No. 25-12813 (consolidated with No. 24-11892)

IN THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

FLORIDA STATE CONFERENCE OF BRANCHES AND YOUTH UNITS OF THE NAACP, et al.,

Plaintiffs-Appellees,

v.

CORD BYRD, et al.,

Defendants-Appellants.

On Appeal from the United States District Court
for the Northern District of Florida

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CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and Circuit Rule 26.1, Plaintiffs-Appellees certify that Florida State Conference of Branches of Youth Units of the NAACP, Voters of Tomorrow Action, Inc., Disability Rights Florida, Alianza for Progress, Alianza Center, UnidosUS, and Florida Alliance for Retired Americans each has no parent corporation, and no publicly held corporation owns 10% or more of any of those entities' stock. The remaining Plaintiffs-Appellees are individual persons.

Plaintiffs-Appellees further certify that the following have an interest in the outcome of this case:

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Dated: December 31, 2025

s/ *Frederick S. Wermuth*

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STATEMENT REGARDING ORAL ARGUMENT

While the challenged provision in this case implicates significant constitutional rights, the issues raised on appeal are straightforward. Appellees maintain that this appeal can be resolved on the papers based on the statute's clear violations of well-established constitutional law. If the Court determines that oral argument would help facilitate resolution of the appeal, Appellees welcome the opportunity to participate.

TABLE OF CONTENTS

INTRODUCTION 1

I. Factual Background 2

II. Procedural Background 2

A. The district court preliminarily enjoins the Citizenship Requirement. 2

B. The district court grants partial summary judgment on Plaintiffs' Equal Protection challenge to the Citizenship Requirement. 4

C. The district court issues a permanent injunction after trial. 6

STANDARD OF REVIEW 8

SUMMARY OF ARGUMENT 8

ARGUMENT 10

I. The Citizenship Requirement is subject to strict scrutiny. 10

A. Laws classifying individuals on the basis of citizenship are subject to strict scrutiny. 10

B. *United States v. Salerno* does not change the analysis. 13

C. *Salerno* is irrelevant because the district court's order enjoined the Citizenship Requirement only as applied to the affected plaintiffs. 17

D. The political function exception does not apply. 18

II. The district court properly concluded that the Citizenship Requirement fails strict scrutiny. 24

CONCLUSION 28

TABLE OF CITATIONS

Cases **Page(s)**

Am. Fed'n of State, Cnty. & Mun. Emps. Council 79 v. Scott,
717 F.3d 851 (11th Cir. 2013) 17

Ambach v. Norwick,
441 U.S. 68 (1979) 20

Bernal v. Fainter,
467 U.S. 216 (1984) 10, 13, 18, 19, 20–24

Bluman v. Fed. Election Comm'n,
800 F. Supp. 2d 281 (D.D.C. 2011) 22, 23

Cabell v. Chavez-Salido,
454 U.S. 432 (1982) 20, 21

Cervantes v. Guerra,
651 F.2d 974 (5th Cir. 1981) 22, 23

Chapman v. AI Transp.,
229 F.3d 1012 (11th Cir. 2000) 25

City of Chicago v. Morales,
527 U.S. 41 (1999) 15

City of Cleburne v. Cleburne Living Ctr.,
473 U.S. 432 (1985) 25

City of Los Angeles v. Patel,
576 U.S. 409 (2015) 16

Club Madonna Inc. v. City of Miami Beach,
42 F.4th 1231 (11th Cir. 2022) 14, 15, 16

Doe v. City of Albuquerque,
667 F.3d 1111 (10th Cir. 2012) 15

Doe v. Reed,
561 U.S. 186 (2010).....17

Espinoza v. Mont. Dep't of Revenue,
591 U.S. 464 (2020).....24

Estrada v. Becker,
917 F.3d 1298 (11th Cir. 2019).....11

Examining Bd. v. Flores de Otero,
426 U.S. 572 (1976).....10, 13

Foley v. Connelie,
435 U.S. 291 (1978).....20

Glenn v. Brumby,
663 F.3d 1312 (11th Cir. 2011).....25

Graham v. Richardson,
403 U.S. 365 (1971).....10, 11

In re Griffiths,
413 U.S. 719 (1973).....10, 13

Henry v. Abernathy,
No. 2:21-CV-797-RAH, 2022 WL 17816945
(M.D. Ala. Dec. 19, 2022).....15

Hisp. Fed'n v. Byrd,
734 F. Supp. 3d 1263 (N.D. Fla. 2024).....6

Koe v. Noggle,
No. 1:23-CV-2904-SEG, 2023 WL 5339281
(N.D. Ga. Aug. 20, 2023).....16

League of Women Voters v. Fla. Sec'y of State,
66 F.4th 905 (11th Cir. 2023).....8

LeClerc v. Webb,
419 F.3d 405 (5th Cir. 2005).....11

Nyquist v. Mauclet,
432 U.S. 1 (1977).....10

Romer v. Evans,
517 U.S. 620 (1996).....28

Shen v. Comm'r, Fla. Dep't of Agric. & Consumer Servs.,
158 F.4th 1227 (11th Cir. 2025).....11

Sugarman v. Dougall,
413 U.S. 634 (1973).....10, 12

Trump v. CASA, Inc.,
606 U.S. 831 (2025).....7, 18

United States v. Salerno,
481 U.S. 739 (1987).....5, 13, 14, 15

United States v. Virginia,
518 U.S. 515 (1996).....25

Young Israel of Tampa, Inc. v. Hillsborough Area Reg'l Transit Auth.,
89 F.4th 1337 (11th Cir. 2024).....5, 15, 17

Statutes

18 U.S.C. § 3142.....13

28 U.S.C. § 441e.....22

Fla. Stat. § 97.0575.....2, 11

Fla. Stat. § 99.061.....21

O.C.G.A. § 50-36-1.....11

Other Authorities

USCIS, "I-131, Application for Travel Documents, Parole Documents, and Arrival/Departure Records," https://www.uscis.gov/i-131.....26

INTRODUCTION

The Citizenship Requirement categorically bars *all* noncitizens from engaging in canvassing work on behalf of third-party voter registration organizations. It is a textbook example of facial discrimination on the basis of alienage—precisely the type of classification the Supreme Court has long held triggers strict scrutiny under the Equal Protection Clause.

Rather than defend the statute as written, the State seeks to complicate this straightforward analysis by inventing distinctions that do not exist in the statutory text, invoking inapposite precedent, and proposing novel legal tests with no grounding in equal protection jurisprudence. This Court need not indulge the State's tortured efforts to rewrite either the statute at issue or the governing precedent. The Supreme Court and Eleventh Circuit have consistently applied strict scrutiny to laws that classify on the basis of alienage, and the State offers neither a compelling interest nor a narrowly tailored means to justify the Citizenship Requirement's sweeping exclusion. The district court correctly held that the Citizenship Requirement facially violates the Fourteenth Amendment and narrowly enjoined its enforcement.

This Court should affirm.

STATEMENT OF THE CASE

I. Factual Background

In May 2023, Florida enacted into law SB 7050, imposing new rules and restrictions governing third-party voter registration organizations ("3PVROs"). This appeal involves only one provision: SB 7050's Citizenship Requirement, which requires all 3PVROs to affirm "that each person collecting or handling voter registration applications" on their behalf "is a citizen of the United States of America," and subjects the 3PVROs to a $50,000 fine "for each such person who is not a citizen." Fla. Stat. § 97.0575(1)(f).

II. Procedural Background

A. The district court preliminarily enjoins the Citizenship Requirement.

Shortly after Governor DeSantis signed SB 7050, three sets of plaintiffs brought constitutional challenges to several of its provisions, including the Citizenship Requirement. *See Fla. State Conf. of Branches & Youth Units of the NAACP et al. v. Byrd et al.*, Case No. 4:23-cv-215 (N.D. Fla. 2023); *Hisp. Fed'n et al. v. Byrd et al.*, Case No. 4:23-cv-218 (N.D. Fla. 2023); *League of Women Voters of Fla. et al. v. Byrd et al.*, Case No. 4:23-cv-216 (N.D. Fla. 2023).

All three sets of plaintiffs moved for a preliminary injunction of the Citizenship Requirement, and the district court held a consolidated preliminary injunction hearing. *Fla. State Conf. of Branches & Youth Units of the NAACP*, Case

No. 4:23-cv-215; *Hisp. Fed'n*, Case No. 4:23-cv-218; *League of Women Voters of Fla.*, Case No. 4:23-cv-216; *see also* App. Doc. 27-1 at 225–248; 27-2 at 7–47. At the hearing, the State conceded that it could not identify a single instance where a noncitizen engaged in any kind of "bad acts" related to voter registration. App. Doc. 27-6 at 216. On July 3, 2023, the district court granted Plaintiffs' motion for a preliminary injunction barring the State from enforcing the Citizenship Requirement. App. Doc. 27-7 at 61–62.

The district court determined that Plaintiffs had established standing to challenge the Citizenship Requirement and that Plaintiffs had shown a substantial likelihood of success on the merits. The district court concluded that the statute's facial classification based on alienage triggered strict scrutiny, rejected the State's request to parse the Citizenship Requirement into separate standards for undocumented and lawfully present noncitizens, and rejected the State's argument that the classification was subject to the political function exception. *Id.* at 33–38. The district court then assessed the State's claimed interest in ensuring that voter registration applications are returned on time and concluded that the State had provided no evidence that the Citizenship Requirement furthered this interest. *Id.* at 40–41. The court concluded that Plaintiffs were substantially likely to succeed on their claim that the Citizenship Requirement violates the Equal Protection Clause and granted the preliminary injunction. *Id.* at 42.

The court issued an identical preliminary injunction in Case No. 4:23-cv-218, which was brought by the Hispanic Federation. NAACP.Supp.App.1.[1] Defendants filed interlocutory appeals of both preliminary injunctions on July 12, 2023. This Court consolidated the appeals. NAACP.Supp.App.59. The appeal was subsequently mooted by the district court's entry of a permanent injunction. NAACP.Supp.App.62.

B. The district court grants partial summary judgment on Plaintiffs' Equal Protection challenge to the Citizenship Requirement.

While the appeals from the preliminary injunction order were pending, Plaintiffs filed a motion for partial summary judgment, arguing in part that the Citizenship Requirement violated the Equal Protection Clause. App. Doc. 27-9 at 88–94. On March 5, 2024, the district court granted partial summary judgment to Plaintiffs on this issue as against Secretary of State Cord Byrd. App. Doc. 27-14 at 153. The court concluded that Plaintiffs had demonstrated standing to challenge the Citizenship Requirement with respect to the Secretary and incorporated by reference the district court's order in Case No. 4:23-cv-218, App. Doc. 27-36 at 244–248; 27-37 at 7-17, addressing the merits of the Hispanic Federation's Equal Protection claim. App. Doc. 27-14 at 148.

[1] The district court found that the League of Women Voters lacked standing to challenge the Citizenship Requirement. App. Doc. 27-26 at 84–86.

In that order, the court affirmed that strict scrutiny applied, once again rejecting the State's attempts to "pencil[] in sub-classes subject to different levels of scrutiny notwithstanding the Florida Legislature's decision to discriminate against *all* noncitizens without regard to their immigration status . . ." App. Doc. 27-37 at 10. The district court further rejected the State's argument that Plaintiffs' facial challenge failed under the "no set of circumstances" rule articulated in *United States v. Salerno*, 481 U.S. 739, 745 (1987). *Id.* at 9. The court relied on this Court's recent decision in *Young Israel of Tampa, Inc. v. Hillsborough Area Regional Transit Authority*, 89 F.4th 1337, 1350 (11th Cir. 2024), which explained that when a law fails the applicable constitutional standard, "there is no circumstance in which [the challenged policy] could ever be lawful." *Id.* at 11–12 (quoting *Young Israel*, 89 F.4th at 1351). The court again rejected the Secretary's arguments that the Citizenship Requirement fell within the political function exception. *Id.* at 13–14.

Applying strict scrutiny, the district court assessed whether the Citizenship Requirement was the least restrictive means to furthering a compelling state interest, and concluded that, even assuming *arguendo* that a compelling state interest existed, the Requirement was not narrowly tailored to further any such interest. The Secretary "failed to proffer any evidence raising a genuine dispute as to the lack of narrow tailoring." *Id.* at 14.

C. The district court issues a permanent injunction after trial.

In April 2024, the district court held a seven-day trial on the remainder of the issues, including Plaintiffs' alternative grounds for challenging the Citizenship Requirement and whether Plaintiffs had demonstrated standing to proceed against the Attorney General with respect to their Equal Protection claim. At that trial, the State was again unable to produce any evidence that any noncitizen engaged in bad acts regarding voter registration. The only evidence they adduced on this issue is the existence of a singular Hispanic Federation canvasser—whose citizenship is unknown—who "left for Mexico for ten days" and failed to timely deliver three voter registration applications, App. Doc. 27-17 at 47–48 (Velez Burgo), and the fact that two individual plaintiffs have family connections outside of the United States. App. Doc. 27-15 at 85 (Orjuela Prieto); App. Doc. 27-16 at 63 (Herrera-Lucha).

After the trial, the district court entered an order in Case No. 4:23-cv-218, finding that the plaintiffs' individual members in that case had standing to proceed against the Attorney General with respect to their Equal Protection claim and permanently enjoining the State from enforcing the Citizenship Requirement for the same reasons set out in the preliminary injunction order. *Hisp. Fed'n v. Byrd*, 734 F. Supp. 3d 1263, 1269–70 (N.D. Fla. 2024). The State appealed that order in Appeal No. 24-11892. The appeal was stayed pending resolution of the present case. NAACP.Supp.App.77.

On August 8, 2025, the district court issued its final order on the merits in this case. The court held that Plaintiffs Humberto Orjuela Prieto and UnidosUS "established standing to challenge both the Secretary of State's and the Attorney General's enforcement of the citizenship requirement." App. Doc. 27-26 at 123. Having already determined on summary judgment "that the citizenship requirement facially discriminates against noncitizens in violation of the Equal Protection Clause of the Fourteenth Amendment," the court declined to address Plaintiffs' alternative theories for challenging the Citizenship Requirement under the First and Fourteenth Amendments. *Id*.

The court then turned to the scope of relief to which Plaintiffs are entitled. Citing *Trump v. CASA Inc.*, 606 U.S. 831 (2025), the court determined it "cannot enjoin Defendants' enforcement of the citizenship requirement against anyone, anywhere," and thus limited the "the scope of relief afforded to Plaintiffs" to "as-applied relief to the parties . . . with standing to seek permanent injunctive relief." App. Doc. 27-26 at 125. Accordingly, the district court issued a permanent injunction preventing the Secretary and Attorney General from enforcing or permitting enforcement of the Citizenship Requirement against Mr. Orjuela Prieto, his 3PVRO employer, and UnidosUS. App. Doc. 27-26 at 127.

STANDARD OF REVIEW

In an appeal from a bench trial, the Court of Appeals "review[s] *de novo* conclusions of law and the application of the law to the facts," but reviews findings of fact for clear error. *League of Women Voters v. Fla. Sec'y of State*, 66 F.4th 905, 921 (11th Cir. 2023). Courts of appeal will not find clear error "unless our review of the record leaves us with the definite and firm conviction that a mistake has been committed." *Id.* (quotation omitted).

SUMMARY OF ARGUMENT

The Citizenship Requirement facially prohibits all noncitizens from engaging in canvassing work on behalf of 3PVROs. Because the statute expressly classifies individuals based on citizenship status, it discriminates on the basis of alienage and is therefore subject to strict scrutiny under the Equal Protection Clause. An unwavering line of Supreme Court precedent has held that laws imposing categorical restrictions on noncitizens—without distinction among different classes of lawful or unlawful status—trigger strict scrutiny.

Rather than defending the Citizenship Requirement under that settled standard, the State urges the Court to adopt a novel, fragmented approach by reading into the statute distinctions among noncitizens that the text does not contain. But courts assess facial equal protection challenges based on the classifications the legislature actually enacted, not those it might have drawn. Because the Citizenship

Requirement imposes a sweeping ban on all noncitizens, binding precedent forecloses the State's attempt to apply different levels of scrutiny to hypothetical subcategories.

The State's reliance on *United States v. Salerno* is misplaced; Circuit precedent dictates that, rather than imposing a separate threshold test for facial challenges, *Salerno* merely describes the result when a statute fails the applicable constitutional standard. And even if *Salerno* applied, it would be irrelevant here because the district court limited the scope of the injunction to the plaintiffs before it.

The political function exception does not apply. Canvassers employed by private third-party organizations do not exercise policymaking authority, discretionary governmental power, or control over public funds, and they do not participate directly in the formulation or execution of public policy. As the district court correctly concluded, the Citizenship Requirement therefore remains subject to strict scrutiny.

The State has not identified a compelling interest—much less shown that the Citizenship Requirement is narrowly tailored to serve one. The legislative record contains no justification for the categorical exclusion of all noncitizens, including lawful permanent residents, and the State's *post hoc* rationales fail to establish any meaningful fit between the asserted interests and the sweeping scope of the law.

Because the Citizenship Requirement cannot survive strict scrutiny, the district court properly held that it violates the Fourteenth Amendment and enjoined its enforcement against the Plaintiffs who established standing.

ARGUMENT

I. The Citizenship Requirement is subject to strict scrutiny.

A. Laws classifying individuals on the basis of citizenship are subject to strict scrutiny.

"As a general matter, a state law that discriminates on the basis of alienage can be sustained only if it can withstand strict judicial scrutiny." *Bernal v. Fainter*, 467 U.S. 216, 219 (1984); *see also Examining Bd. v. Flores de Otero*, 426 U.S. 572, 601–02 (1976) (applying "strict judicial scrutiny" for limitations on state civil engineering licenses based on alienage (quotation omitted)); *Sugarman v. Dougall*, 413 U.S. 634, 642 (1973) (applying "close scrutiny" to statute "which denies all aliens the right to hold positions in New York's classified competitive civil service"); *In re Griffiths*, 413 U.S. 717, 721 (1973) (applying strict scrutiny to a state law that excluded all noncitizens from being licensed as attorneys); *Nyquist v. Mauclet*, 432 U.S. 1, 12 (1977) (applying "close judicial scrutiny" to strike down law banning certain classes of noncitizens from college loan assistance program). In so holding, the Supreme Court has recognized that "aliens as a class are a prime example of a 'discrete and insular' minority for whom such heightened judicial solicitude is appropriate." *Graham v. Richardson*, 403 U.S. 365, 376 (1971)

(applying "strict judicial scrutiny" to strike down state laws denying welfare benefits to noncitizens). Because the Citizenship Requirement expressly classifies Florida residents on the basis of alienage, it is subject to strict scrutiny. *See Shen v. Comm'r, Fla. Dep't of Agric. & Consumer Servs.*, 158 F.4th 1227, 1251 (11th Cir. 2025) ("Alienage generally refers to whether a person is a United States citizen.").

Florida's Citizenship Requirement distinguishes between two categories of Florida residents: citizens and noncitizens. Fla. Stat. § 97.0575(1)(f). While the Eleventh Circuit has applied lower levels of scrutiny to laws that regulate *only undocumented* noncitizens, *see, e.g.*, *Estrada v. Becker*, 917 F.3d 1298, 1301 (11th Cir. 2019) (applying rational basis review to statute prohibiting individuals "not lawfully in the United States" from attending certain Georgia universities (quoting O.C.G.A. § 50-36-1(d)(7)); *LeClerc v. Webb*, 419 F.3d 405, 410 (5th Cir. 2005) (applying rational basis review to requirement that individuals be "a citizen of the United States or a resident alien thereof" to be admitted to the bar), the Citizenship Requirement bars *all noncitizens* from engaging in voter registration, without exception, *see* Fla. Stat. § 97.0575(1)(f) (requiring "affirmation that each person collecting or handling voter registration applications on behalf of the third-party voter registration organization is a citizen of the United States of America"). Its categorical restriction on all noncitizens is thus the emblematic "classification[] based on alienage" that triggers strict scrutiny. *Graham*, 403 U.S. at 372.

The State admits—consistent with the statutory text—that "[a]ll noncitizens are excluded from collecting or handling applications regardless of their alienage status." Br. at 23. But in an effort to salvage the facially unconstitutional statute, the State urges the Court to read into the statute distinctions among different noncitizen subgroups that the text of the law plainly does not make and then apply different levels of scrutiny to each of them. The State concedes that strict scrutiny applies to claims brought by lawful permanent residents but insists rational basis review applies as to "all other aliens." Br. at 24. That contention misses the point. Because the statute draws a single, undifferentiated alienage-based classification, the relevant inquiry is whether the classification itself can survive strict scrutiny—not whether the State can imagine distinct constitutional results for groups the law does not distinguish. As the district court recognized, the State has cited no authority supporting the State's preferred approach. App. Doc. 27-37 at 11–13.

Indeed, the State's proposed bifurcated review is completely at odds with Supreme Court precedent. The Court has repeatedly and consistently applied strict scrutiny to statutes that, like the Citizenship Requirement, subject *all noncitizens* to differential treatment, without distinction between different classes of noncitizens. For example, in *Sugarman*, the Supreme Court applied "close scrutiny" to a law that "denie[d] *all aliens* the right to hold positions in New York's classified competitive civil service." 413 U.S. at 643, 646 (emphasis added). Similarly, the Court imposed

"a heavy burden" on the State of Connecticut to justify a rule "totally excluding aliens from the practice of law." *In re Griffiths*, 413 U.S. at 719, 722. It likewise applied "strict judicial scrutiny" to Puerto Rico's "virtually complete ban on the private practice of civil engineering by aliens," *Examining Bd.*, 426 U.S. at 601–02, and Texas's "wholesale ban against all resident aliens" becoming notaries, *Bernal*, 467 U.S. at 227. In each of these cases, as here, the legislature *could have* distinguished between different categories of noncitizens, such as legal permanent residents and undocumented immigrants, but instead chose to classify all noncitizens with the same broad brush. As a result, the plain text of the relevant laws demanded the application of a single standard of review—strict scrutiny—to evaluate the plaintiffs' facial challenges. Based on this clear and unbroken precedent, the district court properly applied strict scrutiny to the Citizenship Requirement.

B. *United States v. Salerno* does not change the analysis.

The State contends that the "no set of circumstances" language in *United States v. Salerno*, 481 U.S. 739, 745 (1987), required the district court to apply the bifurcated approach for which it advocates. This argument is meritless. *Salerno* considered a challenge to the Bail Reform Act, a federal pretrial detention statute that *on its face* "careful[ly] delineat[ed] . . . the circumstances under which detention will be permitted." *Id.* at 750–51; *see also* 18 U.S.C. § 3142(e) (Bail Reform Act). The Citizenship Requirement, by contrast, makes *no* distinction at all—let alone a

"careful delineation"—between lawful residents and undocumented immigrants. Instead, it broadly targets all noncitizens for discriminatory treatment. In other words, to the extent the *Salerno* court considered different contexts in which the Bail Reform Act could apply, those circumstances were clearly laid out *in the statute's text*. *See id.* at 750-51 (noting that the Act "narrowly focuses on a particularly acute problem," "operates only on individuals who have been arrested for a specific category of extremely serious offenses," and otherwise contains "extensive safeguards suffic[ient] to repel a facial challenge"). The Court did *not* do what the State argues the district court should have done here: apply different levels of scrutiny based on distinctions that do not exist in the statute.

In addition, as the district court noted, binding Eleventh Circuit precedent forecloses the State's preferred reading of *Salerno*. In *Club Madonna Inc. v. City of Miami Beach*, 42 F.4th 1231 (11th Cir. 2022), this Court squarely rejected the argument that a plaintiff asserting a facial challenge must show that "the law is invalid in all circumstances," explaining that this argument "misstates the law governing facial challenges." *Id.* at 1256; *see also id.* ("The City seems to interpret *Salerno* to require that the [plaintiff] prove that there is no hypothetical situation in which the Ordinance could be validly applied. . . . We are not persuaded."). As the Court explained, "*Salerno* is correctly understood not as a separate test applicable to facial challenges, but a description of the outcome of a facial challenge in which a

statute fails to satisfy the appropriate constitutional framework." *Id.* (citing *Doe v. City of Albuquerque*, 667 F.3d 1111, 1123 (10th Cir. 2012)). That is, once a plaintiff demonstrates that a challenged statute "fails the relevant constitutional test," *id.*, they have necessarily shown that "no set of circumstances exists under which the Act would be valid," *Salerno*, 481 U.S. at 745; *see also Young Israel of Tampa, Inc.*, 89 F.4th at 1351 (holding a ban on religious advertising facially unconstitutional, and explaining that the ruling "means that there is no circumstance in which *this particular* [policy] could ever be lawful").[2]

Consistent with this approach, the district court declined to reject Plaintiffs' facial equal protection challenge on the grounds that it "could be applied constitutionally in some hypothetical scenario," App. Doc. 27-37 at 11 (quoting *Henry v. Abernathy*, No. 2:21-CV-797-RAH, 2022 WL 17816945, at *8 (M.D. Ala. Dec. 19, 2022)), and instead "consider[ed] the relevant constitutional standard and

[2] As the State acknowledges, the Eleventh Circuit is not alone in narrowly construing *Salerno*. Br. at 22. In *City of Chicago v. Morales*, a Supreme Court plurality noted that the *Salerno* "no set of circumstances" formulation "has never been the decisive factor in any decision of this Court, including *Salerno* itself." 527 U.S. 41, 55 n.22 (1999). And as the Tenth Circuit explained, "[f]ollowing *Salerno*, the [Supreme] Court has repeatedly considered facial challenges simply by applying the relevant constitutional test to the challenged statute without attempting to conjure up whether or not there is a hypothetical situation in which application of the statute might be valid." *Doe*, 667 F.3d at 1124 (citing cases).

applie[d] it to the challenged provision." App. Doc. 27-14 (incorporating Doc. 27-37 at 13).[3]

The State tries to minimize the relevance of *Club Madonna* by once again insisting that it is impossible to begin the analysis with the relevant constitutional test because "different tests . . . apply based on the kind of alien." Br. at 25. But as discussed *supra* I.A, the State cannot identify a single precedent supporting its preferred bifurcated approach. To the contrary, each time the Supreme Court has encountered an equal protection challenge to an express classification that discriminates against all noncitizens, it has applied one test: strict scrutiny.

The State's reliance on *City of Los Angeles v. Patel*, 576 U.S. 409 (2015), is also misplaced. As an initial matter, that case predates *Club Madonna*'s explanation of the proper application of *Salerno* in this Circuit. And notably the *Patel* Court refused to engage in a rigid application of *Salerno* and found the ordinance at issue—authorizing warrantless searches—facially unconstitutional. *Patel*, 576 U.S. at 417–18, 421. In reaching that conclusion, the Court rejected the City's reliance on hypothetical circumstances in which a warrantless search would be permissible. *Id.* Most importantly, *Patel* simply applied one test to determine whether the ordinance

[3] Other district courts in this circuit have understood and applied this Court's precedent similarly. *See, e.g.*, *Koe v. Noggle*, No. 1:23-CV-2904-SEG, 2023 WL 5339281, at *28 (N.D. Ga. Aug. 20, 2023) (finding that hormone-therapy ban "'fails the relevant constitutional inquiry' because its sex-based legislative scheme does not survive intermediate scrutiny" (quoting *Club Madonna*, 42 F.4th at 1256)).

at issue was unconstitutional—it did not write distinctions into a facially unconstitutional statute in an attempt to save it, as the State requests here.

At bottom, the State's disagreement with the district court's application of *Salerno* is in fact a disagreement with binding precedent. The State's attempt to wield *Salerno* in the precise manner that has been rebuffed by this Court (and many others) must be rejected.

C. *Salerno* is irrelevant because the district court's order enjoined the Citizenship Requirement only as applied to the affected plaintiffs.

Even if *Salerno*'s "no set of circumstances" standard governed Plaintiffs' equal protection challenge, the narrow scope of the district court's injunction negates the need to apply it. As this Court has explained, "[t]he distinction between facial and as-applied challenges, though sometimes difficult to discern, generally 'goes to the breadth of the remedy.'" *Young Israel*, 89 F.4th at 1351 (quotation omitted). "Where 'an injunction . . . reach[es] beyond the particular circumstances of the[] plaintiffs,'" it must "'satisfy [the Supreme Court's] standards for a facial challenge to the extent of that reach.'" *Am. Fed'n of State, Cnty. & Mun. Emps. Council 79 v. Scott*, 717 F.3d 851, 863 (11th Cir. 2013) (quoting *Doe v. Reed*, 561 U.S. 186, 193 (2010)).

Here, Plaintiffs brought both facial and as-applied challenges to the Citizenship Requirement. NAACP.Supp.App.83. Although the district court

correctly determined that the Citizenship Requirement is facially unconstitutional, it expressly limited the injunction to "the parties now before this Court with standing to seek permanent injunctive relief," citing the Supreme Court's recent decision in *Trump v. CASA, Inc.*, 606 U.S. 831 (2025). App. Doc. 27-26 at 125–26. By issuing a tailored, plaintiff-specific injunction, the district court obviated any need to speculate about other, hypothetical applications of the Citizenship Requirement. Indeed, accepting the State's own framing—that the Citizenship Requirement fails strict scrutiny with respect to the "handful of legal permanent residents in this case," Br. at 24—its contention that the statute is "still constitutional for all other aliens" *beyond* the reach of the district court's injunction, *id.*, is of no moment. The State offers nothing to dispute the district court's injunction with respect to the actual Plaintiffs to whom it applies, rendering its reliance on *Salerno* inapposite.

D. The political function exception does not apply.

The political function exception does not save the Citizenship Requirement from strict scrutiny. The political function exception is "a narrow exception to the rule that discrimination based on alienage triggers strict scrutiny" that applies only to "persons holding state elective or important nonelective executive, legislative, and judicial positions" who "participate directly in the formulation, execution, or review of broad public policy." *Bernal*, 467 U.S. at 220–22. To determine whether a restriction fits within the narrow political function exception, courts employ a two-

part framework: (1) whether a classification is over or underinclusive and, if not, (2) whether the position at issue "necessarily exercise[s] broad discretionary power over the formulation or execution of public policies importantly affecting the citizen population." *Id.* at 224. Here, because the Citizenship Requirement does not implicate the type of discretionary, authoritative power subject to the political function exception, the district court properly found that the Citizenship Requirement fails the second prong of the *Bernal* test.[4]

As *Bernal* explained, personnel "to whom the political-function exception is properly applied . . . are invested either with policymaking responsibility or broad discretion in the execution of public policy that requires the routine exercise of authority over individuals." *Id.* at 226. In accordance with this standard, the Supreme Court has exempted from strict scrutiny restrictions on limited *public* positions that

[4] While the district court did not need to consider whether the Citizenship Requirement also fails the first prong, the record also supports a conclusion that the Citizenship Requirement is underinclusive because it bars noncitizens from collecting or handling voter registration applications on behalf of 3PVROs even though noncitizen postal workers and other state agency employees are permitted to handle and collect these applications. *See* App. Doc. 27-7 at 36. Although the State asserts that treating noncitizen 3PVRO canvassers differently "makes sense," it merely speculates, without support, that there are "safeguards" in place to prevent noncitizen government workers from mishandling voter registration forms that do not exist at 3PVROs. Br. at 20. Contrary to the State's suggestion, the fact that public officers are permitted to perform the same functions as 3PVRO employees without a similar citizenship requirement only underscores the gross mismatch between Florida's sweeping ban on noncitizens working for 3PVROs and the "narrow political-function exception," *Bernal*, 467 U.S. at 221.

wield broad discretion and authority that "go[es] to the heart of representative government," *id.* at 216, like police officers, public school teachers, and parole officers. *See Foley v. Connelie*, 435 U.S. 291 (1978); *Ambach v. Norwick*, 441 U.S. 68 (1979); *Cabell v. Chavez-Salido*, 454 U.S. 432 (1982). Plaintiffs' canvassers, by contrast, are *privately* employed by 3PVROs, and as such, have no policymaking responsibility, exercise no discretion to enforce or influence policy, and wield no power or authority over anyone else.

The State cannot and does not argue otherwise; in fact, it *conceded* this point in briefing below. App. Doc. 27-27 at 197 (noting "those who collect and handle completed applications aren't vested with discretion or engage in policy making"). Instead, the State attempts to expand this "narrow exception" to swallow the rule that states may not discriminate on the basis of alienage. The State's argument rests on a shaky chain of inferences: because only citizens may vote, and because voter registration is an "important step" toward voting, the State claims it may exclude all noncitizens from *any* activity related to voting. Br. at 19. That logic overreaches at every step.

To begin with, it collapses voting into the entirely different activity regulated here—handling completed voter registration applications. While registering to vote and voting are political acts, 3PVRO canvassers do neither; they merely collect paperwork. *See* Br. at 18 (conceding that "the only job of a canvasser" is to "deliver"

voter registration applications within a specified timeframe). Like the notary's functions in *Bernal*, 3PVRO canvassers' duties "are essentially clerical and ministerial." 467 U.S. at 225 (distinguishing notaries' ministerial duties from state troopers' "routine[] exercise . . . of legitimate coercive force" and public school teachers' "wide discretion" to educate youth). The State never explains how this ministerial task is "inherently political." Br. at 21. Instead, it asserts—without support—that the political function exception sweeps in any activity that touches the electoral process in any way.

That is plainly wrong. The exception is tightly limited to positions involving either "policymaking responsibility" or "broad discretion in the execution of public policy" through the "routine exercise of authority over individuals." *Bernal*, 467 U.S. at 226. Indeed, taken seriously, the State's boundless reading would have brought the notary statute in *Bernal* within the exception simply because notaries may certify election-related documents. *See* Fla. Stat. § 99.061(5). But the Supreme Court rejected such attenuated reasoning; neither the "importan[ce]" of the notary's function nor the "critical need for a notary's duties to be carried out correctly and with integrity" triggers the political function exception. *Bernal*, 467 U.S. at 225. Instead, the exception applies only to those who "participate *directly*" in formulating or executing public policy "and hence 'perform functions the heart of representative government." *Id.* at 222 (quoting *Cabell*, 454 U.S. at 440).

While the State relies heavily on *Bluman v. Federal Election Commission*, 800 F. Supp. 2d 281 (D.D.C. 2011), and *Cervantes v. Guerra*, 651 F.2d 974 (5th Cir. 1981), those cases only confirm that the political function exception does not apply here. *Bluman* was a First Amendment case that concerned a ban on political contributions and express-advocacy expenditures by foreign nationals. 800 F. Supp. 2d at 284.[5] It was not an Equal Protection case and thus has limited persuasive value here. In any event, the D.C. district court noted that campaign contributions "are an *integral aspect* of the process by which Americans elect officials to federal, state, and local government offices," and Congress had a compelling interest in "preventing foreign influence over the U.S. political process." *Id.* at 288 (emphasis added); *see also id.* at 289 ("When an expressive act is directly targeted at influencing the outcome of an election, it is both speech and participation in democratic self-government."). By contrast, by collecting completed voter registration forms, 3PVRO canvassers do not "influence how voters will cast their

[5] The State wrongly asserts that the law at issue in *Bluman* "made no distinctions based on the type of alien." Br. at 19. In fact, the statute "define[s] 'foreign national' to include all foreign citizens except those who have been admitted as lawful permanent residents." *Bluman*, 800 F. Supp. 2d at 284 (citing 28 U.S.C. § 441e(b)). Despite this carveout, the court subjected the law to strict scrutiny. *Id.* at 285–86. Because the Citizenship Requirement discriminates against *all* noncitizens, including lawful permanent residents, there is even more reason to apply strict scrutiny here.

ballots in the elections," and thus do not "participate in [the] activities of democratic self-government" that concerned the *Bluman* court. *Id.*

Similarly, in *Cervantes*, members of the Community Action Agency board of directors were elected representatives of the community. 651 F.2d at 976. Service on the board was thus inherently "political." *Id.* at 981. Indeed, the board exercised "discretionary decisionmaking" and "broad powers" to "create policy" in allocating five to ten million dollars of public funds. *Id.* at 976, 981–82 (quotation omitted). In this capacity, the board administered government-funded programs that "*directly* affect[ed]" the county's residents. *Id.* at 982 (emphasis added); *see also id.* (noting that "even more than a policeman, . . . or a public school teacher," the board of directors' "choices have profound effects on the community"). As a result, the Fifth Circuit concluded that "[s]ervice on that board" is a "function that 'goes to the heart of representative government.'" *Id.*

Florida's 3PVROs, by contrast, are not state-funded entities and have no responsibility for allocating public funds or otherwise executing—let alone developing—public policy on behalf of the government. As such, Plaintiffs' canvassers are far more like the notaries in *Bernal*, a position the Supreme Court held could not constitutionally be limited to citizens. 467 U.S. at 227–28. Like notaries, canvassers do not wield government power or authority or exercise discretion to enforce or influence policy. And although "considerable damage could

result from the negligent or dishonest performance of" a notary or a canvasser's work, the same is true for "numerous other categories of personnel upon whom we depend for careful, honest service" that are not "invested either with policymaking responsibility or broad discretion in the execution of public policy that requires the routine exercise of authority over individuals." *Id*. at 225–26.

Accordingly, the political function exception does not apply, and the Citizenship Requirement is subject to strict scrutiny.

II. The district court properly concluded that the Citizenship Requirement fails strict scrutiny.

The Citizenship Requirement cannot withstand strict scrutiny. "To satisfy [strict scrutiny], government action must advance interests of the highest order and must be narrowly tailored in pursuit of those interests." *Espinoza v. Mont. Dep't of Revenue*, 591 U.S. 464, 465 (2020) (cleaned up). Defendants must show that the challenged provision furthers a compelling state interest "by the least restrictive means practically available." *Bernal*, 467 U.S. at 217. The Citizenship Requirement falls far short.

Tellingly, the State does not even attempt to argue that the Citizenship Requirement can survive strict scrutiny. And while it feebly offers that it has a "rational—in fact, compelling—interest" in the exclusion of *some* noncitizens, such as those with "illegal or temporary status," Br. at 21, it does not—and cannot—contend that the Citizenship Requirement *as written* is narrowly tailored to a

compelling state interest given its application to *all* noncitizens, including legal permanent residents.

Notably, the Legislature could not come up with *any* state interest in support of the Citizenship Requirement, let alone a compelling interest. When asked what purpose the Requirement serves, SB 7050's sponsor replied simply, "There are certain rights in our country that only citizens get to enjoy." NAACP.Supp.App.68. But, as the Supreme Court has admonished, "some objectives—such as a bare desire to harm a politically unpopular group—are not legitimate state interests." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 446-47 (1985) (cleaned up). Seeking to exclude an entire class of persons, without more, cannot satisfy the rigorous strict scrutiny standard.

With a dearth of any factual underpinning in the legislative record to justify facial discrimination against all noncitizens, the State attempts to wield trial evidence to bolster its discrimination. Br. at 21. But justifications for suspect classifications must be "genuine," not "hypothesized or invented *post hoc* in response to litigation." *Glenn v. Brumby*, 663 F.3d 1312, 1316 (11th Cir. 2011) (quoting *United States v. Virginia*, 518 U.S. 515, 533 (1996)).[6] In any event, even if

[6] Because the district court ruled on the legal issue presented in this appeal on summary judgment, evidence offered at trial cannot form the basis of the State's appeal. See *Chapman v. AI Transp.*, 229 F.3d 1012, 1027 (11th Cir. 2000) ("[A]ny evidence offered at trial is not relevant to our review of the . . . summary judgment and we will not consider it.").

the Court were to consider *post hoc* rationales for the Citizenship Requirement, none withstands scrutiny.

The State asserts that the Citizenship Requirement is justified by the threat that non-permanent residents "may leave the country voluntarily or involuntarily any day and without warning." Br. at 21. But their only support for this speculation is testimony that certain plaintiffs have "ties in [a] foreign country." *Id.* The State cannot point to any evidence that such ties make it more likely for noncitizens as a class to leave the country on a whim. To the contrary, many non-permanent residents including "asylum seekers" referenced by the State, *id.* at 23, have restrictions on their ability to travel internationally and need to seek permission to leave through a detailed process, such as applying for a refugee travel document. *See* USCIS, "I-131, Application for Travel Documents, Parole Documents, and Arrival/Departure Records," available at https://www.uscis.gov/i-131. And "student visa holders," Br. at 23, who have worked hard to obtain the opportunity to pursue educational opportunities in this country, have no incentive to up and leave at a moment's notice. The State's suggestion that "temporary" noncitizens' presence in this country is so fleeting that they are liable to disappear in the ten days between receiving a voter's registration application and delivering it to election officials is entirely unsupported by evidence, argument, or logic.

The State's purported "smoking gun" is trial evidence that a single Hispanic Federation canvasser traveled to Mexico in 2022 and "failed to timely deliver three voter registration applications." Br. at 21. But while the State points to this singular example to justify its expansive statute, there was no evidence that this canvasser was a noncitizen. The State simply assumes as much because a majority of Hispanic Federation canvassers in 2022 were noncitizens. *Id.* That inference is legally and logically flawed: a demographic statistic does not establish the status of a particular individual. If anything, the argument highlights how poorly tailored the Citizenship Requirement is—there is scant evidence of untimely submissions at all, and none showing that noncitizens are any more likely than citizens to submit applications late. As the district court held at the preliminary injunction stage, "such shoddy tailoring between restriction and government interest presents a dubious fit under rational basis review, and it falls woefully short of satisfying the strict scrutiny this Court must apply." App. Doc. 27-7 at 61.[7]

[7] At the preliminary injunction stage, the district court also correctly rejected the State's secondary post-hoc rationale that the Citizenship Requirement promotes voter integrity, finding that it failed to satisfy strict scrutiny because there was no evidence offered as to why banning noncitizens from canvassing would promote this interest. App. Doc. 27-7 at 36–37. The State briefly re-raises this argument in this appeal, but once again fails to explain how "excluding noncitizens from the voter registration process helps improve voter confidence." Br. at 21.

For all of these reasons, the Citizenship Requirement violates the Equal Protection Clause; it is a blunt instrument that broadly discriminates against all noncitizens and therefore triggers—and fails—strict scrutiny.[8]

CONCLUSION

The Court should affirm the district court's order permanently enjoining enforcement of the Citizenship Requirement against Plaintiffs.

Dated: December 31, 2025

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[8] The citizenship requirement would fail even under rational basis review. First, the record shows it was motivated by animus against noncitizens, which cannot constitute a legitimate government interest. *Romer v. Evans*, 517 U.S. 620, 634 (1996). Second, as the district court found, there is no "link between classification and objective." *Romer*, 517 U.S. at 632. Despite multiple opportunities, Defendants have produced no evidence that a noncitizen has engaged in any bad act related to voter registration, rendering the citizenship requirement entirely disconnected from the State's claimed interest. *See supra* at 6.

UnidosUS, Florida Alliance for Retired Americans, Santiago Mayer Artasanchez, and Humberto Orjuela Prieto

CERTIFICATE OF COMPLIANCE

This response complies with Fed. R. App. P. 27(d) because it contains 6,538 words, excluding the parts that may be excluded. This response also complies with Fed. R. App. P. 32(a)(5) and (6) because it has been prepared in a proportionally spaced typeface, 14-point Times New Roman.

Dated: December 31, 2025

/s/ *Frederick S. Wermuth*

CERTIFICATE OF SERVICE

This response has been filed by CM/ECF and served via CM/ECF on all counsel of record.

Dated: December 31, 2025

/s/ *Frederick S. Wermuth*