

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.

U.S. District Court for the Northern District of Florida, No. 4:25-cv-211-MW-MAF
(Walker, J.)

**DEFENDANTS-APPELLANTS FLORIDA SECRETARY OF STATE
AND FLORIDA ATTORNEY GENERAL'S REPLY IN SUPPORT OF
THEIR TIME-SENSITIVE MOTION FOR STAY PENDING APPEAL**

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**CERTIFICATE OF INTERESTED PERSONS
AND CORPORATE DISCLOSURE STATEMENT**

Per Rule 26.1 and Circuit Rule 26.1, Defendants-Appellants Florida Secretary of State and Florida Attorney General certify that the following have an interest in the outcome of this case. Note that “Defendant(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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- 242. State of Georgia, *Amicus Curiae*
- 243. State of Indiana, *Amicus Curiae*
- 244. State of Kansas, *Amicus Curiae*
- 245. State of Louisiana, *Amicus Curiae*
- 246. State of Missouri, *Amicus Curiae*
- 247. State of Montana, *Amicus Curiae*
- 248. State of Nebraska, *Amicus Curiae*
- 249. State of North Dakota, *Amicus Curiae*
- 250. State of South Carolina, *Amicus Curiae*
- 251. State of Tennessee, *Amicus Curiae*
- 252. State of Texas, *Amicus Curiae*
- 253. State of Utah, *Amicus Curiae*
- 254. State of West Virginia, *Amicus Curiae*
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275. Walker, Mark E., *U.S. District Court Judge*
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- 282. Wertz, Debbie, *Defendant*
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Per Circuit Rule 26.1-2(c), Defendants-Appellants Florida Secretary of State and
Florida Attorney General certify that the CIP contained herein is complete.

Dated: July 28, 2025

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PRELIMINARY STATEMENT

The docket-citation and HB1205-reference conventions from the State’s motion apply in this reply. The motion is referred to as “Mot.” The Florida Decides Healthcare and Smart & Safe Plaintiffs’ response is referred to as “FDH & SS Resp.” And the Florida Right to Clean Water and League of Women Voters Plaintiffs’ response is referred to as “FRTCW & LWV Resp.”

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ARGUMENT

The State asks this Court to grant its **time-sensitive** motion to stay **as soon as practicable**. Contrary to Plaintiffs' contentions, the State doesn't need to wait for more Floridians to have their information misappropriated, identities stolen, or signatures forged. Nor does the State need to link every crime to an out-of-state or non-citizen circulator before banning these individuals from *collecting* signed petitions. Legislative findings, investigatory delays, ongoing investigations, and a dose of common sense are enough. That's especially so because the State's prohibitions concern conduct, not speech. Plaintiffs' misreading of *Meyer*, *Buckley*, and out-of-circuit precedent cannot turn conduct (the collection of signed petitions) into speech (the face-to-face interaction needed to persuade another person to sign a petition). The State otherwise stands by the arguments made in its motion and made before the district court. After reviewing Plaintiffs' responses, the State makes five points in this reply.

I. There's Petition Fraud in Florida

The Florida Decides Healthcare and Smart & Safe Plaintiffs say that the State advances an "unsupported claim that fraud permeates Florida's initiative process." FDH & SS Resp. at 2. This misrepresents the record, especially when Smart & Safe's circulators are among the worst offenders. Its circulators have stolen and misappropriated information of a public official. Mot. at 4. They've submitted thousands of invalidated petitions. Mot. at 4. They've been investigated and arrested for fraud. Mot. at 4. The fraud continues, and it's harder to investigate when people (be

they Californians or Colombians) can retreat to other jurisdictions. Doc.267-2 ¶¶ 15-17.

The Office of Election Crimes and Security reports make clear: there's been "widespread petition fraud in connection with a number of initiative petitions." Doc.103-2 at 8. To wish this wasn't so is one thing. It's another to misrepresent reality.

II. Conduct Isn't Speech

Plaintiffs insist that the act of collecting and then delivering signed petition forms (conduct) is the same as the discussion of issues of public importance (speech). They say that *Meyer*, *Buckley*, and out-of-circuit cases support the proposition. They're wrong.

Start with *Meyer*. It concerned a prohibition on the "circulation of an initiative or referendum petition," signed or unsigned. 486 U.S. 414, 416 n.1 (1988) (quoting Colo. Rev. Stat. § 1-40-110 (1980)). The regulation prevented paid circulators from "merely discussing the[ir] petitions with voters." FRTCW & LWV Resp. at 11. Or, as the Supreme Court put it, the regulation prevented paid circulators from having "conversations with voters in an effort to get them to sign the petition[s]." *Meyer*, 486 U.S. at 421 n.4. And, in *that* circumstance, given *that* statute, the Court said that the "circulation of an initiative petition" "involves both the expression of a desire for political change and a discussion of the merits of the proposed change." *Id.* at 421.

Buckley concerned the same set of statutes from the same state that made no distinctions between the discussion of an issue (the speech that precedes the voter's

signature) from the collection of completed petition forms (the conduct that comes after). By contrast, Florida’s statutory scheme applies only to the latter.

Plaintiffs’ out-of-circuit cases similarly concern speech. Take *We the People PAC v. Bellows*, and Maine’s ban on out-of-resident circulators. 40 F.4th 1 (1st Cir. 2022). The law there defined a “circulator” as someone who “‘solicits signatures for the petition by *presenting the petition to the voter, asking the voter* to sign the petition and personally witnessing the voter affixing the voter’s signature to the petition.’” *Id.* at 4 (emphases added, quoting Me. Stat. tit. 21-A, § 903-A). Soliciting someone for a signature, asking them to support a cause, or circulating a blank petition for a coveted signature is speech. It requires “face-to-face, interactive communication” intended to convince another person to rally to a cause. *Id.* at 14. *Meyer* tells us that restricting such speech triggers heightened scrutiny. But placing the *signed* petition in an envelope and mailing it, or otherwise delivering it within a certain timeframe is conduct. So too is the requirement that only residents and citizens may deliver the signed, completed petitions.

Plaintiffs’ other out-of-circuit cases follow a similar pattern. The cases concern statutes that, unlike Florida’s scheme, implicate speech. *See, e.g., Yes on Term Limits, Inc. v. Savage*, 550 F.3d 1023, 1029 (10th Cir. 2008) (ban on “circulat[ing]” petitions); *Chandler v. City of Arvada*, 292 F.3d 1236, 1239, 1241 (10th Cir. 2002) (same); *Wilmoth v. Sec’y of N.J.*, 731 F. App’x 97, 99-103 (3d Cir. 2018) (same).

Commingling speech with conduct also presents another problem: there’s no limiting principle. In Plaintiffs’ telling, anything that touches the citizen-initiative

process is speech, and such speech, they argue, must get heightened (even strict, *see* FRTCW & LWV Resp. at 14) scrutiny. Under Plaintiffs’ approach, the *Buckley* affidavit would be considered a speech regulation and subject to heightened review, because it’s part of the petition-circulation process. Yet the Supreme Court didn’t see things like that. 525 U.S. 182, 198-99 (1999). And, under Plaintiffs’ approach, *Buckley*’s “arsenal of safeguards”—laws that prevent fraudulently signing petitions—would all implicate speech, and would have to withstand the heat of heightened review, because all such laws would touch on the petition-circulation process. *Id.* at 205; *see also* Doc.92-1 at 19 (Florida Decides Healthcare and Smart & Safe Plaintiffs arguing that the prohibition on fraudulently signing petitions, along with other prohibitions, “burden[s] Plaintiffs’ First Amendment rights to engage in core political speech and association”).

There’s a better answer and one this Court has long recognized: “an explicit distinction” exists between “regulat[ing] the exchange of ideas about political changes sought through the process” and regulating the process itself. *Biddulph v. Mortham*, 89 F.3d 1491, 1498 n.7 (11th Cir. 1996). Only the former is speech subject to heightened scrutiny. *Id.* The latter is conduct subject to rational-basis review. *Id.* Florida’s laws concern conduct.

One final note. In their response, the Florida Right to Clean Water and League of Women Voters Plaintiffs say that the State agrees with the Colorado Attorney General’s position in *Meyer*:

“[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.*

FRTCW & LWV Resp. at 12. That’s simply not true. In Florida, speech and conduct can be easily separated. Under Florida law, petition circulators have no duty whatsoever to check the validity of signatures. That’s the supervisors of elections’ job. Fla. Stat. § 100.371(11). Speech and conduct aren’t inherently intertwined here.

In sum, there’s no speech linked with the collection of signed petitions. Collection is pure conduct. Front-end speech is entirely separate from the back-end conduct that’s regulated here. The Supreme Court has done so in other contexts, as have lower courts in election cases. Mot. at 14, 16-17 (collecting cases).

III. More Harm to Floridians Isn’t Needed

Plaintiffs next contend that narrow tailoring isn’t met. Each of their arguments on this point is unconvincing.

A. As an initial matter, Plaintiffs offer alternatives to the non-resident and non-citizen bans. FDH & SS Resp. at 15. But as the State already explained below, those alternatives are on the books, and they don’t work:

Specifically, since 2019, circulators have been required to provide the Secretary with their “name, permanent address, temporary address, if applicable,” and “address in this state at which the[y] will accept service of process related to disputes concerning the petition process.” § 3, Ch. 2019-64, Laws of Fla. A non-resident circulator also “consents to the

jurisdiction of the courts of this state in resolving disputes concerning the petition process.” § 3, Ch. 2019-64, Laws of Fla. But problems persist.

Doc.246 at 17. Also, consider this: circulators lie. We know that circulators fraudulently fill out voter-information on a form; that’s not far removed from filling out false information about themselves. In the end, election administration shouldn’t be an exercise in futility. The State shouldn’t have to rely on the bad actor’s acquiescence to prevent fraud. The State can just bar a subset of possible bad actors—those that are harder to track down—from collecting signed petition forms from Floridians.

B. Plaintiffs then fault the State for relying on “a supposed problem in obtaining information from an out-of-state contractor—which was a company, not an individual circulator.” FDH & SS Resp. at 16. Yet there’s no attempt to refute the State’s concern that petition sponsors and their out-of-state contractors and subcontractors work “through a nesting doll-like setup,” which makes it hard “to investigate, arrest, and obtain a conviction for petition fraud.” Mot. at 1. Indeed, that’s a finding of fact that the Florida Legislature made:

WHEREAS, despite the fiduciary duty prescribed by Florida law, sponsors of initiative petitions have failed to cooperate with investigations and have attempted to deflect responsibility for the actions of petition circulators to contractors and subcontractors, with the sponsors denying that they have custody or control of documents requested by state officials[.]

WHEREAS, sponsors, contractors, and petition circulators have blatantly attempted to evade investigation by delegating key aspects of petition activities to out-of-state entities, who then subcontracted with other individuals who were even further outside the reach of Florida authorities[.]

Fla. HB1205 ll.277-90. Law enforcement even acknowledges the problems of non-resident circulators: there are “several petition circulator investigations that are still open and pending[,] primarily because the circulator is not a Florida resident and is currently living outside of our jurisdiction.” Doc.267-9 ¶ 15.

C. Plaintiffs further claim that the non-citizen prohibition lacks narrow tailoring, because “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.” FRTCW & LWV Resp. at 16. This isn’t a good argument, for the reasons the State provided below (against Plaintiffs’ equal-protection challenge):

Government employees must undergo background checks. *E.g.*, Fla. Stat. § 448.09. Sponsors (and presumably their contractors or subcontractors or sub-subcontractors) don’t run background checks on their circulators. Doc.171-1 ¶ 48 (“RTCW does not have the resources or capacity to conduct citizenship verification checks and is concerned that despite its best efforts, RTCW will not be able to definitively ensure that non-U.S. citizens do not collect petitions for the campaign.”).

Doc.246 at 29.

D. Finally, Plaintiffs argue that, before the State can enforce its laws, it must establish that non-residents and non-citizens are more likely to commit fraud than in-state citizens, *see* FDH & SS Resp. at 15, and they argue that the State can’t rely on cases like *Brnovich v. DNC*, which is a Voting Rights Act case, *see* FRTCW & LWV Resp. at 16. Plaintiffs are wrong on the law.

In various contexts, the Supreme Court has held that (1) fraud prevention is neither an actuarial exercise nor a comparative dissertation, and (2) the State can enforce its anti-fraud laws before further fraud-related harm is committed. Plaintiffs offer nothing to counter the following: *Cranford v. Marion County Election Board*, 553 U.S. 181, 194-96 (2008) (“The record contains no evidence of any such fraud actually occurring in Indiana at any time in its history,” but “[w]hile the most effective method of preventing election fraud may well be debatable, the propriety of doing so is perfectly clear.”); *Munro v. Socialist Workers Party*, 479 U.S. 189, 195-96 (1986) (The State “should be permitted to respond to potential deficiencies in the electoral process with foresight rather than reactively.”); *League of Women Voters of Florida, Inc. v. Florida Secretary of State*, 66 F.4th 905, 925 (11th Cir. 2023) (“Even if there were no evidence of voter fraud in Florida, our precedents would not require it before a bill like S.B. 90 could be adopted.”); *see also Williams-Yulee v. Florida Bar*, 575 U.S. 433, 447 (2015) (applying strict scrutiny, but not requiring “proof by documentary record” to support the “genuine and compelling” interest in “the concept of public confidence in judicial integrity”).

IV. There’s No Associational Rights At Issue

The Florida Decides Healthcare and Smart & Safe Plaintiffs contend that their associational rights are at issue in this case, implicating *Anderson-Burdick*’s balancing test.

FDH & SS Resp. at 2. The argument is a variation of Plaintiffs’ core-speech First Amendment claim, though not a good one, as explained in *Biddulph*:

Biddulph has not requested that we weigh state interests against the voters’ burden—the case-by-case balancing test called for by the Supreme Court in the ballot access cases. That test is not appropriate here. Unlike the petitioners in [*Anderson*] and [*Burdick*], Biddulph has not raised a right-to-vote or freedom-of-association claim. Additionally, this case involves an initiative’s access to the ballot, not a candidate’s. This difference is material because, as noted earlier, the right to place an initiative on the ballot is a right created by the state.

89 F.3d at 1500 n.10 (citations removed). Put another way, *Anderson-Burdick*’s balancing test focuses on *voters’ rights* under the federal constitution. Efforts to get an initiative on the ballot don’t implicate the ability to vote in an election. So, shoehorning initiative-related claims into *Anderson-Burdick*’s balancing test simply wouldn’t be appropriate; “the Constitution contains no universal ‘cost-benefit balancing’ provision.” *Lichtenstein v. Hargett*, 83 F.4th 575, 593 (6th Cir. 2023).

V. The State’s *Purcell*-like Concerns Can’t Be Waived

As a final point, the Florida Decides Healthcare and Smart & Safe Plaintiffs contend that the State’s *Purcell* argument is waived. FDH & SS Resp. at 25. They cite as support this Court’s decision in *League of Women Voters of Florida v. Florida Secretary of State*, 32 F.4th 1363 (11th Cir. 2022), and pincite footnote 4. FDH & SS Resp. at 25 n.8. Yet Plaintiffs don’t mention that this Court held that *Purcell* arguments can’t be waived: “[w]e note plaintiffs’ contention that the state has ‘waived’ any argument that

the *Purcell* principle applies because it ‘never raised *Purcell* below as a basis for denying injunctive relief.’ We disagree.” *League of Women Voters*, 32 F.4th at 1370 n.4.

That said, the State uses *Purcell* to underscore its concerns with the district court’s decision—concerns highlighted in *Purcell* and its progeny—but concedes that *Purcell* isn’t a neat fit for the situation. The State is *not* arguing that “federal courts could never enjoin an unconstitutional state law related to citizen initiatives.” FDH & SS Resp. at 26; FRTCW & LWV Resp. at 20. To recap, the State’s concern is that the machinery for this part of its election process is always humming. So, any attempt to *preliminarily* enjoin the law has the effect of throwing sand into the gears. The State highlights some very practical problems with a *preliminary* injunction in this case. And, again, whether it’s *Purcell* or a balance-of-the equities analysis, the now-unrebutted problems highlighted in the State’s motion, Mot. at 20, favor the issuance of a stay from this Court.

CONCLUSION

For these reasons, and for the reasons in the State’s motion, the State asks this Court to grant its **time-sensitive** motion to stay **as soon as practicable**.

Dated: July 28, 2025

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CERTIFICATE OF COMPLIANCE

This reply complies with Rule 27(d)(2)(A) because it contains 2,585 words, excluding the parts that can be excluded. This reply also complies with Rule 32(a)(5)-(6) because it has been prepared in a proportionally spaced face using Microsoft Word 2016 in 14-point Garamond font.

Dated: July 28, 2025

/s/ Mohammad O. Jazil
Mohammad O. Jazil

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing certificate was filed on ECF.

Dated: July 28, 2025

/s/ Mohammad O. Jazil
Mohammad O. Jazil

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