**No. 25-12370**

**UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT**

FLORIDA DECIDES HEALTHCARE INC, ET AL.,

*Plaintiffs-Appellees,*

*-v-*

FLORIDA SECRETARY OF STATE, ET AL.,

*Defendants-Appellants.*

On Appeal from the United States District Court for the Northern District of Florida, No. 4:25-cv-00211-MW-MAF

# FLORIDA RIGHT TO CLEAN WATER & LEAGUE OF WOMEN VOTERS OF FLORIDA PLAINTIFFS-APPELLEES' OPPOSITION TO DEFENDANTS-APPELLANTS' MOTION FOR STAY PENDING APPEAL



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## CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 and Circuit Rule 26.1, Plaintiffs-Appellees Florida Right to Clean Water and League of Women Voters of Florida certify that the following have an interest in the outcome of this case. Note that "Defendants(s)," as opposed to "Defendants-Appellants," refer to defendants in the case, other than the Florida Secretary of State and Florida Attorney General.

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232. Todd, Stephen, *Attorney for Defendant*

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236. Villane, Tappie, *Defendant*

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247. Wilcox, Wesley, *Defendant*
248. Williams, H. Russell, *Defendant*
249. Williams, Kenya, *Defendant*
250. Worrell, Monique, *Defendant*
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Per Circuit Rule 26.1-2(c), Plaintiffs-Appellees Florida Right to Clean Water and League of Women Voters of Florida certify that the CIP contained herein is complete.



Dated: July 24, 2025

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## INTRODUCTION

In May, Florida enacted a law severely restricting the rights of those seeking to amend Florida's Constitution. In part, that law banned all people who live outside Florida and all non-U.S. citizens from collecting signatures for ballot initiative campaigns. The district court quickly enjoined those provisions because they violate the First Amendment.

The district court's decision was an easy one: two Supreme Court cases, *Meyer v. Grant*, 486 U.S. 414 (1988), and *Buckley v. American Constitutional Law Foundation,* 525 U.S. 182 (1999), squarely hold that heightened scrutiny applies to laws that restrict who is allowed to circulate petitions for ballot initiatives. And while the new restrictions have already severely harmed each Plaintiff here by restricting their speech and reducing the likelihood that their initiatives would qualify for the ballot, Florida could not produce any evidence that non-U.S. citizens or non-residents were likely to commit fraud.



The Secretary of State and the Attorney General ("Movants") now seek the extraordinary remedy of a stay pending appeal. But rather than show that the district court erred, they ask this Court to create new law. On the merits, they advance a novel and stunningly inaccurate interpretation of *Meyer* and *Buckley* that would nullify those holdings. They assert that even if heightened scrutiny applies, they should not be required to muster any evidence that non-U.S. citizens or non-residents are particularly likely to commit petition fraud. And finally, they rely on *Purcell v. Gonzalez*, 549 U.S. 1 (2006), to effectively contend that laws relating to ballot initiatives should never be

enjoined because states continuously process petition signatures. Each of these arguments is meritless, and the motion for a stay should be denied.

## BACKGROUND

The Florida Constitution expressly reserves the right to propose constitutional amendments to the people. Fla. Const. art. XI, § 3. And that right serves as a "check and balance against legislative and executive power" by directly giving voters "a narrow but direct voice in amending their fundamental organic law." *Browning v. Fla. Hometown Democracy, Inc., PAC*, 29 So. 3d 1053, 1063 (Fla. 2010). For many years, Floridians have relied on this enshrined right to push for changes that the Legislature has declined to address through traditional legislation. But when they have sought such changes, the Legislature has systematically erected new barriers to direct democracy, making it more difficult for voters to approve new initiative amendments and place initiatives on the ballot.



HB 1205 is the Legislature's latest attempt to restrain the people's right to participate in direct democracy by hindering the ability to place significant issues on the ballot through petition collection and delivery. HB 1205 undermines Florida's entire petition circulation system—most notably by severely weakening the robust network of volunteer petition gatherers. The law does this by imposing heavy fines on grassroots sponsors such as Florida Right to Clean Water ("RTCW"). It also requires all volunteers who collect more than 25 signed petitions to register as circulators and subjects them to burdensome criminal and civil penalties. That includes volunteers for grassroots

organizations like the League of Women Voters of Florida ("LWVFL") and the League of United Latin American Citizens ("LULAC") (collectively "League Plaintiffs").

Relevant here, HB 1205 categorically bars certain people from participating in the signature-collection process. HB 1205's new eligibility requirements (the "Eligibility Requirements" or, separately, the "Non-U.S. Citizen Restriction" and "Non-Resident Restriction") prohibit individuals who are non-U.S. citizens (including permanent residents and visa holders) and non-residents of Florida from serving as petition circulators. HB 1205 § 6, 2025 Leg. (Fla. 2025) (amending Fla. Stat. § 100.371).[1] This ban applies irrespective of whether the person gathering signatures is paid or of how many petitions the person gathers. Because non-residents and non-U.S. citizens may not register as petition circulators, they are guilty of a third-degree felony if they collect, deliver, or physically possess more than 25 signed petition forms; sponsor groups are liable for a $50,000 fine for each non-U.S. citizen or non-resident who they knowingly allow to collect any forms. Fla. Stat. §§ 104.188(2); 100.371(4)(g).



The Proceedings Below

The League Plaintiffs and RTCW Plaintiffs (collectively "Appellees") each sought to preliminarily enjoin, among other things, the Eligibility Requirements. On July 8th, the district court enjoined the application of Eligibility Requirements as to

[1] HB 1205 also bars individuals with felony convictions who have not had their voting rights restored from collecting signed petitions. While League Plaintiffs challenge that provision in this litigation, they did not seek a preliminary injunction enjoining it.

RTCW's volunteers and Plaintiff Melissa Martin. Doc.283 at 38.[2] Separately, the court enjoined the Non-U.S. Citizen Restriction as to LWVFL and LULAC, permitting their non-citizen members to continue gathering petitions. Doc.283 at 39.

On the merits, the district court explained that the State's categorical prohibition on non-U.S. citizens and non-residents participating in petition gathering significantly burdened Appellees' "core political speech" and applied heightened scrutiny to strike down both provisions. Doc.283 at 19–20 (quoting *Meyer v. Grant*, 486 U.S. 414). Specifically, the court noted that this Court has historically applied heightened scrutiny to laws like the Eligibility Requirements, namely "where a state impermissibly burdens the free exchange of ideas about the objective of an initiative proposal." Doc.283 at 20 (citing *Biddulph v. Mortham,* 89 F.3d 1494, 1500 (11th Cir. 1996)).

The court then concluded that the restrictions failed heightened scrutiny, noting the "dramatic mismatch between the State's interest in combatting fraud in the initiative process and limiting the pool of potential circulators to U.S. citizens who are Florida residents." Doc.283 at 23. The court concluded therefore that Appellees were likely to succeed on their claims that the Eligibility Requirements violated the First Amendment. Doc.283 at 28. The court also held that Appellees had demonstrated irreparable injury, that the balance of equities favored an injunction, and that the public interest is served "when the First Amendment is vindicated." Doc.283 at 31–32.



[2] "Doc." refers to the district court docket. "ECF" refers to this Court's docket. Pin cites refer to the page numbers printed on the bottom of the page.

The court's findings were based on the extensive record before it. The unrebutted evidence presented by Appellees illustrated that HB 1205's exclusion of non-residents and non-citizens from petition collection dealt a shattering blow to their ability to carry out their missions. RTCW is a volunteer-run initiative sponsor organization that endeavors to place a state constitutional right to clean water on the 2026 ballot. Doc.113 at 4-5. Its core mission is engaging with Floridians about the state's waterways, explaining why the RTCW initiative is vital, and collecting signed petition forms with a goal of placing that initiative on the ballot. *Id.* To collect petitions, RTCW relies entirely on volunteers, including non-citizens and non-residents. *Id.* at ¶ 16.

Similarly, LWVFL trains and mobilizes hundreds of members to support initiatives, including the initiatives sponsored by Appellees RTCW and Florida Decides Healthcare ("FDH"). Doc.174-1 ¶¶ 12–13. Members of LULAC have also gathered petitions in support of past initiatives and planned to collect petitions in support of FDH. Doc.174-2 ¶¶ 7–12. The members of these organizations are passionate about these issues and are eager to help sponsors get their message out through circulating petitions. Doc.174-1, ¶¶ 14–15, 52; Doc.260-2 at ¶ 9; Doc.270-3 at ¶ 4; Doc.730-2 at ¶ 4-5.

The court's ruling rested upon the evidence in the record that Appellees rely on volunteers and have members who are non-citizens and non-residents and plan to collect petitions in support of the ongoing initiatives. Doc.283 at 9. For example, RTCW submitted declarations and testimony that it has members who are non-citizens

and non-residents, including Plaintiff Melissa Martin. Doc.171-3 ¶¶ 3, 8; Doc.171-2 ¶¶ 9, 16; Doc.171-1 ¶¶ 64–65, 67–68.). RTCW submitted evidence that several of its volunteers do not live in Florida full-time. Doc.171-1 ¶ 9. And it submitted a declaration from one of its non-citizen volunteers who has collected petition forms for RTCW since April 2023, wished to do so in the future, and was unable to do so under the new law. Doc.220-1 ¶¶ 7, 15-16. As a result, RTCW has lost volunteers who otherwise would be supporting their petition gathering activities. Doc.173-1 at 13 (citing Doc.171-1 ¶ ¶47, 50; Doc.171-2 ¶¶ 9, 23–26; 71–3 ¶¶ 2–3, 7–8, 13–14). This has hindered RTCW's ability to spread its message and to collect signed petitions to put the clean water initiative on the ballot. Doc.173-1 (citing Doc.171-1 ¶¶ 47, 50).

Likewise, the League Plaintiffs showed that they depend on non-citizens to support their petition gathering operations through declarations and testimony. Doc.175-1 at 6–7 (citing Doc.174-1 at ¶¶ 33–35; Doc.174-2 at ¶¶ 14–20). As the district court found, LULAC and the League have several non-citizen members that live throughout the state, Doc.283 at 10 (citing PI H'rg Tr. at 85–86), including League members in Orange, Polk, Walton, and Bay Counties, PI H'rg Tr 83:10-20. LULAC's declaration explains that the organization "has a large volunteer base that is made up of permanent residents or of people who are on work or student visas," who have previously gathered petitions in support of initiatives (including the FDH initiative) in the past, but are now unable to do so. Doc.174-2 at ¶¶ 16–20. The League also submitted evidence that it relies on out-of-state volunteers, including League members

from outside Florida and snowbirds who only live in Florida on a seasonal basis. Doc.175-1 at 6–7 (citing Doc.174-1 at ¶ 32). As explained in the declarations of the League and LULAC, this has limited each organization's ability to communicate its message to voters and collect signatures in support of initiatives it has endorsed, including the RTCW and FDH initiatives. Doc.174-1 at ¶¶ 12, 34, 53; Doc.174-2. ¶¶ 14–20.

The district court also rejected the State's theory that the Eligibility Requirements prevent fraud, instead finding that the evidence submitted by the State likely shows that the instances of fraud stem from pay-per-signature schemes and has to do with a lack of recordkeeping and cooperation. Doc.283 at 25–26. The "complete ban on all non-residents and non-citizens, paid and unpaid" is not "narrowly tailored to furthering the State's interest in combatting fraud in the initiative petition process." Doc.283 at 27. In sum, the court concluded that the Restrictions place "a severe burden on political expression that the State failed to justify, and thus Plaintiffs are substantially likely to succeed on their claims that these provisions violate the First Amendment." *Id.*



The Instant Motion

On July 11, Movants filed their notice of appeal with the district court. Doc.284. Three days later, the Secretary of State and the Attorney General filed a "time-sensitive

motion" in this Court seeking an emergency stay of the preliminary injunction. ECF 2-1.[3]

## LEGAL STANDARD

A stay of a preliminary injunction requires the exercise of judicial discretion, and "the party requesting the stay must demonstrate that the circumstances justify the exercise of that discretion." *Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1317 (11th Cir. 2019). To obtain a stay, the movant must establish (1) a strong showing that it is likely to succeed on the merits, (2) irreparable injury absent the issuance of a stay, (3) the stay will not substantially injure the other parties interested in the proceeding, and (4) that the public interest favors a stay. *Id.* (*citing Nken v. Holder*, 556 U.S. 418, 434 (2009)); *Fla. Immigrant Coal.*, 2025 WL 1625385, at *2 (quotations omitted). The first two factors are the most critical. *Nken*, 556 U.S. at 434.



## ARGUMENT

1. Movants have not made a strong showing they are likely to succeed on the merits

Movants have little chance of succeeding on the merits. The district court correctly concluded that heightened scrutiny applies to both Eligibility Requirements because they prohibit core political speech, and that the provisions cannot withstand that scrutiny.

[3] Although the preliminary injunction applies to Defendant Supervisors of Elections and State Attorneys, *see* Doc.283 at 37-39, those Defendants have not moved for a stay or noticed an appeal. Thus, any relief granted here would apply only to Movants. *See, e.g.*, *Fla. Immigrant Coal. v. Att'y Gen.*, 2025 WL 1625385 at *4–*5 (11th Cir. 2025).

a. *The Eligibility Requirements are subject to heightened scrutiny*

The Supreme Court has explained that laws restricting petition circulation for ballot initiatives "trench[] upon an area in which the importance of First Amendment protections is at its zenith." *Meyer*, 486 U.S. at 425 (quotations omitted). Therefore, "the burden that [a state] must overcome to justify [such a] criminal law is well-nigh insurmountable." *Id.*

Thus, in *Meyer*, the Court invalidated a Colorado law prohibiting ballot initiative sponsors from paying petition circulators, reasoning that doing so would "limit[] the number of voices" who would spread the sponsors' message and "make[] it less likely" that the sponsors would "garner the number of signatures necessary to place the matter on the ballot." *Id.* at 422–23. In *Buckley*, the Court struck down several other Colorado statutes regulating petition circulation, including a requirement that circulators be registered voters. 525 U.S. at 194–97. As in *Meyer*, the Court explained that the restriction would reduce the number of people who could convey the sponsors' message and therefore reduce the size of the audience the initiative proponents could reach. *Id.* at 194–95.



Here, the district court correctly concluded that under *Meyer* and *Buckley*, heightened scrutiny applies to both Eligibility Requirements. Just as in those cases, the restrictions ban entire classes of people from circulating petitions. They therefore "limit the number of voices" available to spread RTCW's message, as well as those messages espoused by League and LULAC members, and make it less likely that RTCW's

initiative will qualify for the ballot. *Meyer*, 486 U.S. at 422; *see* Doc.283 at 22–23. As the court noted, all but one Court of Appeals to consider a law similar to the Non-Resident Restriction has held that heightened scrutiny applies. Doc.283 at 20-21.[4] And as required by Supreme Court precedent, the district court rejected Movants' argument that restrictions on who may circulate petitions regulate only conduct, not speech. *See id.* at 19 n.17, 23–24 (citing *Buckley*'s holding that "[p]etition circulation is core political speech") (alterations omitted).

Movants' argument to the contrary relies on a single, faulty premise: they assert that unlike the Eligibility Requirements, the laws at issue in *Meyer* and *Buckley* prevented certain people "from even approaching voters, discussing petitions, and encouraging voters to sign." ECF 2-1 at 12; *see id.* at 13. But that is simply wrong. Just like the Eligibility Requirements here, the laws challenged in *Meyer* and *Buckley* regulated the circulation of petitions—*i.e.*, the distribution of unsigned petitions and the collection of signed ones—not the speech surrounding that circulation. The Court invalidated those laws because it understood that the act of circulating a petition was almost always accompanied by speech seeking to persuade someone to sign the petition. *See Meyer*,



[4] The district court correctly rejected the reasoning in the outlier case, *Initiative & Referendum Inst. v. Jaeger*, 241 F.3d 614 (8th Cir. 2001). *See* Doc.283 at 21. In *Jaeger*, the Eighth Circuit upheld a restriction on petition circulation in part because those who were banned from circulating petitions were "still free to speak to voters regarding particular measures." *Id.* at 617. That reasoning ignores *Meyer*'s contrary holding. *See* 486 U.S. at 424.

486 U.S. at 421 (circulation "will in almost every case involve an explanation of the nature of the proposal and why its advocates support it").

Start with the statutory text: the law in *Meyer* said nothing about whether sponsors could pay people to discuss the merits of a petition; it banned payment for "'the *circulation of* an initiative or referendum petition.'" 486 U.S. at 416 n.1 (quoting Colo. Rev. Stat. § 1–40–110 (1980)) (emphasis added). Likewise, the statute in *Buckley* provided that "[n]o section of a petition for any initiative . . . shall be *circulated* by any person" who is not a registered voter. Colo. Rev. Stat. § 1–40–112(1) (1998) (emphasis added). And to "circulate" a petition is to distribute "the approved drafts of the petitions for signature," 486 U.S. at 417, and then to "collect the signatures." *Am. Const. L. Found., Inc. v. Meyer*, 120 F.3d 1092, 1096 (10th Cir. 1997) ("Petition circulators collect the signatures and sign affidavits in which they aver, among other things, that each signer was a registered elector and was not paid to sign the petition."). Indeed, after *Meyer*, initiative sponsors in Colorado were required to report the "amount paid per signature" to circulators, not any amount paid for merely discussing the petitions with voters. *Id.* at 1104 (quoting Colo. Rev. Stat. § 1–40–121(1)).



The Supreme Court and other courts have reiterated this same understanding of the Colorado laws at issue in *Buckley* and *Meyer*. As the *Buckley* Court described it, the ban on paid petition circulation in *Meyer* regulated "hired signature collector[s]." 525 U.S. at 196 n.17. And this Court explained that in *Meyer*, "the Court determined that the *circulation* of initiative petitions *and the concomitant exchange* of political ideas constitutes

'core political speech.'" *Biddulph*, 89 F.3d at 1498 (emphases added); *see also Project Vote v. Kelly*, 805 F. Supp. 2d 152, 162, 164 (W.D. Pa. 2011) (explaining that statutes in *Meyer* and *Buckley* "did not specifically limit or restrain 'speech'" but were "burdensome to potential speakers"); *id.* at 162 (statute in *Meyer* prohibited payment "for a canvasser's act of circulating a petition").

The Colorado Attorney General shared this understanding of the law when *Meyer* was argued, explaining that "[t]he Colorado constitution establishes the petition *circulator* as the person with the public duty to determine the *validity of the signatures* of the persons who sign the petitions." *Meyer*, Brief for Appellants, 1987 WL 880992, at *12 (emphasis added). Just like Movants do here, Colorado unsuccessfully sought to persuade the Court that "the fact that a person voluntarily links his conduct with a speech component does not transform the conduct into speech." *Id.*



While Movants quote the statutory language from *Meyer* and *Buckley*, they offer no support for their conclusion that the law prevented people from "discussing petitions." ECF 2-1 at 12.[5] They instead quote a single line from *League of Women Voters of Fla. v. Browning*, 575 F. Supp. 2d 1298 (S.D. Fla. 2008), which explains that "the statute at issue in *Meyer* directly regulated the conditions under which plaintiffs could interact with members of the public." *Id.* at 1321; *see* ECF 2-1 at 12–13. But nowhere did the *Browning* court imply that the law in *Meyer* banned mere discussion of petition initiatives.

[5] *Amici* States make the same argument as Movants and provide equally little support for it. *See* ECF 30 at 10.

That court, like others, recognized that the Colorado law "prohibit[ed] organizations from paying individuals to *circulate* petitions." *Browning*, 575 F. Supp. 2d at 1321. Indeed, by highlighting how the law in *Meyer* limited interaction between circulators and potential signatories, the *Browning* court acknowledged that restricting distribution and collection of petitions inevitably interferes with the corresponding discussion that is a core part of petition circulation. *See id.*

The district court also correctly applied *Biddulph*, 89 F.3d 1491, a case this Court decided before *Buckley*. In *Biddulph*, this Court "distinguish[ed] between regulation of the circulation of petitions—which is 'core political speech'—and a state's general initiative regulations." *Id.* at 1497. The Court identified three categories of regulations of the initiative process that are "subject to strict scrutiny." *Id.* at 1500. One category is comprised of laws, like those in *Meyer*, in which "a state impermissibly burden[s] the free exchange of ideas about the objective of an initiative proposal." *Id.* Here, the district court concluded that "[t]he residency and citizenship requirements . . . directly implicate [that] category," because they create "a severe burden on the free exchange of ideas about petition initiatives." Doc.283 at 20, 23. Movants do not (and could not) dispute the district court's reasoning on this point.



Finally, Movants maintain that even if heightened scrutiny applies, this Court should apply "exacting," rather than "strict" scrutiny. ECF 2-1 at 14. But that contradicts this Court's instruction to apply "strict scrutiny" to the category of initiative regulations at issue here. *Biddulph*, 89 F.3d at 1500; *see also id.* at 1498 ("The *Meyer* Court

then applied strict scrutiny to the Colorado law. . . ."). It also ignores that the Supreme Court previously used the terms exacting scrutiny and strict scrutiny interchangeably. *See McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 346 n.10, 347 (1995) (explaining that the *Meyer* Court "unanimously applied strict scrutiny to invalidate an election-related law" before describing the "exacting scrutiny" standard). But the terminology used is ultimately unimportant; under either level of scrutiny, the Eligibility Requirements must be narrowly tailored to an important state interest. *See Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595, 608 (2021) ("[E]xacting scrutiny does not require that disclosure regimes be the least restrictive means of achieving their ends, it does require that they be narrowly tailored to the government's asserted interest."). As the district court properly concluded, they cannot pass that test.



b. *The Non-U.S. Citizen Restriction fails heightened scrutiny*

Applying heightened scrutiny, the district court easily concluded that the Non-U.S. Citizen Restriction likely violates the First Amendment. While Florida's interest in preventing ballot initiative fraud is compelling, "the record demonstrates a dramatic mismatch between the State's interest in combatting fraud in the initiative process and limiting the pool of potential petition circulators to U.S. citizens who are Florida residents." Doc.283 at 23.

For one, the State's own declarant was "'unaware of any investigations involving non-citizen petition circulators.'" *Id.* at 27 (quoting Doc.267-2 ¶ 17). Instead, Movants relied on "isolated instances of non-citizens allegedly behaving badly in other contexts

within the universe of election regulations," "[b]ut mere assumptions are no substitute for actual evidence demonstrating that it is necessary to burden Plaintiffs' ability to communicate their messages." *Id.* As the court recognized, state investigators actually believe that "unlawful pay-per signature schemes" are "the primary motivator for the suspected fraud," *id.* at 25, and banning non-U.S. citizens from circulating petitions is not tailored to resolve that problem.

Movants now contend that non-U.S. citizens are "[c]onceptually . . . out-of-staters" and that "there's always a risk they can leave the state." ECF 2-1 at 6. They also assert that non-U.S. citizens "likely have left" the state after collecting *voter registration forms*—not ballot initiative petitions. *Id.*[6] But Movants' reliance on this wholly speculative concern only highlights their failure to produce any evidence supporting a need for the Non-U.S. Citizen Restriction. *See also* ECF 2-1 at 16 (arguing that non-resident circulators "have proven difficult to locate and investigate" and that "the same *would hold true* for non-citizen petition circulators") (emphasis added).



Moreover, even if Movants could show that *some* group of non-U.S. citizens, such as undocumented individuals, were more likely to commit fraud while circulating petitions than U.S. citizens—which they have not attempted to do—the law is not well-

[6] Even Movants' allegation that non-U.S. citizens "likely have left" Florida before delivering voter registration forms is based on flimsy evidence. *Id.* They rely on a single allegation that a canvasser visited Mexico and failed to timely submit three voter registration applications, but they remain uncertain whether that person was a U.S. citizen. *See NAACP v. Byrd*, 4:23-cv-215, Doc.311 at 13 (N.D. Fla. Apr. 29, 2024).

tailored because it bans collection of petitions by *all* non-U.S. citizens, including those lawfully in the United States. This tailoring problem is highlighted by the fact that Florida does not impose such a broad ban on non-U.S. citizens in other contexts—the state allows non-U.S. citizens lawfully present in the United States to work as state employees in the Department of State, Supervisors of Elections offices, and other departments. *See Hisp. Fed'n v. Byrd*, 719 F. Supp. 3d 1236, 1243 n.2 (N.D. Fla. 2024).

Movants have little to say about the district court's tailoring analysis—they maintain that the State "produced evidence of non-citizens engaging in bad conduct in Florida's elections" and that "[m]ore isn't needed." ECF 2-1 at 17–18. But *Meyer* says just the opposite—the State's burden is "well-nigh insurmountable," and it must produce appropriate evidence to survive heightened scrutiny. *See* 486 U.S. at 425–26 (refusing to accept state's claim that law was necessary to protect "the integrity of the initiative process" because evidence was insufficient); *see also Bonta*, 594 U.S. at 613 (concluding that even if there were some evidence that state relied on disclosures to investigate fraud, it fell "far short of satisfying the means-end fit that exacting scrutiny requires").



Movants rely on *Brnovich v. DNC*, 594 U.S. 647 (2021), to assert that "'a State may take action to prevent election fraud without waiting for it to occur and be detected within its own borders.'" ECF 2-1 at 18 (quoting *Brnovich*, 594 U.S. at 686). That reliance is misplaced. *Brnovich* was a case brought under Section 2 of the Voting Rights Act—not the First Amendment or any other part of the Constitution—challenging an

Arizona law prohibiting people from delivering other voters' mail ballots. The Court highlighted evidence of mail ballot fraud in North Carolina and from the Carter-Baker Commission, explaining that such out-of-state evidence was sufficient to justify Arizona's concern about fraud. *Brnovich*, 594 U.S. at 685–86. But here, Movants have pointed to *no* evidence, within Florida or elsewhere, that non-U.S. citizens are more likely than U.S. citizens to commit petition fraud. That lack of evidence is even more telling here, where Florida has for decades allowed non-U.S. citizens to circulate petitions and has intensely investigated petition fraud. *See* ECF 2-1 at 3–6 (summarizing state investigations). In short, nothing in *Brnovich* changes the well-established principle that laws infringing on First Amendment rights must be supported by appropriate evidence. *See*, *e.g.*, *Bonta*, 594 U.S. at 613. Movants have failed to provide that support here.[7]



c. *The Non-Resident Restriction fails heightened scrutiny*

Appellees incorporate the arguments made in the response brief of Plaintiffs-Appellees FDH and Smart & Safe Florida concerning the Non-Resident Restriction. As explained therein and by the district court, Movants produced no evidence demonstrating that non-residents are particularly likely to commit petition fraud. And

[7] Although heightened scrutiny is undoubtedly required here, the Non-U.S. Citizen Restriction would fail even a lower standard of scrutiny because of the State's utter failure to produce evidence or sound reasoning supporting the Non-U.S. Citizen Restriction. *See* Doc.256 at 6 n.6, 7-8.

even if they had, they have "fail[ed] to justify a complete ban where [their] own evidence indicates narrower solutions." Doc.283 at 27.

2. The remaining factors weigh against granting a stay

The three remaining factors of the *Nken* analysis—irreparable injury, harm to the non-moving party relative to that of the moving party, and the public interest—all decidedly cut against Movants' request. Movants simply attempt to relitigate the merits, contending that because the Eligibility Requirements are "likely constitutional," ECF 2-1, at 18 (internal citations omitted), their inability to enforce the laws inflicts irreparable harm to the State. But the State has "no legitimate interest in enforcing an unconstitutional law." *See Honeyfund.com v. Governor of Fla.*, 94 F.4th 1272, 1283 (11th Cir. 2024). Indeed, the district court correctly determined that Appellees' challenge to the Eligibility Requirements is substantially likely to succeed given the "severe burden" these restrictions place on Appellees. Doc.283 at 21. Movants' irreparable harm arguments thus fall apart.



In contrast, the harm to Appellees from the enforcement of an unconstitutional law is irreparable. Should this Court stay the preliminary injunction, the Eligibility Requirements will go into immediate effect and lead to a litany of adverse consequences: the members of LWVFL and LULAC, the volunteers of RTCW, and Plaintiff Melissa Martin will lose their ability to speak to Florida voters and exercise their fundamental right to free speech and association. *See, e.g.*, Doc.174-2 ¶¶ 51–53, Doc.171-1 at 21. Moreover, it will "be less likely" that RTCW will "garner the number of signatures

necessary to place the matter on the ballot." *Meyer*, 486 U.S. at 423; Doc.283 at 21–22. Movants argue that organizations like RTCW, the League, and LULAC do not face irreparable harm because it is unclear how many non-U.S. citizens or non-residents gather petitions for them. ECF No. 2-1 at 19. But that argument fails because courts have long recognized that "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion); *accord Honeyfund*, 94 F.4th at 1283.

Further, granting Movants' motion would not serve the public interest, because "[t]he public interest is served when constitutional rights are protected." *Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d at 1327; *see Otto*, 981 F.3d at 870 ("[N]either the government nor the public has any legitimate interest in enforcing [such an] unconstitutional" law.").



Nor does the *Purcell* principle help Movants. The *Purcell* principle applies on the "eve of an election," a circumstance clearly not present here. *Jacksonville Branch of NAACP v. City of Jacksonville*, 2022 WL 16754389, at *2 (11th Cir. Nov. 7, 2022) (rejecting application of *Purcell* when stay was sought five months prior to election). Here, the absolute earliest pertinent deadline—the submission of signed petitions for a ballot initiative to be placed on the 2026 General Election—is February 1, 2026, over a half year away. Certainly, the bounds of *Purcell* do not come close to stretching so far.

Movants assert that "with citizen initiatives, the machinery is always running." ECF No. 2-1, at 20. But by that logic, no federal court could ever enjoin an

unconstitutional law, and any challenge by a plaintiff would be futile precisely because "the machinery is always running." And while Movants maintain that "the 'rules of the road' should 'be clear and settled'" any time that machinery is running, ECF 2-1 at 19 (quoting *Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring), they fail to acknowledge that it was HB 1205 that drastically changed the laws surrounding petition circulation in the middle of a signature-gathering cycle; the district court's injunction partially restored the status quo shortly after the law was enacted.

Indeed, the limitations of the *Purcell* principle are not thrown out the window simply because a challenged law implicates pre-election conduct. Whether it be petition circulation, voter registration, or election advocacy efforts, myriad election-related activities take place well before the election itself. Statutory restrictions on such activities are frequently the subject of litigation, yet Movants can cite no case that has interpreted the *Purcell* principle so broadly as to preclude challenges of election-related laws on the basis that election machinery is always running. *See Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 589 U.S. 423 (2020).



## CONCLUSION

For all these reasons, the motion for stay should be denied.

Dated: July 24, 2025

Respectfully Submitted,

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## CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g), I hereby certify that the foregoing Opposition to Motion to Stay contains 5,155 words, consistent with the length limitation in Fed. R. App. P. 27(d)(2). This motion has been prepared using a proportionally spaced typeface using Microsoft Word in 14-point Garamond, consistent with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type styles requirements of Fed. R. App. P. 32(a)(6).

Dated: July 24, 2025

/s/ Brent Ferguson
Signature

**CERTIFICATE OF SERVICE**

I certify that on July 24, 2025, I electronically filed the foregoing document using the Court's CM/ECF system, which will serve all counsel of record.

/*s*/ Brent Ferguson
Signature