Petition Circulator Eligibility provisions for non-residents and volunteers Ten-Day Return Time provisions

Count Three	Overbreadth	Petition Circulator Eligibility provisions for non-residents and volunteers Ten-Day Return Time provisions Financial Impact Statement provisions One Amendment provisions
Count Four	Compelled Speech	Financial Impact Statement provisions
Count Five	Content-Based Speech Regulation	Verification provisions
Count Six	Equal Protection	Ten-Day Return Time provisions Verification provisions

Here, the Smart & Safe Plaintiff's naming conventions mostly align with the State's. But to be clear, Plaintiff's non-resident and volunteer categories ("non-resident circulator" category and "registration requirements" category) are subsumed in the **Petition Circulator Eligibility** categories.

There are three new categories that weren't featured in the first three rounds of preliminary injunction briefing. They are as follows:

The **Financial Impact Statement** provisions require petitions to include a financial impact statement, which is drafted by the Financial Impact Estimating Conference. Fla. Stat. § 100.371(2). Before HB1205, the conference would create a statement to be placed on the ballot. Under the old regime and new regime, the Florida

Supreme Court reviews the financial impact statement for legal compliance, and a legally deficient statement prevents an initiative from going on the ballot. Fla. Stat. § 100.371(15). (The **Financial Impact Statement** category combines Plaintiff's "FIS" "speech" and "mandatory decertification" categories. Doc.293 ¶¶ 3, 5.).

The **One Amendment** provisions require petition sponsors to sponsor only one amendment. Fla. Stat. § 100.371(2). (Plaintiff calls this the "additional amendment prohibition.").

And the **Verification** provisions concern the supervisors' costs to verify signed petitions and costs to mail voters notice that their signatures were used on signed petitions. *E.g.*, Fla. Stat. § 100.371(14)(f).

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). 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). And under Rule 8, a complaint can be dismissed for shotgun pleading. *Jackson v. Bank of Am., N.A.*, 898 F.3d 1348, 1356 (11th Cir. 2018).

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

Plaintiff engages in shotgun pleading. There’s also standing issues in its complaint. And Plaintiff fails to state claims upon which relief can be granted.

I. Plaintiff Engages in Shotgun Pleading

For each of Plaintiff’s six counts, Plaintiff “realleges the allegations in paragraphs 1 – 116.” Doc.293 ¶¶ 117, 124, 130, 138, 143, 149. When a complaint “employs a multitude of claims and incorporates by reference all of its factual allegations into each claim, making it nearly impossible for” the defendant “and the Court to determine with any certainty which factual allegations give rise to which claims for relief,” that’s shotgun pleading. *Jackson*, 898 F.3d at 1356. That alone justifies dismissal, because it violates the general rules for a pleading. *See generally* Fed. R. Civ. P. 8(a), (d).

Plaintiff shouldn’t be given leave to amend, either. The plaintiffs groups in this case already had numerous chances to perfect their pleadings, and this Court imposed a pleading deadline of August 11. Doc.343. Allowing even more pleadings, past the deadline, invites more motion practice and does a disservice to the timely resolution of this case. *Rudder v. Wyrosdick*, 3:21-cv-1001, 2022 U.S. Dist. LEXIS 248615, at *3 (N.D. Fla. Sept. 7, 2022) (“A district court may deny leave to amend because of undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure

deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, and futility of amendment.” (cleaned up)).

II. Plaintiff Has Some Standing Issues

Plaintiff lacks standing for its challenges to the **Financial Impact Statement** provisions and the **One Amendment** provisions.

Before detailing specific problems, it’s important to highlight what’s in Plaintiff’s complaint. Plaintiff mentions two citizen initiatives: (1) a citizen initiative on the adult use of recreational marijuana (what it calls the “Proposed Amendment”), approved for use on January 14, 2025, Doc.293 ¶¶ 1, 34; and (2) a citizen initiative on the home cultivation of medical marijuana (what it calls the “Second Proposed Amendment”), which was submitted to the Secretary on May 8, 2025, Doc.293 ¶¶ 2, 78.

The first initiative is still live, but Plaintiff withdrew the second. In one of its attachments to its complaint, Plaintiff said that “Smart & Safe Florida withdraws the second petition entitled ‘Home Cultivation of Medical Marijuana’ and will continue its efforts to place initiative petition 25-01 [the currently active initiative] on the general election ballot.” Doc.293-6 at 2. Plaintiff has not alleged that it’s currently and actively seeking to advance the second initiative anymore.

With that said, consider the standing issues:

- **Financial Impact Statement.** These provisions (1) require a petition to include a financial impact statement and (2) if the Florida Supreme Court finds the statement deficient, the petition can’t be placed on the ballot.

As things currently stand, Plaintiff's active initiative (the first one, concerning adult recreational use of marijuana) doesn't need to include a financial impact statement, given that its form was approved for use before HB1205. And it's speculative at this point to conclude that the Florida Supreme Court will invalidate the financial impact statement that the Financial Impact Estimating Conference drafts for potential ballot placement. *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 414 (2013).

- **One Amendment.** Because Plaintiff withdrew its second citizen initiative (regarding home cultivation of medical marijuana), and because Plaintiff alleged no intention to advance it any further, the **One Amendment** provisions aren't triggered for Plaintiff. Plaintiff is just dealing with one citizen initiative.

Even so, Plaintiff says (in a footnote) that "should" its active initiative (adult use of recreational marijuana) "not be adopted at the 2026 General Election, Smart & Safe will pursue the amendment again in 2028." Doc.293 ¶ 78 n.20. But this chain of events—2026 ballot placement, 2026 defeat, etc.—is also too speculative to confer standing. *Clapper*, 568 U.S. at 414.

In sum, Plaintiff lacks standing to challenge the **Financial Impact Statement** provisions and the **One Amendment** provisions.

III. Plaintiff Fails to State Claims

Separately, from what can be gleaned from Plaintiff's shotgun pleading, Plaintiff fails to state claims upon which relief can be granted.

A. Count One (Political Speech). Plaintiff contends that four categories of HB1205 provisions—the **Petition Circulator Eligibility**, **Ten-Day Return Time**, **Financial Impact Statement**, and **One Amendment**—infringe upon its political speech.

As an initial matter, the State recognizes that this Court held that the **Petition Circulator Eligibility** provisions that prevent non-residents from collecting signed petitions implicate political speech. While the State disagrees, it doesn't advance its contrary arguments in this motion.

That said, the **Petition Circulator Eligibility** provisions concerning volunteer circulators don't touch speech. This Court indicated that the State has the better of the arguments, and the complaint itself is devoid of factual allegations that make the claim plausible. Doc.283 at 29 ("In short, Plaintiffs have not demonstrated, at this juncture, that the registration requirements pose an impermissibly severe burden on speech.").

As for the **Ten-Day Return Time** provisions, this Court held that such provisions survive First Amendment scrutiny, and the complaint lacks factual allegations to show why the deadline is inherently irrational. Doc.189 at 22 ("the challenged deadline and fine provisions are subject only to rational basis review").

The **Financial Impact Statement** provisions don't implicate political speech, either. At this stage, Plaintiff's active initiative petition (adult use of recreational marijuana) isn't required to include a financial impact statement. So, Plaintiff can't say that its "quantum of speech" is being reduced by this provision. *Meyer v. Grant*, 486 U.S. 414, 423 (1988). And state supreme court review of citizen-initiative procedures was deemed constitutional in *Biddulph v. Mortham*, 89 F.3d 1491, 1496 (11th Cir. 1996).

Nor do the **One Amendment** provisions touch political speech. It's part of the "state's power to regulate the initiative process in general," and it's not a regulation on

“the exchange of ideas about political changes sought through the process.” *Id.* at 1498 n.7. If the proponents of recreational marijuana wish to sponsor another initiative, then they are free to do so through another political committee registered with the State.

In sum, Plaintiff largely fails to establish its political speech claim.

B. Count Two (Association). Next, Plaintiff contends that the **Petition Circulator Eligibility** and **Ten-Day Return Time** provisions implicate its free association rights.

Plaintiff’s First Amendment association claim doesn’t add anything to the mix. It’s virtually indistinguishable from its First Amendment political speech claim in count one. Both claims involve allegations of circulators interacting with voters, and circulators interacting with Plaintiff. Plaintiff’s associational concerns can therefore be advanced in its political speech claim. *See, e.g., Citizens for Police Accountability Political Comm. v. Browning*, 572 F.3d 1213, 1217 n.6 (11th Cir. 2009) (“Plaintiffs contend that the Florida statute also infringes some on their First Amendment right to engage in political association. But even if true, the additional infringement has no material affect on the analysis otherwise applicable here; so we discuss it no further.”).

To the extent that Plaintiff asserts that *Anderson-Burdick* balancing applies to the standalone free association claim, the Eleventh Circuit already rejected that approach in citizen-initiative cases. *Biddulph*, 89 at 1500 n.10. After all, “the Constitution contains no universal ‘cost-benefit balancing’ provision.” *Lichtenstein v. Hargett*, 83 F.4th 575, 593 (6th Cir. 2023).

C. Count Three (Overbreadth). Plaintiff then argues that four categories—the **Petition Circulator Eligibility, Ten-Day Return Time, Financial Impact Statement,** and **One Amendment** categories—are overly broad. Not so.

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.*

Plaintiff’s complaint doesn’t do that. Its complaint identifies no constitutional applications of challenged provisions, nor does the complaint weigh them against the purportedly unconstitutional applications. Instead, Plaintiff merely concludes that the “Challenged Provisions prohibit a substantial amount of protected speech relative to its legitimate sweep.” Doc.293 ¶ 133.

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) (“SB 1 regulates *conduct*. It does not regulate any speech associated with the prohibited conduct,” and “Plaintiffs have not plausibly alleged that SB 1 penalizes a substantial amount of speech that is constitutionally protected.”).

D. Count Four (Compelled Speech). Plaintiff contends that the **Financial Impact Statement** provisions amount to compelled speech. It's not.

True, “the First Amendment stringently limits a State’s authority to compel a private party to express a view with which the private party disagrees.” *Walker v. Tex. Div., Sons of Confederate Veterans, Inc.*, 576 U.S. 200, 219 (2015). But right now, Plaintiff doesn’t have any views with which to agree or disagree—its active initiative isn’t required to have a financial impact statement on its form. And at this stage, Plaintiff doesn’t know what statement the Financial Impact Estimating Conference will draft (and the Florida Supreme Court will review) to be placed on the ballot (assuming Plaintiff collects enough verified petitions and withstands state supreme court review). Plaintiff could hypothetically receive the following statement from the conference:

THIS PROPOSED CONSTITUTIONAL AMENDMENT IS ESTIMATED TO HAVE A NET POSITIVE IMPACT ON THE STATE BUDGET. THIS IMPACT MAY RESULT IN GENERATING ADDITIONAL REVENUE OR AN INCREASE IN GOVERNMENT SERVICES.

Fla. Stat. § 101.161(1)(c). It could also receive no statement:

THE FINANCIAL IMPACT OF THIS AMENDMENT, IF ANY, HAS NOT BEEN DETERMINED AT THIS TIME.

Fla. Stat. § 101.161(1)(e). At this time, though, it’s too speculative to say.

More to the point, the **Financial Impact Statement** provisions don’t compel speech—the petition form itself is government speech. Sure, some parts of the petition form involve petition sponsors’ speech. But the government nonetheless controls how

the forms are formatted, and what information's required to be on it. Fla. Stat. § 100.371(3) (providing this information); *see also Walker*, 576 U.S. at 219-20 (concluding that “Texas’s specialty license plate designs constitute government speech”).

It’s noteworthy that Plaintiff doesn’t challenge the fact that the State can—and does—put a lot of information and statements on petition forms. The forms include the following statements: that “the form becomes a public record upon receipt by the supervisor,” that “it is a misdemeanor of the first degree to knowingly sign the petition more than once,” and that “the form will not be validated if all of the requested information is not completed.” Fla. Stat. § 100.371(3)(a). A statement about the financial impact of a citizen initiative is another permissible piece of information that the State can put on the petition form.

As such, Plaintiff failed to state a compelled speech claim.

E. Count Five (Content-Based Regulation). Plaintiff then contends that the **Verification** provisions are content-based speech regulations. It argues that the provisions “constitute content based regulation[s] of speech that unduly burdens Smart & Safe’s core political speech,” because “petitions to get a candidate or local referendum on the ballot are not subject to the same burdens.” Doc.293 ¶ 146.

This isn’t a good argument. A content-based regulation of speech turns on the “topic discussed or the idea or message expressed.” *Reed v. Town of Gilbert*, 576 U.S. 155, 163-64 (2015). It “draws distinctions based on the message a speaker conveys.” *Id.*

Florida law makes no content-based distinctions. Verification costs don't turn on ideas or messages. Say that a group wants to enshrine a right to smoke. That group's content—its message about smoking—doesn't dictate the verification costs. Instead, if the group goes through a *local* referendum, it's subject to one verification cost formula, and if it goes through the citizen-initiative process for the *State* constitution, it's subject to another verification cost formula. The distinction turns on something other than content.

And rational reasons support the distinction Florida makes between local referenda and citizen initiatives. The State's Office of Election Crimes and Security reports detail concerns about the citizen-initiative process. HB1205 also requires supervisors to engage in more anti-fraud measures such as notifying voters, through the mail, that petitions were signed in their name. Fla. Stat. § 100.371(14)(e). These additional steps, among other things, explain the difference in costs. Put another way, the law being challenged includes the more-than-rational reasons for the distinctions.

F. Count Six (Equal Protection). Finally, Plaintiff argues that the **Ten-Day Return Time** and **Verification** provisions violate the Equal Protection Clause. This argument largely overlaps with the arguments made in count five. But here, Plaintiff contends that these provisions create disparate treatments between petition sponsors, on one hand, and “candidates seeking to appear on the ballot by petition and sponsors of local referenda,” on the other hand. Doc.293 ¶ 151.

Plaintiff's claim doesn't work. If a law "neither burdens a fundamental right nor targets a suspect class," it "will" be "uph[e]ld" "so long as it bears a rational relation to some legitimate end." *United States v. Skarmetti*, 145 S. Ct. 1816, 1828 (2025) (cleaned up). Here, the two provisions should be upheld.

There's no burden on fundamental rights. In this case, Plaintiff failed to establish that the **Ten-Day Return Time** provision burdened its constitutional rights. Doc.189 at 22 ("the challenged deadline and fine provisions are subject only to rational basis review"). As for the **Verification** provision, Plaintiff has no fundamental right to low-cost verification. *Biddulph*, 89 F.3d at 1500-01 ("the Constitution does not require Florida to structure its initiative process in the most efficient, user-friendly way possible").

Nor is "state petition sponsor" a suspect class, like race.

Rational basis applies and is met for the reasons explained in count five (and for the reasons explained in this Court's first preliminary injunction order, Doc.189 at 22). Count six should be dismissed.

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 2,870 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
Mohammad O. Jazil