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SC24-1314

In the Supreme Court of Florida

ADAM RICHARDSON,
Petitioner,

v.

JASON WEIDA, IN HIS OFFICIAL CAPACITY AS SECRETARY OF THE AGENCY FOR HEALTH CARE ADMINISTRATION ET AL.,
Respondents.

ON PETITION FOR A WRIT OF QUO WARRANTO

RESPONSE TO PETITION FOR WRITS OF QUO WARRANTO AND MANDAMUS

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INTRODUCTION AND SUMMARY OF ARGUMENT

Petitioner asks the Court to order three high-ranking executive-branch officials—the Governor, the Attorney General, and the Secretary of the Agency for Health Care Administration—to not use their "official authority" to inform the public about an issue of enormous public importance. Specifically, Petitioner asks the Court to order the Secretary to remove information from the Agency's webpage about the abortion amendment that will go for a vote in November.

Petitioner is free to disagree with the content of the webpage, but he has no right to silence Respondents from voicing their serious concerns about the proposed amendment and the misinformation spread by its proponents. Respondents in fact have a duty to inform the public about those concerns. That is not "interfer[ence] with an election." Pet.10. It is just good government.

The Petition must be denied for several reasons. The statute Petitioner selectively quotes in support of his claim is simply inapplicable. Regardless, it cannot be enforced by Petitioner—a private citizen—because it is principally a criminal statute, with supplemental civil enforcement only at the discretion of the Florida

Election Commission.

This case is also Exhibit A for why the Court should recede from the taxpayer-standing doctrine for the writ of quo warranto. Petitioner has no connection to the underlying facts other than his personal quest to undermine the State's abortion laws.[1] The Court should not permit every taxpayer to bypass the ordinary judicial process and force the Attorney General's Office, and many other governmental components, to expend considerable public resources on an expedited basis just because the taxpayer has an offhand theory that the government has done something unlawful. Otherwise, the Attorney General's Office and this Court may be doing little other than reacting to quo warranto petitions for the foreseeable future. In any event, to deny the petition, the Court need do no more than decline to extend its existing taxpayer-standing cases to the private enforcement of a criminal statute that is civilly enforceable only by the Florida Election Commission.

[1] *See* Adam Richardson, *The Originalist Case for Why the Florida Constitution's Right of Privacy Protects the Right to Abortion*, 53 Stetson L. Rev. 101 (2023).

ARGUMENT

I. EXTRAORDINARY WRITS ARE NOT VEHICLES FOR THE PRIVATE ENFORCEMENT OF CRIMINAL STATUTES.

1. Petitioner—a private citizen—asks this Court to issue writs of mandamus and quo warranto compelling state officials to comply with a criminal statute. *See* Pet.10 (citing § 104.31(1), Fla. Stat.). But quo warranto "is a common-law remedy" and its "scope depend[s] upon the use and limitations authorized by the common law and statute laws of England." *W. Flagler Assocs., Ltd. v. DeSantis*, 382 So. 3d 1284, 1286 (Fla. 2024) (quoting *State ex rel. Landis v. Prevatt*, 148 So. 578, 579 (Fla. 1933)). In *West Flagler*, this Court reaffirmed that a writ of quo warranto cannot substitute for a declaratory judgment in circuit court. *Id.* at 1287. Nothing in the history of the writ supports Petitioner's still more extravagant notion that it is a substitute for a criminal prosecution by the government.

Florida's chosen constitutional scheme confirms that conclusion. In Florida, "prosecution must be conducted by an official representative of the state." *Mercer v. State*, 24 So. 154, 155 (Fla. 1898); *see* Fla. Const., art. IV, § 4(b) (attorney general and statewide prosecutor); *id.*, art. V, § 17 (state attorneys). "Under Florida's

constitution, the decision to charge and prosecute is an executive responsibility, and the state attorney has complete discretion in deciding whether and how to prosecute." *State v. Bloom*, 497 So. 2d 2, 3 (Fla. 1986); *see also Anderson v. State*, 291 So. 3d 531, 535 (Fla. 2020); *Ayala v. Scott*, 224 So. 3d 755, 759 n.2 (Fla. 2017). The Constitution leaves no room for private citizens to countermand a state attorney's "decision *not* to prosecute or enforce." *Heckler v. Chaney*, 470 U.S. 821, 831 (1985) (emphasis added). Thus, it is well-established that "[p]rivate citizens . . . are not empowered to sue under a criminal statute, which involves an executive function" that is constitutionally committed to executive branch officials. *Hall v. Cooks*, 346 So. 3d 183, 189 (Fla. 1st DCA 2022). And although the Legislature gave the Florida Election Commission the authority to impose fines and seek injunctive relief in circuit court, *see* § 106.27, Fla. Stat., that only underscores that the Legislature's reticulated scheme contemplates enforcement solely at the discretion of government officials. *See, e.g.*, *Citizens for Resp. & Ethics in Washington v. Fed. Election Comm'n*, 993 F.3d 880, 888 (D.C. Cir. 2021) (explaining that the Federal Election Commission has "prosecutorial discretion" and that "agency attorneys who bring civil

enforcement actions are engaged in prosecuting functions").

But even if Section 104.31 contemplated private enforcement, any such action should still be brought as a declaratory judgment action in circuit court, and not as a quo warranto petition in this Court. *See W. Flagler*, 382 So. 3d at 1287. Petitioner cannot and does not claim that Respondents lack the general authority to speak on behalf of the government. Rather, he contends that specific communications violate a specific statutory prohibition. But as this Court made clear in *West Flagler*, quo warranto is not an all-purpose device for policing general compliance with substantive rules like that. In *West Flagler*, the Court applied that principle to a claim about "the substantive constitutionality of an enacted law." *Id.* But the same logic applies where, as here, a petitioner claims that an official "lacked authority" in that the official violated a statute—criminal or otherwise. That is far afield from the office of the writ, which is to test whether a government official has "the bare ability to act." *Id.*

2. Mandamus must be denied for much the same reasons. The writ requires "a clear legal right to the performance of a clear legal duty by a public officer." *Doe v. DeSantis*, No. 1D2023-0149, 2024 WL 2947763, at *2 (Fla. 1st DCA June 12, 2024). Criminal statutes

afford private parties no such rights. *See, e.g.*, *Andrews v. Heaton*, 483 F.3d 1070, 1076 (10th Cir. 2007) (private action unavailable to enforce criminal statutes because the executive branch has absolute discretion whether to prosecute).

Even if Section 104.31 created a general duty to comply with the law, Petitioner would have no "clear legal right" to the performance of that duty for the reasons already mentioned. Statutes enforceable exclusively by the government—like other "[s]tatutes that focus on the person regulated rather than the individuals protected"—"create no implication of an intent to confer rights on a particular class of persons." *Alexander v. Sandoval*, 532 U.S. 275, 289 (2001) (quotation omitted). "[A] statute that merely describes how the . . . government will effectuate or enforce rights does not contain rights-creating language." *Alabama v. PCI Gaming Auth.*, 801 F.3d 1278, 1297 (11th Cir. 2015); *see also Dist. Lodge No. 166, Int'l Ass'n of Machinists & Aerospace Workers, AFL-CIO v. TWA Servs., Inc.*, 731 F.2d 711, 717 (11th Cir. 1984) ("We are not persuaded that there is a clear right in the plaintiff to the relief sought. As we have previously explicated, the SCA does not confer on the plaintiff a private right of action for its enforcement."). That dooms petitioner's claim for

mandamus no less than his request for a writ of quo warranto. *See State ex rel. Orrell v. Johnson*, 147 So. 254, 256–57 (Fla. 1933); *State ex rel. First State Sav. Bank v. Special Rd. & Bridge Dist. No. 7*, 153 So. 909, 909 (Fla. 1933) ("We have recently held here that rights enforceable by writ of mandamus against the state board of administration when made a respondent to such writ, are dependent solely upon the statute creating rights . . . ." (citing *Johnson*)).

Moreover, just as quo warranto must be denied because it "is not a substitute for declaratory and injunctive relief," *W. Flagler*, 382 So. 3d at 1287, mandamus must be denied because a "petitioner must . . . have no other legal remedies available," *Doe*, 2024 WL 2947763, at *2. Again, even if the statute invoked here were privately enforceable at all, the appropriate vehicle for that action would be a suit for declaratory and injunctive relief in circuit court. Indeed, such a case is already pending. *See Floridians Protecting Freedom, Inc. v. Agency for Health Care Administration*, No. 2024-CA-1531 (2d Jud. Cir.).

II. PETITIONER LACKS STANDING TO SEEK QUO WARRANTO.

As this Court explained in *West Flagler*, "[q]uo warranto's earliest application was narrow in scope and limited by its common

law background," "[b]ut over time, the use of the writ has drifted from its common law moorings." 382 So. 3d at 1286. One of "the most egregious example[s]" of that drift is a series of decisions entertaining quo warranto petitions brought by private parties. *Floridians Protecting Freedom, Inc. v. Passidomo*, No. SC2024-1098, 2024 WL 3882608, at *5 (Fla. Aug. 21, 2024) (Francis, J., concurring) (discussing *Whiley v. Scott*, 79 So. 3d 702 (Fla. 2011)). Receding from those decisions is especially appropriate, as quo warranto petitioners have no cognizable reliance interest in "procedural rules" governing the availability of the writ. *State v. Poole*, 297 So. 3d 487, 507 (Fla. 2020).

But here, the Court need only decline to extend the doctrine. *See Anders v. Hometown Mortg. Servs.*, 346 F.3d 1024, 1031 (11th Cir. 2003) ("[W]hile we must apply the *Paladino* decision to facts and circumstances sufficiently similar to those under which it arose, we are not obligated to extend the decision to different situations."); *Egbert v. Boule*, 596 U.S. 482, 502 (2022) ("[W]e have indicated that if we were called to decide *Bivens* today, we would decline to discover any implied causes of action in the Constitution. But, to decide the case before us, we need not reconsider *Bivens* itself."). This Court has

never allowed private use of the writ to enforce a statute, much less a criminal statute, and the Court should decline to extend the taxpayer-standing doctrine to reach such claims here.

1. As the First DCA recently recognized, "only the Attorney General or a person claiming title to the office in question has standing to seek a writ of quo warranto." *Hall v. Cooks*, 346 So. 3d 183, 189 (Fla. 1st DCA 2022). Historically, quo warranto guarded the State's "sovereignty from invasion or [intrusion]," *State v. Gleason*, 12 Fla. 190, 206 (1868), by providing the State a mechanism to ensure its power was exercised only by those entitled to do so. Consistent with those historical roots, this Court long recognized that quo warranto petitions "could not be filed by an individual without the consent of the Attorney General," subject to certain statutory exceptions not relevant here. *State ex rel. Watkins v. Fernandez*, 143 So. 638, 639 (Fla. 1932); *see* § 80.01, Fla. Stat. ("Any person claiming title to an office which is exercised by another has the right" to seek quo warranto relief "on refusal by the Attorney General to commence an action.").

It was not until 2011 that this Court, for the first time, entertained a private citizen's quo warranto petition merely because

she was "a citizen and taxpayer." *Whiley*, 79 So. 3d at 706. The Court did so on the strength of an earlier case allowing the Governor and private citizens to serve as co-relators, given that "this Court historically has taken jurisdiction of writ petitions where members of one branch of government challenged the validity of actions taken by members of another branch." *Chiles v. Phelps*, 714 So. 2d 453, 456 (Fla. 1998); *see Whiley*, 79 So. 3d at 706 n.4 (citing *Chiles*). That was a reference to cases like *Martinez v. Martinez*, in which the Court concluded that a member of the Legislature could petition the Court for a writ of quo warranto against the Governor because, "as a member of the legislature being called into special session," he "[wa]s directly affected by the governor's action." 545 So. 2d 1338, 1339 (Fla. 1989); *see also Austin v. State ex rel. Christian*, 310 So. 2d 289, 290–91 (Fla. 1975) (commissioner of education petitioning for quo warranto to test the assignment by the governor of state attorney from another judicial circuit).

Although this Court has allowed quo warranto petitions by "members of one branch of government" seeking to "challenge[] the validity of actions taken by members of another branch," *Chiles*, 714 So. 2d at 456, that is a far cry from cases like this, in which private

citizens seek to take that power for themselves. The Court's recognition of such standing is rooted not in history, but in a rogue statement that "[i]n quo warranto proceedings . . . the people are the real party to the action and the person bringing suit 'need not show that he has any real or personal interest in it.'" *Martinez*, 545 So. 2d at 1339 (quoting *State ex rel. Pooser v. Wester*, 170 So. 736, 737 (Fla. 1936)).

In *Pooser*, "[a] majority of the court d[id] not think it necessary to" determine whether the petitioner there had standing because the petition was otherwise barred. 170 So. at 737. Yet Justice Terrell went on to opine that "[o]ne of the high prerogatives of a court of justice is to keep . . . the law dynamic by construing it to provide a remedy for every new wrong that arises" and that the writ should thus be "extended" to cover every instance where "the one complaining has suffered an injury . . . that should in right and justice be atoned for." *Id.* at 737–38. Long after *Pooser*, however, this Court continued to recognize that "except as modified by statute, the common law authorize[d] no person, however interested, to institute quo warranto proceedings in a case of this nature except through the

Attorney General." *State ex rel. Wurn v. Kasserman*, 179 So. 410, 411 (Fla. 1938).[2]

The English common-law writ was "of right for the king, against [someone] who . . . usurps any office, franchise, or liberty" of the King. 3 William Blackstone, *Commentaries on the Laws of England* *262. It could be pursued by the King's Attorney General and his

[2] *See also Farrington v. Flood*, 40 So. 2d 462, 464 (Fla. 1949) ("[T]he right to institute [quo warranto] proceedings [is] in the State and the institution of the action [is] a matter in the sole discretion of the Attorney General."); *Washington Cnty. Kennel Club, Inc. v. State ex rel. McAllister*, 107 So. 2d 176, 179 (Fla. 1st DCA 1958) ("Our conclusion is that neither under the statutes of this state nor under any applicable principle of law did the relator have the right to institute the present proceeding for the State of Florida on his relation, without the permission of the Attorney General . . . ."); *McGhee v. City of Frostproof*, 289 So. 2d 751, 752 (Fla. 2d DCA 1974) ("[I]t might at first blush appear that . . . quo warranto . . . would be appropriate . . . [, but] while it is ordinarily the proper method to determine entitlement to an office, it may be instituted only by the Attorney General (who, it appears, declined to do so in this case) or by a person claiming title to the office."); *Orange Cnty. v. City of Orlando*, 327 So. 2d 7, 8 (Fla. 1976) ("In the event quo warranto is not available, *i.e.*, the Attorney General refuses to allow quo warranto to proceed, then an action for injunctive and declaratory relief would be proper."); *Gryzik v. State*, 380 So. 2d 1102, 1105–06 (Fla. 1st DCA 1980) (accepting the rule in *McGhee*); *Butterworth v. Espey*, 523 So. 2d 1278, 1278 (Fla. 2d DCA 1988) ("Even if, as those appellants argue, the Attorney General refused to bring the suit, those appellants are not entitled to bring the suit unless they claim entitlement to the office.").

Coroner, but not by individuals. *State v. City of Sarasota*, 109 So. 473, 478 (Fla. 1926) (quoting *Gleason*, 12 Fla. at 212–13); Henry William Tancred, *A Treatise on Informations in the Nature of Quo Warranto* 4–6, 14 (1830). English statute law broadened this in one narrow way: "person[s] whose rights [we]re affected" by conduct that "primarily affect[ed] some private right, though [it] at the same time involve[d] usurpation of a public franchise," were allowed to ask the King's Coroner to file, on their behalf, "informations relating to [municipal] offices or franchises." *City of Sarasota*, 109 So. at 478 (discussing the Statute of Anne, 9 Anne c. 20 (1711)).

Individuals could never prosecute quo warranto actions against royal franchisees. And they could only do so against officers of municipal franchises, through a crown officer, if they had a special interest in doing so. *See* Tancred, *Quo Warranto* 4–6, 45–46. American jurisdictions were split as to whether the Statute of Anne had any effect, *see* 22 *Ruling Case Law*, Quo Warranto §§ 3, 24 (1918), but most adopted this general framework, *id.* §§ 1, 3, 11, 21–29; Floyd R. Mechem, *Public Offices and Officers* §§ 488, 490 (1890); James Lambert High, *Extraordinary Legal Remedies* §§ 697–701 (1896); VII John D. Lawson, *Rights, Remedies and Practice* § 4042

(1890). Petitioner's cherry-picked quotes from treatises are not to the contrary. *See* Pet. 12–14 & n.7 (discussing the above treatises). Nor are the laws of "other jurisdictions" that he identifies. The other-state cases in question simply adopted the Statute of Anne's rule with, at most, de minimis deviation therefrom. *See* Pet. 14 (citing *State ex rel. City of Waterbury v. Martin*, 46 Conn. 479 (1878); *Davis v. City Council of Dawson*, 17 S.E. 110 (Ga. 1893); *State ex rel. Lee v. Jenkins*, 25 Mo. App. 484 (1887)).

2. Ahistorical and damaging as the taxpayer-standing doctrine is, this case can be resolved without jettisoning it altogether. For present purposes, it is enough to cabin cases like *Whiley* to petitions to enforce "constitutional dut[ies]," thereby "effectuat[ing] the intent of the framers." *Thompson v. DeSantis*, 301 So. 3d 180, 184 (2020).[3] This Court has never entertained a private quo warranto petition premised on a statute, much less a statute enforceable

[3] *See also Boan v. Fla. Fifth Dist. Ct. of App. Jud. Nominating Comm'n*, 352 So. 3d 1249, 1252 (Fla. 2022) ("[T]his Court has recognized 'citizen and taxpayer' standing to challenge a governor's alleged noncompliance with *constitutional* provisions . . . ." (emphasis added)); *Chiles*, 714 So. 2d at 456 ("[C]itizens and taxpayers" have standing "to challenge alleged *unconstitutional* acts." (emphasis added)); *Pleus v. Crist*, 14 So. 3d 941, 945 (Fla. 2009) (same).

exclusively by the government, and the Court should decline to do so now.

Respecting the Legislature's choice to make a statute enforceable only by the government is especially significant in the quo warranto context. Quo warranto actions were historically "in substance as well as in form an action" by the sovereign on "behalf of the people" and the public interest. *Robinson v. Jones*, 14 Fla. 256, 260 (1873). That is why, like criminal prosecutions, quo warranto actions "must be prosecuted in the [people's] name and by the officer whose duty it is to protect their rights." *Id.* "It is for [the Attorney General] to determine whether a fit case is presented" in both contexts. *Id.*; *see also Colonial Stores v. Scarbrough*, 355 So. 2d 1181, 1185 (Fla. 1977) ("The prosecutor's ultimate duty is to vindicate the State's interest in enforcing its criminal laws.").

In fact, quo warranto actions themselves were quasi-criminal. But that character only underscores why the writ was the exclusive province of the Attorney General. And for that reason, even if Petitioner had standing to enforce a provision of the Constitution or even a different statute, the Court should not entertain private enforcement of the statute here.

III. THE PETITION FAILS ON THE MERITS.

Procedural issues aside, the executive branch is well within its rights in expressing its concerns about a proposed amendment to the State's governing charter.

Petitioner partially quotes Section 104.31, Florida Statutes, which provides that "[n]o officer or employee of the state, . . . except as hereinafter exempted from provisions hereof, shall . . . [u]se his or her official authority or influence for the purpose of interfering with an election or a nomination of office or coercing or influencing another person's vote or affecting the result thereof." § 104.31(1)(a), Fla. Stat. But he omits the portions of the statute providing that the "political activit[ies]" of high-ranking state officials "in general or special elections" are categorically "exempted" from the statute's general restriction on the use of "official authority or influence." § 104.31(1), Fla. Stat. Specifically, the statute exempts "the political activity in general or special elections of the officials appointed as the heads or directors of state administrative agencies," such as Secretary Weida. *Id.* The same is true of "the Governor" and "the elected members of the Governor's Cabinet," such as the Attorney General. *Id*; *see* Op. Att'y Gen. Fla. 72-62 (Mar. 7, 1972) (recognizing

that these officials are "exempted from this provision"). The challenged actions—statements made in opposition to Amendment 4—plainly fall within the broad ambit of exempted "political activity" and are therefore entirely lawful.[4]

That broad exemption for the State's highest-ranking officials accords with the State's "right to 'speak for itself.'" *Pleasant Grove v. Summum*, 555 U.S. 460, 467 (2009). The State "'is entitled to say what it wishes,' and to select the views that it wants to express." *Id.* "[I]t is not easy to imagine how government could function if it lacked this freedom." *Id.*

Thus, despite the enactment of Section 104.31 fifty years earlier, this Court explained in *People Against Tax Revenue Mismanagement, Inc. v. County of Leon* that officials "are not bound

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[4] Chapter 104 does not define the term "political activities," but Chapter 106—which addresses electioneering in tandem with Chapter 104—makes clear in its definition of "political committee" that "political activities" broadly include "expenditures *in support of or opposition to an issue*." § 106.011(16)(b)2., Fla. Stat. (emphasis added); *cf. id.* § 106.011(15) (defining "political advertisement" to include "expression . . . which expressly advocates the election or defeat of a candidate *or the approval or rejection of an issue* (emphasis added)). "Issue," in turn, "means a proposition that is required by the State Constitution . . . or a proposition for which a petition is circulated in order to have such proposition placed on the ballot at an election." *Id.* § 106.011(13).

to keep silent in the face of a controversial vote that will have profound consequences for the community. Leaders have both a duty and a right to say which course of action they think best, and to make fair use of their offices for this purpose." 583 So. 2d 1373, 1374 (Fla. 1991). The plaintiff there sought to set aside an optional sales tax passed by local referendum, arguing that county officials had "used public funds and public resources to mount an informational campaign" expressly advocating "that the optional tax was needed to remedy problems at the county jail and to meet local infrastructure needs." *Id.* at 1375. The Court rejected the argument, agreeing that county officials had every right to publicize their view of the proposed tax by "g[etting] that information out to the community," including through official means. *Id.* Indeed, the Court concluded, "[t]he people elect governmental leaders precisely for this purpose." *Id.*; *see also* Op. Att'y Gen. Fla. 98-33 (May 1, 1998) ("[A] county may expend county funds to support or oppose an issue before the electorate, provided that the county commission makes the requisite legislative findings as to the purpose of the expenditure and the benefits accruing to the county from such expenditure.").

The same conclusion follows with even greater force where a

constitutional amendment is at stake, and greater force still with respect to the highest-ranking executive-branch officials—the Governor, the Attorney General, and the head of an executive branch agency. The Governor is vested with "[t]he supreme executive power" and as "the chief administrative officer of the state" is "responsible for [its] planning," Art. IV, § 1(a), Fla. Const., which naturally includes the determination of the executive branch's position on policy matters—including controversial issues like abortion. The Attorney General is the State's "chief state legal officer" and a member of the Governor's cabinet. *Id.* § 4(b). And the Secretary exercises part of "the executive [power] of state government" "under the direct supervision of the governor." *Id.* § 6. It is for those officials to determine the executive branch's position on questions of law and policy, and they are well within their rights in using executive branch resources to explain and advocate that position to voters. *See, e.g.*, Op. Att'y Gen. Fla. 75-281 (Nov. 13, 1975) (approving the Governor's "use of a state aircraft on trips to promote adoption of . . . a constitutional amendment" by initiative as "consistent with applicable statutes and rules" because it was "for a state purpose").

That background, as well as the statute's history, undergirds

another reason Petitioner is wrong on the merits—Section 104.31 does not forbid officials from taking positions on issues to be voted on by the people by citizen initiative. For more than four decades, the statute's enforcing authorities have properly understood the statute "to prohibit the *corrupt* use of official authority or influence for the purposes set forth therein." Op. Att'y Gen. Fla. 78-133 (Nov. 27, 1978) (emphasis in original). Since 1978, the Attorney General has "construed [the statute] to require a corrupt intent as an element of the criminal offenses embraced by its terms," owing to the statute's history as well as "uncertainty and ambiguity" "as to the precise nature of the conduct which is proscribed and penalized." *Id.* The Florida Election Commission, which has jurisdiction to bring enforcement proceedings under the statute, reads it the same way. *E.g.*, Op. FEC No. 22-328 (Feb. 14, 2023).

Whatever "corrupt intent" means in the context of advocacy for a political candidate, state officials do not act with "corrupt intent" when they communicate to voters the State's concerns about a proposed constitutional amendment. The kind of corruption with which elections laws are principally concerned—"quid pro quo corruption"—"cannot arise in a ballot-issue campaign." *Buckley v.*

Am. Const. Law Found., Inc., 525 U.S. 182, 203 (1999). That is so because "[r]eferenda are held on issues, not candidates for public office." *Id.* Accordingly, "[t]he risk of corruption perceived in cases involving candidate elections . . . simply is not present in a popular vote on a public issue." (citing *First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765, 790 (1978))). That is consistent with the common understanding that "'[c]orruptly' ordinarily describes an act done with an intent to give some advantage inconsistent with official duty," *United States v. Reeves*, 752 F.2d 995, 998 (5th Cir. 1985), while it is a state official's "duty" to weigh in on important issues and help voters make "informed choices through fair persuasion," *People Against Tax Revenue Mismanagement, Inc.*, 583 So. 2d at 1374.

The candidate-issue distinction is confirmed by the statute's roots in the federal Hatch Act. Since 1940, the Hatch Act has, in parallel to Section 104.31, generally prohibited state employees whose agencies receive federal funds from using "official authority or influence for the purpose of interfering with an election or a nomination for office, or affecting the result thereof." Pub. L. No. 76-753, § 4, 54 Stat. 767, 767 (1940) (codified at 18 U.S.C. § 61a) (superseded); *see also* Pub. L. No. 76-252 § 2, 53 Stat. 1147, 1147

(1939) (similar as to federal employees). And the Hatch Act was always understood to prohibit "only partisan political activity." *United Pub. Workers of Am. (C.I.O.) v. Mitchell*, 330 U.S. 75, 100 (1947); Thomas I. Emerson & David M. Helfeld, *Loyalty Among Government Employees*, 58 Yale L.J. 1, 86–87 (1948) (explaining that the Hatch Act was "part of a historic campaign to eliminate the spoils system and political corruption from the Federal service"). Federal regulations make clear that the Hatch Act does not reach "activ[ity] in connection with a question which is not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a municipal ordinance or any other question or issue of a similar character." 5 C.F.R. § 734.203.

Finally, when the Legislature *has* targeted issue advocacy by public officials, it has spoken in markedly distinct terms. *See* § 106.113(2), Fla. Stat. ("A local government or a person acting on behalf of local government may not expend or authorize the expenditure of . . . public funds for a political advertisement or any other communication sent to electors concerning an issue, referendum, or amendment, including any state question, that is subject to a vote of the electors."). In enacting that law in 2009, the

Legislature confirmed that Section 104.31 did not already plow that same ground.[5]

IV. PETITIONER'S REQUEST FOR ALL-WRITS RELIEF IS MOOT.

Petitioner's request for all-writs relief essentially asks the Court to preliminarily enjoin the Governor and Attorney General from participating in a call with faith and community leaders that (at the time the Petition was filed) was scheduled for September 12, 2024. *See* Pet.19. The Court effectively denied that request when it ordered a Response to the Petition by September 23. Regardless, the request is now moot because the call has already taken place. To the extent Petitioner seeks all writs relief with respect to any other act, he has

[5] Even if Petitioner were right on the merits, the question is one of first impression before this Court, and "[m]andamus may not be used to establish the existence of such a right, but only to enforce a right already clearly and certainly established in the law." *Pincket v. Detzner*, No. SC16-768, 2016 WL 3127704, at *1 (Fla. June 3, 2016) (citing *Fla. League of Cities v. Smith*, 607 So.2d 397, 401 (Fla.1992)); *see also State ex rel. Swoboda v. Mo. Comm'n on Hum. Rts.*, 651 S.W.3d 800, 810 (Mo. 2022) ("Mandamus proceedings cannot create or clarify the existence of a right; instead, mandamus relief is appropriate to enforce only a previously delineated right. *Id.* . . . In some circumstances, statutes may create a right enforceable by mandamus."); *Redd v. Sossamon*, 868 S.W.2d 466, 467 (Ark. 1994) ("A writ of mandamus will not be issued to establish a right. Rather, the extraordinary writ is issued only to enforce a right that is already established.").

not explained how such relief would preserve or protect the Court's jurisdiction. *See Roberts v. Brown*, 43 So. 3d 673, 677 (Fla. 2010) ("[T]he doctrine of all writs is not an independent basis for this Court's jurisdiction. Rather, its use is restricted to preserving jurisdiction that has already been invoked or protecting jurisdiction that likely will be invoked in the future." (citations omitted)).

CONCLUSION

For the foregoing reasons, the Petition should be denied.

Date: September 23, 2024

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was furnished via the e-Filing Portal to counsel for all parties of record on this 23rd day of September, 2024.

/s/ *Daniel W. Bell*
Chief Deputy Solicitor General

CERTIFICATE OF COMPLIANCE

I certify that this document complies with all applicable font and word-count requirements. It was prepared in 14-point Bookman Old Style font and contains 5,145 words.

/s/ *Daniel W. Bell*
Chief Deputy Solicitor General