

**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 REPLY TO FLORIDA DECIDES HEALTHCARE'S
RESPONSE IN OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT (DOC.512)**

Memorandum

Mindful of the limitations in Local Rule 56.1(D), the Secretary and Attorney General file this reply in support of their summary judgment motion directed at the Florida Decides Healthcare Plaintiffs. Doc.471. The State focuses on two points: Plaintiffs' attempt to sidestep the Eleventh Circuit's most recent explication of the legal standards that should govern this case, and Plaintiffs' argument that the State can't move for summary judgment in defense of the **Verification** provisions. Doc.512.

I. Plaintiffs are wrong to discount the Eleventh Circuit's decision.

On September 9, 2025, the Eleventh Circuit granted the State's motion to stay the July 8, 2025, preliminary injunction pending appeal. *Fla. Decides Healthcare, Inc. v. Fla. Sec'y of State*, 25-12370, 2025 U.S. App. LEXIS 23431 (11th Cir. Sept. 9, 2025). The Eleventh Circuit found that the State is likely to succeed on the merits of its appeal. *Id.* at *24. Plaintiffs say that it's wrong for the State to now rely so extensively on the Eleventh Circuit's stay panel opinion. Doc.512 at 1, 19, 22-23, 25.

True, the Eleventh Circuit's stay panel opinion isn't dispositive of all legal issues, but it's highly persuasive authority. This Court has agreed with that point in the past. When the Eleventh Circuit addressed legal issues concerning the State's felon re-enfranchisement provision at the preliminary injunction stage, this Court deferred to the Eleventh Circuit's perspective later in the underlying case. *See Jones v. DeSantis*, 462 F. Supp. 3d 1196, 1208 (N.D. Fla. 2020) (referring to preliminary injunction opinion

and explaining that “the Eleventh Circuit’s analysis is more important than anything included in this order”) (reversed on other grounds).

Another district court within this circuit has done much the same. The Northern District of Georgia said this about stay panel decisions: “While this Court recognizes that stay-panel opinions are ‘tentative,’ ‘preliminary [in] nature,’ and are ‘not a final adjudication of the merits of the appeal,’ this Court accepts the stay-panel’s opinion” “as persuasive authority.” *Fair Fight Action, Inc. v. Raffensperger*, 634 F. Supp. 3d 1128, 1228 n.80 (N.D. Ga. 2022) (alteration in original) (quoting *Democratic Exec. Comm. of Fla. v. Nat’l Republican Senatorial Comm.*, 950 F.3d 790, 795 (11th Cir. 2020)); see also *E. Bay Sanctuary Covenant v. Trump*, 950 F.3d 1242, 1264–65 (9th Cir. 2020) (while an order on a stay motion was “not binding,” it was still “persuasive”).

So, when it comes to summary judgment, it matters that the Eleventh Circuit concluded that “H.B. 1205’s residency and citizenship requirements do not restrict any speech elements of the petition-circulation process.” *Fla. Decides Healthcare*, 2025 U.S. App. LEXIS 23431, at *14. It matters that the Eleventh Circuit recognized that “*Biddulph* limits strict scrutiny to instances where the law ‘substantially restricts political discussion.’” *Id.* at *16–17 (quoting *Biddulph v. Mortham*, 89 F.3d 1491, 1498 (11th Cir. 1996)). And it matters where the Eleventh Circuit ultimately drew the line between speech and conduct in the petitioning process—that the interactive communication between a canvasser and a voter implicates speech but everything that follows is conduct. See generally *id.* at *17–20.

II. The Secretary and Attorney General can move for summary judgment on the Verification provisions.

The Secretary, as the appropriate *Ex parte Young* defendant, *Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1318 (11th Cir. 2019), and the Secretary and Attorney General, as the officers with standing to defend the state law at issue, *League of Women Voters of Fla., Inc. v. Fla. Sec’y of State*, 66 F.4th 905, 945 (11th Cir. 2023), may move for summary judgment on Plaintiffs’ challenges to the **Verification** provisions.

An “important requirement” of *Ex parte Young* “is that the state officials being sued must have some connection to the enforcement of the challenged provisions under state law.” *Common CAUSE Fla. v. Desantis*, No. 4:22-cv-109-AW-MAF, 2022 U.S. Dist. LEXIS 242946, at *6 (N.D. Fla. Nov. 8, 2022) (three-judge panel). “They must, in other words, be in some way ‘responsible for enforcing the allegedly unconstitutional scheme.’” *Id.* (quoting *Osterback v. Scott*, 782 F. App’x 856, 858-59 (11th Cir. 2019)).

Here, “it is Florida’s Secretary of State (currently Secretary Byrd) who is the ‘chief election officer of the state,’ and that is a correct statement of Florida law.” *Id.* at *6-7 (citing § 97.012(1), Fla. Stat.). “The Secretary of State” “is ‘responsible for the administration and implementation of election laws in Florida.’ That too is an accurate description of Florida law.” *Id.* at *7.

For his part, “the Attorney General has the authority to ‘appear in and attend to, in behalf of the state, all suits or prosecutions, civil or criminal or in equity, in which

the state may be a party, or in anywise interested' in federal court.” *League of Women Voters of Fla.*, 66 F.4th at 945 (citing § 16.01(4)-(5), Fla. Stat.). He too can thus participate in this case and move for summary judgment to defend state law.

In the end, Plaintiffs are wrong in their assertion that “[t]his Court should deny the Motion as to Plaintiffs’ First Amendment and Equal Protection challenges to the Verification Fee provisions” because they “are brought against only the *Supervisors*.” Doc.512 at 14. “*Ex parte Young* does not require a grant of explicit enforcement authority,” for the Secretary of State and Attorney General to protect the State’s interest and defend the constitutionality of state law. *Support Working Animals, Inc. v. DeSantis*, 457 F. Supp. 3d 1193, 1209 (N.D. Fla. 2020) (quoting *Ex parte Young*, 209 U.S. 123, 157 (1908)); see also *League of Women Voters of Fla.*, 66 F.4th at 945 (the Secretary “need not be bound by an injunction nor even bear the primary responsibility for enforcing the [challenged] provision to enjoy the requisite interest”).

Dated: October 27, 2025

Respectfully submitted,

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Local Rules Certifications

As required by Local Rule 5.1, 7.1, and 56.1, I certify that this reply contains 948 words and complies with this Court's word count, spacing, and formatting requirements.

/s/ Mohammad O. Jazil
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Certificate of Service

I certify that on October 27, 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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