UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

COMMON CAUSE FLORIDA, et al.,

Plaintiffs,

v.

LAUREL M. LEE, in her official capacity as Florida Secretary of State, et al.,

Defendants.

No. 4:22-cv-109-AW-MAF

FLORIDA LEGISLATORS' MOTION TO DISMISS

Defendants Florida State Senate President Wilton Simpson, Speaker of the Florida House of Representatives Chris Sprowls, Florida State Senator and Chair of the Florida State Senate Reapportionment Committee Ray Rodrigues, Florida State Representative and Chair of the Florida House Redistricting Committee Tom Leek, Florida State Senator and Chair of the Florida State Senate Select Subcommittee on Congressional Reapportionment Jennifer Bradley, and Florida State Representative and Chair of the Florida House Congressional Redistricting Subcommittee Tyler Sirois, in their official capacities as Florida State Legislators (collectively, the "Florida Legislators") move to dismiss all claims against them in the Complaint. Because Plaintiffs' claims against the Florida Legislators are barred by absolute legislative

immunity, Eleventh Amendment sovereign immunity, and Article III standing principles, this Court should dismiss all such claims against the Florida Legislators with prejudice.

MEMORANDUM OF LAW

Introduction

Plaintiffs allege that Florida's current congressional districts are unconstitutionally malapportioned and should not be used in the 2022 congressional elections. (Compl. ¶ 4). The Complaint requests this Court to declare the current congressional district plan unconstitutional; enjoin defendants from implementing, enforcing, or giving effect to the current congressional district plan; and to implement a new congressional district plan prior to the June 2022 qualifying period for the upcoming 2022 congressional elections. (*Id.* ¶¶ 4, 58, Prayer for Relief). In addition to the Florida Legislators, the Complaint names as defendants Secretary of State Laurel M. Lee and Florida Governor Ron DeSantis. (*Id.* ¶¶ 10-17). All defendants are named in their official capacities. (*Id.*).

Plaintiffs' claims against the Florida Legislators, however, are prohibited on three separate and independent grounds: absolute legislative immunity, Eleventh Amendment immunity, and Article III standing principles. Any of these grounds, standing alone, is sufficient for this Court to grant the Florida Legislators' Motion.

First, the claims against the Florida Legislators are barred by the doctrine of absolute legislative immunity. The Eleventh Circuit has held that state legislators are entitled to absolute legislative immunity when sued for actions taken in a legislative capacity. That absolute legislative immunity applies "regardless of whether a suit seeks damages or prospective relief," and it applies "regardless of whether the state legislators are named in their individual or official capacity." *Scott v. Taylor*, 405 F.3d 1251, 1257 (11th Cir. 2005). The Complaint falls squarely within the controlling precedent, and the Florida Legislators are entitled to have all claims against them dismissed on the basis of absolute legislative immunity.

Second, the claims against the Florida Legislators are prohibited by Eleventh Amendment sovereign immunity. The six Florida Legislators named as defendants do not "enforce" the laws establishing the current congressional districts challenged in this lawsuit. For that reason, the doctrine established in *Ex parte Young*, 209 U.S. 123 (1908), does not authorize a lawsuit seeking injunctive relief on a prospective basis against the Florida Legislators. The claims against the Florida Legislators should therefore be dismissed on the basis of Eleventh Amendment sovereign immunity.

Finally, and also alternatively, the claims against the Florida Legislators should be dismissed for lack of Article III standing. Even if Plaintiffs' claims were not barred from consideration by the immunities described above, no relief ordered

by this Court against the Florida Legislators could redress the Complaint's allegations that the existing congressional districts are malapportioned. Indeed, the Complaint does not even appear to request any relief specifically directed against the Florida Legislators. As a matter of law, the Plaintiffs cannot establish the requisite element of redressability for their claims against the Florida Legislators.

No matter which legal framework this Court applies—absolute legislative immunity, sovereign immunity, or Article III standing—the result is the same: all claims against the Florida Legislators should be dismissed with prejudice.

Legal Standards

I. Absolute legislative immunity and Eleventh Amendment immunity

Absolute legislative immunity and Eleventh Amendment immunity are affirmative defenses that are properly raised in a motion to dismiss. *Attwood v. Clemons*, 818 F. App'x 863, 866 (11th Cir. 2020). The party claiming the immunity bears the burden of proof. *See id.* A district court ruling on questions of immunity at the motion to dismiss stage accepts all well-pleaded factual allegations in a complaint as true. *Weissman v. Nat'l Ass'n of Sec. Dealers, Inc.*, 500 F.3d 1293, 1295-96 (11th Cir. 2007).

The determination of absolute legislative immunity is purely a question of law. *Brown v. Crawford Cty., Ga.*, 960 F.2d 1002, 1012 (11th Cir. 1992). State legislators wishing to invoke the doctrine must show that their actions were "taken

within the sphere of legitimate legislative activity." *Id.* at 1011 (internal quotation marks and citation omitted); *see also Sons of Confederate Veterans, Fla. Div., Inc. v. Atwater*, No. 6:09-cv-134-Orl-28KRS, 2009 WL 4546646, at *5 (M.D. Fla. Dec. 1, 2009) (requiring defendants to "demonstrate that the actions giving rise to Plaintiffs' claims were undertaken in their legislative capacities" (internal quotation marks omitted)). "It is the nature of the act which determines whether legislative immunity shields the individual from suit." *Yeldell v. Cooper Green Hosp., Inc.*, 956 F.2d 1056, 1062 (11th Cir. 1992).

Eleventh Amendment immunity and the *Ex parte Young* doctrine similarly present pure questions of law. *See Summit Med. Assocs., P.C. v. Pryor*, 180 F.3d 1326, 1341 n.12 (11th Cir. 1999). Eleventh Amendment immunity strikes at the heart of whether the federal courts have subject matter jurisdiction over the defendant. *See Kimel v. Fla. Bd. of Regents*, 528 U.S. 62, 73 (2000) ("[T]he Constitution does not provide for federal jurisdiction over suits against nonconsenting States."). Unless a state has waived its sovereign immunity, or the state's immunity is abrogated by an act of Congress under section 5 of the Fourteenth Amendment, the state may not be sued in federal court. *Grizzle v. Kemp*, 634 F.3d 1314, 1319 (11th Cir. 2011).

A narrow exception under *Ex parte Young* authorizes a suit against a state official in his or her official capacity for prospective relief. *Grizzle*, 634 F.3d at 1319.

Under *Ex parte Young*, however, a state official is not subject to suit unless he or she has the responsibility to enforce the law(s) at issue in the suit. *See Grizzle*, 634 F.3d at 1319.

II. Standing

Standing under Article III of the U.S. Constitution is a threshold jurisdictional determination, and the federal courts place the burden squarely on the Plaintiffs to "clearly . . . allege facts demonstrating" standing. *E.g.*, *Warth v. Seldin*, 422 U.S. 490, 518 (1975). The Plaintiffs must thus establish for each of their claims the "irreducible constitutional minimum[s]" of (1) an injury that is concrete and particularized, or actual or imminent; (2) caused by the defendant; and (3) redressable, at least in part, through a favorable decision for the plaintiffs and against the defendant. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992).

District courts may not "create jurisdiction by embellishing a deficient allegation of injury." *Bochese v. Town of Ponce Inlet*, 405 F.3d 964, 976 (11th Cir. 2005) ("It is not enough that the plaintiff's complaint sets forth facts from which we could *imagine* an injury sufficient to satisfy Article III's standing requirements, since we should not speculate concerning the existence of standing, nor should we imagine or piece together an injury sufficient to give plaintiff standing when it has demonstrated none." (internal quotation marks, brackets, and citation omitted)).

Failure to establish standing provides grounds to dismiss under Federal Rule of Civil Procedure 12(b)(1).

Argument

I. Absolute legislative immunity bars Plaintiff's claims against the Florida Legislators.

Legislative immunity provides broad protection to legislators "from arrest or civil process for what they say or do in legislative proceedings." *Tenney v. Brandhove*, 341 U.S. 367, 372 (1951). The principle has deep roots in federal common law and is reflected in the federal Speech or Debate Clause as to members of Congress. The doctrine of legislative immunity recognizes that legislators should not be subjected to inconveniences and distractions of a trial diverting their attention from their legislative tasks. *See Supreme Court of Va. v. Consumers Union of U.S., Inc.*, 446 U.S. 719, 733 (1980); *see also Tenney*, 341 U.S. at 377 ("The claim of an unworthy purpose does not destroy the privilege. Legislators are immune from deterrents to the uninhibited discharge of their legislative duty, not for their private indulgence but for the public good."). Of particular relevance here, absolute legislative immunity "shields [lawmakers] from political wars of attrition in which their opponents try to defeat them through litigation rather than at the ballot box." *E.E.O.C. v. Wash. Suburban Sanitary Com'n*, 631 F.3d 174, 181 (4th Cir. 2011).

Though its origins may be federal, "state legislators [also] enjoy common-law immunity from liability for their legislative acts . . . ." *Consumers Union*, 446 U.S.

at 732 (citing *Tenney*, 341 U.S. 367). The legislative immunity available to state legislators under § 1983 is equivalent "to that accorded Congressmen under the Constitution." *Id.* at 733. This legislative immunity is so vast and critical that it has even been extended to officials taking legislative actions at the local government level. *See Bogan-Scott-Harris*, 523 U.S. 44, 49 (1998).

Under binding Eleventh Circuit precedent, state legislators are entitled to absolute legislative immunity for actions taken in their legislative capacity. *Scott*, 405 F.3d at 1257. The *Scott* Court's holding is broad and protects state legislators from claims seeking either prospective injunctive relief or damages. *See id.* at 1254. Legislative immunity applies regardless of whether a legislator is sued in his or her personal or official capacity. *Id.* at 1256 ("The purpose of legislative immunity being to free legislators from such worries and distractions, it makes sense to apply the doctrine regardless of the capacity in which a state legislator is sued."); *see also Atwater*, 2009 WL 4546646, at *5 (rejecting plaintiffs' argument that the legislators' actions were merely administrative and not legislative). All that needs to be shown is that the legislators were acting within their legislative roles. *See Yeldell*, 956 F.2d at 1062.

The broad doctrine of absolute legislative immunity also protects state legislators through the related concept of legislative privilege, which generally prohibits federal courts from compelling lawmakers to testify about the motivation

of any given legislation or the inner workings of the legislative process. *See, e.g.*, *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 268 n.18 (1977) ("[J]udicial inquiries into legislative or executive motivation represent a substantial intrusion into the workings of other branches of government. Placing a decisionmaker on the stand is therefore usually to be avoided." (internal quotation marks and citation omitted)); *In re Hubbard*, 803 F.3d 1298, 1308, 1310 (11th Cir. 2015) ("The privilege protects the legislative process itself, and therefore covers both governors' and legislators' actions in the proposal, formulation, and passage of legislation.").

This Court has previously recognized the importance of safeguarding the legislative privilege, citing many of the same justifications that support the doctrine of absolute legislative immunity: separation of powers concerns, potential chilling effect on the legislative process, and burdens that would be placed on legislators through compelled testimony. *See League of Women Voters of Fla., Inc. v. Lee*, No. 4:21cv186-MW/MAF, 2021 WL 5283949, at *4 (N.D. Fla. Nov. 4, 2021) ("In short, as the Eleventh Circuit has explained, 'inquiry into the motivation' behind a state legislative enactment 'strikes at the heart of the legislative privilege.'" (quoting *Hubbard*, 803 F.3d at 1310)); *Florida v. United States*, 886 F. Supp. 2d 1301, 1303 (N.D. Fla. 2012) ("Legislators ought not call unwilling judges to testify at legislative hearings about the reasons for specific judicial decisions, and courts ought not

compel unwilling legislators to testify about the reasons for specific legislative votes."). Absolute legislative immunity, like legislative privilege, "serves to prevent parties from harassing legislators . . . for actions those legislators take in their legislative capacity." *League of Women Voters of Fla.*, 2021 WL 5283949, at *3.

Here, the Plaintiffs' claims fall squarely within the Florida Legislators' scope of protection of absolute legislative immunity. The Complaint names six members of the Florida Legislature as defendants, but includes only general allegations relating to the Florida Legislature's consideration and passage of congressional district voting plans. (Compl. ¶¶ 36, 37, 44). There are no allegations specific to any single action taken by one of the Florida Legislators, nor are there any allegations as to any purely personal actions.

To the extent the Complaint addresses the Florida Legislators at all, it discusses the Florida Legislators' involvement in proposed legislation addressing congressional district maps. The consideration or rejection of proposed legislation, however, "is quintessentially legislative." *Marylanders for Fair Representation, Inc. v. Schaefer*, 144 F.R.D. 292, 299 (D. Md. 1992). Indeed, "[t]he passing of acts is the very essence of the legislative process, and any attempt to punish a legislator for such actions would manifestly tend to 'control his [or her] conduct as a legislator.'" *Martin v. Augusta-Richmond Cty., Ga., Comm'n*, No. CV 112-058, 2012 WL 5950408, at *4 (S.D. Ga. Nov. 28, 2012) (quoting *Gravel v. United States*, 408 U.S.

606, 618 (1972)); *see also Gravel*, 408 U.S. at 618 (construing the Speech and Debate Clause broadly to avoid any action seeking "to control . . . conduct as a legislator."); *Yeldell*, 956 F.2d at 1062, 1063-64 (noting that numerous acts fell within absolute legislative immunity, including voting, speech making on the chamber floor, preparing committee reports, participating in committee investigations and proceedings, and refusing to introduce legislation for a vote); *Martin*, 2012 WL 5950408, at *4 ("The Eleventh Circuit has recognized that voting, debate and reacting to public opinion are manifestly in furtherance of legislative duties." (internal quotation marks and citations omitted)); *Atwater*, 2009 WL 4546646, at *6 (holding that legislators acted within their legislative capacities when they refused to bring proposed legislation up for a vote). The Complaint makes no allegations that the Florida Legislators took any actions or inactions which fell outside their legislative duties that injured the Plaintiffs. *Cf. Attwood*, 818 F. App'x at 870 (holding that a legislator's social media conduct through his Facebook and Twitter posts did not entitle him to absolute legislative immunity).

Moreover, district courts have consistently applied the doctrine of absolute legislative immunity to protect state legislators in redistricting cases similar to this one. *See, e.g.*, *Schaefer*, 144 F.R.D. at 296-99 (applying absolute legislative immunity to bar any inquiry into the Maryland Legislature's consideration of a redistricting plan submitted by the governor or the Legislature's "failure to ratify an

alternative plan"); *Martin*, 2012 WL 5950408, at *4 (holding that legislators were entitled to legislative immunity concerning any "failure to enact a redistricting plan"). Plaintiffs' claims are thus barred under the doctrine of absolute legislative immunity, and the Florida Legislators' Motion should be granted.

II. Eleventh Amendment sovereign immunity bars the claims against the Florida Legislators.

This Court should alternatively dismiss Plaintiffs' claims on the basis of Eleventh Amendment sovereign immunity. The Eleventh Amendment bars suits against nonconsenting states in federal courts, *see, e.g.*, *Kimel*, 528 U.S. at 73, and the Plaintiffs' claims against the Florida Legislators do not fall within the narrow exception recognized in *Ex parte Young*. This Court therefore lacks subject matter jurisdiction over the claims against the Florida Legislators.

Under *Ex parte Young*, a state official is subject to suit in his or her official capacity when the office imbues the official with the responsibility to enforce the law or laws at issue in the suit. *Grizzle*, 634 F.3d at 1319. But "the doctrine of *Ex parte Young* cannot operate as an exception to [a state's] sovereign immunity where no defendant has any connection to the enforcement of the challenged law at issue." *Summit Med.*, 180 F.3d at 1341-42 ("[F]ederal courts have refused to apply *Ex parte Young* where the officer who is charged has no authority to enforce the challenged statute." (citing cases)). "Therefore, unless the state officer has some responsibility to enforce the statute or provision at issue, the 'fiction' of *Ex parte Young* cannot

operate." *Id.* (refusing to apply *Ex parte Young* to permit a suit against the state Governor, Attorney General, or the district attorney because the challenged statute was enforceable only at the request of certain private persons); *see also Women's Emergency Network v. Bush*, 323 F.3d 937, 949 (11th Cir. 2003) (holding a governor's "general executive power" was insufficient to qualify as having the requisite responsibility to enforce a challenged statute under *Ex parte Young*).

The office held by the Florida Legislators does not "imbue" them with the responsibility to enforce the law at issue in the suit—the existing congressional map that has been in effect since 2015 and that Plaintiffs now challenge as malapportioned. Unlike the Secretary of State in *Grizzle*, *see* 634 F.3d at 1319, the Florida Legislators have no power or duty to ensure that any entities comply with the Florida Election Code or any congressional district plan. Notably, the Complaint does not allege that the Florida Legislators have any power of enforcement or responsibility over the implementation of the current congressional district plan—they simply have the power to consider and pass legislation. Nor could Plaintiffs ever make such allegations, as Florida's strong Separation of Powers Clause prevents legislators from wielding enforcement powers that are properly exercised by the executive branch. *See* Fla. Const. art. II, § 3 ("No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.")

Perhaps Plaintiffs seek to put the responsibility for the current malapportioned maps on the backs of the Florida Legislators solely because, as legislators, they have the power to enact legislation. But the courts reject claims seeking "prospective injunctive relief against state legislators—either in their official or individual capacity—to require them to pass legislation to remedy a constitutional violation." *Tolman v. Finneran*, 171 F. Supp. 2d 31, 37-38 (D. Mass. 2001). Indeed, if members of the Florida Senate or Florida Legislature could be named as defendants solely because a law exists that some plaintiffs wish to challenge as unconstitutional, then it would completely destroy "the fundamental principle that [the States] cannot, without their assent, be brought into any court at the suit of private persons." *Ex parte Young*, 209 U.S. at 157; *Summit Med.*, 180 F.3d at 1341 ("Only if a state officer has the authority to enforce an unconstitutional act in the name of the state can the Supremacy Clause be invoked to strip the officer of his [or her] official or representative character and subject him [or her] to the individual consequences of his [or her] conduct."); *cf. Bush*, 323 F.3d at 949-50 ("If a governor's general executive power provided a sufficient connection to a state law to permit jurisdiction over him, any state statute could be challenged simply by naming the governor as a defendant.").

Because the Florida Legislators have no responsibility to enforce the current congressional district plan, this Court cannot apply doctrine of *Ex parte Young*, and the claims against the Florida Legislators must be dismissed.

III. Plaintiffs lack standing to pursue claims against the Florida Legislators.

This Court should also dismiss Plaintiffs' claims against the Florida Legislators because the Complaint alleges no Article III case or controversy between Plaintiffs and the Florida Legislators. Article III standing requires that a plaintiff allege and demonstrate a concrete and particularized injury in fact traceable to actions of the defendants that can be redressed by a favorable decision by the court. *See, e.g.*, *Vt. Agency of Natural Res. v. United States ex rel. Stevens*, 529 U.S. 765, 771 (2000). These three elements comprise the "irreducible constitutional minimum" necessary for a plaintiff to maintain a cause of action against a defendant under Article III's case-or-controversy requirement. *Lujan*, 504 U.S. at 560; *see also Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016) (holding that the plaintiff bears the burden to "allege facts demonstrating each element" (internal quotation marks and citation omitted)).

Notably, Article III standing examines the relationship between the plaintiff(s) and *each* defendant for *each* claim. *See Jacobson v. Fla. Sec'y of State*, 974 F.3d 1236, 1256 (11th Cir. 2020); *Anderson v. Raffensperger*, 497 F. Supp. 3d 1300, 1307 (N.D. Ga. 2020); *see also Calzone v. Hawley*, 866 F.3d 866, 869 (8th

Cir. 2017) ("Article III standing to sue each defendant also requires a showing that each defendant caused [plaintiff's] injury and that an order of the court against each defendant could redress the injury."). Thus, if the Court cannot issue an order that directs a particular defendant to afford redress, the plaintiffs have failed to establish Article III standing to sue *that* defendant. *See, e.g.*, *Jacobson*, 974 F.3d at 1256. It is "the effect of the court's judgment on the defendant" that must redress the plaintiffs' injury. *Id.* at 1254 (internal quotation marks, emphasis, and citation omitted).

"[I]n a suit against state officials for injunctive relief, a plaintiff does not have Article III standing with respect to those officials who are powerless to remedy the alleged injury." *Scott*, 405 F.3d at 1259 (Jordan, J., concurring) (citing cases); *see also id.* at 1256-57 & n.8 (the Court's opinion concluding in dicta that it was "extremely doubtful" that standing could be maintained against legislator defendants in a similar case where the relief sought was to enjoin the enforcement of a challenged voting district). Thus, in *Jacobson*, this Court held that the plaintiffs had failed to demonstrate Article III standing against the Secretary because any injury they suffered with regard to the order of candidates on the ballot could not be redressed through relief against the Secretary. 974 F.3d at 1253 (noting that Florida law charged Supervisors of Elections, not the Secretary, with printing the names of candidates who would appear on the ballots). Because the Secretary did not control the Supervisors of Elections and the plaintiffs could not demonstrate that "the

Secretary plays any role in determining the order in which candidates appear on ballots," the Court lacked jurisdiction over plaintiffs' claims against the Secretary. *Id.*

Here the Florida Legislators' "role is limited to making law"; they "do not have enforcement authority and are not involved in conducting elections in" Florida. *Scott*, 405 F.3d at 1259 (Jordan, J., concurring); *see also Jacobson*, 974 F.3d at 1253. Though the burden is Plaintiffs' to allege and demonstrate, it is unclear how the Florida Legislators could ever possibly be ordered to redress the alleged injury caused by malapportioned districts.[1] The Complaint has not alleged—nor could it—that the Florida Legislators have any role in enforcing or implementing any congressional district plan that Plaintiffs seek to enjoin. Plaintiffs also notably do

[1] Moreover, Plaintiffs have also failed to adequately allege that any injuries are traceable to any actions or inactions by the Florida Legislators. The Florida Legislators did not draw or vote upon the current congressional district plans. (Compl. ¶¶ 24-25 (alleging the current congressional district map was ordered by the Florida Supreme Court); *see also League of Women Voters of Fla. v. Detzner*, 179 So. 3d 258, 305 (Fla. 2015) (Polston, J., dissenting) ("This is a Court-adopted map, not a legislative-drawn map. The map the trial court recommended and the majority adopts . . . . [is a] remedial plan drawn entirely by Democratic operatives."). The Florida Legislators also did not cause the population changes in Florida that Plaintiffs complain are the reason the current congressional district plan has become unconstitutionally malapportioned. (Compl. ¶ 52). In fact, the Complaint concedes that the Florida Legislators did precisely what is in their constitutional power to do—together with other members of the Florida Legislature—through their consideration and passage of redistricting legislation. (Compl. ¶ 44). Plaintiffs' failure to show that any injury they may suffer is traceable to the Florida Legislators necessarily means that any relief ordered against the Florida Legislators also will not redress Plaintiffs' injuries. *See Jacobson*, 974 F.3d at 1254.

not make any requests for relief against the Florida Legislators. (Compl. pp. 23-24). Moreover, even if this Court were to go outside the Complaint and consider an extraordinary decree—which has not been requested by Plaintiffs and thus could not be issued—to order the Florida Legislators to create new congressional maps, the Court's order "would be ineffective, for the legislators, by themselves, are powerless to pass laws." *Scott*, 405 F.3d at 1259 (Jordan, J., concurring). Nor can a court order a state legislature to enact legislation without invading the separation of powers. *Smith & Lee Assoc*s., *Inc. v. City of Taylor*, 102 F.3d 781, 797 (6th Cir. 1996) ("The enactment of legislation is not a ministerial function subject to control by mandamus, prohibition or the injunctive powers of a court." (quoting *Joseph Skillken & Co. v. City of Toledo*, 528 F.2d 867, 878 (6th Cir. 1975), *vacated on other grounds*, 429 U.S. 1068 (1977))).

Because Plaintiffs have failed to allege what is minimally constitutionally required for Article III standing, this Court is without jurisdiction over any claims against the Florida Legislators and must therefore dismiss the Florida Legislators from this suit.

CONCLUSION

For all of the above reasons, this Court should grant the Florida Legislators' Motion to Dismiss and dismiss all of Plaintiffs' claims against the Florida Legislators with prejudice.

Dated March 29, 2022.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(F)

This document contains 4,164 words, excluding what can be excluded under N.D. Fla. Local Rule 7.1(F).

/s/ Daniel Nordby

CERTIFICATE OF SERVICE

I hereby certify that on March 29, 2022, I electronically filed this document with the Clerk of the Court by using the CM/ECF system, which will serve all parties whose counsel have entered appearances. Those parties who have not yet appeared will be served via email.

/s/ Daniel Nordby