IN THE SUPREME COURT OF FLORIDA

ANDREW H. WARREN,

Petitioner,

v. Case No.: SC23-247

RON DESANTIS, as Governor of the State of Florida,

Respondent.
_____/

BRIEF OF *AMICI CURIAE* FLORIDA SHERIFFS ASSOCIATION, FLORIDA POLICE CHIEFS ASSOCIATION, AND FLORIDA PROSECUTING ATTORNEYS ASSOCIATION IN SUPPORT OF THE GOVERNOR

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STATEMENT OF INTEREST OF *AMICUS CURIAE*

The Florida Sheriffs Association (FSA) is a statewide organization comprised of the sheriffs of the state of Florida. Its mission as a self-sustaining charitable organization is to foster the effectiveness of the office of sheriff through leadership, education and training, innovative practices, and legislative initiatives. On occasion, the FSA appears as *amicus curiae* in cases of interest to the sheriffs that may impact their operational duties and responsibilities.

The Florida Police Chiefs Association ("FPCA") is a statewide organization founded in 1952 and is now composed of more than 900 law enforcement executives representing every region of the state. The FPCA is committed to law enforcement training, legislation, professional development, and other issues impacting public safety and Florida's law enforcement agencies, administrators, and officers. More specifically, the FPCA promotes legislation and activities that enhance public and officer safety by providing superior police protection for the residents of Florida and its many visitors, and provides advocacy, communication, education and training for the state's police agencies and personnel.

The Florida Prosecuting Attorneys Association ("FPAA") represents the nineteen (19) elected state attorneys and the approximately 2,000

assistant state attorneys. The FPAA is concerned about the administration of justice in Florida and participates in those matters which the FPAA believes are important to that principle involving the administration of justice.

The present case involves a challenge to the Governor's authority to suspend the Petitioner, Andrew H. Warren ("Warren") as the State Attorney for the 13th Judicial Circuit. Although this circuit comprises only Hillsborough County, it is not just the sheriff of Hillsborough County or the chief of police of this county who are affected. As set forth in Executive Order No. 22-176, Warren's policies carved out categories of criminal activity that would no longer be prosecuted in his circuit. *See* App. 5–14 (Exec. Order 22-176). This abuse of prosecutorial authority raises significant concerns for sheriffs, chiefs of police, and state attorneys alike, and they have a significant interest in the outcome of the proceedings, which may adversely impact the safety of the communities that they serve.

Warren's quo warranto action characterizes his policies as prosecutorial discretion. Amici adamantly disagree. Instead, Warren's blanket refusal to enforce certain criminal laws has the net effect of circumventing legislative authority and is far beyond the scope of prosecutorial discretion.

Historically, the chiefs of police and the sheriffs have partnered with state attorneys to protect the public by enforcing the criminal laws of this state. The sheriff is the chief law enforcement officer of the county. *Weitzenfeld v. Dierks*, 312 So. 2d 194, 196 (Fla. 1975). Statutorily, the sheriff's duties include serving as the conservator of the peace. § 30.15(1)(e), Fla. Stat. (2022).

In this role as conservator of the peace, sheriffs and their deputies serve as community caretakers by protecting people and property under a variety of circumstances. *See Pinto v. Rambosk*, 2021 WL 3406253, *21 at fn. 14 (M.D. Fla., August 4, 2021), citing *State v. A.R.R.*, 113 So. 3d 942, 944-45 (Fla. 5th DCA 2013). Sworn to uphold the law, sheriffs' deputies are required to protect against crime without waiting for it to occur. *Id.*

The police chiefs are similarly empowered to enforce criminal laws within the jurisdiction of the city limits, and often work hand-in-hand with their Sheriff counterparts, through participation in joint task forces, mutual aid agreements, during times of natural or other disasters, and in critical incidents. Their officers enforce the same criminal laws as deputy sheriffs and they face comparable challenges in protecting the public from being victimized by the criminal element.

Sheriffs and police chiefs anticipate that arrests by their officers will be reviewed on a case-by-case basis and the state attorney will exercise prosecutorial discretion. Although state attorneys have complete discretion in deciding whether to prosecute an individual, prosecutorial discretion requires a state attorney to make case specific and individualized determinations. *Ayala v. Scott*, 224 So. 3d 755, 759 (Fla. 2017). "[E]xercising discretion demands an individualized determination 'exercised according to the exigency of the case, upon a consideration of the attending circumstances.'" *Id.,* quoting *Barber v. State*, 5 Fla. 199, 206 (Fla. 1853) (Thompson J. concurring).

In the present case, Warren was not removed for exercising his prosecutorial discretion. Rather, he established policies indicating that his office would not prosecute[1] certain classes of crimes or that there would be a presumption of non-prosecution for a variety of offenses, including charges arising from pedestrian and bicycle stops. These proclamations detrimentally impacted law enforcement's ability to effectively safeguard the public and foreclose the use of valuable law enforcement tools that result in the

[1] It is axiomatic that to "prosecute" means to bring legal action against for redress or punishment of a crime or violation of law. *Merriam-Webster Online Dictionary*, at https://www.merriam-webster.com/dictionary/prosecute.

discovery of those wanted for other crimes or the discovery of other, more serious offenses.

Warren's Policy Regarding Prosecution of Cases Based on Pedestrian and Bicycle Violations exemplifies the ramifications of a prosecutorial edict disqualifying categories of crimes from prosecution. *See* App. 105–106 (Policy Regarding Prosecution of Cases Based on Pedestrian and Bicycle Violations). As in the case of vehicle stops for noncriminal moving violations, pedestrian and bicycle stops may lead to more serious charges relating to illegal drugs, offenders involved in committing property or other crimes, or arrests of suspects wanted for violent crimes. Indeed, in the policy, Warren acknowledges that "[b]icycle and pedestrian stops can be a legal and legitimate tool to promote community safety, particularly in high crime areas." *Id*. at 105.

Although these stops serve as a means to effectively remove criminals from neighborhoods and communities, the presumption of non-prosecution placed sheriffs and chiefs in an untenable position. They could discontinue these enforcement efforts to the detriment of public safety or proceed with the arrests knowing these cases would not be prosecuted and thereby invite civil litigation.

Perhaps as an unintended consequence, Warren's non-prosecution policy encouraged lawlessness. Assuming that officers would no longer effect pedestrian and bicycle stops, drug dealers would be inclined to use these means to carry out their trade. In other words, the policy incentivized criminals to explore methods that would escape the attention of law enforcement because the State Attorney announced that these cases would not be charged.

Although the joint statements relating to gender transition treatments and abortion may not impact law enforcement's efforts to address criminal activity as dramatically as the non-prosecution policies, the implication is clear. If a state attorney, under the guise of prosecutorial discretion, can decline to prosecute abortions, a state attorney could effectively legalize recreational marijuana by announcing that possession cases would not be prosecuted. In other words, regardless of legislation criminalizing certain conduct, a state attorney could nullify the will of the legislature and advance his or her personal agenda through statements of policy as in the present case.

The Governor was justified in the removal because Warren, as a result of his neglect of duty and incompetence, effectively usurped the role of the legislature by dictating to the sheriffs and chiefs of police what is a crime in

the 13th Judicial Circuit. These actions fractured the relationship between the State Attorney and law enforcement in Hillsborough County and breached the trust reposed in the State Attorney's office that cases would be reviewed individually on their merits. Through these policies Warren has hindered sheriffs and police chiefs in their efforts to curb criminal conduct, including drug-related crimes, on the misguided assumption that through prosecutorial discretion a state attorney can pick and choose criminal offenses.

A state attorney cannot hide behind prosecutorial discretion under these circumstances, and Warren's pronouncements went beyond prosecutorial discretion. Rather, he blatantly abused his executive powers. The Governor's Executive Order removing Warren from his position is well grounded as a matter of law and equally supported by the facts.

SUMMARY OF ARGUMENT

Warren's quo warranto claim fails as a matter of law. The only issue before this Court is whether the factual allegations in Executive Order No. 22-176, which suspended Warren from office, are sufficient to support the charges. In reaching this determination, the scope of the Court's review is limited to the face of the Executive Order.

Executive Order No. 22-176 identifies "neglect of duty" and "incompetence" as grounds for Warren's suspension. On its face, the Executive Order enumerates factual allegations which bear a reasonable relation to the charges against Warren – neglect of duty and incompetence. Thus, the Executive Order is sufficient as a matter of law.

The findings of the United States District Court in the Order on the Merits that the Governor violated the Florida Constitution in suspending Warren do not have preclusive effect and should not be given any consideration by this Court. The District Court had dismissed Warren's quo warranto claim and Warren's First Amendment retaliation claim was the only remaining claim to be litigated by the parties. *See* Gov.'s App. 70–98 (Order Dismissing the State-Law Claim, Denying the Motion to Dismiss the Federal Claim, and Denying a Preliminary Injunction, *Warren v. DeSantis*, Case No. 4:22-cv-302-RH-MAF (N.D. Fla. Jan. 20, 2023)). The District Court's foray into Florida Constitutional issues was unnecessary and irrelevant to the resolution of Warren's First Amendment claim.

Additionally, any judicial inquiry into the propriety of the suspension by the Governor of an elected official such as Warren is limited to a review of the executive order effecting the suspension. The District Court delved into

the merits of the suspension without regard to these constraints. The findings, therefore, do not comport with established precedent of this Court.

ARGUMENT

I. THE SOLE ISSUE BEFORE THIS COURT IS WHETHER EXECUTIVE ORDER NO. 22-176 CONTAINS SUFFICIENT FACTS THAT BEAR A REASONABLE RELATION TO THE CHARGES AGAINST WARREN

On February 15, 2023, Warren filed a Petition for Writs of Quo Warranto and Mandamus before this Honorable Court. Pet. 1. "The Florida Constitution authorizes this Court to issue writs of quo warranto to 'state officers and state agencies.'" *Fla. House of Representatives v. Crist*, 999 So. 2d 601, 607 (Fla. 2008) (quoting Art. V, § 3(b)(8), Fla. Const.). "The term 'quo warranto' means 'by what authority.' This writ historically has been used to determine whether a state officer or agency has improperly exercised a power or right derived from the State." *Id*; *see Martinez v. Martinez*, 545 So. 2d 1338, 1339 (Fla. 1989); *see also* Art. V, § 3(b)(8), Fla. Const. The Governor is a state officer. *See Whiley v. Scott*, 79 So. 3d 702, 707 (Fla. 2011).

Warren contends that "the Governor broke the laws of Florida… when he issued [Executive Order No. 22-176] suspending [] Warren from his duly elected office" pursuant to Article IV, Section 7(a) of the Florida Constitution. Pet. 1. In support of his contention, Warren alleges that Executive Order No.

22-176 “does not identify any lawful or legitimate basis for suspending [] Warren.” *Id*.

Here, “the judiciary’s role is limited to determining whether the executive order, **on its face**, sets forth allegations of fact relating to one of the constitutionally enumerated grounds of suspension.” *Israel v. DeSantis*, 269 So. 3d 491, 495 (Fla. 2019) (emphasis added) (citing *State ex rel. Hardie v. Coleman*, 155 So. 129, 133 (Fla. 1934)). In fact, “where the executive order of suspension contains factual allegations relating to an enumerated ground for suspension, the Constitution prohibits the courts from examining or determining the sufficiency of the evidence supporting those facts, as the ‘matter of reviewing the charges and the evidence to support them is solely in the discretion of the Senate.’” *Id*. at 496-97 (emphasis added) (quoting *Hardie*, 155 So. at 134); *see also State ex rel. Kelly v. Sullivan*, 52 So. 2d 422, 425 (Fla. 1951) (“It is the function of the Senate, **and never the courts**, to review the evidence upon which the Governor suspends an officer in the event the Governor recommends his removal from office.”) (emphasis added).

Accordingly, under both long-standing precedent in the state of Florida, and more recently in *Israel*, this Court has concretely stated that the judiciary’s role is limited to an assessment of the face of executive orders for

suspension of county officers. Facially, Executive Order No. 22-176 states sufficient grounds for suspension.

II. THE GOVERNOR LAWFULLY EXERCISED HIS DUTIES IN SUSPENDING WARREN FROM HIS POSITION AS STATE ATTORNEY

Warren challenges the factual basis for the Governor's action in removing him as state attorney. Warren contends that the stated grounds of incompetence and neglect of duty are insufficient as a matter of law because Warren was doing nothing more than exercising his prosecutorial discretion.

This argument misses the mark. This is not a case of prosecutorial discretion. Rather, this is a case where a state attorney abused his authority and superseded the Florida Legislature by establishing policies that directly impeded law enforcement's ability to enforce the criminal laws of this state.

Warren's quo warranto claim alleges that the justifications presented in Executive Order No. 22-176 are facially insufficient under Florida law to support removal. Pet. 38–51. It is the duty of the Governor under Article IV, § 1(a) of the Florida Constitution in the exercise of his executive power to "take care that the laws be faithfully exercised." *Finch v. Fitzpatrick*, 254 So. 2d 203, 204 (Fla. 1971). The Florida Constitution expressly provides authority to the Governor to suspend from office "any county officer for malfeasance, misfeasance, neglect of duty, drunkenness, incompetence,

permanent inability to perform official duties, or commission of a felony." Art. IV, § 7(a), Fla. Const. The Florida Senate has the exclusive role of determining whether to remove or reinstate a suspended official. Art. IV, § 7(b), Fla. Const.

The courts have a limited role in reviewing the suspension or removal of a public official. *Israel*, 269 So.3d at 495 (citing *Jackson v. DeSantis*, 268 So.3d 662 (Fla. 2019). If the executive order of suspension "names one or more of the grounds embraced in the Constitution and clothes or supports it with alleged facts sufficient to constitute the grounds of suspension, it is sufficient." *Id* (quoting *Hardie*, 155 So. at 133). Succinctly stated, if the face of the order establishes sufficient enumerated grounds, this Court may not "go behind" the order to evaluate the sufficiency of the allegations, for that role is exclusively delegated to the Senate. *See* Art. IV, § 7(b), Fla. Const.

This Court's decision in *Ayala v. Scott* is instructive to the case at bar. Akin to Warren's actions, Ayala, the state attorney for the Ninth Judicial Circuit, announced at a press conference that she would not be seeking the death penalty prospectively in the cases handled in her office. *Ayala,* 224 So.2d at 756. Like Warren's justifications for his policy statements, Ayala grounded her decision in the public interest. In her view, pursuing death sentences "[was] not in the best interest of the community or in the best

interest of justice" even when an individual case "absolutely deserve[s] [the] death penalty." *Id.* at 756-57.

Governor Rick Scott issued executive orders reassigning death penalty eligible cases from Ayala's office to the State Attorney for the Fifth Judicial Circuit. As in the present case, Ayala filed a petition for writ of quo warranto in which she contested the Governor's authority to reassign the cases. *Id.* at 757.

Upholding the Governor's reassignment of death penalty cases, the Court rejected Ayala's argument that she was acting with prosecutorial discretion. *Id.* at 758. Relevant to the instant case, the Court held that her blanket refusal to seek the death penalty did not reflect an exercise of prosecutorial discretion but rather embodied "at best, a misunderstanding of Florida law." *Id.* at 759. The Court concluded that "by effectively banning the death penalty in the Ninth Circuit—as opposed to making case-specific determinations whether the facts of each death penalty eligible case justify seeking the death penalty—Ayala has exercised no discretion at all." *Id*. at 758. Citing to the decision of the New York Court of Appeals in *Johnson v. Pataki*, 691 N.E.2d 1002, 1007 (N.Y. 1997), the Court explained that adopting a blanket penalty policy against the imposition of the death penalty is effectively refusing to exercise discretion and tantamount to a functional

veto of state law authorizing prosecutors to pursue the death penalty in appropriate cases. *Ayala*, 224 So. 3d at 758.

There can be no appreciable distinction between Ayala's blanket policy not to pursue death sentences and Warren's stated policies opposing the criminalization of abortion and establishing presumptions of non-prosecution for numerous criminal offenses or arrests arising from vehicle or pedestrian stops. The Governor did not exceed his authority to reassign Ayala's death sentence cases because Ayala failed to exercise her duties as a state attorney to consider the death penalty for eligible cases. For similar reasons, the Governor did not overstep when he removed Warren.

The deficiencies in the quo warranto claim become even more evident upon reviewing *Israel v. DeSantis,* in which the sheriff of Broward County contested the Governor's authority to suspend him from office. As in the case of Warren, the stated grounds for Sheriff Israel's suspension included neglect of duty and incompetence. *Israel*, 269 So.3d at 493. Israel argued that the Governor's executive order failed to identify any statutory duty prescribed to his office which he failed to perform. *Id.* at 496. The Court declined to accept this argument. *Id.*

Defining duty as "the action required by one's position or occupation" the court turned then to what constitutes neglect of duty and incompetence.

Id. Neglect of duty, explained the Court, refers to the neglect or failure on the part of a public officer "to do and perform some duty or duties laid on him as such by virtue of his office or which is required of him by law." *Id.* (quoting *Hardie,* 155 So. at 132). The Court added that it was not material whether the neglect was willful through malice, ignorance, or oversight. *Id.* If the neglect was grave and the frequency of it endangered or threatened the public welfare, it is considered to be gross. *Id*.

Incompetence, reasoned the Court, related to neglect of duty. *Id.* The Court defined incompetency to refer to any "physical, moral, or intellectual quality, the lack of which incapacitates one to perform the duties of his office" and which "may arise from gross ignorance of official duties or gross carelessness in the discharge of them … from lack of judgment and discretion." *Id.* (quoting *Hardie,* 155 So. at 133).

In reviewing the executive order suspending Sheriff Israel, the Court was satisfied that the factual allegations were sufficient to establish both neglect of duty and incompetency. *Id.* at 496-97. The executive order, held the Court, contained allegations that bore a reasonable relation to the charges of neglect of duty and incompetence as those terms were understood in their usual and ordinary meaning. *Id*. Nothing here compels a different result.

The same is true for Executive Order No. 22-176, which contains sufficient facts that bear a reasonable relation to the charges against Warren particularly given the "low threshold" that the Governor must satisfy. *Israel*, 269 So. 3d at 496. Executive Order No. 22-176 identifies "neglect of duty" and "incompetence" as grounds for Warren's suspension. App. 5–14. It also provides, on its face, allegations that "Warren's policies of presumptive non-enforcement are not a proper exercise of prosecutorial discretion because they do not require 'case-specific' and 'individualized' determinations as to whether the facts warrant prosecution but instead are based on categorical exclusions of otherwise criminal conduct that is tantamount to rewriting Florida criminal law." *Id*.

The Executive Order further alleges that "Warren's declared refusal to prosecute abortion cases is alone sufficient to justify his suspension and removal for neglect of duty and incompetence" and "Warren's avowed refusal to enforce certain criminal laws on a non-individualized, category-wide basis of his choosing is a neglect of duty in violation of his oath of office to faithfully perform his duties as State Attorney for the 13th Judicial Circuit." *Id*. Accordingly, Executive Order 22-176 "contains allegations that bear some reasonable relation to the charge made against the officer" and is sufficient as a matter of law. *Israel*, 269 So. 3d at 496 (quoting *Hardie*, 155 So. at 133).

In view of the factual allegations supporting the stated charges of neglect of duty and incompetence, the Executive Order is facially sufficient to withstand the quo warranto challenge. The quo warranto claim should therefore be denied.

III. THE PROCEEDINGS IN THE UNITED STATES DISTRICT COURT SHOULD NOT BE CONSIDERED BY THIS COURT

In his Petition for Writs of Quo Warranto and Mandamus, Warren argues that "a federal court has already held that the Executive Order is unconstitutional." Pet. 1. Warren relies on findings made by the District Court in its Order on the Merits that the Governor violated the Florida Constitution in suspending Warren. According to Warren, this Court can merely "take judicial notice" of the District Court's findings in order to reach its decision here. Pet. 1.

However, for two reasons, this Court should disregard these findings: (1) the District Court exceeded its authority given the issues then before the court and (2) the District Court did not limit its review to the sufficiency of Executive Order No. 22-176.

A. The District Court Exceeded the Scope of its Authority in Finding a Violation of the Florida Constitution

On August 17, 2022, Warren filed a two-count Complaint in the District Court. *See* Gov.'s App. 3–30 (Complaint, *Warren v. DeSantis*, Case No.

4:22-cv-302-RH-MAF (N.D. Fla. Jan. 20, 2023)). Count I of Warren's Complaint in the District Court alleged a violation of the First Amendment. *Id*. Count II alleged a claim of quo warranto under Florida state law and requested the District Court enter an order enjoining the Governor's alleged retaliatory conduct. *Id*.

On September 29, 2022, the District Court entered its Order Dismissing the State-law Claim, Denying the Motion to Dismiss the Federal Claim, and Denying a Preliminary Injunction ("Order Dismissing the State-law Claim"). Gov.'s App. 70–98. In its Order Dismissing the State-law Claim, the court acknowledged that the Eleventh Amendment barred it from taking any action on Warren's quo warranto claim. Gov.'s App. 75 ("With exceptions not applicable here, the Eleventh Amendment bars any claim in federal court for declaratory or injunctive relief based on state law against a state or state officer…. This requires dismissal of [] Warren's state-law claim."). Thus, as of September 29, 2022, Warren's quo warranto claim was no longer pending before the District Court, and therefore, the Governor's authority under the Florida Constitution was not germane to the remaining First Amendment claim.

Despite the fact that Warren's quo warranto state law claim was not at issue, the District Court entered findings on the merits of Warren's quo

warranto state law claim in its Order on the Merits. *See* App. 34–92 (Order on the Merits, *Warren v. DeSantis*, Case No. 4:22-cv-302-RH-MAF (N.D. Fla. Jan. 20, 2023)). Although conceding that it had no authority under the Eleventh Amendment to award declaratory or injunctive relief against a state official, the court nonetheless found that the suspension violated the Florida Constitution. App. 92.

Predictably, Warren now argues that the District Court's findings rise to a valid claim of collateral estoppel. Pet. 24–26. However, Warren's argument is contrary to the very precedent he cites as support in his Petition for Writs of Quo Warranto and Mandamus.

Amici do not dispute that that collateral estoppel bars re-litigation of specific issues that were *actually litigated* and decided *on the merits* in the former suit. *See Zikofsky v. Mktg. 10, Inc.*, 904 So. 2d 520, 525 (Fla. 4th DCA 2005) (citation omitted). Collateral estoppel applies where:

> (1) the issue at stake is identical to the one involved in the prior proceeding; (2) the issue was actually litigated in the prior proceeding; (3) the determination of the issue in the prior litigation must have been 'a critical and necessary part' of the judgment in the first action; and (4) the party against whom collateral estoppel is asserted must have had a full and fair opportunity to litigate the issue in the prior proceeding.

Gawker Media, LLC. v. Bollea, 129 So. 3d 1196, 1203 (Fla. 2d DCA 2014) (citation omitted).

Here, the underlying issues that give rise to Warren's collateral estoppel argument were not actually litigated and decided in the former suit, because the issue under review here was no longer the subject of the federal court litigation at the time the order was issued. The District Court had dismissed the quo warranto action prior to making its findings on the Florida Constitution violation. *See* Gov.'s App. 70–98. The only remaining claim alleged a violation of Warren's First Amendment rights. *Id*. At most, the District Court's opinion on the Governor's authority under the Florida Constitution was mere surplusage.

Therefore, the question of whether or not the Governor's suspension of Warren violated the Florida Constitution was not a "critical and necessary part" of the District Court judgment. Furthermore, the Governor was not given a full and fair opportunity to litigate the issue before the District Court, because the evidentiary hearing before the District Court did not address the quo warranto state law claim due to its earlier dismissal.

Warren's assertion that "[e]ach of the four prongs is satisfied here as to the factual issue of <u>why [] Warren was suspended</u>" also misstates the issue before this Court. Pet. 25 (emphasis added). This Court is not tasked

with determining why Warren was suspended from office. The only role this Court undertakes in these proceedings is determining whether Executive Order No. 22-176 is sufficient on its face. *See Israel*, 269 So. 3d at 495 ("the judiciary's role is limited to determining whether the executive order, **on its face**, sets forth allegations of fact relating to one of the constitutionally enumerated grounds of suspension.") (emphasis added). Accordingly, Warren cannot satisfy the requirements of a collateral estoppel claim and the District Court's findings on the merits of Warren's quo warranto state-law claim should be discounted.

B. The District Court Improperly Decided the Merits in Finding a Violation of the Florida Constitution

As discussed above, the judiciary's role is limited to determining whether the executive order alleges facts relating to one of the constitutionally enumerated grounds of suspension. *Israel*, 269 So. 3d at 495 (emphasis added) (citing *Hardie*, 155 So. at 133). "[W]here the executive order of suspension contains factual allegations relating to an enumerated ground for suspension, the Constitution prohibits the courts from examining or determining the sufficiency of the evidence supporting those facts, as the 'matter of reviewing the charges and the evidence to support them is solely in the discretion of the Senate.'" *Id*. at 496-97 (quoting *Hardie*, 155 So. at 134)

Moreover, it is not the judiciary's role to decide the merits of the suspension. See *Sullivan*, 52 So. 2d at 425 ("It is the function of the Senate, **and never the courts**, to review the evidence upon which the Governor suspends an officer in the event the Governor recommends his removal from office.") (emphasis added).

By making factual determinations as to the merits of the suspension, the District Court improperly assumed a role that is reserved for the Senate. The extraneous findings under a non-existent Florida law claim signal an intent to opine on the merits of the suspension regardless of the scope of the issues at hand.

The long-standing precedent of this Court clearly and unequivocally limits the scope of review in this matter to the face of Executive Order No. 22-176. *See Israel*, 269 So. 3d at 495; *see also Sullivan*, 52 So. 2d at 425. As Executive Order No. 22-176 contains factual allegations that reasonably relate to Warren's alleged neglect of duty and incompetence, it is facially sufficient to withstand the quo warranto challenge.

CONCLUSION

Amici curiae, the Florida Sheriffs Association, Florida Police Chiefs Association, and Florida Prosecuting Attorneys Association support Governor DeSantis's suspension of State Attorney Andrew H. Warren for the

reasons articulated in Executive Order No. 22-176. The quo warranto claim fails because the Executive Order sets forth sufficient facts to support the neglect of duty and incompetence charges against Warren. The Petition should be denied.

Respectfully submitted this 12th day of April 2023.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of April, 2023, the foregoing was electronically filed via the Court's e-filing system, which will automatically send an electronic copy to all counsel of record.

By: */s/ R. W. Evans*
Attorney

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing brief contains 4,701 words, excluding the sections listed in Florida Rule of Appellate Procedure 9.045(e), in compliance with Florida Rule of Appellate Procedure 9.370(b).

By: */s/ R. W. Evans*
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