IN THE SUPREME COURT OF THE STATE OF FLORIDA

MONIQUE WORRELL,

Petitioner,

v.

Case No. _____

RON DESANTIS, as Governor of the State of Florida,

Respondent.

PETITION FOR WRITS OF QUO WARRANTO AND MANDAMUS

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PRELIMINARY STATEMENT

On August 9, 2023, Governor Ron DeSantis issued Executive Order No. 23-160 ("EO" or "Order") suspending from office Petitioner Monique Worrell, the duly elected State Attorney for the Ninth Judicial Circuit of the State of Florida. This Court has recognized that a suspended state official, such as Ms. Worrell, "may seek judicial review of an executive order of suspension to ensure that the order satisfies [the] constitutional requirement" that it "stat[e] the grounds" for the suspension. *Israel v. DeSantis*, 269 So. 3d 491, 495 (Fla. 2019). As the Court explained in *Israel*, an executive order of suspension must, "on its face, set[] forth allegations of fact relating to one of the constitutionally enumerated grounds of suspension." *Id.* Here, the Executive Order purports to remove Ms. Worrell for "neglect of duty" and "incompetence" but fails to allege facts that, even if true, would relate to any neglect of duty or incompetence. This Court should, therefore, declare the Order invalid.

As discussed in Part I.A., the Order fails to allege any facts relating to Ms. Worrell's own conduct (either acts or omissions) that would constitute neglect of duty or incompetence, making it readily distinguishable from the suspension orders at issue in *Israel*, 269 So.

3d 491, and *Jackson v. DeSantis*, 268 So. 3d 662, 663 (Fla. 2019). Instead, the Order vaguely refers to Ms. Worrell's "practices and policies" throughout but notably fails to identify a single, specific policy or practice, making the Order distinguishable from recent cases involving other Florida state attorneys, where the executive orders identified specific policies alleged to constitute a neglect of duty. *See Warren v. DeSantis*, No. SC2023-0247, 2023 Fla. LEXIS 939 (Fla. June 22, 2023); *Ayala v. Scott*, 224 So. 3d 755, 759 (Fla. 2017). And, unlike the executive orders at issue in *Warren* and *Ayala*, the Governor has not alleged any practice or policy that could constitute a refusal to exercise prosecutorial discretion.

As discussed in Part I.B., unable even to identify any "practices or policies" of Ms. Worrell, the Executive Order instead attempts to *infer* that she has adopted practices or policies that result in reduced incarceration rates by comparing incarceration rate data from the Ninth Judicial Circuit to that of other Florida judicial circuits. Such data, even if accurate, reflects a host of factors unrelated to the practices or policies of the state attorney and thus cannot be relied on to demonstrate that Ms. Worrell has practices or policies that result in lower incarceration rates. Moreover, because there is no

duty for a state attorney to maximize incarceration rates, lower than average incarceration rates are no evidence of neglect of duty or incompetence. In any event, the comparative incarceration rate data does not support the Executive Order's claim that the Ninth Judicial Circuit is underperforming as to violent crimes.

Finally, as discussed in Part II, although the Order repeatedly implies that Ms. Worrell, by exercising her prosecutorial discretion, has neglected her duty by adopting practices and policies contrary to Florida law, the Order does not allege a single instance in which Ms. Worrell's exercise of prosecutorial discretion violated Florida law. Rather, Florida statutes, case law, and ethics rules recognize the important role of prosecutorial discretion in determining whether a case should be prosecuted, what crimes should be charged, and what sentence should be sought. To the extent the Governor disagrees with how Ms. Worrell is lawfully exercising her prosecutorial discretion, such a disagreement does not constitute a basis for suspension from elected office. Ms. Worrell was elected to serve as State Attorney, not the Governor. Mere disagreement between a Governor and a state attorney about where within the lawful range

of discretion that discretion should be exercised falls far short of the constitutionally required showing of neglect of duty or incompetence.

JURISDICTION

This Court has original jurisdiction pursuant to Florida Constitution Article V, Section 3(b)(8), which provides that the Supreme Court "[m]ay issue writs of mandamus and quo warranto to state officers and state agencies." *See also* Fla. R. App. P. 9.030(a)(3) ("The supreme court . . . may issue writs of mandamus and quo warranto to state officers and state agencies."); *Thompson v. DeSantis*, 301 So. 3d 180, 184 (Fla. 2020) ("It is undisputed that article V, section 3(b)(8) gives this Court discretionary jurisdiction to issue writs of mandamus and quo warranto to state officers."); *Whiley v. Scott*, 79 So. 3d 702, 707 (Fla. 2011) ("[I]t is clear that the Florida Constitution authorizes this Court as well as the district and circuit courts to issue writs of quo warranto."). It is unquestionable that Governor DeSantis is a state officer. *Israel v. DeSantis*, 269 So. 3d 491, 494 (Fla. 2019); *see also* Art. IV, § 1(a), Fla. Const. (stating that "[t]he governor shall be the chief administrative officer of the state."); *Whiley*, 79 So. 3d at 707 ("The Governor is a state officer.").

Although the Court's exercise of jurisdiction to issue writs of quo warranto and mandamus is discretionary, its exercise of original jurisdiction is especially important "where the functions of government would be adversely affected absent an immediate determination by this Court." *Whiley*, 79 So. 3d at 707 (internal citation and quotation omitted). Here, the functions of government have been adversely affected because the Governor has suspended an elected official without basis, frustrating the will of the voters who elected her. In addition, by invoking the Governor's suspension power without an adequate factual basis, the Order creates uncertainty for any elected official, particularly state attorneys, as to how their conduct might lead to suspension and potential removal from office.

FACTUAL BACKGROUND

With over twenty-years' experience as an attorney focused on the criminal justice system, Ms. Worrell is highly qualified to serve as State Attorney. After graduating from University of Florida Levin College of Law in 2000, Ms. Worrell served as an Assistant Public Defender and later went into private practice before becoming a law professor at the University of Florida. During her time as a law

professor, she developed a statewide criminal practice training program. Ms. Worrell later became the founding director of the Ninth Judicial Circuit's first conviction integrity unit, where she led a team investigating wrongful convictions. After founding the integrity unit, and directly before becoming State Attorney, Ms. Worrell served as the Chief Legal Officer of REFORM Alliance, where she developed a nationwide pro bono program that advocated for probation and parole reform.

In 2020, Ms. Worrell ran for State Attorney for the Ninth Judicial Circuit as a Democrat. In the November general election, Ms. Worrell was elected by a commanding margin, receiving 66.6% of the votes (395,979), compared to 33.4% received by her opponent (198,719). *See* https://ballotpedia.org/Monique_Worrell. She took office in January 2021.

On August 9, 2023, Governor DeSantis issued Executive Order 23-160, suspending Ms. Worrell for supposed "neglect of duty" and "incompetence." *See* Exh. 1. The Executive Order makes the following unsupported claims, none of which is adequately alleged and none of which constitutes neglect of duty or incompetence: (1) Ms. Worrell "has authorized or allowed practices or policies whereby

her assistant state attorneys are generally prevented or discouraged from obtaining meritorious minimum mandatory sentences" for "gun crimes" or "drug trafficking offenses" (EO at 3, 5); (2) "under Worrell's direction, the Ninth Circuit has used a variety of techniques to allow serious juvenile offenders to evade incarceration," including "discourag[ing]" assistant state attorneys from charging juveniles as adults (*id.* at 7); (3) the Ninth Circuit has slower than average case processing times for juvenile cases (*id.* at 7-8); (4) Ms. Worrell has "authorized or allowed practices or policies whereby her assistant state attorneys are generally prevented or discouraged from seeking certain sentencing enhancements" (*id.* at 9); (5) Ms. Worrell "has authorized or allowed practices or policies that limit the number of charges for Possession of Child Pornography on which the assistant state attorneys in her office may obtain a conviction" (*id.* at 11); and (6) "under Ms. Worrell's supervision, her subordinates have authorized or required assistant state attorneys . . . to seek the withholding of adjudication in cases where such disposition is not permitted by Florida law" (*id.* at 12).

The Executive Order then concludes that these "practices or policies are an abuse of prosecutorial discretion and reflect a

systemic failure to enforce incarcerative penalties called for by Florida law" (*id.* at 13). The Order further claims that Ms. Worrell's "neglect of duty and incompetence endanger the public safety and welfare." *Id.*

The Order does not identify any particular practices or policies of Ms. Worrrell but instead untenably assumes without support that they exist based on inapposite data, such as comparative incarceration rates and juvenile case processing times, which in any event have no bearing on the stated grounds of suspension.

The Order suspends Ms. Worrell from office, effective August 9, and prohibits her from "performing any official act, duty, or function of public office" and from "receiving any pay or allowance" until "further executive order is issued, or as otherwise provided by law." The Order appoints Andrew Bain as State Attorney for the Ninth Judicial Circuit for the duration of Ms. Worrell's suspension.

STANDARD OF REVIEW

Writ of quo warranto. The writ of quo warranto is used to determine "whether a state officer or agency has improperly exercised a power or right derived from the State"). *Israel*, 269 So. 3d at 494 (internal quotation and citation omitted). *See also Warren*, 2023 Fla.

LEXIS 939, at *11 (The writ of quo warranto "is thus the proper vehicle to challenge whether the Governor properly exercised the suspension power.").

Florida's Constitution provides that the Governor, "[b]y executive order stating the grounds," may "suspend from office any state officer not subject to impeachment . . . 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. Once the Governor suspends a state official, the Florida Senate "may, in proceedings prescribed by law, remove from office or reinstate the suspended official." *Id.* § 7(b). Before the Senate proceedings, the "suspended officer may seek judicial review of an executive order of suspension to ensure that the order satisfies [the] constitutional requirement" that the executive order "stat[e] the grounds" for the suspension. *Israel*, 269 So. 3d at 495.

As the Court explained in *Israel*, the judiciary's role is to determine "whether the executive order, on its face, sets forth allegations of fact relating to one of the constitutionally enumerated grounds of suspension." *Id.* For example, "[a] mere arbitrary or blank

order of suspension without supporting allegations of fact, even though it named one or more of the constitutional grounds of suspension, would not meet the requirements of the Constitution." *State ex rel. Hardie v. Coleman*, 155 So. 129, 133 (Fla. 1934). Further, the suspension order must "identify the specific instances of alleged misconduct with sufficient detail to facilitate meaningful review by the Senate, by this Court when applicable, and to allow the official to mount a defense. An executive order which presents only general or conclusory allegations will not suffice." *Israel*, 269 So. 3d at 498 (Labarga, J., concurring).

Writ of mandamus. To be entitled to mandamus relief, "the petitioner must have a clear legal right to the requested relief, the respondent must have an indisputable legal duty to perform the requested action, and the petitioner must have no other adequate remedy available." *Pleus v. Crist*, 14 So. 3d 941, 945 (Fla. 2009) (quoting *Huffman v. State*, 813 So. 2d 10, 11 (Fla. 2000)). Here, under Article IV, Section 7(a) of the Florida Constitution, the Governor has a "clear and indisputable legal duty" to allege facts that would constitute one of the enumerated grounds for suspension before suspending a state official. Because the Executive Order fails

to state any specific facts supporting suspension, Ms. Worrell has a "clear legal right" to be restored to her office, and no other adequate remedy is available. *Id.*

ARGUMENT

I. THE EXECUTIVE ORDER'S VAGUE ALLEGATIONS OF "PRACTICES AND POLICIES" DO NOT SATISFY THE CONSTITUTIONAL REQUIREMENT THAT IT STATE THE GROUNDS FOR SUSPENSION.

The Executive Order asserts that the "actions and omissions of Monique Worrell . . . constitute 'neglect of duty' and 'incompetence' for the purposes of Article IV, section 7 of the Florida Constitution." EO at 14. "Neglect of duty has reference 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." *Israel*, 269 So. 3d at 496 (quoting *State ex rel. Hardie v. Coleman*, 155 So. 129, 133 (Fla. 1934)); *see also id.* ("According to Webster's Seventh New Collegiate Dictionary 259 (1967), 'duty' is defined in part as 'the action required by one's position or occupation.'"). Incompetency as a ground for suspension "'has reference to any physical, moral, or intellectual quality, the lack of which incapacitates one to perform the duties of his office' and 'may

arise from gross ignorance of official duties or gross carelessness in the discharge of them . . . [or] from lack of judgment and discretion.'" *Id.* (quoting *Hardie*, 155 So. at 133).

Here, the Executive Order is invalid because it fails to allege any specific conduct of Ms. Worrell that, if true, would constitute a basis for suspension on the ground of neglect of duty or incompetence. Instead, the Order wrongly attempts to infer her "practices and policies" from inapposite data, but even if such practices and policies existed, they would not constitute a ground for suspension.

A. Unlike the Executive Orders in *Israel*, *Jackson*, *Warren*, and *Ayala*, This Order Fails to Identify Any Conduct of Ms. Worrell That, If True, Would Even Arguably Support Suspension.

In *Israel*, this Court held that an order suspending the sheriff of Broward County for neglect of duty and incompetence following two mass shootings satisfied the Section 7(a) standard because it asserted "various factual allegations, based in part on the Marjory Stoneman Douglas Public Safety Commission Report and an internal investigation into the Fort Lauderdale-Hollywood Airport shooting." 269 So. 3d at 493. Those reports "specifically found" that (1) "Sheriff Israel has not and does not provide frequent training for his deputies

resulting in the deaths of twenty-two individuals and a response that is inadequate for the future safety of Broward County residents," and (2) "Sheriff Israel has not implemented proper protocols to provide guaranteed access to emergency services, nor proper protocols to have timely, unified command centers set up to control a crime scene leading to confusion, a lack of recognized chain-of-command, and ultimately a failure to contain the dangerous situation." *Id.* at 493-94 (internal quotation omitted).

Similarly, in *Jackson*, 268 So. 3d 622, in which the Court reviewed Governor DeSantis' suspension of the Superintendent of Schools for Okaloosa County for neglect of duty or incompetence, the suspension order relied on the results of significant investigations into the suspended official's conduct to justify the suspension. In denying Jackson's petition, the Court noted that the order suspending Jackson for "her alleged ongoing mismanagement of the school district" relied on "Okaloosa County Grand Jury Reports dated February 20, 2018, and June 13, 2018," which "faulted Jackson's longer-term response to allegations made during the 2015-2016 school year about a teacher's abuse of special needs students" and "found systemic failures in Jackson's training and supervision of

personnel, especially in the areas of ethics, child abuse, and mandatory reporting obligations." *Id.* at 663 (internal quotation omitted). Unlike the suspension orders in *Israel* and *Jackson*, instead of demonstrating some threat to public safety resulting from specific conduct revealed by a rigorous investigation, the Executive Order here fails to identify any conduct of Ms. Worrell and instead principally relies on irrelevant comparative prison admission data. This is reason enough to declare the Order invalid.

Rather than identifying any conduct of Ms. Worrell, the Executive Order vaguely refers to "practices or policies" of Ms. Worrell that supposedly result in prosecutors in her office not seeking maximum sentences. *See* EO at 3 (alleging "practices or policies whereby . . . assistant state attorneys are generally prevented or discouraged from obtaining meritorious minimum mandatory sentences for gun crimes"); *id.* at 5 (same); *id.* (alleging same as to drug trafficking offenses); *id.* at 6 (same); *id.* at 7 (alleging "practices or policies with respect to serious juvenile offenders"); *id.* at 9 (alleging that Ms. Worrell has "authorized or allowed practices or polices whereby her assistant state attorneys are generally prevented or discouraged from seeking certain sentencing enhancements"); *id.*

at 11 (alleging that Ms. Worrell has "authorized or allowed practices or policies that limit the number of charges for Possession of Child Pornography"); *id.* at 12 (alleging a "practice or policy of permitting or requiring withholds of adjudication").

Notably, the Executive Order never identifies *any* written policy adopted by Ms. Worrell or the State Attorney's Office. Nor, unlike the executive orders at issue as to State Attorneys Warren and Ayala, does the Order even cite *any* statements of Ms. Worrell about any policies or practices of the office. The Warren suspension order cited as the factual basis for the suspension two Joint Statements and two other specific policies, which it characterized as an "avowed refusal to enforce certain criminal laws on a non-individualized, category-wide basis of [Mr. Warren's] choosing." *Warren,* 2023 Fla. LEXIS 939, at *6 (quoting Executive Order 22-176 (Aug 4, 2022). In *Ayala*, the Court denied Ms. Ayala's petition challenging the transfer of death penalty cases from her office, where the order was based on a "March 15, 2017, press conference, [at which] Ayala announced that she 'will not be seeking [the] death penalty in the cases handled in [her] office'" and repeatedly "reiterated her intent to implement a blanket 'policy' of not seeking the death penalty in any eligible case because, in her

view, pursuing death sentences 'is not in the best interest of th[e] community or in the best interest of justice,' even where an individual case 'absolutely deserve[s] [the] death penalty.'" *Ayala*, 224 So. 3d at 756-57. Remarkably, the Order here does not once identify any particular written policy or statement of policy by Ms. Worrell, let alone tie any policy or statement to outcomes that would constitute grounds for suspension.

Florida courts previously have overturned Section 7(a) suspension orders for failure to meet the constitutional standard. In *Crowder v. State*, 285 So. 2d 33, 35 (Fla. 4th DCA 1973), *cert. denied*, 291 So. 2d 9 (Fla. 1974), the Fourth District Court of Appeal held that the executive order suspending the Martin County sheriff did not allege sufficient facts to provide the requisite notice. The suspension order alleged that the sheriff (1) "perfect[ed] or attempt[ed] to perfect arrests, participat[ed] in felony investigations and supervis[ed] the conduct of inmates in the county jail, while he was intoxicated"; and (2) on a specific date, "permitted the introduction of an alcoholic beverage, to-wit: whiskey, into and on the premises of the County Jail . . . and permitted and encouraged . . . a prisoner incarcerated in jail, to consume said alcoholic beverages

on the premises." *Id.* at 35. The Fourth District Court of Appeal found these allegations too "vague and indefinite" to meet the Section 7(a) standard. *Id.* The court concluded: "Simple justice requires that there be at least enough specificity as to fairly apprise the accused officer of the alleged acts against which he must defend himself." *Id.* (citing *State ex rel. Hawkins v. McCall*, 29 So. 2d 739 (Fla. 1947) (overturning suspension of a police officer because the suspension order's "allegations of fact were entirely insufficient to advise the police officer of what act he was required to defend against or to explain")). Here, the Executive Order is invalid because it provides far less detail than the invalid suspension order in *Crowder*.

Lacking any concrete information about what conduct, practices, or policies the Executive Order contends constitute a neglect of duty or incompetence, the Order fails to provide Ms. Worrell the notice necessary to mount an effective defense. Moreover, the Order's failure to specifically identify the conduct, practice, or policy at issue does not permit the Senate to assess whether Ms. Worrell has even potentially neglected to exercise her prosecutorial discretion by adopting blanket non-prosecution policies or whether instead she

exercised her discretion on a case-by-case basis consistent with the law.

The suspension power is not a limitless "take my word for it" license for the Governor to suspend anyone with whom the Governor has a policy dispute. In addition to Ms. Worrell's constitutional right to adequate notice to mount a defense and the Senate's need for adequate factual allegations to determine whether to remove or reinstate her, the voters and other elected state officials also are entitled to a more detailed recitation of Ms. Worrell's supposed neglect or incompetence. Indeed, the Governor owes the voters in the Ninth Judicial Circuit a clearly reasoned, facially valid order of suspension so they can understand precisely what alleged conduct purportedly justified Ms. Worrell's suspension from office, especially where the Order appears to find fault with the very platform on which Ms. Worrell was elected. Further, state officials subject to the Governor's suspension power also should have notice of what conduct, practices, or policies could give rise to a claim of incompetence or neglect of duty and potential removal from office. This sort of vague, unsupported suspension order, which seeks suspension on policy grounds rather than for any actual neglect of

duty or incompetence, has the potential to create a substantial chilling effect in which state officials will be reluctant to perform their duties in a manner disfavored by the Governor.

B. Practices and Policies of Ms. Worrell Cannot Be Inferred from Data Cited in the Executive Order and, In Any Event, the Data Is Not Related to Neglect of Duty or Incompetence.

Unable to identify any policy or practice attributable to Ms. Worrell that could possibly constitute neglect of duty or incompetence by her, the Executive Order attempts to infer practices and policies, and draw conclusions about Ms. Worrell's "prosecutorial record," from prison admission data (EO at 5, 6, 11, 13) or case processing times (*id.* at 7-8). There are, however, numerous flaws with the Executive Order's reliance on this data, which are apparent on the face of the Executive Order.

1. Prison Admission Statistics Are Not Evidence of Any Practices or Policies of Ms. Worrell.

The Executive Order repeatedly cites a chart prepared by the Florida Department of Corrections comparing prison admissions, by Circuit, for January 1, 2022, to March 31, 2023. *See* EO, Ex. A. That comparison, the Order concludes, *a fortiori* reflects Ms. Worrell's neglect of duty and incompetence. Nothing in Florida Law (or logic)

would justify using this sort of comparison as support for suspension. Tying prison comparative admission data to allegations of neglect of duty or incompetence by a state attorney ignores how the criminal justice system operates. State attorneys are not all powerful, and they are not judge and jury. A host of factors beyond Ms. Worrell's control affect prison admission rates, including (1) the quantity and quality of law enforcement referrals, (2) the sufficiency and admissibility of the evidence; (3) issues with police conduct during arrest or evidence collection, captured by video or otherwise; (4) availability and credibility of witnesses; (5) the role of the court in pre-trial rulings; (6) the appropriateness of a plea agreement; (7) the role of the jury in convictions; and (8) the role of the judge in sentencing and in approving plea agreements. *See* Fla. R. Crim. P. 3.171(a) ("Ultimate responsibility for sentence determination rests with the trial judge."). And, of course, such data completely ignores the demographics of each circuit and whether crime rates and conviction rates are consistent across the compared jurisdictions.[1]

[1] Located in the heart of Central Florida, and serving Orange and Osceola counties, the Ninth Circuit covers over 2,000 square miles and serves more than 1.8 million residents, making it one of the largest circuits in Florida. Central Florida hosts "nearly 50 million

As an illustrative example, the Order claims that "Worrell's practices and policies of evading minimum mandatory sentences for gun crimes are . . . corroborated by" prison admission rates. EO at 5 (citing Ex. A). Prison admission rates however have no relationship whatsoever to what sentences a court imposes for gun crimes. And they certainly provide no information about whether Ms. Worrell has a "practice or policy of evading minimum mandatory sentences for gun crimes," because the referenced exhibit includes no information about sentence length or whether a minimum mandatory sentence applied. *See id.* The data also does not account for the quality or quantity of cases brought to Ms. Worrell's office, and it does not account for crime rates, judicial review, or jury verdicts.

Similarly, the Executive Order claims Ms. Worrell has "pursued practices or adopted policies whereby assistant state attorneys in her office are generally prevented or discouraged from incarcerating or even charging serious juvenile offenders," EO at 7, but the very report from the Florida Department of Juvenile Justice on which the Order relies, Ex. B, explains the many appropriate reasons why juvenile

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business and vacationing visitors each year, making [it] the most visited region of the world." https://ninthcircuit.org/about.

cases are dismissed. "When cases are *appropriately* dismissed (non-filed or result in nolle prosequi) in juvenile court, it is commonly due to lack of evidence or a decision that further court action is not warranted, especially with less serious cases. This allows for serious offenses to be pursued rather than devoting excessive court resources to minor offenses." EO, Ex. B at 4 (emphasis in original). Juvenile incarceration rates, like adult incarceration rates, are not evidence of any "practices or policies" of Ms. Worrell.

Similarly, allegations that many referrals from the Osceola County Sheriff's Office for particular categories of felonies have not resulted in minimum mandatory sentences, EO at 4-5, even if true, does not reflect any practice or policy of Ms. Worrell to "evade" mandatory minimums. As noted, there are numerous factors unrelated to any practice or policy of Ms. Worrell that would account for why a referral from the Sheriff's Office does not result in a minimum mandatory sentence. No conclusions can be drawn from such information about Ms. Worrell's practices or policies, and certainly such information does not state a ground for her suspension.

2. In Any Event, as a General Matter, Incarceration Rates Are Not Reasonably Related to Neglect of Duty or Incompetence.

Comparative incarceration rates are not useful data for evaluating a state attorney's performance. The Order states the Ninth Circuit has "among the lowest prison admission rates relative to other circuits" for certain crimes. EO at 5, 11. But nothing in Florida law supports treating such "evidence" as facially sufficient to support an elected official's suspension for "neglect of duty" or "incompetence." It is axiomatic that there will be one "last-place" circuit in each crime category. Using these sorts of criteria to justify suspension makes it all too easy for a governor to target any official for suspension simply by vaguely attributing "last place" in any given category of data or metric to a practice or policy of the state attorney and then characterizing that practice or policy as neglect of duty or incompetence. The potential for abuse is considerable, which is why judicial review serves a necessary role.

Certainly, there is no correlation between prison admission data and competence. A state attorney might decide, within the sound exercise of her discretion, not to seek mass incarceration of non-violent offenders. Such a state attorney might, again within the

sound application of her discretionary authority, reserve scarce prison resources for violent offenders and use pre-trial diversion programs to address the underlying causes of non-violent offenses, such as addiction or mental illnesses. A state attorney's duty is not to maximize incarceration rates at all costs, without regard to whether incarceration is the best means to rehabilitation and avoiding recidivism.

3. The Incarceration Data Alleged Here Undermine the Executive Order's Claims and Therefore Do Not Reasonably Relate to the Purported Grounds for Suspension.

Even if prison admission data were relevant, the data provided in the Executive Order undermines rather than supports the Order's claim of neglect of duty or incompetence. The Executive Order asserts that Ms. Worrell's practices or policies "reflect a systemic failure to enforce incarcerative penalties called for by Florida law." EO at 13. But the prison admission statistics show the opposite. There were 627 prison admissions from January 1, 2022 to March 31, 2023 from the Ninth Circuit, across a wide range of offense categories. *See* EO, Ex. A. This disproves the Executive Order's allegation that there has been a "failure to enforce incarcerative

penalties." Moreover, when one focuses on violent crimes, rather than non-violent crimes, such as drug possession, the prison admission rates from the Ninth Circuit are akin to the statewide average and are higher than that of several other circuits, led by state attorneys the Governor has not sought to remove.

Prison Admissions, 1-1-2022 to 3-31-2023
Rate per 1,000,000 Population

Offense Category	**Ninth Circuit**	**State Average**	**No. of Circuits with Admissions Lower Than Ninth Circuit**
Capital Murder	19.2	21.5	7
2nd Degree Murder	26.4	31.1	11
Capital Sexual Battery	12.6	14.5	8
Life Sexual Battery	6.6	5.9	11
Carjacking	9.3	11.2	12

See EO, Ex. A.

The prison admission statistics also do not support the Executive Order's inflammatory claim that Ms. Worrell's supposed "neglect of duty and incompetence endanger the public safety." EO at 13; *see also id.* at 5 (alleging that Ms. Worrell's practices or policies "subjects the residents of Orange and Osceola Counties. . . to increased risk of harm"). Indeed, unlike the suspension order in

Israel, where an internal investigation tied the sheriff's actions directly to loss of life in two mass shootings, the Executive Order here cites no facts related to any conduct by Ms. Worrell that has endangered the public safety. In fact, there is no evidence that citizens in the Ninth Circuit have experienced a higher rate of violent crime based on Ms. Worrell's "practices or policies," and the Executive Order is notably silent on violent crime statistics. Those statistics show that violent crime rates are lower in the Ninth Circuit during Ms. Worrell's tenure than they have been over the past ten years:

Violent Crime, Rate Per 100,000 Population

County	2022	2021	2020	2019	2018	2017	2016	2015	2014	2013	2012
Orange	205.5	199.8	215.4	208.7	222.6	236.3	242.2	281.1	272.3	278.3	287.8
Osceola	145.0	183.0	192.7	193.4	186.7	204.1	218.8	193.3	209.6	217.3	223.5

See Florida Department of Health, Bureaus of Community Health Assessment and Vital Statistics, FLHealthCHARTS (citing Florida Department of Law Enforcement as Data Source, and defining violent crimes to include murder, rape, robbery, and aggravated assault).[2]

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2 https://www.flhealthcharts.gov/ChartsDashboards/rdPage.aspx?rdReport=NonVitalIndNoGrp.TenYrsRpt&cid=9914.

4. Juvenile Case Processing Times Are Not Evidence of Any Practices or Policies of Ms. Worrell and, In Any Event, Do Not Reasonably Relate to Neglect of Duty or Incompetence.

The Executive Order also asserts that the Ninth Circuit has below-average juvenile case processing times and then asserts that these case processing times are among the "practices or policies" which "have the effect of avoiding incarceration or accountability for serious juvenile offenders" and "constitute 'neglect of duty' and 'incompetence'" by Ms. Worrell. EO at 7-9. There are three flaws with this contention.

First, Ms. Worrell, as State Attorney, does not control case processing times. Therefore, logically, they are not the result of her "practices or policies." Many other stakeholders and factors influence case processing times, including defense counsel, the number of judges available to hear such cases and the court's management of its docket, the need for evaluations and hearings, the complexity of discovery, and the potential appointment of a guardian ad litem, to name a few.

Second, the Florida Rules of Juvenile Procedure have a speedy trial provision, which provides that "the child shall be brought to an

adjudicatory hearing without demand within 90 days of the earlier of the following: (1) The date the child was taken into custody. (2) The date of service of the summons that is issued when the petition is filed." Fla. R. Juv. P. 8.090(a); *see also id.* 8.090(g) ("the child shall have the right to demand a trial within 60 days"). There are several grounds for extending or tolling the 90-day period, but none is in the exclusive control of the state attorney. *Id.* 8.090(d), (e), (f).

Third, the data does not support the Executive Order's claims that Ms. Worrell's practices and policies regarding "serious" juvenile offenders constitutes a neglect of duty or incompetence. The Florida Department of Juvenile Justice statistics referenced in the Executive Order, and attached as Exhibit C, show that the average juvenile case processing times for felonies was 178 days, compared with the statewide average of 115. EO, Ex. 3 at 5. The Executive Order fails to explain how a roughly two-month difference in case processing times from the state average constitutes a ground for suspension from office. Other circuits had comparable case processing times for felonies, including the 17th Circuit (211), the 11th Circuit (175), and the Sixth Circuit (143) and yet there is no effort to remove those state attorneys. *Id.*

In another misuse of data, the Executive Order highlights that the juvenile case processing times increased during Ms. Worrell's tenure: "For Fiscal Year 2019-20 – the last full reporting period before Worrell assumed office – the Ninth Circuit had an average juvenile case processing time of 116 days. For the most recent reporting period of Fiscal Year 2021-22, that number went up to 212 days, an increase of 96 days." EO at 8. The Order, however, neglects to include data from Fiscal Year 2020-21 (July 1, 2020, to June 30, 2021), when the average case processing time was 203 days, EO, Ex. C at 7, or nearly the same as for Fiscal Year 2021-22. One obvious reason for the increase in case processing times beginning in July 2020 was the coronavirus pandemic. Indeed, almost all the circuits saw a substantial uptick in case processing times beginning in Fiscal Year 2020-21. *Id.* An increase in juvenile case processing times during the pandemic cannot constitute neglect of duty or incompetence, especially when the State Attorney does not control the timing.

5. Other Claims Regarding Ms. Worrell's Prosecutorial Record Are Unsupported by Factual Allegations.

The Executive Order also claims that Ms. Worrell "has authorized or allowed practices or policies whereby her assistant state attorneys are generally prevented or discouraged from seeking certain sentencing enhancements, such as for prison release reoffenders (PRRs) and habitual violent felony offenders (HVFOs)." EO at 9. The Order, however, fails to allege any facts supporting these claims. It does not cite any examples where the State Attorney prevented or discouraged assistant state attorneys from seeking sentencing enhancements and provides no data on sentencing enhancements sought by the Ninth Circuit, even if such data would be relevant to neglect of duty or incompetence. The Executive Order also does not allege that Ms. Worrell had a policy of always declining to seek sentencing enhancements, as opposed to making a case-by-case decision within the scope of her lawful exercise of prosecutorial discretion.

Similarly, the claim that "under Worrell's supervision, her subordinates have authorized or required assistant state attorneys in the Ninth Circuit to seek the withholding of adjudication in cases

where such disposition is not permitted by Florida law," EO at 12, is not supported by any factual allegations. The Order provides no examples or data and otherwise fails to put Ms. Worrell on notice of what conduct constitutes neglect of duty or incompetence.

Finally, the Executive Order asserts that Ms. Worrell has "authorized or allowed practices or policies that limit the number of charges for Possession of Child Pornography on which the assistant state attorneys in her office may obtain a conviction." EO at 11. The Order then cites prison admission data for crimes involving lewd and lascivious behavior, which the Executive Order wrongly asserts includes possession of child pornography. *Id.* In fact, child pornography is classified as "Abuse of Children," which covers a range of conduct, making it impossible to draw any conclusions about prison admission data for child pornography. *See* § 827.071(5), Fla. Stat. (2023). In any event, as noted in part I.B.1 above, prison admission rates are not a useful metric for state attorney performance and certainly are not evidence of neglect of duty or incompetence.

II. THE EXECUTIVE ORDER DOES NOT ALLEGE ANY VIOLATION OF ANY STATUTORY DUTY AND MS. WORRELL HAS NO DUTY TO FOLLOW POLICIES OF THE GOVERNOR.

Throughout, the Executive Order implies that Ms. Worrell's "practices and policies" violate Florida law and thus constitute a "neglect of duty." The Order, however, fails to allege any conduct of Ms. Worrell that violates Florida law and, indeed, the referenced statutes recognize the role of prosecutorial discretion. The Order adopts the premise that Ms. Worrell exercises prosecutorial discretion in a manner that is ostensibly at odds with the Governor's own policy preferences, but that premise is not supported by any factual allegations and, more importantly, would not reasonably relate to any "neglect of duty" by Ms. Worrell. Her duties are to comply with Florida laws and her ethical obligations as a prosecutor, not to the Governor's political views about maximizing incarceration rates.

A. The State Attorney Is a Constitutional Officer, Whose Exercise of Prosecutorial Discretion Is a Central Feature of the Criminal Justice System.

1. The State Attorney, Not the Governor, Is Vested with the Duty to Serve as the Prosecuting Officer.

Article V, Section 17 of the Florida Constitution provides for an elected state attorney "[i]n each judicial circuit," who "shall be the

prosecuting officer of all trial courts in that circuit and shall perform other duties prescribed by general law." Art. V, § 17, Fla. Const. As this Court made clear in *Austin v. State ex rel. Christian*, 310 So. 2d 289, 293 (Fla. 1975), "State Attorneys are constitutional officers, charged with the responsibility of prosecutions in the circuit in which he [or she] is elected and with the performance of such other duties as are prescribed by general law." Moreover, "[b]eing an elected official he [or she] is responsible to the electorate of [the] circuit, this being the traditional method in a democracy by which the citizenry may be assured that vast power will not be abused." *Id.*

The Governor is not vested with any power to serve as the prosecuting officer for a circuit. *See* Art. IV, § 1, Fla. Const.; *see also Warren v. Desantis*, No. 4:22cv302-RH-MAF, 2023 U.S. Dist. LEXIS 11427, *4 (N.D. Fla. Jan. 20, 2023) ("Running a state attorney's office is the state attorney's job, not the governor's."). The Executive Order relies on the Governor's authority to "take care that the laws of Florida are faithfully executed," Art. IV, § 1(a), Fla. Const., *see* EO at 1, but the "fact that the Governor is charged to faithfully execute the laws does not supplant the constitutional authority of the independently elected State Attorney to prosecute crimes and to

exercise his or her discretion in deciding what punishment to seek within the confines of the applicable laws." *Ayala v. Scott*, 224 So. 3d 755, 761 (Fla. 2017) (Pariente, J., dissenting). "[T]he power to remove is not analogous to the power to control." *Whiley v. Scott*, 79 So. 3d 702, 715 (Fla. 2011).

In *Ayala*, this Court held that the Governor's duty to "faithfully execute[]" the laws is discharged, "among other ways, through state attorney assignments." *Id.* at 757. Florida's assignment statute, § 27.14(1), Fla. Stat., gives the Governor authority to assign state attorneys to other circuits "if, for any . . . good and sufficient reason, the Governor determines that the ends of justice would be best served," but the assignment expires after 12 months unless an extension is approved by this Court. *Id.* As the Court explained in *Ayala*, the "purpose of the time limitation in the statute is to prevent the Chief Executive from frustrating the will of the voters of a judicial circuit by replacing an elected state attorney with one chosen by the Governor from another circuit." *Ayala*, 224 So. 3d at 759 n.1 (quoting *Finch v. Fitzpatrick*, 254 So. 2d 203, 205 (Fla. 1971)). Here, the Governor's use of the suspension power to replace an elected state attorney with one chosen by the Governor equally frustrates the

will of the voters but, here, there is no time limitation on the suspension. Moreover, while the governor has some discretion in exercising the statutory assignment power, *Ayala*, 224 So. 3d at 758, the constitutional suspension power is limited, requiring a showing that the state attorney engaged in certain prohibited conduct. Art. IV, § 7(a), Fla. Const.

2. Prosecutorial Discretion Is an Essential Feature of the Criminal Justice System.

It is long and well-established that state attorneys are vested with prosecutorial discretion and that the exercise of this discretion is essential to the sound and just administration of the criminal justice system. *See State v. Werner*, 402 So. 2d 386, 387 (Fla. 1981) ("State attorneys are 'the prosecuting officer[s] of all trial courts' under our constitution, and as such must have broad discretion in performing their duties.") (quoting Art. V, § 17, Fla. Const.); *Wade v. State*, 41 So. 3d 857, 875 (Fla. 2010) ("the state attorney has *complete discretion* in deciding whether and how to prosecute") (citation omitted) (emphasis in original).

"Prosecutorial discretion allows a prosecutor to determine what crimes to charge," *State v. Tuttle*, 177 So. 3d 1246, 1250 (Fla. 2015);

see also Bordenkircher v. Hayes, 434 U.S. 357, 364 (1978) ("In our system, so long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion."). Prosecutorial discretion applies to plea bargains and the range of penalties to seek. *Malloy v. State*, 382 So. 2d 1190, 1196 (Fla. 1979) ("Prosecutorial discretion to plea bargain is an accepted feature of our criminal justice system."); *Fayerweather v. State*, 332 So. 2d 21, 22 (Fla. 1976) ("Traditionally, the legislature has left to the prosecutor's discretion which violations to prosecute and hence which range of penalties to visit upon the offender."); *Freeman v. State*, 858 So. 2d 319, 322 (Fla. 2003) ("[T]he decision to seek the death penalty," as allowed by statute, "is within the prosecutor's discretion.").

3. Prosecutors Have an Ethical Obligation to Exercise Their Discretion to Serve Justice, Within the Bounds of the Law.

Prosecutors are not only permitted to exercise their discretion when performing their duties, but they are required to do so by their ethical obligations. Under Florida Rule Regulating the Florida Bar 4-

3.8(a), a prosecutor in a criminal case "must . . . refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause." The Comment to that rule states: "A prosecutor has the responsibility of a minister of justice and not simply that of an advocate."

The ABA Criminal Justice Standards for the Prosecution Function provide that the "prosecutor's office should exercise sound discretion and independent judgment in the performance of the prosecution function." ABA Criminal Justice Standards for the Prosecution Function 3-1.2(a) (2017). Contrary to the Executive Order's position that circuits with higher incarceration rates are performing better than the Ninth Circuit, "[t]he primary duty of the prosecutor is to seek justice within the bounds of the law, *not merely to convict*." *Id.* 3-1.2(b) (2017) (emphasis added). The prosecutor "serves the public interest and should act with integrity and balanced judgment to increase public safety both by pursuing appropriate criminal charges of appropriate severity, and by exercising discretion to not pursue criminal charges in appropriate circumstances." *Id.*

The unchecked exercise of the suspension power to remove state attorneys for the lawful exercise of their prosecutorial discretion

would put Florida state attorneys in the untenable position of risking removal simply for exercising independent judgment, consistent with their ethical obligations, where that judgment is contrary to that of the Governor.

B. A State Attorney May Not Be Removed for Exercise of His or Her Prosecutorial Discretion, Absent the Adoption of a Blanket Non-Prosecution Policy, Which Is Not Alleged Here.

1. The Exercise of Prosecutorial Discretion Cannot, as a Matter of Law, Constitute Neglect of Duty or Incompetence.

Given that the lawful exercise of prosecutorial discretion cannot constitute a neglect of duty or incompetence, it is not surprising this Court has never sanctioned the suspension of a state attorney for the exercise of prosecutorial discretion. The Court has found suspension warranted only when the suspension order alleges that the prosecutor has *abdicated* his or her duty to exercise discretion by adopting a blanket non-prosecution policy for particular categories of offenses. In *State ex rel. Hardee v. Allen*, 172 So. 222 (Fla. 1937), cited by the Executive Order (EO at 2), the Court held that the order suspending the solicitor of the Criminal Court of Record for Hillsborough County from office was based on a constitutionally

enumerated ground for suspension (neglect of duty), because the state official knowingly permitted gambling in his jurisdiction and declined to enforce prohibitions on gambling. *Id.* at 224 ("to knowingly permit gambling and prefer no charges therefor was a neglect of duty").

Although this Court declined to rule on the merits, the order suspending State Attorney Andrew Warren alleged that Mr. Warren instituted "two presumptive non-enforcement policies." *Warren*, 2023 Fla. LEXIS 939 at *5; *see also id.* at *6 (noting that the Executive Order "explains that the 'neglect of duty is not excused by prosecutorial discretion, because [Mr. Warren's] blanket policies ensure that he will exercise no discretion at all in entire categories of criminal cases.'"). Similarly, in *Ayala*, although addressing the assignment statute rather than the Governor's suspension power, the Court declined to "view[] this case as a power struggle over prosecutorial discretion," because "by effectively banning the death penalty in the Ninth Circuit—as opposed to making case-specific determinations as to whether the facts of each death-penalty eligible case justify seeking the death penalty—Ayala has exercised no discretion at all." *Ayala v. Scott*, 224 So. 3d at 758. *See also id.* at

759 ("Thus, under Florida law, Ayala's blanket refusal to seek the death penalty in any eligible case, including a case that 'absolutely deserve[s] [the] death penalty' does not reflect an exercise of prosecutorial discretion; it embodies, at best, a misunderstanding of Florida law.").

Here, unlike the prosecutor in *Hardee v. Allen*, Ms. Ayala, and Mr. Warren, Ms. Worrell is not alleged to have failed to exercise prosecutorial discretion with blanket refusals to make case-specific determinations. Because she is alleged to have exercised her discretion, rather than disavowed the exercise of her discretion, she has not even arguably neglected her duty or engaged in incompetence, and there is no basis for her suspension.

2. The Executive Order Has No Basis for Implying that Ms. Worrell's Exercise of Prosecutorial Discretion Violated Any Florida Laws.

The Executive Order often implies that Ms. Worrell has acted inconsistent with Florida law. *See, e.g.*, EO at 5 (asserting that Worrell's policies and practices "def[y] the expressed will of the Florida Legislature"); *id.* at 13 (claiming Ms. Worrell has failed to "enforce incarcerative penalties called for by Florida law"). None of

the statutes the Executive Order cites, however, limits Ms. Worrell's exercise of prosecutorial discretion.

The statutes on mandatory minimums for gun crimes, § 775.087, Fla. Stat., and drug trafficking, § 893.135, Fla. Stat., (*see* EO at 4, 5), do not address or limit the prosecutor's discretion to enter into plea bargains in which the defendant pleads guilty to an offense that does not carry a mandatory minimum. The Florida Rules of Criminal Procedure authorize, and indeed "encourage," plea bargains. *See* Fla. R. Crim. P. 3.171 ("the prosecuting attorney and the defense attorney . . . are encouraged to discuss and to agree on pleas that may be entered by a defendant."). Moreover, even for felony offenses, Florida law recognizes mitigating circumstances "under which a departure from the lowest permissible sentence is reasonably justified." § 921.0026(2), Fla. Stat. (2023).

The Executive Order claims that § 27.366, Fla. Stat., strips prosecutors of discretion to deviate from the minimum mandatory sentences imposed by §§ 775.087(2) and (3), Fla. Stat., EO at 4, but that statute says nothing of the kind. In fact, it provides: "For every case in which the offender meets the criteria in this act and does not receive the mandatory minimum prison sentence, the state attorney

must explain the sentencing deviation in writing and place such explanation in the case file maintained by the state attorney." § 27.366, Fla. Stat. (2023). *See also State v. Kelly*, 147 So. 3d 1061, 1063 (Fla. 3d DCA 2014) (noting that "section 27.366 of the Florida Statutes accords prosecutors with the discretion to waive imposition of minimum mandatory sentences"). Far from barring sentence deviations, the statute contemplates that they may occur. Moreover, the statute states that "*prosecutors should appropriately exercise their discretion* in those cases in which the offenders' possession of the firearm is incidental to the commission of a crime and not used in furtherance of the crime, used in order to commit the crime, or used in preparation to commit the crime." § 27.366, Fla. Stat. (2023) (emphasis added).

With regard to sentencing enhancements, the Executive Order concedes that "state attorneys have discretion whether to seek a [prison release reoffenders] designation," EO at 10, and does not cite any statute requiring a state attorney to seek a habitual violent felony offender sentencing enhancement. *Id.*

The Executive Order also faults Ms. Worrell for not charging more juveniles as adults, EO at 7, but Florida's direct file statute,

§ 985.557(1), Fla. Stat. (2023), makes clear that the decision whether to direct file is within the state attorney's discretion, with the only restrictions serving to *prohibit* direct filing for any child younger than 14 who has not committed certain enumerated felonies, *id.* § 985.557(1)(a), and for children under 18 who are charged with a misdemeanor, "unless the child has had at least two previous adjudications or adjudications withheld for delinquent acts, one of which involved an offense classified as a felony under state law," *id.* § 985.557(1)(b). In fact, the Florida legislature amended the direct file statute in 2019 to end mandatory direct files, thereby expanding, not limiting, the role of prosecutorial discretion. Ch. 2019-167, § 76, Laws of Fla.

As to the child pornography statute, § 827.071(5)(a), Fla. Stat. (2023), (*see* EO at 11), the statute does not foreclose the prosecutor from exercising discretion on the number of separate offenses to charge, and the exercise of that discretion is reasonable when a lesser number of offenses still results in a lengthy period of incarceration. *See Walsh v. State*, 198 So. 3d 783, 784, 788 (Fla. 2d DCA 2016) (defendant found with over 3000 pornographic images pled to possession of 170 images, resulting in 63.5 years in prison, where

even 300 concurrent sentences would have resulted in a sentence of 4500 years).

Finally, with regard to the Executive Order's misleading claim that Florida law prohibits prosecutors from seeking or obtaining the withholding of adjudication of guilt, EO at 12, the cited statute expressly allows withholds of adjudication of guilt for a second degree or third degree felony where the "state attorney requests in writing that adjudication be withheld." § 775.08435(1)(b), (c), Fla. Stat, (2023). The statute provides that "the court may not withhold adjudication of guilt upon the defendant" for "[a]ny capital, life, or first degree felony offense," with no provision for a request from the state attorney to withhold adjudication. *Id.* § 775.08435(1)(a). The Executive Order, however, never alleges that Ms. Worrell has ever sought the withholding of adjudication of guilt in capital, life, or first degree felony cases. *See* EO at 12.

CONCLUSION

For the foregoing reasons, Ms. Worrell respectfully requests that this Court grant her Petition and issue a writ of quo warranto and a writ of mandamus to the Governor declaring Executive Order No. 23-160 as exceeding his Constitutional authority under Article IV,

Section 7(a) and directing him to restore Ms. Worrell to her position as State Attorney for the Ninth Judicial Circuit, with back pay, and with full access, without interference or restriction, to the Office of State Attorney for the Ninth Judicial Circuit.

Because the suspension power, when applied to elected officials, carries with it the potential to undermine the will of the voters and to be abused for political reasons, the Constitution requires that the suspension order allege facts that constitute a legitimate basis for suspension. If simply claiming the official has "practices and policies" that constitute neglect of duty and incompetence were sufficient, any governor could suspend any state official. The Florida Constitution does not contemplate the arbitrary, unsubstantiated exercise of the suspension power, and this Court must restrain its exercise here.

Dated: September 6, 2023

By: */s/ Jack E. Fernandez, Jr.*

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petition for Writs of Quo Warranto and Mandamus was served by U.S. Mail to Ryan Newman, Esq., General Counsel, Office of the Governor, 400 South Monroe Street, Tallahassee, FL 32399-0001 and by email to ryan.newman@eog.myflorida.com, this 6th day of September, 2023.

CERTIFICATE OF COMPLIANCE

I hereby certify that this Petition complies with the font requirement by utilizing Bookman Old Style 14-point font as outlined in Rule 9.045 (b) of the Florida Rules of Appellate Procedure and is within the word count as required by Rule 9.100(g) of the Florida Rules of Appellate Procedure. This Petition contains 8,838 words.

By: */s/ Jack E. Fernandez, Jr.*
Jack E. Fernandez, Jr.