



FLORIDA HEALTH  
JUSTICE PROJECT

# Opposition, Inaction and Obstruction: A History of Florida's Failure to Pass Medicaid Expansion

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Medicaid Expansion History in Florida

**July 2022 Update**

## Efforts in the Legislature<sup>1</sup>

In 2013, when the states were given the option to expand Medicaid under the Affordable Care Act, the Florida House of Representatives refused to consider it. Instead, the House [passed a bill](#) allowing uninsured adults with minor children to contribute \$300, and in turn receive \$2,000 a year, to create a health savings account.<sup>2</sup> The House plan, which was ineligible for federal matching funds under Medicaid, was rejected by the Senate.<sup>3</sup>

Meanwhile, that same year, the Senate passed the “Healthy Florida” bill, a plan that might have qualified for federal Medicaid expansion funding.<sup>4</sup> Proponents cited evidence that expanding Medicaid improves health outcomes, lowers disparities, improves family financial stability, boosts local economies, and results in net state budget savings.<sup>5</sup> Opponents expressed concerns that Medicaid expansion (“expansion”) was an improper use of federal power and that the government’s commitment to pay for no less than 90% of the coverage of the expansion population was unreliable.<sup>6</sup> With such dramatically different approaches, the two chambers were unable to find a compromised solution.<sup>7</sup>

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<sup>1</sup> For a bill to become law in Florida it must be sponsored by a Senator or House Representative. The bill is then developed in a committee and passed onto the full Senate or House for review and voting. Once it passes one chamber of the legislature, it moves to the second and can travel back and forth between the Senate and the House until consensus is reached. Finally, the bill must be approved and signed by the Governor. *See, e.g.* The Florida Senate, How an Idea Becomes a Law, <https://www.flsenate.gov/About/HowAnIdeaBecomesALaw#:~:text=A%20legislator%20sponsors%20a%20bill,related%20to%20the%20bill's%20subject.&text=If%20passed%2C%20the%20bill%20moves,the%20other%20house%20for%20review.>

<sup>2</sup> Governor Rick Scott was briefly supportive (as long as the 100% federal match was in effect), before becoming a staunch opponent. *See* Sarah Kliff, Florida rejects Medicaid expansion, leaves 1 million uninsured. The Washington Post (2019), <https://www.washingtonpost.com/news/wonk/wp/2013/05/05/florida-rejects-medicaid-expansion-leaves-1-3-million-uninsured/>

<sup>3</sup> Avik Roy, Florida Senate Republicans vote to expand Obamacare and Medicaid, rejecting House's free-market alternative. Forbes (2013), <https://www.forbes.com/sites/theapothecary/2013/05/01/florida-senate-republicans-vote-to-expand-obamacare-and-medicaid-rejecting-houses-free-market-alternative/?sh=34477dad4093>

<sup>4</sup> The bill’s sponsor, Sen. Joe Negron, claimed that it was not a Medicaid expansion bill because it enlisted private insurers to manage the Medicaid program. *See id.*

<sup>5</sup> Florida Legal Services, White Paper: Medicaid Expansion (2013), available at [file:///C:/Users/aliso/Downloads/Florida\\_Legal\\_Services\\_Medicaid\\_Expansion\\_white\\_paper\\_2-1-13.pdf](file:///C:/Users/aliso/Downloads/Florida_Legal_Services_Medicaid_Expansion_white_paper_2-1-13.pdf)

<sup>6</sup> Lynn Hatter, Medicaid Expansion Divides Florida GOP, Kaiser Health News (2013), <https://khn.org/news/florida-republicans-medicaid-expansion-dispute/>

<sup>7</sup> Associated Press, Senate not backing down on Medicaid expansion, The Oklahoman (2013), <https://www.oklahoman.com/article/feed/534688/senate-not-backing-down-on-medicaid-expansion>

Florida's next attempt at expansion was in 2015, when the Senate developed a bill ("A Healthy Florida Works") that was championed by the Florida Hospital Association.<sup>8</sup> This plan, was similar to the Senate's 2013 "Healthy Florida" bill.<sup>9</sup> It also included several provisions that were unlikely to have received approval from the federal government at that time, including work requirements, premiums, and lockout periods.<sup>10</sup> But because the bill referenced the federal Medicaid statute as its governing authority, it was seen as a viable attempt to draw down federal funding.<sup>11</sup>

Over the course of the session, there was significant media attention, with major state papers across Florida publishing editorials calling for passage of expansion.<sup>12</sup> The Miami Herald ran a week-long series on Medicaid expansion, with daily front-page stories of Miami-Dade County residents in the "coverage

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<sup>8</sup> Ilana Kowarski, Coalition presents plan to expand Medicaid, Florida Today (2015), <https://www.floridatoday.com/story/money/business/2015/02/26/business-coalition-presents-plan-expand-medic-aid/24085061/>. See also, Wilson Sayre and Daniel Chang, Floridians affected by the health coverage gap, WLRN 91.3 FM (2015), <https://www.wlrn.org/health-care/2015-04-17/floridians-affected-by-the-health-coverage-gap>

<sup>9</sup> A Healthy Florida Works, Florida Association of Counties (2014), <https://www.fl-counties.com/2014/12/12/a-healthy-florida-works>

<sup>10</sup> Florida Senate Bill 2A (2015A), <https://www.flsenate.gov/Session/Bill/2015A/2A/?Tab=BillText>

<sup>11</sup> Senate Bill 2A. See also Florida Senate Republicans vote to expand Obamacare and Medicaid.

<sup>12</sup> Tia Mitchell, Special session begins today with focus on Medicaid expansion proposal, The Florida Times-Union (June 1, 2015), <https://www.jacksonville.com/news/florida/2015-06-01/story/special-session-begins-today-focus-medic-aid-expans-ion-proposal>. See also, Lisann Ramos, Miami leaders urge lawmakers to expand Medicaid, Health News Florida (March 9, 2015), <https://health.wusf.usf.edu/2015-03-09/miami-leaders-urge-lawmakers-to-expand-medic-aid>; Nina Lincoff, Miami mayor backs advocacy group that aims to close health care coverage gap, South Florida Business Journal (March 6, 2015), <https://www.bizjournals.com/southflorida/news/2015/03/06/miami-mayor-backs-advocacy-group-that-aims-to.ht ml>; Charlie Patton, Affordable health care advocates hoping to create pressure on Florida's government, Saint Augustine Record (February 25, 2015), [https://www.staugustine.com/news/florida-news/2015-02-25/affordable-health-care-advocates-hoping-create-pre ssure-floridas#.VP7jtvzF\\_xo](https://www.staugustine.com/news/florida-news/2015-02-25/affordable-health-care-advocates-hoping-create-pre ssure-floridas#.VP7jtvzF_xo); Kathleen McGrory, Business groups back Medicaid expansion in Florida, Tampa Bay Times (January 19, 2015), <https://www.tampabay.com/news/politics/stateroundup/support-builds-for-medic-aid-expansion-in-florida/221402 6/>; Wilson Sayre and Daniel Chang, Floridians affected by the health coverage gap, WLRN 91.3 FM (April 17, 2015), <https://www.wlrn.org/health-care/2015-04-17/floridians-affected-by-the-health-coverage-gap>; Miami Herald, Life in Florida without Medicaid expansion, <https://www.miamiherald.com/news/health-care/article18726207.html>; Daniel Chang, How the Miami Herald told stories of lives caught in the 'coverage gap,' without falling into the politics trap, USC Annenberg Center for Health Journalism; <https://centerforhealthjournalism.org/resources/lessons/how-miami-herald-told-stories-lives-caught-%E2%80%98c overage-gap%E2%80%99-without-falling-politics>

gap”.<sup>13</sup> The South Florida national public radio affiliate, WLRN, also ran a daily series interviewing both those in the coverage gap and their providers.<sup>14</sup>

While the Senate’s “Healthy Florida” bill passed almost unanimously (31-3), the House refused to take up either expansion or an alternative.<sup>15</sup> In response to public pressure, the House agreed to consider the Senate bill during a rare Special Session.<sup>16</sup> In spite of the public’s support, the Florida House voted against Medicaid expansion, 72 to 41.<sup>17</sup>

In the 6 years following the 2015 defeat, no state legislative committee has taken up Medicaid expansion.<sup>18</sup>

In March 2021, in the midst of Florida’s legislative session, and as COVID-19 raged on, the federal government passed the American Rescue Plan Act (ARPA), which increased financial incentives for the 12 hold-out, non-expansion states to expand Medicaid. ARPA offered Florida an anticipated net windfall of over \$1.4 billion to expand coverage to eligible residents.<sup>19</sup> Yet once again, and this session with numerous expansion bills published, no legislative committees took up the issue. When asked why the

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<sup>13</sup> Miami Herald, Life in Florida without Medicaid expansion, <https://www.miamiherald.com/news/health-care/article18726207.html>.

<sup>14</sup> Wilson Sayre and Daniel Chang, Floridians affected by the health coverage gap, WLRN (April 17, 2015), <https://www.wlrn.org/health-care/2015-04-17/floridians-affected-by-the-health-coverage-gap>

<sup>15</sup> Nick Madigan, Healthcare expansion is rejected in Florida, The New York Times (June 5, 2015), <https://www.nytimes.com/2015/06/06/us/health-care-expansion-is-rejected-in-florida.html>

<sup>16</sup> Tia Mitchell, Special session begins today with focus on Medicaid expansion proposal, The Florida Times-Union (June 1, 2015), <https://www.jacksonville.com/news/florida/2015-06-01/story/special-session-begins-today-focus-medicaid-expansion-proposal>. See also, Lisann Ramos, Miami leaders urge lawmakers to expand Medicaid, Health News Florida (2015), <https://health.wusf.usf.edu/2015-03-09/miami-leaders-urge-lawmakers-to-expand-medicaid>; Nina Lincoff, Miami mayor backs advocacy group that aims to close health care coverage gap; Charlie Patton, Affordable health care advocates hoping to create pressure on Florida’s government, Saint Augustine Record; Kathleen McGrory, Business groups back Medicaid expansion in Florida; Miami Herald, Life in Florida without Medicaid expansion; Wilson Sayre and Daniel Chang, Floridians affected by the health coverage gap.

<sup>17</sup> Senate Bill 2A (2015A).

<sup>18</sup>

A committee hearing is an essential first step to develop a bill in either the Senate or the House and without it the bill will not be considered on the floor of either chamber.

<sup>19</sup> Medicaid provisions in American Rescue Plan: Impact on Florida Access and Revenue, Florida Health Justice Project (2021), <https://www.floridahealthjustice.org/publications--media/medicaid-provisions-in-american-rescue-plan-impact-on-florida-access-and-revenue>.

legislature would not expand Medicaid to cover almost a million uninsured Floridians, House Speaker Sprowls noted a preference for “a path to employment, financial resilience and prosperity.”<sup>20</sup>

Table 1: Chronology of Florida’s Consideration of Medicaid Expansion<sup>21</sup>

Year	Florida
<a href="#">2013</a>	Governor Rick Scott indicates initial <a href="#">support</a> before becoming a staunch opponent. State Senate passes a Medicaid expansion bill. The House does not pass a bill.
2014	The Florida Legislature does not debate any Medicaid expansion bills.
2015	The Senate passes a Medicaid expansion bill and sends it to the House; the House refuses to vote on it during the regular session. During a rare special session, the House <a href="#">votes against</a> the bill.
2016	The Florida Legislature does not debate any Medicaid expansion bills. <sup>22</sup>
2017	
2018	

<sup>20</sup> Senate President Wilton Simpson said he worried about “the long term recurring costs associated with Medicaid expansion.” The Miami Herald Editorial Board, Florida is among the last holdouts against expanding Medicaid. Why? It starts with an O, Miami Herald (June 14, 2021), <https://www.miamiherald.com/opinion/editorials/article251975298.html>. See also Gary Rohrer, Florida unlikely to expand Medicaid for 800,000 residents, despite offer of more federal money, Orlando Sentinel (March 17, 2021), <https://www.orlandosentinel.com/politics/os-ne-florida-medicaid-expansion-20210317-uxvqvh3trigvthw4qxoba52svy-story.html>

<sup>21</sup> During this time, Medicaid was passed in the following states: Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Iowa, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Oregon, Vermont, Washington and West Virginia in 2014; Alaska, Indiana and Pennsylvania in 2016; Louisiana and Montana in 2017; Maine in 2018; and Idaho, Missouri, Nebraska, Oklahoma, and Utah in 2020. See, Kaiser Family Foundation, Status of state Medicaid expansion decisions: Interactive map, (2021), <https://www.kff.org/medicaid/issue-brief/status-of-state-medicaid-expansion-decisions-interactive-map/>

<sup>22</sup> A study published by the National Bureau of Economic Research, see S.Miller et al., and summarized by CBPP found that between 2014 and 2017 found that 2,776 Floridians ages 55-64 died due to the state’s decision not to expand. Sarah Miller, Norman Johnson & Laura R. Wherry, Medicaid and Mortality: New evidence from linked survey and administrative data NBER (2019), <https://www.nber.org/papers/w26081>

2019	
2019	The Florida Legislature does not debate any Medicaid expansion bills; it does pass legislation making signature collection more difficult for ballot initiatives. (see Table 2)
2020	The Florida Legislature does not debate any Medicaid expansion bills; it does pass legislation limiting ballot initiatives. (see Table 2)
2021	The Florida Legislature does not debate any Medicaid expansion bills; it does pass legislation limiting ballot initiatives. (see below, and Table 2)

### Efforts through Ballot Initiative and Recent Laws Restricting Ballot Initiatives

Given the Legislature’s refusal after 2015 to debate, let alone pass, Medicaid expansion, healthcare advocates began to explore sponsoring a ballot initiative that would give state voters the power to expand Medicaid.<sup>23</sup>

#### The Ballot Initiative Process<sup>24</sup>

At the time that Medicaid expansion advocates began exploration of the ballot initiative process, the following was required:

- 1) Potential sponsors of a ballot initiative must register as a political committee
- 2) Sponsors must receive formal approval and a serial number from the Division of Elections
- 3) Upon receipt of approval and serial number, signature collection can begin
  - a) For an initiative to be placed on the ballot, signatures must be gathered from registered voters, in support of adding the initiative to the upcoming election ballot. The number of signatures collected must equal 8% of the votes cast statewide in the last presidential election and must come from voters representing at least one-half of the state’s congressional districts.
- 4) When 10% of the required signatures have been gathered, coming from at least 25% of Florida’s 27 Congressional districts, the FL Secretary of State will send the petition to the State Attorney General

<sup>23</sup>

Florida Medicaid expansion initiative (2022), Ballotpedia (n.d.) [https://ballotpedia.org/Florida\\_Medicaid\\_Expansion\\_Initiative\\_\(2022\)](https://ballotpedia.org/Florida_Medicaid_Expansion_Initiative_(2022))

<sup>24</sup>

Ballot initiative, Ballotpedia (n.d.) [https://ballotpedia.org/Ballot\\_initiative](https://ballotpedia.org/Ballot_initiative). See also Initiative petition handbook 2018 election cycle, Florida Department of State Division of Elections (2017) <https://files.floridados.gov/media/697659/initiative-petition-handbook-2018-election-cycle-eng.pdf>

- a) Within 30 days of receiving the petition, the Attorney General will petition the Florida Supreme Court for an advisory opinion on the legality of the ballot initiative (ensuring that it conforms with the substantive requirements for ballot initiatives)
- b) The Secretary of State will concurrently send the petition to the Financial Impact Estimating Conference for an analysis and financial impact statement

### Florida Decides Healthcare Collects Signatures Needed for Review by the Supreme Court

In 2018, proponents of expansion formed a political committee, Florida Decides Healthcare (FDH), as the first step toward getting Medicaid expansion on the ballot,<sup>25</sup> and then began collecting voters' signatures. At that time, 683,149 signatures (equal to 8% of the votes cast in the 2016 presidential election) were required from 14 Congressional districts for ballot placement.<sup>26</sup>

Before a proposed amendment can be placed on the ballot, the proposed language must be reviewed by the Supreme Court.<sup>27</sup> This review determines if the ballot initiative satisfies statutory and state constitutional requirements.<sup>28</sup> To qualify for Supreme Court review, FDH needed to secure the first 10% of the 683,149 required for ballot placement, from one quarter of Florida's Congressional Districts.<sup>29</sup>

On May 28, 2019, the Secretary of State informed the Attorney General that the Medicaid expansion amendment spearheaded by FDH had secured 90,420 signatures. This was sufficient to trigger review by the Florida Supreme Court and schedule a Financial Impact Estimating Conference.<sup>30</sup> On June 27, 2019, the Attorney General petitioned the Florida Supreme Court for an advisory opinion on the ballot

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<sup>25</sup>

Florida Medicaid expansion initiative (2022), Ballotpedia (n.d.)  
[https://ballotpedia.org/Florida\\_Medicaid\\_Expansion\\_Initiative\\_\(2022\)](https://ballotpedia.org/Florida_Medicaid_Expansion_Initiative_(2022))

<sup>26</sup> This number is calculated by requiring signatures equal to 8% of the total votes cast in the previous presidential election. Laws governing the initiative process in Florida, Ballotpedia (n.d.)  
[https://ballotpedia.org/Laws\\_governing\\_the\\_initiative\\_process\\_in\\_Florida](https://ballotpedia.org/Laws_governing_the_initiative_process_in_Florida)

<sup>27</sup> Laws governing the initiative process in Florida, Ballotpedia (n.d.)  
[https://ballotpedia.org/Laws\\_governing\\_the\\_initiative\\_process\\_in\\_Florida](https://ballotpedia.org/Laws_governing_the_initiative_process_in_Florida)

<sup>28</sup> *Ibid.*

<sup>29</sup> This number is 10% of the total signatures required to get on the ballot 683,149 and one-fourth of the total districts required to get on the ballot. Laws governing the initiative process in Florida, Ballotpedia (n.d.)  
[https://ballotpedia.org/Laws\\_governing\\_the\\_initiative\\_process\\_in\\_Florida](https://ballotpedia.org/Laws_governing_the_initiative_process_in_Florida). See also Initiative petition handbook 2018 election cycle, Florida Department of State Division of Elections (2017)  
<https://files.floridados.gov/media/697659/initiative-petition-handbook-2018-election-cycle-eng.pdf>

<sup>30</sup> The findings from the Financial Impact Estimating Conference were inconclusive because the conference was unable to agree on the financial impact of the ballot initiative. See also Jim Saunders, Medicaid Expansion Backers Battle Senate On New Law, Health News Florida (2020),  
<https://health.wusf.usf.edu/health-news-florida/2020-04-28/medicaid-expansion-backers-battle-senate-on-new-law>

initiative's compliance with state laws and the Supreme Court issued a briefing schedule.<sup>31</sup> (The docket can be seen [here](#)).

On November 14, 2019, the Americans for Prosperity (AFP), the Foundation for Government Accountability (FGA), the Florida Senate, and the Florida House of Representatives filed briefs in opposition to the ballot initiative. They argued that the ballot initiative failed the single-subject requirement (a state law that requires ballot initiatives to address only a single subject, topic, or issue), that it proposed an improper use of legislative power, violated the separation of powers doctrine, and failed the clarity and informational requirements.<sup>32</sup> In defense, FDH argued, in part that opponents' reasoning with regard to the improper use of legislative power would, if successful, unconstitutionally restrict Floridians' right to amend the Constitution.<sup>33</sup> Oral arguments were scheduled for February 2, 2020.<sup>34</sup>

### Legislature Passes New Laws Making Ballot Initiatives More Difficult and Fueling Arguments Against the FDH Ballot Initiative

In the three years subsequent to the creation of Florida Decides Healthcare, the Legislature passed a series of bills making the ballot initiative process more burdensome, both mechanistically and financially, for would-be initiative sponsors.<sup>35</sup>

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<sup>31</sup> News Service of Florida, Medicaid expansion amendment reaches review by Florida Supreme Court, Sun Sentinel (2019), <https://www.sun-sentinel.com/news/politics/fl-ne-nsf-medicaid-expansion-florida-supreme-court-20190603-5v7pv552ifbniiifow5biej4um-story.html>. See also, *Advisory opinion to the attorney general re: provide Medicaid coverage to eligible low-income adults*, SC19-1070, Florida Supreme Court Docket (2019) <http://onlinedocketssc.flcourts.org/DocketResults/LTCases?CaseNumber=1070&CaseYear=2019>; Letter from Ashley Moody to Charles Canady on the ballot title for the proposed amendment. "Provide Medicaid Coverage to Eligible Low-Income Adults", (Sep. 20, 2019) [https://efactssc-public.flcourts.org/casedocuments/2019/1070/2019-1070\\_letter\\_65663\\_e48.pdf](https://efactssc-public.flcourts.org/casedocuments/2019/1070/2019-1070_letter_65663_e48.pdf)

<sup>32</sup> *Advisory opinion to the attorney general re: provide Medicaid coverage to eligible low-income adults*, SC19-1070, Florida Supreme Court Docket (2019) <http://onlinedocketssc.flcourts.org/DocketResults/LTCases?CaseNumber=1070&CaseYear=2019>

<sup>33</sup> Answer brief of sponsor Florida decides healthcare, Inc. on the *Advisory opinion to the attorney general re: provide Medicaid coverage to eligible low-income adults*, SC19-1070, Florida Supreme Court Docket (2019) [https://efactssc-public.flcourts.org/casedocuments/2019/1070/2019-1070\\_brief\\_135891\\_answer20brief2dmerits.pdf](https://efactssc-public.flcourts.org/casedocuments/2019/1070/2019-1070_brief_135891_answer20brief2dmerits.pdf)

<sup>34</sup> Court invitation letter for oral argument on the *Advisory opinion to the attorney general re: provide Medicaid coverage to eligible low-income adults*, SC19-1070, Florida Supreme Court Docket (2019) [https://efactssc-public.flcourts.org/casedocuments/2019/1070/2019-1070\\_order\\_239359\\_a01g.pdf](https://efactssc-public.flcourts.org/casedocuments/2019/1070/2019-1070_order_239359_a01g.pdf)

<sup>35</sup> Gary Fineout, Florida lawmakers tighten ballot measure rules ahead of 2020 election, Politico (2019), <https://www.politico.com/states/florida/story/2019/05/03/florida-legislature-takes-aim-at-ballot-measures-ahead-of-2020-election-9178437>

In 2019, the legislature made onerous changes to the signature collection process. Specifically, new restrictions: (1) required that anyone gathering signatures on behalf of a ballot initiative effort be registered with the state, (2) prohibited payment schedules for canvassers (hired to collect signatures) based on the number of signatures obtained, and (3) required that ballot measures include language noting the amendment's anticipated effect on the state budget and estimated impact on the economy.<sup>36</sup>

Then, in 2020, while the FDH petition was pending before the state Supreme Court, the legislature passed further legislation encumbering the ballot initiative process. Specifically, Ch. 2020-15 increased significantly the percentage of required signatures necessary to trigger the Florida Supreme Court's initial review from ten percent to **twenty-five percent**, and the number of congressional districts represented from one-fourth to **one-half**.<sup>37</sup> Additionally, the statute placed a limit on how far in advance of the election the sponsor could qualify the ballot amendment.<sup>38</sup>

Opponents of the petition seized on the 2020 legislation. They all filed motions to dismiss, arguing in part that the ballot initiative would be unable to meet the new requirements in time for the 2020 ballot.<sup>39</sup> They further argued that the signatures collected in 2019 would be stale by the 2022 election as state law limits their validity to 2 years.<sup>40</sup>

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<sup>36</sup> Despite the overwhelming support, this legislation slowed signature collection, making it more difficult for FDHC to secure enough signatures for the 2020 ballot. See e.g. News Service of Florida, *Ballot proposal to expand Medicaid pushed back to 2022*, Health News Florida (2019), <https://health.wusf.usf.edu/health-news-florida/2019-08-10/ballot-proposal-to-expand-medicaid-pushed-back-to-2022#stream/0>. See also Gary Fineout, *Florida lawmakers tighten ballot measure rules ahead of 2020 election*, Politico (2019), <https://www.politico.com/states/florida/story/2019/05/03/florida-legislature-takes-aim-at-ballot-measures-ahead-of-2020-election-9178437>

<sup>37</sup> § 15.21, Fla. Stat. (2020). [https://efactssc-public.flcourts.org/casedocuments/2019/1070/2019-1070\\_notice\\_88997\\_notice2dappendix2fattachment20to20notice.pdf](https://efactssc-public.flcourts.org/casedocuments/2019/1070/2019-1070_notice_88997_notice2dappendix2fattachment20to20notice.pdf)

<sup>38</sup> Sponsor's corrected response to amended motion to dismiss on the *Advisory opinion to the attorney general re: provide Medicaid coverage to eligible low-income adults*, SC19-1070, Florida Supreme Court Docket (April 22, 2020) [https://efactssc-public.flcourts.org/casedocuments/2019/1070/2019-1070\\_response\\_54627\\_response.pdf](https://efactssc-public.flcourts.org/casedocuments/2019/1070/2019-1070_response_54627_response.pdf)

<sup>39</sup> Amended Motion to Dismiss based on Supplemental Authority on the *Advisory opinion to the attorney general re: provide Medicaid coverage to eligible low-income adults*, SC19-1070, Florida Supreme Court Docket (April 11, 2020)

[https://efactssc-public.flcourts.org/casedocuments/2019/1070/2019-1070\\_motion\\_121698\\_motion2ddismiss.pdf](https://efactssc-public.flcourts.org/casedocuments/2019/1070/2019-1070_motion_121698_motion2ddismiss.pdf)

<sup>40</sup>

*The law passed by the 2020 legislature also stated that "signatures remain valid until February 1 in even-numbered years," essentially meaning that they could not be valid for more than 2 years.* Amended Motion to Dismiss based on Supplemental Authority on the *Advisory opinion to the attorney general re: provide Medicaid coverage to eligible low-income adults*, SC19-1070, Florida Supreme Court Docket (2019) [https://efactssc-public.flcourts.org/casedocuments/2019/1070/2019-1070\\_motion\\_121698\\_motion2ddismiss.pdf](https://efactssc-public.flcourts.org/casedocuments/2019/1070/2019-1070_motion_121698_motion2ddismiss.pdf). See also Laws governing the initiative process in Florida, Ballotpedia (n.d.) [https://ballotpedia.org/Laws\\_governing\\_the\\_initiative\\_process\\_in\\_Florida](https://ballotpedia.org/Laws_governing_the_initiative_process_in_Florida)

In response, Florida Decides Healthcare underscored the fact that the signature requirements were met when the petition was accepted by the Supreme Court for review in June 2019 and that retroactive application of the 2020 standard would be improper.<sup>41</sup> If applied retroactively, the new law would “render all signatures [already] obtained by the Sponsor invalid” for a ballot initiative in 2022, despite their validity at the time the Attorney General petitioned the Florida Supreme Court.<sup>42</sup> In comparing the 2020 legislation to “moving the goalposts,” the FDHC urged the Court not to dismiss the petition, noting that the “right of initial review is a valuable one ... [because] an early advisory opinion from this Court indicating that an amendment meets constitutional and statutory requirements is a great benefit to a sponsor in its efforts to raise the funds and otherwise garner public support necessary to achieve ballot position.”

In 2021 the Legislature passed a third bill encumbering the ballot initiative process by imposing a \$3,000 limit on contributions to political committees like Florida Decides Healthcare that are working to get proposed constitutional amendments on the Florida ballot.<sup>43</sup> The ACLU filed a lawsuit in the Northern District of Florida on May 8, 2021 arguing that the legislation violates Floridian’s First Amendment rights.<sup>44</sup> On July 1, 2021 the Northern District found that there was a First Amendment violation and entered a temporary injunction.<sup>45</sup> On June 15, 2022, the Plaintiff’s motion for Summary Judgment, for a declaratory judgment, and for a permanent injunction were granted.<sup>46</sup>

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<sup>41</sup> Sponsor’s corrected response to amended motion to dismiss on the *Advisory opinion to the attorney general re: provide Medicaid coverage to eligible low-income adults*, SC19-1070, Florida Supreme Court Docket (April 22, 2020) [https://efactssc-public.flcourts.org/casedocuments/2019/1070/2019-1070\\_response\\_54627\\_response.pdf](https://efactssc-public.flcourts.org/casedocuments/2019/1070/2019-1070_response_54627_response.pdf)

<sup>42</sup> Sponsor’s corrected response to amended motion to dismiss on the *Advisory opinion to the attorney general re: provide Medicaid coverage to eligible low-income adults*, SC19-1070, Florida Supreme Court Docket (April 22, 2020) [https://efactssc-public.flcourts.org/casedocuments/2019/1070/2019-1070\\_response\\_54627\\_response.pdf](https://efactssc-public.flcourts.org/casedocuments/2019/1070/2019-1070_response_54627_response.pdf)

<sup>43</sup> Mary Ellen Klas, Florida legislators pass bill to limit citizen ballot initiatives, Tampa Bay Times (April 26, 2021), <https://www.tampabay.com/news/florida-politics/2021/04/26/florida-lawmakers-limits-money-backing-ballot-initiatives/>

<sup>44</sup> Case No. 4:21-cv-190-AW-MJF filed in The United States District Court for the Northern District of Florida, Tallahassee Division (2021), <https://www.aclufl.org/en/aclu-florida-v-lee-order-motions-preliminary-injunction>. See also Jim Saunders, ACLU challenges new Florida law limiting contributions to ballot initiatives, Orlando Weekly (May 10, 2021), <https://www.orlandoweekly.com/Blogs/archives/2021/05/10/aclu-challenges-new-florida-law-limiting-contributions-to-ballot-initiatives>

<sup>45</sup> News Service of Florida, Judge blocks Florida’s contribution cap limit on ballot initiatives, Tampa Bay Times (July 1, 2021), <https://www.tampabay.com/news/florida-politics/2021/07/01/judge-blocks-floridas-contribution-cap-limit-on-ballot-initiatives/>. See also Case No. 4:21-cv-190-AW-MJF filed in The United States District Court for the Northern District of Florida, Tallahassee Division (July 1, 2021), <https://www.aclufl.org/en/aclu-florida-v-lee-order-motions-preliminary-injunction>

<sup>46</sup> Order Granting Summ. J. and Permanent Inj. at 17, *The American Civil Liberties Union of Florida, Inc. vs. Cord Byrd in his official capacity as Florida Secretary of State, et. al.*, No. 4:21-cv-190-AW-MJF (N.D. Fla. Jun. 15, 2022).

In April 2022, the Attorney General’s request to the Florida Supreme Court for an advisory opinion on the ballot initiative’s compliance with state laws was dismissed.<sup>47</sup>

Table 2: Chronology of Major Actions Related to Ballot Initiative<sup>48</sup>

Date	Action
05/04/2019	The Legislature passed <a href="#">restrictions</a> (1) requiring anyone gathering signatures to register with the state, (2) prohibiting groups hiring individuals to canvas from paying based on the number of signatures obtained, and (3) requiring ballot measures to include language noting the amendment’s effect on the state budget and estimated impact on the economy.
05/28/2019	The Secretary of State submitted the ballot initiative and summary of petition signatures (90,420) to the Attorney General after the initiative met the requirements under section 15.21, Florida Statutes. (A copy of this is included in the Attorney General’s <a href="#">petition</a> ).
06/07/2019	The Attorney General of Florida submitted a <a href="#">petition</a> for the Florida Supreme Court to review the ballot initiative as required under Article IV, section 10, Florida Constitution, and section 16.061, Florida Statutes and provide a written opinion on it.
10/07/2019	The Florida Senate filed a <a href="#">Motion</a> requesting more time to file their opposition brief.
11/14/2019	<p>The Americans for Prosperity (AFP) and Foundation for Government Accountability (FGA) filed an <a href="#">initial brief</a> in opposition arguing that the ballot initiative violated the Florida Constitution’s single-subject requirement and failed the clarity and informational requirements of Florida Statutes.</p> <p>The Florida House of Representatives also filed an <a href="#">initial brief</a> in opposition. It echoed the claims of AFP and FGA that the ballot initiative was not single-subject or sufficiently clear and accurate. It also added a third claim that the ballot initiative was an attempt to exercise the legislative power reserved for the Florida Legislature, an improper use of a Constitutional amendment.</p> <p>The Florida Senate also filed an <a href="#">initial brief</a> in opposition, arguing that the ballot</p>

<sup>47</sup> <https://www.floridasupremecourt.org/content/download/835061/opinion/sc19-1070.pdf>

<sup>48</sup> *Advisory opinion to the attorney general re: provide Medicaid coverage to eligible low-income adults*, SC19-1070, Florida Supreme Court Docket (2019)  
<http://onlinedocketssc.flcourts.org/DocketResults/LTCases?CaseNumber=1070&CaseYear=2019>

	initiative was insufficiently clear, used emotionally misleading language, failed the single-subject requirement, and violated Separation of Powers Doctrine.
12/04/2019	Florida Decides Healthcare filed an <a href="#">answer brief</a> responding to all of the arguments posed by the opponents.
01/06/2020	<p>The House of Representatives filed a <a href="#">reply brief</a> restating its arguments in opposition to the ballot initiative. The Americans for Prosperity (AFP) and Foundation for Government Accountability (FGA) also filed a <a href="#">reply brief</a> restating their arguments in opposition to the ballot initiative.</p> <p>The Florida Senate filed a <a href="#">reply brief</a> restating its arguments in opposition to the ballot initiative.</p> <p>The Senate also filed a <a href="#">Motion to Dismiss</a>, arguing that the ballot initiative would be unable to meet the requirements to be on the 2020 ballots. They argued that the signatures signed in 2019 would not be valid for the 2022 ballot. Additionally, they argued that the sponsor (Florida Decides Healthcare) must “obtain verification of signatures equal to 10% of 8% of the votes cast in the presidential election preceding the initiative appearing on the ballot. Since the presidential election preceding the 2022 election has not yet happened, it is not possible for an initiative to meet the criteria in § 15.21(3), Florida Statutes” and that therefore review at this time was moot.</p>
<a href="#">04/08/2020</a>	The Florida Legislature approved Chapter 2020-15 which “amended the law to state that a signature remained valid only ‘until the next February 1 occurring in an even-numbered year for the purpose of the amendment appearing on the ballot for the general election occurring in that same year’” and <a href="#">changing the requirements</a> for review ten to <b>twenty-five percent</b> and the number of congressional districts from one-fourth to <b>one-half</b> .
04/13/2020	The Florida Senate submitted an <a href="#">Amended Motion to Dismiss</a> citing the 2020 legislation and arguing the signatures would not be valid.
04/22/2020	Florida Decides Healthcare filed a <a href="#">Corrected Response</a> to the Amended Motion to Dismiss. They argued that the Legislature had “moved the goalposts” because the Chapter 2020-15 was enacted on April 8, 2020, many months after the Attorney General’s certification that they had already met the requirements for review and that “no law prohibited the Sponsor herein from qualifying in 2019 for review of the petition for placement of the Amendment on the 2022 ballot.”
12/18/2020	The Senate submitted another <a href="#">Notice of Supplemental Authority</a> calculating the new number of signatures required based on Chapter 2020-15 as 222,898 signatures are

	necessary for judicial review.
<a href="#">05/07/2021</a>	The 2021 Florida Legislature passed legislation imposing a \$3,000 <a href="#">limit on contributions</a> to political committees like Florida Decides Healthcare who are trying to collect petition signatures to get proposed constitutional amendments on the Florida ballot. The 2021 legislation was <a href="#">challenged</a> by the ACLU in federal court as a violation of the first amendment and a temporary injunction was entered on July 1, 2021.
4/14/2022	The Attorney General’s request to the Florida Supreme Court for an advisory opinion on the ballot initiative’s compliance with state laws was dismissed. <sup>49</sup>

### Federal Efforts to Extend Coverage in Non-expansion States

In July 2021, Medicaid expansion was included in the proposed budget reconciliation plan.<sup>50</sup> President Biden has called for an end to the Medicaid coverage gap, but his administration has not endorsed a specific approach.<sup>51</sup> Senators Raphael Warnock (D-Ga.), Tammy Baldwin (D-WI) and Jon Ossoff (D-GA), have proposed the Medicaid Saves Lives Act which would create a Medicaid-like federal agency to provide coverage for those individuals who would be Medicaid-eligible if their state expanded Medicaid.<sup>52</sup> Passage of the bill would offer coverage to 425,000 uninsured Floridians who are otherwise trapped in the coverage gap.<sup>53</sup> With Congress narrowly controlled by a Democratic majority, the Biden Administration would need all Democratic members to vote in favor of the budget reconciliation proposal as well as a tie-breaking vote from Vice President Kamala Harris for the bill to pass.<sup>54</sup>

<sup>49</sup> <http://onlinedocketssc.flcourts.org/DocketResults/LTCases?CaseNumber=1070&CaseYear=2019>

<sup>50</sup> Jeff Amy, Senators seek Medicaid-like plan to cover holdout states, AP News (July 12, 2021), <https://apnews.com/article/joe-biden-health-government-and-politics-coronavirus-pandemic-medicaid-b860eb79612352dc9ae7659352c3141d>

<sup>51</sup> Nathaniel Weixel, Senate Democrats call for Medicaid-like plan to cover non-expansion states, The Hill (July 12, 2021), <https://thehill.com/policy/healthcare/562627-senate-democrats-call-for-medicaid-like-plan-to-cover-non-expansion-states?rl=1>

<sup>52</sup> Michael McAuliff, Senate Democrats’ Plan Boosts Spending on Medicare, ACA Subsidies, Long-Term Care, Kaiser Health News (July 15, 2021), <https://khn.org/news/article/senate-democrats-plan-boosts-spending-on-medicare-aca-subsidies-long-term-care/>

<sup>53</sup> The Medicaid Coverage Gap in Florida, Center on Budget and Policy Priorities (2021), <https://www.cbpp.org/sites/default/files/7-8-21tax-factsheets-fl.pdf>

<sup>54</sup> Kaiser Health News, Senate democrats' plan boosts spending on Medicare, ACA subsidies, long-term care, Health Leaders Media (2021) <https://www.healthleadersmedia.com/payer/senate-democrats-plan-boosts-spending-medicare-aca-subsidies-long-term-care>

The history of Medicaid expansion in Florida is one of persistent resistance by the state legislature. Even before the pandemic, over 425,000<sup>55</sup> Floridians were trapped in the coverage gap, representing nearly one-fifth of all Americans in the gap, and well over 800,000<sup>56</sup> (by some estimates over 1 million<sup>57</sup>) Floridians would benefit from Medicaid expansion. Given the state legislature's refusal to act on behalf of these residents, it is time for a federal fix. Florida residents cannot afford inaction.

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<sup>55</sup> Center on Budget and Policy Priorities (June 14, 2021)

<https://www.cbpp.org/research/health/closing-medicaid-coverage-gap-would-help-diverse-group-and-narrow-racial>

<sup>56</sup> Kaiser Family Foundation, The Coverage Gap: Uninsured Poor Adults in States that Do Not Expand Medicaid, (January 21, 2021)

<https://www.kff.org/medicaid/issue-brief/the-coverage-gap-uninsured-poor-adults-in-states-that-do-not-expand-medicaid/>

<sup>57</sup> Kaiser Family Foundation, How Many Uninsured Adults Could Be Reached If All States Expanded Medicaid? (June 25, 2020)

<https://www.kff.org/report-section/how-many-uninsured-adults-could-be-reached-if-all-states-expanded-medicaid-tables/>