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IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA
CIRCUIT CIVIL DIVISION

CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT, Plaintiff, v. WALT DISNEY PARKS AND RESORTS U.S., INC., Defendant.	Case No. 2023-CA-011818-O

DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT AS MOOT OR, IN THE ALTERNATIVE, TO STAY THIS ACTION

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Defendant Walt Disney Parks and Resorts U.S., Inc. ("Disney") files this Motion to Dismiss Plaintiff's Amended Complaint as Moot or, in the Alternative, to Stay This Action, and states as follows:

INTRODUCTION

Just over a year ago, Disney expressed a political view that Governor DeSantis did not like. In response, the Governor unleashed a campaign of retaliation, weaponizing the power of government to punish Disney for its protected speech. Faced with a newly hostile state administration, Disney aimed to protect its planned investments in Central Florida—including thousands of new jobs and billions of dollars in capital over the next decade—by executing two development contracts with the local government body that had managed the special district where Disney has been located for more than 50 years. Public notice appeared twice in a prominent Orlando newspaper, and there were two public hearings on the subject. Over no objection, the contracts were executed in early February.

A key component of the Governor's retaliation campaign was to replace the elected board of Disney's local government entity with a hostile board, hand-picked by the Governor. None of the nearly 2,000 other special government districts in Florida underwent any similar state-mandated revision to its governance structure. In late March, when the reconstituted board sat for its second meeting, board members suddenly announced that they had just discovered the publicly-noticed-and-approved development contracts. The contracts became a top priority for the State's retaliatory campaign. The Governor promised that the State Legislature would pass a law that "revoked" the contracts. And the Governor pledged that his new local governing board would declare the contracts void.

The Governor made good on his threats. On April 26, the new board approved a declaration repudiating the contracts as void and unenforceable. That day, left with no other option for protecting its rights, Disney filed a lawsuit in federal court asserting federal constitutional claims against the Governor, the new board, and other responsible officials. Five days later, on May 1, the new board brought this suit asking the Court to declare that the contracts are "void, unenforceable, and/or invalid" and to issue an order prohibiting Disney from enforcing them.

Shortly thereafter, the Governor followed through on his additional threat to take action against the contracts at the State level. Four days after the board filed this case, the Governor signed the legislation he had previewed, effectively voiding the contracts as a matter of state law by prohibiting the board "from complying with the terms" of the contracts.

That legislation renders Plaintiff's complaint moot because it makes any order this Court could issue—in either party's favor—legally irrelevant. If the Court rejects the board's claims on their merits and agrees with Disney that the contracts complied with any procedural and substantive requirements of state law, the board would still be prohibited from complying with them under the new state statute. For the same reason, even if the Court found merit in the board's objections to the contracts, any order to that effect would be pointless because the contracts would *already* be void under the new state statute. In short, any declaration about the contracts' enforceability, voidness, or validity—either way—would be an advisory opinion with no real-world consequence. Trial courts in Florida are forbidden from issuing advisory opinions, and this case should be dismissed.

In the alternative, Florida law requires that the Court stay this litigation until Disney's federal action resolves. Disney's earlier-filed and earlier-served federal action is pending

between substantially the same parties, and it involves substantially overlapping issues. In these circumstances, controlling precedents provide that the Court lacks discretion to proceed with this case. Disney regrets that it is compelled to litigate these issues anywhere, but the federal action is the proper vehicle for first hearing the parties' dispute.

BACKGROUND

Over the last 55 years, Disney transformed 27,000 acres of Central Florida swamplands into a global tourist destination. Tens of millions of visitors now come to the Walt Disney World Resort each year because of its world-class guest experience, timeless storytelling, and unforgettable characters. The Reedy Creek Improvement District ("RCID" or the "District"), Disney's long-time local governing jurisdiction, was integral to its success from the beginning, and Disney long enjoyed a constructive relationship with both RCID and the State.

That changed in 2022, when Disney voiced opposition to pending state legislation supported by the Governor. The Governor initiated a hostile campaign of retaliation expressly targeting Disney for its protected speech. The first step was coordinating with the Florida Legislature to pass Senate Bill 4C, ordering the dissolution of RCID effective June 1, 2023. *See* Am. Compl. ¶ 18. Senate Bill 4C rushed through the Legislature at lightning speed. The result was volatility and uncertainty—for Disney, RCID bondholders, neighboring taxpayers, and others around the State.

In that uncertain time, Disney and RCID sought to protect future development plans already laid out in an existing comprehensive plan—one the State itself had found statutorily compliant—through the execution of two long-term land use contracts: a Development Agreement and a Declaration of Restrictive Covenants (together, the "Contracts"). The Contracts are similar in character to contracts between other developers and special districts that

fix long-term development rights and obligations, thereby facilitating the certainty needed to ensure investment and effective commercial progress. Following public notice and open hearings attended by several press outlets, those Contracts were executed on February 8, 2023. *See* Am. Compl. ¶¶ 40-41.

Then came more state legislation orchestrated by Governor DeSantis. Three weeks after the Contracts were executed, on February 27, 2023, the Governor signed into law House Bill 9B, which prevented RCID's scheduled dissolution and ordered "reform" instead. Am. Compl. ¶ 19. Under House Bill 9B, the District continued to exist but under a new name: the Central Florida Tourism Oversight District ("CFTOD"). *Id.* The CFTOD board would no longer be elected by landowners in the District, as had been done since the District's establishment decades ago, but would be nominated by the Governor and confirmed by the Florida Senate. *Id.*

The new members of the CFTOD board sat for their first meeting on March 8, 2023. Three weeks later, the board met for the second time. At that second meeting, board members claimed to have just discovered the Contracts. One board member tweeted a warning: "Disney has once again overplayed their hand in Florida. We won't stand for this and we won't back down."[1] At a press conference a few weeks later, the Governor pledged action from the CFTOD board on the Contracts, along with legislation that would "make sure" the Contracts "are revoked."[2]

The promised legislation—Senate Bill 1604—came the next day, on April 18. The bill states:

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[1] Bridget Ziegler (@BridgetAZiegler), TWITTER (Mar. 29, 2023, 9:36 PM), https://twitter.com/BridgetAZiegler/status/1641253049250336771 (last accessed May 16, 2023).

[2] Ron DeSantis (@GovRonDeSantis), TWITTER (Apr. 17, 2023, 12:57 PM), https://twitter.com/GovRonDeSantis/status/1648007909333417985 ("Governor DeSantis Provides an Update on Florida's Response to Disney," remarks at 6:26) (last accessed May 16, 2023).

> An independent special district is *precluded from complying with the terms* of any development agreement, or any other agreement for which the development agreement serves in whole or part as consideration, which is executed within 3 months preceding the effective date of a law modifying the manner of selecting members of the governing body of the independent special district from election to appointment or from appointment to election.

Fla. Laws ch. 2023-31 (adding subsection (7) to Fla. Stat. § 189.031) (emphasis added). RCID and Disney, of course, had executed the Contracts within three months of the transition from RCID's elected board to CFTOD's appointed one. Thus, under the proposed legislation, the Contracts would be rendered immediately void and unenforceable.

The following morning, on April 19, CFTOD's litigation counsel presented to the CFTOD board a list of purported infirmities with the Contracts. The board asked its litigation counsel to prepare a resolution that would declare the Contracts void, make findings of fact in support, and direct action necessary to assert CFTOD's position on the issues (the "Legislative Declaration").

CFTOD approved the Legislative Declaration one week later, on April 26, calling the Contracts "void *ab initio*." Am. Compl. ¶ 26. Moreover, underscoring the State's coordinated efforts, CFTOD made clear that the "readoption" provision in the soon-to-be enacted Senate Bill 1604 would have no applicability: "[T]he Board has no desire to readopt or ratify such instruments"—*i.e.*, the Contracts. Legislative Declaration ¶ 91;[3] *see* Fla. Stat. § 189.031(7) ("The newly elected or appointed governing body … shall … vote on whether to seek readoption of such agreements.").

That same day, Disney reluctantly filed a lawsuit against the CFTOD board and other parties in the United States District Court for the Northern District of Florida. *See Walt Disney*

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[3] *Available at* https://www.rcid.org/wp-content/uploads/2023/05/Legistative-Findings-executed.pdf (last accessed May 16, 2023).

Parks and Resorts U.S., Inc. v. DeSantis, No. 4:23-cv-00163-MW-MJF (N.D. Fla.) (the "Federal Action"), ECF No. 1; Am. Compl. ¶¶ 27, 31. In the Federal Action, Disney alleges that CFTOD's Legislative Declaration violates its rights under the Contracts Clause, Takings Clause, Due Process Clause, and the First Amendment of the federal Constitution. Disney also alleges that the Governor's dissolution of RCID and retaliatory installation of a State-appointed local governing board following Disney's political statements violates the First Amendment. On May 1, Disney served all parties in that suit. *Id.*, ECF Nos. 13-20.

On May 1, CFTOD filed this suit purporting to challenge the validity of the Contracts. CFTOD seeks a declaration that the Contracts are "void, unenforceable, and/or invalid," and an order enjoining Disney from enforcing them. Am. Compl. p. 34.

Four days later, just as forecast, the Governor signed into law Senate Bill 1604, Fla. Laws ch. 2023-31 ("Senate Bill 1604"), under which the CFTOD board was forbidden from complying with the Contracts. Fla. Stat. § 189.031(7). Disney filed a first amended complaint in the Federal Action on May 8, which incorporated constitutional challenges to Senate Bill 1604. Disney served all parties with the amended complaint the same day. Federal Action at ECF No. 25 ("Disney's FAC").[4]

On May 9, CFTOD filed an amended complaint in this suit that only corrected its signature block. Despite Senate Bill 1604 being signed into law four days prior—the law giving CFTOD the precise relief it requests here—CFTOD added no mention of the law in its amended complaint. Disney was served in this action on May 12.

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[4] Senate Bill 1604 renders the Contracts void and unenforceable under state law, but Disney's Federal Action challenges that statute itself as unconstitutional on multiple grounds. The additional presentation of those issues is yet another reason the Federal Action is the proper forum to litigate this dispute. *See infra* p. 18-19.

LEGAL STANDARD

CFTOD's complaint raises two threshold legal issues—mootness and Florida's "principle of priority" rule.

First, courts have an obligation to dismiss a moot case because "[t]he mootness doctrine is 'a corollary to the limitation on the exercise of judicial power to the decision of justiciable controversies.'" *Casiano v. State*, 310 So. 3d 910, 913 (Fla. 2021). "'It is the function of a judicial tribunal to decide actual controversies by a judgment which can be carried into effect, and not to give opinions on moot questions, or to declare principles or rules of law which cannot affect the matter in issue.'" *Merkle v. Guardianship of Jacoby*, 912 So. 2d 595, 599-600 (Fla. 2d DCA 2005); *see, e.g.*, *Dixon v. State*, 274 So. 3d 531 (Fla. 1st DCA 2019) (because issue was moot, court "must dismiss"); *Carlin v. State*, 939 So. 2d 245, 247 (Fla. 1st DCA 2006) (court "constrained to dismiss … as moot").

Second, Florida law recognizes a robust "principle of priority," under which state proceedings should be stayed pending an earlier-filed federal court proceeding. *E.g.*, *Ocwen Loan Servicing, LLC v. 21 Asset Mgmt. Holding, LLC*, 307 So. 3d 923, 925-926 (Fla. 3d DCA 2020). The rule is strict and strongly favors a stay of later-filed state court litigation. Indeed, it is "an *abuse of discretion* to refuse to stay a subsequently filed state court action in favor of a previously filed federal action which involves the same parties and the same or substantially similar issues." *Florida Crushed Stone Co. v. Travelers Indem. Co.*, 632 So. 2d 217, 220 (Fla. 5th DCA 1994) (emphasis added); *accord Ocwen*, 307 So. 3d at 926 ("'Absent extraordinary circumstances … a trial court abuses its discretion when it fails to respect the principle of priority.'").

ARGUMENT

I. THE COURT SHOULD DISMISS PLAINTIFF'S AMENDED COMPLAINT AS MOOT

CFTOD's complaint challenges the validity of the Contracts on various procedural and substantive grounds. Those challenges have been mooted by the enactment of Senate Bill 1604, through which CFTOD obtained the exact result it seeks in this state court lawsuit. The Legislature has forbidden CFTOD from complying with the Contracts, rendering them immediately void and unenforceable. Fla. Stat. § 189.031(7). In the Governor's own words, they "are revoked." This Court accordingly cannot provide meaningful relief to either party: A ruling in CFTOD's favor would be pointless, and a ruling in Disney's favor would be meaningless. Under the Florida Constitution, trial courts have no power to issue opinions that are at best advisory and lack any real-world effect on the parties' rights. The case should be dismissed as moot.

A. Senate Bill 1604 Deprives Judgment In This Case Of Any Actual Effect

"Article V, section 1 of the Florida Constitution vests '[t]he judicial power' in Florida's courts." *Casiano*, 310 So. 3d at 913. The courts, out of respect for the "separation of powers," reserve their power "for cases involving actual controversies." *Id.* Thus, Florida courts "will dismiss a case if the issues raised have become moot." *Id.* "An issue is moot when the controversy has been so fully resolved that a judicial determination can have no actual effect." *Godwin v. State*, 593 So. 2d 211, 212 (Fla. 1992). "A case is 'moot' when it presents no actual controversy or when the issues have ceased to exist." *Id.* Put differently, "where no practical result could be attained," courts dismiss the case as moot. *Du Bose v. Meister*, 110 So. 546, 547 (Fla. 1926).

Dismissal is required here. This is an action by a state board raising questions about the validity of Contracts that are *already* void and unenforceable by unequivocal legislative fiat.

There is no order this Court can issue that will affect that result. CFTOD's 175-paragraph complaint asserts nine claims about issues such as the Contracts' alleged negotiations, benefit structure, consideration, compliance with local, statutory, and constitutional law, consistency with public policy, and delegation of authority. All of those questions are academic. No matter how this Court answers them, CFTOD will not comply with the Contracts because it legally *cannot*: Senate Bill 1604 provides, without qualification, that CFTOD "is precluded from complying with the terms of" the Contracts. Fla. Stat. § 189.031(7). Because the Legislature has made "it impossible for the court to provide effectual relief," *Lund v. Department of Health*, 708 So. 2d 645, 646 (Fla. 1st DCA 1998), the case now "presents no actual controversy," *Godwin*, 593 So. 2d at 212.

Rather than effectuating meaningful relief, any decision by this Court—in either party's favor—would be advisory and "trial courts have no authority to issue advisory opinions to parties." *McMullen v. Bennis*, 20 So. 3d 890, 892 (Fla. 3d DCA 2009) (citing *Department of Revenue v. Kuhnlein*, 646 So. 2d 717, 721 (Fla. 1994)). "It is the function of a judicial tribunal to decide actual controversies by a judgment which can be carried into effect, and not to give opinions on moot questions, or to declare principles or rules of law which cannot affect the matter in issue." *Montgomery v. Department of Health & Rehab. Servs.*, 468 So. 2d 1014, 1016-1017 (Fla. 1st DCA 1985); *cf. Baptist Hosp., Inc. v. Baker*, 84 So. 3d 1200, 1204 (Fla. 1st DCA 2012) ("The injury must be distinct and palpable, not abstract or hypothetical."). By rendering any opinion by this Court legally irrelevant, the new statute has deprived this Court of jurisdiction to resolve this case.

B. No Exception To Mootness Applies

Florida courts recognize three narrow situations when an otherwise moot case will not be dismissed: where (1) "'the questions raised are of great public importance,'" (2) the questions raised "'are likely to recur,'" or (3) "collateral legal consequences that affect the rights of a party flow from the issue to be determined." *Godwin*, 593 So. 2d at 212. None exists here.

First, the "great public importance" exception to mootness has no application. The exception applies only to appellate review of a case that becomes moot after the judicial power has been permissibly exercised by a trial court with jurisdiction to resolve a live controversy. As Florida courts have long recognized, "mootness does not destroy an appellate court's jurisdiction … when the questions raised are of great public importance or are likely to recur." *Holly v. Auld*, 450 So. 2d 217, 218 n.1 (Fla. 1984), *abrogated on other grounds by Conage v. United States*, 346 So. 3d 594, 598 (Fla. 2022); *see Public Defender, Eleventh Judicial Circuit of Fla. v. State*, 115 So. 3d 261, 281 (Fla. 2013); *State v. Matthews*, 891 So. 2d 479, 484 (Fla. 2004); *Enterprise Leasing Co. v. Jones*, 789 So. 2d 964, 965 (Fla. 2001). The exception is thus often invoked by appellate courts when, for example, the plaintiff dies during the appeal, *see Dugger v. Grant*, 610 So. 2d 428, 429 n.1 (Fla. 1992), or a habeas petitioner is released from prison before the appeal is decided, *see Rivera v. Singletary*, 707 So. 2d 326, 327 n.6 (Fla. 1998), or the parties settle while the appeal is pending, *see Pino v. Bank of New York*, 76 So. 3d 927, 930 (Fla. 2011); *Bell v. U.S.B. Acquisition Co.*, 734 So. 2d 403, 404 n.1 (Fla. 1999). That principle does not, and should not, authorize a trial court to assert jurisdiction over a case that is or becomes moot at the very outset—before the court has exercised any judicial power—simply because the case arguably involves important issues. *See Apthorp v. Dentzner*, 162 So. 3d 236, 240-241 (Fla. 1st DCA 2015) (reversing judgment of trial court addressing constitutionality of state statute for

lack of any "bona fide, actual, present practical need for a declaration"). If the "public importance" exception applied at the trial level, it would transform courts into public oracles empowered to issue advisory proclamations on the great issues of the day. Trial courts have no such authority. *See City of Hollywood v. Petrosino*, 864 So. 2d 1175, 1177 (Fla. 4th DCA 2004) (party seeking declaration cannot request "legal advice by the courts or the answers to questions propounded from curiosity"). They are instead empowered only to resolve cases through judgments with concrete effects on the parties in the cases before them. Because there can be no such effect here, this case is moot.

Moreover, even if it applied at the trial level, this exception would provide CFTOD no help. While the underlying dispute, of course, has attracted significant media attention, the actual questions in this case are not of "great public importance … on which Florida's trial courts and litigants need guidance." *Pino*, 76 So. 3d at 928. CFTOD sues to enjoin Disney from enforcing contracts based on allegations that are specific to the facts giving rise to this dispute. *See, e.g.*, Am. Compl. ¶ 76 (alleging that certain "proposed amendments … did not revise the densities or intensities of the existing joint comprehensive plan" in support of claim that comprehensive plan amendments were void); *id.* ¶ 148 (alleging circumstances surrounding "edit[s]" to "the text of [an] agenda item" to support unconscionability claim). This state court case is—as CFTOD has pleaded it—an idiosyncratic, local contract dispute. The first exception to mootness does not exist here.[5]

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[5] Even cases that affect large numbers of people beyond the disputing parties are not necessarily matters of "great public importance." In *Rosa v. Beracha*, for example, the Fourth District Court of Appeal rejected the parties' joint position that a question "of statutory construction" was one "of 'great importance' because of the large number of Florida residents [affected]." 996 So. 2d 958, 959 (Fla. 4th DCA 2008). As the court observed, "There are any number of statutes in Florida lacking construction by a District Court affecting large numbers of citizens." *Id.* And not just statutes: There are public controversies and problems of all kinds

Second, no issue in this case is likely to "recur, yet evade review." *State v. S.M.*, 131 So. 3d 780, 783 (Fla. 2013). This exception applies only "when '(1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there [is] a reasonable expectation that the same complaining party [will] be subjected to the same action again.'" *Morris Publ'g Grp., LLC v. State*, 136 So. 3d 770, 776 (Fla. 1st DCA 2014) (quoting *Weinstein v. Bradford*, 423 U.S. 147, 149 (1975)). *S.M.*, for example, was a habeas case involving pre-hearing detention of juveniles. 131 So. 3d at 781. The case was moot because, by the time the Florida Supreme Court heard it, the petitioner had received a hearing. *Id.* at 783. The habeas issues would "recur, yet evade review because of the short period of time that a juvenile will be detained prior to an adjudicatory hearing." *Id.* On that basis, the court recognized an exception to mootness. *Id.*; *see also N.W. v. State*, 767 So. 2d 446, 447 n.2 (Fla. 2000) ("because periods of supervision or community control may expire before a case may be reviewed, this case presents a controversy capable of repetition, yet evading review, which should be considered on its merits").

No remotely comparable situation exists here. In this case, a special district entered into two land use contracts with a company; the state legislature reconstituted the special district's board; the newly appointed board disavowed those contracts and (after the company sued) brought suit against the company to enjoin enforcement of the contracts; days later, the state legislature enacted a law prohibiting the special district from complying with the contracts. CFTOD's highly context-specific claims are not likely to recur. And CFTOD's claims will not

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that affect large numbers of citizens. That alone has never been enough to authorize trial courts to address such issues through advisory opinions with no concrete effect on the parties before them.

evade review. If any live dispute were to somehow emerge in the future, the board could simply assert its claims then.

Third, no "collateral legal consequences that affect the rights of a party flow from the issue to be determined." *Godwin*, 593 So. 2d at 212. In *Godwin*, an appeal of a commitment order was not mooted by the appellant's release from custody because the State retained the right, as a result of the commitment order, to impose "a lien for unpaid fees flowing from an involuntary commitment." *Id.* at 214. Importantly, there were "no statutory means provided to challenge a lien imposed after an improper commitment short of challenging the validity of that commitment." *Id.* Collateral legal consequences have also been held to include the "restriction of voting rights, jury service, driver's licenses or gun licenses." *Westlake v. State*, 440 So. 2d 74, 75 (Fla. 5th DCA 1983). In these situations, the collateral legal consequences follow essentially automatically from resolution of the pending issue.

When the consequences are uncertain or speculative, they do not constitute the kind of concrete effect that justifies adjudication of an otherwise moot case. For instance, in *Araguel v. Bryan*, the court deemed the plaintiff's concern about being held in contempt for violating an expired order "too speculative to justify an exception" given "that there is no pending motion seeking to hold Appellant in contempt of the now-expired order." 315 So. 3d 1241, 1242 (Fla. 1st DCA 2021); *see also Casiano*, 310 So. 3d at 914 (completion of sentence during pendency of appeal rendered case moot and potential designation as a prison releasee reoffender was "too speculative to be considered a collateral legal consequence"); *Kendall Healthcare Grp., Ltd. v. Pub. Health Tr. of Miami-Dade Cnty*., 296 So. 3d 533, 535 (Fla. 1st DCA 2020) (possibility of attorneys' fees does not create a sufficient legal consequence); *Lund*, 708 So. 2d at 646 (same).

Similarly insufficient is the existence of related litigation. In *McGraw v. DeSantis*, the plaintiff argued that "collateral legal consequences" would "extend from [the state court suit] to her federal voting-rights lawsuit." __ So. 3d __, 2023 WL 2904955, at *1 (Fla. 1st DCA Apr. 12, 2023). The First District Court of Appeal refused to overlook the mootness of the case, observing that the plaintiff's "federal lawsuit … is a separate legal matter to which no collateral legal consequences will flow from the dismissal of this appeal." *Id.* So too here, to the extent CFTOD were to invoke Disney's Federal Action as a basis for the application of this exception. Of course, all judicial opinions carry the prospect of affecting other judicial proceedings under principles of res judicata, estoppel, and *stare decisis*. That is not enough to displace mootness. The dismissal of this case will not create "collateral legal consequences," as Florida's mootness doctrine uses that term, in the federal proceeding between these parties.

Nor do *non-legal* consequences of dismissal suffice to overcome mootness. In *Westlake v. State*, the appellant argued that the court should decide the appeal of an involuntary commitment order, notwithstanding the release of the formerly committed person, "because of the stigma attached to an involuntary commitment for treatment of mental illness." 440 So. 2d at 75. The court disagreed, highlighting the difference between "*legal*, not social, consequences." *Id.* Any non-legal consequences CFTOD might suggest in asking the Court to supplant the mootness of this case are unavailing.

II. IN THE ALTERNATIVE, THE COURT SHOULD STAY THIS CASE UNDER THE PRIORITY PRINCIPLE

This case should be dismissed as moot. In the alternative, the Court should stay the case under Florida's priority rule until the Federal Action resolves.

"It is well-settled that when a previously filed federal action is pending between substantially the same parties on substantially the same issues, a subsequently filed state action

should be stayed pending the disposition of the federal action." *Beckford v. Gen. Motors Corp.*, 919 So. 2d 612, 613 (Fla. 3d DCA 2006); *see also Wade v. Clower*, 114 So. 548, 551 (Fla. 1927) ("Where a state and federal court have concurrent jurisdiction over the same parties or privies and the same subject-matter, the tribunal where jurisdiction first attaches retains it exclusively and will be left to determine the controversy and to fully perform and exhaust its jurisdiction and to decide every issue or question properly arising in the case.").

The priority rule avoids waste of judicial resources through duplicative and unnecessary proceedings, decreases the burden on the parties to concurrent litigation in separate forums, and mitigates the risk of inconsistent judgments. *Ocwen*, 307 So. 3d at 926. Departure from the rule is thus an abuse of discretion, which the District Courts of Appeal routinely—and strictly—enforce. *E.g.*, *Shooster v. BT Orlando Ltd. Partnership*, 766 So. 2d 1114, 1115 (Fla. 5th DCA 2000) (applying priority rule to quash trial court order that vacated a previously-granted stay; "the [] judge departed from the essential requirements of the law in vacating the stay"); *Florida Crushed Stone Co.*, 632 So. 2d at 220 (similar; "it was [] error to refuse to grant the stay"); *Ocwen*, 307 So. 3d at 926 (similar; "The trial court's denial of the Petitioner's motion to stay the state court action is error … .").

A stay under the priority rule is warranted here because jurisdiction attached in the Federal Action first and both actions involve substantially similar parties and issues.

A. Jurisdiction Attached In The Federal Action First

Florida's priority rule requires that, where a state and federal court have concurrent jurisdiction, the "tribunal where jurisdiction first attaches retains jurisdiction exclusively and will be left to determine the controversy and to fully perform and exhaust its jurisdiction and to decide every issue or question properly arising in the case." *Shooster*, 766 So. 2d at 1115 (citing

Wade, 114 So. at 551). To determine when jurisdiction attaches in either forum, Florida courts look to Florida procedural law. *Id.*; *see also OPKO Health, Inc. v. Lipsius*, 279 So. 3d 787, 793 (Fla. 3d DCA 2019). Under Florida law, jurisdiction attaches when service is perfected. *Shooster*, 766 So. 2d at 1115.

Disney perfected service against all defendants in the Federal Action on May 1—before even the issuance of summons in this action. Federal Action at ECF Nos. 13-20.[6] CFTOD did not serve Disney in this action until May 12. Under Florida law, jurisdiction therefore attached first in Disney's federal suit. *See Roche v. Cyrulnik*, 337 So. 3d 86, 89 (Fla. 3d DCA 2021) (stay warranted where state court action was filed 10 days after the federal suit was filed and 6 days after the federal defendants were served); *OPKO Health*, 279 So. 3d at 789 (stay warranted where state suit filed 13 days after federal suit).[7]

B. The Federal Action Involves Substantially Similar Parties And Issues

For a stay to be warranted under the priority rule, the parties and claims in the federal and state actions need only be substantially similar. *See Sorena v. Gerald J. Tobin, P.A.*, 47 So. 3d

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[6] On May 15, after two weeks of silence, the CFTOD board member and administrator defendants, through counsel, suggested that it "appear[ed]" they had not yet been properly served with the original complaint. That suggestion is incorrect, and the priority rule applies. As of May 1, CFTOD did not have any registered agent, as identified on its website or on the appropriate Florida state website. As the sworn proofs of service indicate, service was thus perfected on each CFTOD defendant on May 1 through a CFTOD employee "authorized to accept service" and "the liaison to intercept legal documents for the board and director." *E.g.*, Federal Action at ECF No. 15 (proof of service for board chair Martin Garcia); *see* Fla. Stat. § 48.111(1)(b). In any event, the Court has the inherent authority to stay this case and should do so for all the same reasons stated in the text. *See Shake Consulting, LLC v. Suncruz Casinos, LLC*, 781 So. 2d 494, 495 (Fla. 4th DCA 2001) (recognizing trial court's "broad discretion to grant … a motion to stay a case pending before it" and affirming stay based on "risk of inconsistent and/or duplicative rulings" and conservation of "[s]ubstantial judicial resources").

[7] Disney filed and served its first amended complaint in the Federal Action on May 8, 2023, before CFTOD perfected service in this case. *See* Federal Action at ECF No. 25. In any event, filing an amended complaint does not change the priority analysis. *See Ocwen*, 307 So. 3d at 925-926 (relying on original federal complaint for priority).

875, 878 (Fla. 3d DCA 2010) ("Complete identity of the parties and claims is not required."); *see also Ocwen*, 307 So. 3d at 926. The parties and issues in these cases easily clear that hurdle.

1. There is sufficient identity of parties

The parties in these actions are more than "substantially similar." *See Pilevsky v. Morgans Hotel Grp. Mgmt., LLC*, 961 So. 2d 1032, 1035 (Fla. 3d DCA 2007). They are for the most part functionally identical—CFTOD on one side and Disney on the other. CFTOD, the plaintiff here, is a defendant in the Federal Action, albeit sued in the official capacities of its individual officers: CFTOD's board chair; CFTOD's four additional board members; and CFTOD's district administrator. Disney's FAC ¶¶ 23-28. A suit against the CFTOD board members in their official capacities is, for all purposes relevant here, a suit against CFTOD itself. Official capacity suits are "'another way of pleading an action against an entity of which an officer is an agent.'" *Kentucky v. Graham*, 473 U.S. 159, 165-166 (1985); *see id.* at 166 ("As long as the government entity receives notice and an opportunity to respond, an official-capacity suit is, in all respects other than name, to be treated as a suit against the entity."); *see also Welch v. Laney*, 57 F.3d 1004, 1009 (11th Cir. 1995) ("Welch's claim against the commissioners in their official capacity was [] a claim against the Cullman County Commission."). In this case, CFTOD has sued Disney. The suits thus involve the same parties.[8]

2. There is sufficient identity of issues

It is "'clear that 'the causes of action do not have to be identical' to require a stay of the second filed action.'" *Ocwen*, 307 So. 3d at 926. Instead, a stay is warranted where the actions

[8] Disney also sued the Governor and the Acting Secretary of the Florida Department of Economic Opportunity in their official capacities. Those two additional defendants in the earlier-filed Federal Action do not change the priority analysis. *See Ricigliano v. Peat, Marwick, Main & Co.*, 585 So. 2d 387, 387 (Fla. 4th DCA 1991) (granting stay despite "disparity in the parties to the two actions"); *see also Pilevsky*, 961 So. 2d at 1035.

"stem from the same nucleus of facts" and the first-filed complaint is likely to resolve "some questions of fact or materially affect the viability of some claims" in the later action. *OPKO Health*, 279 So. 3d at 791-792.

Both federal and state actions here involve the "same nucleus of facts." Disney's complaint in the Federal Action and CFTOD's state complaint include competing factual allegations on the same fundamental topics, including: CFTOD's comprehensive plan (*compare* Disney's FAC ¶¶ 44-48, *with* Am. Compl. ¶¶ 21, 72-101); the purpose of the Contracts (*compare* Disney's FAC ¶¶ 101-110, *with* Am. Compl. ¶¶ 20-22); the notice and hearing processes for the Contracts (*compare* Disney's FAC ¶¶ 111-117, *with* Am. Compl. ¶¶ 36-43); the terms of the Contracts (*compare* Disney's FAC ¶¶ 118-127, *with* Am. Compl. ¶¶ 23-24, 107-119); and CFTOD's legislative findings regarding the Contracts and its declaration that the Contracts are void (*compare* Disney's FAC ¶¶ 128-158, *with* Am. Compl. ¶¶ 25-26). Given the substantial factual overlap, the "outcome of the" federal litigation is "likely to resolve some questions of fact" in the state action. *OPKO Health*, 279 So. 3d at 792.

Likewise, resolution of the Federal Action will "materially affect the viability" of some claims in the state action. In the federal lawsuit, Disney alleges that CFTOD's April 26, 2023 Legislative Declaration violated the Contracts Clause, the Takings Clause, the Due Process Clause, and the First Amendment of the federal Constitution. Disney's FAC ¶¶ 176-209. Disney seeks a declaration that the State's action is unlawful because it impairs valid and enforceable Contracts. Disney's FAC at 78-79. In its state suit, CFTOD seeks essentially the opposite: a declaration that the Contracts are void, unenforceable, and invalid. Am. Compl. p. 34.

CFTOD can—and presumably will—present its arguments about the validity of the Contracts as defenses to Disney's claims that CFTOD's and the State's actions unconstitutionally impaired the Contracts. Under Florida law, where a first-filed lawsuit is likely to resolve affirmative defenses that are relevant to claims in a later-filed suit, the later-filed case must be stayed. *See Florida Crushed Stone*, 632 So. 2d at 221. In *Florida Crushed Stone*, the plaintiff purchased insurance plans from various Travelers entities. After a dispute about premium payments, both parties filed federal lawsuits for breach of contract. Travelers then filed an additional state court lawsuit to recover money owed under a repayment plan memorialized in a promissory note the parties executed—a note not mentioned in either federal case. The District Court of Appeal stayed the state action after concluding that the cases all concerned the same issues, including because Travelers would necessarily raise the promissory note "as an affirmative defense" in the federal litigation. *Id.* at 220-221.

Disney's Federal Action includes an additional First Amendment claim based on a series of events surrounding and predating the replacement of RCID with CFTOD. But the presence of that additional federal claim, and its attendant background, is not basis for denying a stay. If anything, it supports a stay because the questions raised with respect to that claim and CFTOD's authority are antecedent to those here. But in any event, the standard is not complete identity of claims. *See, e.g.*, *State v. Harbour Island, Inc.*, 601 So. 2d 1334, 1335 (Fla. 2d DCA 1992) ("While the two cases are not identical, the disposition of the federal case will resolve many of the issues raised in the state action."). Indeed, CFTOD's Complaint extends back to 1967 in its opening section. *See* Am. Compl. ¶¶ 1-2. Critically, the existence of the contract-related claims in both proceedings means "both courts will simultaneously be considering the same facts and

the same legal issues, creating a risk of conflicting decisions." *REWJB Gas Invs. v. Land O'Sun Realty, Ltd.*, 645 So. 2d 1055, 1056 (Fla. 4th DCA 1994). A stay is thus warranted.

CONCLUSION

Senate Bill 1604 moots the claims in the amended complaint, and the Court should dismiss this action. In the alternative, the Court should stay this case under the rule of priority in light of the pending, previously filed Federal Action.

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Respectfully submitted.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was electronically filed with the Clerk of Court by using the ECF system, which will provide electronic notification to Alan Lawson, Esquire at alan@lawsonhuckgonzalez.com, paul@lawsonhuckgonzalez.com, jason@lawsonhuckgonzalez.com, David Thompson, Esquire at dthompson@cooperkirk.com, Pete Patterson, Esquire at ppatterson@cooperkirk.com, Joe Masterman, Esquire at jmasterman@cooperkirk.com, and Megan Wold, Esquire at mwold@cooperkirk.com, A. Kurt Ardaman, Esquire at ardaman@fishbacklaw.com, Daniel W. Langley at dlangley@fishbacklaw.com and sc@fishbacklaw.com this 16th day of May 2023

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