

**IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA**

SENATOR RAY
RODRIGUES, et al.,

Non-Parties-Appellants,

v.

BLACK VOTERS MATTER
CAPACITY BUILDING
INSTITUTE, INC., et al.,

Plaintiffs-Appellees.

Case No.: 1D22-3834
L.T. No.: 2022-ca-000666

**APPELLEES' PROPOSED REPLY
IN SUPPORT OF MOTION TO DISMISS**

Appellants do not dispute that it is “impossible for the court to grant . . . any effectual relief” here. *Montgomery v. Dep’t of Health & Rehab. Servs.*, 468 So. 2d 1014, 1016 (Fla. 1st DCA 1985). Instead, they rely on depositions in *Common Cause Fla. v. Byrd*, No. 4:22-cv-109-AW (N.D. Fla.), an entirely separate federal challenge to the Enacted Plan, to argue that the Court should retain jurisdiction over the case because the legislative privilege issues raised here are likely to recur. Opp. at 15; *see also* Supp. App. at 1-2. But it is blackletter law that “a claim of privilege in federal court is resolved by federal common law.” *Hancock v. Hobbs*, 867 F.2d 462, 466 (11th Cir.

1992).¹ It is thus impossible for the state privilege issue raised here to recur in the federal proceeding.

Appellants' reliance on *Florida v. United States*, 886 F. Supp. 2d 1301 (N.D. Fla. 2012), to argue otherwise is misplaced. That case too made clear that "the question of legislative privilege in a [federal case] is a question of federal law." *Id.* at 1304. And while the court acknowledged that a federal privilege claim may be "weaker" "if a state indeed did not recognize a privilege for its own legislators," "[t]his makes no difference here, because Florida *does* recognize a state legislative privilege." *Id.*; *see also Apportionment IV*, 132 So. 3d 135, 143-47 (Fla. 2013).

Appellants may not keep this appeal alive by bootstrapping it to separate litigation in a separate jurisdiction. For these reasons, and those stated in their motion, Appellees' respectfully request that the Court dismiss Appellants' appeal as moot.

¹ State privilege law may apply in federal court if "the privilege is invoked with respect to an element of a claim or defense as to which State law supplies the rule of decision." *Hancock*, 967 F.2d at 466. The federal challenge includes neither a state a claim nor defense. Appellants do not argue otherwise.

Dated: January 31, 2023

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 31, 2023 I electronically filed the foregoing using the State of Florida ePortal Filing System, which will serve an electronic copy to counsel in the Service List below.

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