

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

**CASE NO: 2022 CA 001902**

**DCA NO: 1D23-0149**

**J. DOE,**

**APPELLANT**

**VS**

**GOVERNOR RON DESANTIS, IN HIS OFFICIAL CAPACITY  
AS CUSTODIAN OF PUBLIC RECORDS, AND THE EXECUTIVE  
OFFICE OF THE GOVERNOR,**

**APPELLEES**

# **RECORD ON APPEAL**

**FROM THE CIRCUIT  
COURT OF LEON COUNTY, FLORIDA  
HONORABLE ANGELA C. DEMPSEY**

**JUSTIN HEMLEPP, ESQ  
6019 RACHEL'S WAY  
ASHLAND, KY 41102**

**JOHN GABRIEL WOODLEE, ESQ  
101 EAST ADAMS STREET  
JACKSONVILLE, FL 32202**

**ATTORNEY(S) FOR APPELLANT(S)**

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LAURA M. DENNIS, ESQ  
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**HENRY CHARLES WHITAKER, ESQ  
EVAN EZRAY, ESQ  
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OFFICE OF THE ATTORNEY GENERAL  
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TALLAHASSEE, FL 32399**

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TALLAHASSEE, FL 32399**

**ATTORNEY(S) FOR APPELLEE(S)**

OCTOBER 27, 2022	<u>PETITION FOR WRIT OF MANDAMUS</u>	005 - 021
OCTOBER 28, 2022	<u>ORDER TO SHOW CAUSE</u>	022 - 023
NOVEMBER 23, 2022	<u>RESPONSE TO ORDER TO SHOW CAUSE</u>	024 - 046
NOVEMBER 23, 2022	<u>NOTICE OF FILING AFFIDAVIT OF CHRISTOPHER DELORENZ</u>	047 - 155
DECEMBER 02, 2022	<u>PETITIONER'S REPLY TO RESPONDENTS' RESPONSE TO ORDER TO SHOW CAUSE</u>	156 - 195
DECEMBER 19, 2022	<u>PETITIONER'S NOTICE OF SUPPLEMENTAL AUTHORITY</u>	196 - 214
JANUARY 03, 2023	<u>TRANSCRIPT OF DECEMBER 20, 2022 HEARING</u>	215 - 253
JANUARY 03, 2023	<u>ORDER DENYING PETITION FOR WRIT OF MANDAMUS AND DISMISSING COMPLAINT</u>	254 - 270
JANUARY 17, 2023	<u>NOTICE OF APPEAL TO DISTRICT COURT - Recorded (OR 5809.2010 / 20230002702)</u>	271 - 272
FEBRUARY 08, 2023	<u>PETITIONER'S NOTICE OF FILING RESPONDENTS' PROPOSED ORDER FOR INCLUSION IN THE RECORD ON APPEAL</u>	273 - 295
FEBRUARY 21, 2023	<u>CERTIFICATE OF CLERK</u>	296

<u>Date</u>	<u>Docket Description/Text</u>
February 21, 2023	CERTIFICATE OF CLERK
February 12, 2023	CASE CLOSED 30 DAYS – PER RJA 2.505(F) DEACTIVATE ATTORNEY for ATT JOHN WOODLEE on 02/12/2023 CASE CLOSED 30 DAYS – PER RJA 2.505(F) DEACTIVATE ATTORNEY for ATT NICHOLAS MEROS on 02/12/2023 CASE CLOSED 30 DAYS – PER RJA 2.505(F) DEACTIVATE ATTORNEY for ATT NICHOLAS MEROS on 02/12/2023
February 09, 2023	EMAIL SENT TO APPEALS REVIEW TEAM RE SERVICE OF COURT DOCUMENT – 2022 CA 001902, DOE, J VS. GOVERNOR RON DESANTIS IN HIS OFFICIAL CAPACITY AS CUSTODIAN OF PUBLIC RECORDS WITH 1 ATTACHMENTS: NOF-2/8/2023
February 08, 2023	PETITIONER'S NOTICE OF FILING RESPONDENTS' PROPOSED ORDER FOR INCLUSION IN THE RECORD ON APPEAL DESIGNATION OF CURRENT MAILING AND EMAIL ADDRESS NOTICE OF APPEARANCE
February 05, 2023	CASE CLOSED 30 DAYS – PER RJA 2.505(F) DEACTIVATE ATTORNEY for ATT LAURA DENNIS on 02/05/2023 CASE CLOSED 30 DAYS – PER RJA 2.505(F) DEACTIVATE ATTORNEY for ATT MARION PARKER on 02/05/2023 CASE CLOSED 30 DAYS – PER RJA 2.505(F) DEACTIVATE ATTORNEY for ATT CHRISTOPHER LUNNY on 02/05/2023 CASE CLOSED 30 DAYS – PER RJA 2.505(F) DEACTIVATE ATTORNEY for ATT LAURA DENNIS on 02/05/2023 CASE CLOSED 30 DAYS – PER RJA 2.505(F) DEACTIVATE ATTORNEY for ATT MARION PARKER on 02/05/2023 CASE CLOSED 30 DAYS – PER RJA 2.505(F) DEACTIVATE ATTORNEY for ATT CHRISTOPHER LUNNY on 02/05/2023 CASE CLOSED 30 DAYS – PER RJA 2.505(F) DEACTIVATE ATTORNEY for ATT JUSTIN HEMLEPP on 02/05/2023
February 03, 2023	NOTICE OF APPEARANCE FILED
January 27, 2023	ORDER FROM DCA TO PAY FILING FEE OR FILE ORDER OF INSOLVENCY - 1D23-0149
January 20, 2023	ORDER FROM DCA TO FILE COPY OF ORDER BEING APPEALED - 1D23-0149 DCA CASE NUMBER - 1D23-0149
January 19, 2023	CERTIFIED COPY OF NOTICE OF APPEAL E-FILED TO DCA EMAIL SENT TO APPEALS TEAM RE SERVICE OF COURT DOCUMENT – 2022 CA 001902, DOE, J VS. GOVERNOR RON DESANTIS IN HIS OFFICIAL CAPACITY AS CUSTODIAN OF PUBLIC RECORDS WITH 1 ATTACHMENTS: ATDC_CA-1/17/2023 PAYMENT \$100.00 RECEIPT #1686391
January 17, 2023	NOTICE OF APPEAL TO DISTRICT COURT - Recorded (OR 5809.2010 / 20230002702)
January 03, 2023	ORDER DENYING PETITION FOR WRIT OF MANDAMUS AND DISMISSING COMPLAINT TRANSCRIPT OF DECEMBER 20, 2022 HEARING NOTICE OF FILING TRANSCRIPT OF DECEMBER 20, 2022 HEARING
December 19, 2022	PETITIONER'S NOTICE OF SUPPLEMENTAL AUTHORITY
December 12,	HEARING SET FOR 12/20/2022 AT 10:00 AM IN ZOOMC, JDG: DEMPSEY,

<u>Date</u>	<u>Docket Description/Text</u>
2022	ANGELA C
December 08, 2022	NOTICE OF HEARING
December 06, 2022	EMAIL SENT TO JUDGE DEMPSEY'S OFFICE RE SERVICE OF COURT DOCUMENT – 2022 CA 001902, DOE, J VS. GOVERNOR RON DESANTIS IN HIS OFFICIAL CAPACITY AS CUSTODIAN OF PUBLIC RECORDS WITH 1 ATTACHMENTS: REPLY-12/2/2022
December 02, 2022	PETITIONER'S REPLY TO RESPONDENTS' RESPONSE TO ORDER TO SHOW CAUSE
November 29, 2022	EMAIL SENT TO JUDGE DEMPSEY OFFICE RE SERVICE OF COURT DOCUMENT – 2022 CA 001902, DOE, J VS. GOVERNOR RON DESANTIS IN HIS OFFICIAL CAPACITY AS CUSTODIAN OF PUBLIC RECORDS WITH 1 ATTACHMENTS: ROSC-11/23/2022
November 23, 2022	NOTICE OF FILING AFFIDAVIT OF CHRISTOPHER DELORENZ
	RESPONSE TO ORDER TO SHOW CAUSE
November 08, 2022	NOTICE OF APPEARANCES AND DESIGNATION OF EMAIL ADDRESSES RETURN OF SERVICE EXECUTED - AGENCY EXECUTIVE OFFICE OF THE GOVERNOR RETURN OF SERVICE EXECUTED - AGENCY FLORIDA DEPT OF FINANCIAL SERVICES RETURN OF SERVICE EXECUTED - GOV DESANTIS
November 03, 2022	PAYMENT \$10.00 RECEIPT #1672649
November 02, 2022	SUMMONS ISSUED
	REQUEST FOR SUMMONS
October 28, 2022	ORDER TO SHOW CAUSE
October 27, 2022	EMAIL SENT TO RE SERVICE OF COURT DOCUMENT – 2022 CA 001902, DOE, J VS. GOVERNOR RON DESANTIS IN HIS OFFICIAL CAPACITY AS CUSTODIAN OF PUBLIC RECORDS WITH 1 ATTACHMENTS: WRMA_CA-10/27/2022 PAYMENT \$400.00 RECEIPT #1671338 PETITION FOR WRIT OF MANDAMUS CIVIL COVER SHEET JUDGE DEMPSEY, ANGELA C: ASSIGNED



Filing # 160078401 E-Filed 10/27/2022 10:32:01 AM

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT  
IN AND FOR LEON COUNTY, FLORIDA  
CIVIL DIVISION**

J. DOE, anonymously and individually, a/k/a  
“FloridaSupremeCourtPRR@protonmail.com,”

Petitioner,

Case No: 2022 CA 001902

v.

GOVERNOR RON DESANTIS, in his  
official capacity as custodian of public records,  
and the EXECUTIVE OFFICE OF THE  
GOVERNOR,

**IMMEDIATE HEARING  
REQUESTED PURSUANT  
TO § 119.11(1), FLA. STAT.**

Respondents. /

**PETITION FOR WRIT OF MANDAMUS,  
COMPLAINT TO ENFORCE THE PUBLIC RECORDS ACT,  
AND EX PARTE MOTION FOR ALTERNATIVE WRIT OF MANDAMUS**

Petitioner J. DOE, a/k/a “FloridaSupremeCourtPRR@protonmail.com,”  
hereby sues Respondents, GOVERNOR RON DESANTIS, in his official capacity  
as custodian of public records, and the EXECUTIVE OFFICE OF THE  
GOVERNOR, to enforce the Public Records Act.

**INTRODUCTION**

1. This action concerns Doe’s right to inspect public records requested on  
October 5, 2022 related to the “six or seven pretty big legal conservative  
heavyweights” who have assisted the governor in vetting nominees for vacancies on

the Supreme Court of Florida.<sup>1</sup> Respondents have to date failed to disclose the requested records, and the merit retention elections for several Supreme Court justices will occur imminently, on November 8, 2022.

### **JURISDICTION**

2. This Court has jurisdiction because this is a complaint to enforce Chapter 119, Florida Statutes (the “Public Records Act” or “Act”). Petitioner seeks a writ of mandamus, a declaration that Respondents violated the Act, and an order commanding Respondents to disclose the requested public records. Petitioner also seeks an award of costs and reasonable attorneys’ fees. Jurisdiction therefore is proper under Article V, Section 5, of the Florida Constitution, Sections 86.011 and 119.11, Florida Statutes, and Rule 1.630, Florida Rules of Civil Procedure.

### **VENUE**

3. Venue in this Court is proper pursuant to Section 47.11, Florida Statutes, because Respondents are located in and conduct business in Leon County, Florida, and because the causes of action alleged herein accrued in that county.

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<sup>1</sup> Hugh Hewitt, *Florida Governor Ron DeSantis On The Great Biden Give-Away*, HughHewitt.com, <https://hughhewitt.com/florida-governor-ron-desantis-on-the-great-biden-give-away/> (Aug. 25, 2022).

## PARTIES

4. Petitioner J. Doe, a/k/a “FloridaSupremeCourtPRR@protonmail.com,” is a Florida resident.<sup>2</sup>

5. Respondents Governor Ron DeSantis and the Executive Office of the Governor have custody of the public records requested by the Petitioner. Their business is conducted in Leon County, Florida.

## GENERAL ALLEGATIONS

6. Governor DeSantis was interviewed by Hugh Hewitt on August 25, 2022. During the interview, the governor described his process for vetting nominees for vacancies on the Supreme Court of Florida. In pertinent part, DeSantis stated:

So what I do is I convene a group of people that I trust – some people in Florida, some people outside of the state *who you would know who I’m not going to say, because you know, it’s private*. But and then they put these candidates through the wringer. So they will go into a room and you’ll have *six or seven pretty big legal conservative heavyweights*, and they have to answer questions. And I’m not there for that, but then I get debriefed by them, and then I’ll sit and do interviews with each individual candidate.<sup>3</sup>

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<sup>2</sup> See Op. Att’y Gen. Fla. 92-38 (1992), 1992 WL 527447 (government cannot require requester to identify himself or herself, unless required by law); Op. Att’y Gen. 91-76 (1991), 1191 WL 528207 (stating that such a requirement “might for some have a chilling effect on access to public records); *Chandler v. City of Greenacres*, 140 So. 3d 1080, 1084-85 (Fla. 4th DCA 2014) (approvingly discussing and quoting the preceding opinions and stating: “Requiring appellant to provide further identifying information prior to the disclosure could have a chilling effect on access to public records and is not required by the Public Records Act.”).

<sup>3</sup> Hewitt, *supra*, note 1 (emphasis added).

7. On October 4, 2022, the *Sun-Sentinel* editorial board reported the above interview and wrote: “Who are these people? DeSantis won’t say. His press office ignored our four requests to identify them. The four sitting justices he appointed won’t say if they were vetted by an entity other than the official Supreme Court Judicial Nominating Commission.”<sup>4</sup>

8. On October 5, 2022, Petitioner sent the following public records request to Respondents in writing via email:

Any and all materials, on official devices or personal devices used for official business, in whatever form, including but not limited to call logs, emails, or texts, between or among Governor Ron DeSantis, Casey DeSantis, the governor’s chief of staff, his executive or personal assistants or aides, his general counsel or anyone within the general counsel’s office, the director of appointments or anyone within the director of appointment’s office, and the “six or seven pretty big legal conservative heavyweights” described by the governor in an interview with Hugh Hewitt on August 25, 2002.

**Ex. A** (email string).

9. Respondents acknowledged the records request the next day, October 6, 2022. *Id.*

10. On October 12, 2022, Petitioner asked for an update on the records request. That day, Respondents replied: “The Office of Open Government receives a high volume of requests and yours is one of the most recent. We are processing

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<sup>4</sup> Editorial, *Reject four Florida Supreme Court justices*, Sun-Sentinel, Oct. 4, 2022, <https://www.sun-sentinel.com/opinion/endorsements/fl-op-endorse-florida-supreme-court-20221004-joknrpufsfefbamb5pjkyzvei-story.html>.

your request along with all others. Once documents are compiled and reviewed, they are released.” *Id.*

11. On October 15, Petitioner conveyed the urgency of his or her records request given the imminent elections, and even suggested he or she would be willing to narrow the request in an attempt to avoid litigation:

This is a matter of some urgency given the approaching merit retention elections for the justices. It should be easy to at least disclose who the outside conservative legal heavyweights are, the dates and locations of their interviews of the now justices, and the dates of the governor’s or his agents’ communications with those people. I will file a lawsuit if I have to in order to receive a timely response to my request.

*Id.*

12. Having received no response from Respondents, Petitioner asked on October 18 if he or she would have to file a lawsuit. *Id.*

13. The same day, Respondents responded:

Your request is one of hundreds of public records requests. Your request is less than two weeks old. You do not just get to cut the line because you threaten litigation. We are processing your request along with all other requests. It would be unfair if we were to prioritize your request over all our other requests. If you want to discuss this request on the phone, we are happy to do so.

*Id.*

14. On October 18, Petitioner replied:

Thank you for your response. I will withdraw the request entirely if the governor’s office identifies the conservative legal heavyweights who interviewed the nominees and the vacancies for which the governor consulted them. I really am not trying to be difficult. This is an easy

question to answer and the merit retention elections are on November 8.

*Id.*

15. After receiving no response, on October 26, Petitioner wrote to Respondents: “I am preparing to file a lawsuit either today or tomorrow to enforce the public records law. Will the governor’s office provide a timely response to my request or, in an effort to resolve this amicably, take me up on the offer in the last email?” *Id.*

16. Respondents responded the same day. They explained that they were conducting an investigation to identify the individuals the governor referred to, but also asked for clarification—namely, exactly which justices were at issue—that might narrow the scope of the investigation. *Id.*

17. Petitioner replied that he or she would be amenable to a partial production: information concerning the justices subject to retention this year as soon as practicable, and then information regarding the other justices the governor has appointed following the election. *Id.*

18. Thus, it appears that Petitioner and Respondents are trying to reach an agreement. But as Petitioner communicated to Respondents, Petitioner is nonetheless initiating this action given the timing issues. *Id.* That is, Petitioner wishes to ensure that his or her rights under the PRA are protected.

19. And the fact remains that Petitioner submitted the public records request on October 5 and, to date, Respondents have not disclosed the Requested Records or identified the “legal conservative heavyweights” who help the governor decide the makeup of the Supreme Court of Florida.

\* \* \*

20. The Florida Constitution guarantees “[e]very person [] the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf” unless those records are confidential or exempt from disclosure. Art. I, § 24(a), Fla. Const.

21. Section 119.011, Florida Statutes, defines “public records” which are open to inspection as “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business of any agency.”

22. The materials described herein (the “Requested Records”) were made or received by Respondents in connection with the transaction of official business and were prepared with the intent to communicate, perpetuate, or formalize knowledge. Therefore, the Requested Records constitute public records within the meaning of Section 119.011, Florida Statutes.

23. Petitioner has a clear legal and constitutional right to inspect all portions of public records to which no statutory exemption or confidentiality applies. Art. I, § 24(a), Fla. Const.; § 119.07(1)(a), Fla. Stat.

24. Respondents have not asserted that any exemption or confidentiality applies to the Requested Records and have failed to disclose the records within the limited reasonable time to redact any allegedly exempt information.

25. As custodians of public records, Respondents have a mandatory and non-discretionary duty to permit the timely inspection of all non-exempt, non-confidential public records and bear the burden of proving an exemption or confidentiality. § 119.07(1), Fla. Stat.

26. Respondents breached that duty by refusing to allow Petitioner to inspect the Requested Records.

\* \* \*

27. All conditions precedent to this action have been met, sustained, or waived by Respondents' actions as alleged herein.

28. Petitioner's purpose in seeking the Requested Records is proper.

29. Petitioner has incurred costs in pursuing this action, retained the undersigned counsel to represent its interests, and is obligated to pay a reasonable fee for the undersigned's legal services. Petitioner will effect service of process of this pleading upon the state Department of Financial Services pursuant to Section



284.30, Florida Statutes. Petitioner provided notice of the request to Respondents' records custodian pursuant to Section 119.12(1)(b).

30. Accordingly, should Petitioner prevail in this action, he or she is entitled to costs and attorneys' fees pursuant to Section 119.12, Florida Statutes.

### **COUNT I – PETITION FOR WRIT OF MANDAMUS**

31. This is an action by Petitioner against Respondents for a writ mandamus to correct their failure to disclose the Requested Records pursuant to the Public Records Act.

32. The allegations contained within paragraphs 1 through 30, *supra*, are hereby incorporated as if fully set forth herein.

33. This cause of action is alleged additionally and alternatively to the other causes of action set forth herein.

34. Section 119.07(1)(a), Florida Statutes, provides:

Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

35. Respondents have a ministerial, non-discretionary duty to disclose public records upon request.

36. Respondents failed, despite a written request, to produce the Requested Records.

37. Respondents have not asserted that any exemptions to the Public Records Act apply to Petitioner's request.

38. Mandamus is an appropriate remedy to enforce violations of public records law. *See Smith v. State*, 696 So. 2d 814, 816 (Fla. 2d DCA 1997).

39. Petitioner is entitled to and seeks the issuance of an alternative writ of mandamus ordering Respondents to either produce the Requested Records or show cause why a writ of mandamus should not be issued granting the relief requested herein. Fla. R. Civ. P. 1.630(d).

## **COUNT II – DECLARATORY RELIEF**

40. This is an action by Petitioner against Respondents for a declaratory judgment. *See* § 86.011, Fla. Stat.

41. The allegations contained within paragraphs 1 through 30, *supra*, are hereby incorporated as if fully set forth herein.

42. This cause of action is alleged additionally and alternatively to the other causes of action alleged herein.

43. Respondents violated the Public Records Act by failing to disclose the Requested Records.

44. There is a bona fide, actual, and present need for a judicial declaration of Petitioner's right to inspect the Requested Records.

45. The declaration sought deals with a present, ascertained set of facts and a present controversy concerning that set of facts.

46. The rights of Petitioner and the public are dependent upon the aforementioned set of facts and the law applicable to those facts.

47. Petitioner and Respondents have an actual, present, adverse, and antagonistic interest in the subject matter of this action.

48. The relief sought herein is not merely the giving of legal advice by the court or the satisfaction of mere curiosity.

**EX PARTE MOTION FOR ALTERNATIVE WRIT OF  
MANDAMUS AND IMMEDIATE FINAL HEARING**

Petitioner is entitled to and seeks an immediate hearing pursuant to Section 119.11, Florida Statutes, which provides: “Whenever an action is filed to enforce the provisions of this chapter, the court shall set an immediate hearing, giving the case priority over other pending cases.” *See also Salvador v. Fennelly*, 593 So. 2d 1091, 1093 (Fla. 4th DCA 1992) (rejecting agency’s suggestion that “immediate” under § 119.11(1) meant a reasonable period of time in the absence of an identifiable emergency); *Woodfaulk v. State*, 935 So. 2d 1225, 1227 (Fla. 5th DCA 2006).

Petitioner therefore moves *ex parte*, based on the allegations, argument, and prima facie case set forth herein, for an alternative writ of mandamus ordering

Respondents to immediately disclose the public records identified herein or show cause why their failure to disclose those records is lawful.

WHEREFORE, Petitioner J. Doe respectfully requests that this Court:

- A. Enter on an *ex parte* basis an alternative writ of mandamus ordering Respondents to either disclose the Requested Records or show cause why they need not disclose the records;
- B. Set an immediate final hearing;
- C. Enter a peremptory writ of mandamus ordering Respondents to disclose the Requested Records;
- D. Declare that Respondents violated the Public Records Act;
- E. Award to Petitioner his or her costs and reasonable attorneys' fees; and
- F. Award to Petitioner any other relief deemed by the Court to be just and proper.

Dated: October 27, 2022

Respectfully submitted,

/s/Justin S. Hemlepp

**Justin S. Hemlepp, Esq.**

Fla. Bar No.: 58991

6019 Rachel's Way

Ashland, KY 41102

Telephone: (606) 694-2285

E-mail: jhemlepp@gmail.com

*Attorney for Petitioner J. Doe*

## RE: Public records request

From FloridaSupremeCourtPRR@protonmail.com <FloridaSupremeCourtPRR@protonmail.com>

To DeLorenz, Christopher <Christopher.DeLorenz@eog.myflorida.com>

Date Wednesday, October 26th, 2022 at 6:26 PM

Thank you for the update. Your point is fair. I would like that information for each justice Governor DeSantis has appointed. *However*, I am amenable to a partial production/disclosure as soon as practicable regarding *just* Justices Couriel and Grosshans. Then, the EOG could provide the information for Chief Justice Muniz and Justice Francis later, after the elections. If this is okay, do you think you could make the partial production/disclosure in the next few days? Also, my assumption has been that, when the governor referred to debriefing in the Hewitt interview, he meant by way of a phone call, not by email or text or some other written medium. If my assumption is not correct, please let me know because I would want those communications. Otherwise, if you can just get me the names of the heavyweights and which ones interviewed which justices, that would resolve my request.

To be completely forthcoming, my current plan is to still file the lawsuit in order to start that process given the timing issues, but note that in the petition and that we are trying to reach an agreement.

Sent with [Proton Mail](#) secure email.

----- Original Message -----

On Wednesday, October 26th, 2022 at 5:45 PM, DeLorenz, Christopher <Christopher.DeLorenz@eog.myflorida.com> wrote:

Good afternoon,

I am conducting an investigation to identify the names of the individuals who the Governor is referring to in the article that you referenced. It would be extremely helpful to know which justices you were referring to because you mentioned "the approaching merit retention elections for the justices." Are you referring to all of the justices appointed by Governor DeSantis or just the justices who are up for retention election? Providing this information would help narrow the scope of the investigation.

Sincerely,

Christopher DeLorenz

*Director, Office of Open Government*

*Office of the General Counsel*

Exhibit A

*Executive Office of the Governor*

*Personal Line:* [REDACTED]

**From:** FloridaSupremeCourtPRR@protonmail.com <FloridaSupremeCourtPRR@protonmail.com>  
**Sent:** Wednesday, October 26, 2022 3:15 PM  
**To:** DeLorenz, Christopher <Christopher.DeLorenz@eog.myflorida.com>  
**Subject:** RE: Public records request

I am preparing to file a lawsuit either today or tomorrow to enforce the public records law. Will the governor's office provide a timely response to my request or, in an effort to resolve this amicably, take me up on the offer in the last email?

Sent with [Proton Mail](#) secure email.

----- Original Message -----

On Tuesday, October 18th, 2022 at 1:46 PM, <[FloridaSupremeCourtPRR@protonmail.com](mailto:FloridaSupremeCourtPRR@protonmail.com)> wrote:

Thank you for your response. I will withdraw the request entirely if the governor's office identifies the conservative legal heavyweights who interviewed the nominees and the vacancies for which the governor consulted them. I really am not trying to be difficult. This is an easy question to answer and the merit retention elections are on November 8.

Sent with [Proton Mail](#) secure email.

----- Original Message -----

On Tuesday, October 18th, 2022 at 1:31 PM, DeLorenz, Christopher  
<[Christopher.DeLorenz@eog.myflorida.com](mailto:Christopher.DeLorenz@eog.myflorida.com)> wrote:

Good afternoon,

Your request is one of hundreds of public records requests. Your request is less than two weeks old. You do not just get to cut the line because you threaten litigation. We are processing your request along with all other requests. It would be unfair if we were to prioritize your request over all our other requests. If you want to discuss this request on the phone, we are happy to do so.

Exhibit A

Sincerely,

Christopher DeLorenz

*Director, Office of Open Government*

*Office of the General Counsel*

*Executive Office of the Governor*

*Personal Line:* [REDACTED]

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**From:** [FloridaSupremeCourtPRR@protonmail.com](mailto:FloridaSupremeCourtPRR@protonmail.com) <[FloridaSupremeCourtPRR@protonmail.com](mailto:FloridaSupremeCourtPRR@protonmail.com)>

**Sent:** Tuesday, October 18, 2022 12:26 PM

**To:** Desantis.OpenGovernment <[Desantis.OpenGov@eog.myflorida.com](mailto:Desantis.OpenGov@eog.myflorida.com)>

**Subject:** RE: Public records request

Will I have to file a lawsuit?

Sent with [Proton Mail](#) secure email.

----- Original Message -----

On Saturday, October 15th, 2022 at 10:27 AM, <[FloridaSupremeCourtPRR@protonmail.com](mailto:FloridaSupremeCourtPRR@protonmail.com)> wrote:

This is a matter of some urgency given the approaching merit retention elections for the justices. It should be easy to at least disclose who the outside conservative legal heavyweights are, the dates and locations of their interviews of the now justices, and the dates of the governor's or his agents' communications with those people. I will file a lawsuit if I have to in order to receive a timely response to my request.

Sent from Proton Mail for iOS

Exhibit A

On Wed, Oct 12, 2022 at 10:46 AM, Desantis.OpenGovernment  
<[Desantis.OpenGov@eog.myflorida.com](mailto:Desantis.OpenGov@eog.myflorida.com)> wrote:

Good morning,

The Office of Open Government receives a high volume of requests and yours is one of the most recent. We are processing your request along with all others. Once documents are compiled and reviewed, they are released.

Sincerely,

Office of Open Government

**From:** [FloridaSupremeCourtPRR@protonmail.com](mailto:FloridaSupremeCourtPRR@protonmail.com) <[FloridaSupremeCourtPRR@protonmail.com](mailto:FloridaSupremeCourtPRR@protonmail.com)>  
**Sent:** Wednesday, October 12, 2022 9:48 AM  
**To:** Desantis.OpenGovernment <[Desantis.OpenGov@eog.myflorida.com](mailto:Desantis.OpenGov@eog.myflorida.com)>  
**Subject:** RE: Public records request

Please provide an update on this request.

Sent from Proton Mail for iOS

On Thu, Oct 6, 2022 at 10:12 AM, Desantis.OpenGovernment  
<[Desantis.OpenGov@eog.myflorida.com](mailto:Desantis.OpenGov@eog.myflorida.com)> wrote:

Good afternoon,

The Governor's Office of Open Government is in receipt of your request for records as stated in your email below. If there is a fee associated with your request, you will be provided with a fee estimate for your review. Thank you for contacting the Executive Office of the Governor.

Sincerely,

Office of Open Government

Exhibit A



**From:** [FloridaSupremeCourtPRR@protonmail.com](mailto:FloridaSupremeCourtPRR@protonmail.com) <[FloridaSupremeCourtPRR@protonmail.com](mailto:FloridaSupremeCourtPRR@protonmail.com)>  
**Sent:** Wednesday, October 5, 2022 5:27 PM  
**To:** Desantis.OpenGovernment <[Desantis.OpenGov@eog.myflorida.com](mailto:Desantis.OpenGov@eog.myflorida.com)>  
**Subject:** Public records request

Any and all materials, on official devices or personal devices used for official business, in whatever form, including *but not limited to* call logs, emails, or texts, between or among Governor Ron DeSantis, Casey DeSantis, the governor's chief of staff, his executive or personal assistants or aides, his general counsel or anyone within the general counsel's office, the director of appointments or anyone within the director of appointment's office, and the "six or seven pretty big legal conservative heavyweights" described by the governor in [an interview with Hugh Hewitt on August 25, 2002](#).

Sent with [Proton Mail](#) secure email.

Please note that under Florida law correspondence sent to the Governor's Office, which is not confidential or exempt pursuant to chapter 119 of the Florida Statutes, is a public record made available upon request.

Exhibit A

Filing # 160205244 E-Filed 10/28/2022 03:16:56 PM

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT  
IN AND FOR LEON COUNTY, FLORIDA**

J. DOE, anonymously and individually, a/k/a  
"FloridaSupremeCourtPRR@protonmail.com,"

Plaintiff(s)/Petitioner(s),

vs.

CASE NO.: 2022 CA 1902

GOVERNOR RON DESANTIS, in his official  
capacity as a custodian of public records, and the  
EXECUTIVE OFFICE OF the GOVERNOR,

Defendant(s)/Respondent(s).

**ORDER TO SHOW CAUSE**

THIS CAUSE was considered on the "Petition for Writ of Mandamus, Complaint to Enforce the Public Records Act, and Ex Parte Motion for Alternative Writ of Mandamus" (Petition) filed on October 27, 2022. After reviewing the Petition, it is hereby,

**ORDERED AND ADJUDGED** Defendant(s) shall have **15 days** from the date of service of the Petition and this order as described below to file a written response showing cause why the relief requested should not be granted. The response shall include copies of all documents necessary to establish the validity of Defendant's position(s). The Defendant(s) shall file the original with the Clerk of the Court and provide a copy to both the Court and the attorney for Plaintiffs. The Defendants shall also provide the Court and opposing counsel a proposed order/judgment in Microsoft Word via email at [hooperh@leoncountyfl.gov](mailto:hooperh@leoncountyfl.gov).

If the Plaintiffs choose to file a Reply to the Defendant's Response, the Reply must be filed with the Clerk of Court within **10 days** from the date of the certificate of service on the Defendant's Response and Plaintiffs shall provide a copy to both the Court and the attorneys for Defendants. Plaintiffs may also submit a proposed order/judgment in Microsoft Word via email at [hooperh@leoncountyfl.gov](mailto:hooperh@leoncountyfl.gov) within the same 10 days. Upon the filing of the Response and Reply or upon the expiration of the time to respond, whichever occurs first, the Court will review the case and decide whether a hearing is necessary.

Plaintiff shall promptly serve a copy of this Order to Show Cause and the Petition on Defendants by personal service (unless waived by Defendant(s)). Thereafter, Plaintiff shall promptly file a certificate of service or waiver of personal service as to each Defendant.

Requests for extensions of time to file a Response or Reply will not be granted unless good cause is demonstrated to the satisfaction of the Court.

DONE AND ORDERED in Tallahassee, Florida, October 28, 2022.

  
\_\_\_\_\_  
ANGELA C. DEMPSEY  
Circuit Judge

copy furnished to:  
Attorney for Plaintiff through e-portal

Filing # 161816105 E-Filed 11/23/2022 01:07:08 PM

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT  
IN AND FOR LEON COUNTY, FLORIDA**

J. DOE, anonymously and individually, a/k/a  
“FloridaSupremeCourtPRR@protonmail.com,”

Petitioner,

v.

Case No.: 2022 CA 1902

GOVERNOR RON DESANTIS, in his official  
capacity as a custodian of public records, and the  
EXECUTIVE OFFICE OF THE GOVERNOR,

Respondents.

\_\_\_\_\_ /

**RESPONSE TO ORDER TO SHOW CAUSE**

Pursuant to this Court’s Order to Show Cause entered on October 28, 2022 (the “Order”), Respondents, Governor Ron DeSantis (“DeSantis” or “Governor”) and the Executive Office of the Governor (“EOG”) (collectively the “Respondents”) hereby file their response to the Order and show that Petitioner “J. Doe” is not entitled to relief in mandamus in this case because: (a) the Petition by “J. Doe” was not filed “in the name of the plaintiff” as required by Florida Rule of Civil Procedure 1.630; (b) the Petition asks the Court to essentially require the Governor to respond to an interrogatory (and not a public records request); (c) Petitioner does not have a clear legal right to the information requested and cannot compel a discretionary duty; and (d) the request seeks privileged information. In further support, Respondents state:

**Introduction**

Contrary to Petitioner’s contention, this case is not about Respondents’ refusal to produce records to Petitioner. Instead, this case concerns whether an unnamed Petitioner can force Respondents to divulge privileged information related to the Governor’s constitutional obligation

to fill judicial vacancies, in the guise of a vague public records request. The Florida Constitution assigns to the Governor alone the authority to appoint justices to the Supreme Court of Florida. Because of the Constitution's separation of powers, information about the Governor's deliberations involving the exercise of this authority is protected by the executive privilege. To be clear, unnamed "J. Doe" has not requested that Respondents provide any specific public record that can be identified and disclosed without violating the executive privilege. Simply put, the records custodian cannot satisfy the request without probing into privileged information from the Governor and then utilizing such information to locate potentially responsive records. That is not, and has never been, a part of Florida public records law. In fact, the opposite is true. The law is laden with exceptions and privileges which cannot be explicitly or implicitly voided by simply making a public records request. Regardless, Petitioner is not entitled to the relief requested because neither a writ of mandamus nor declaratory relief is appropriate. As such, the Petition must be denied and this matter must be dismissed.

### **Background**

During an interview on August 25, 2022, the Governor stated that he had asked a group of people he trusts to interview potential nominees for appointment to the Supreme Court of Florida. Pet. ¶ 6. The Governor referred to these individuals as "six or seven pretty big legal conservative heavyweights." *Id.* He also pointedly refused to reveal the identities of these individuals, saying simply that "it's private." *Id.* Shortly thereafter, the *Sun-Sentinel* editorial board asked the Governor's staff to identify these individuals, but they declined to do so. Pet. ¶ 7.

On October 5, 2022, in an effort to force the Governor to identify these individuals, Petitioner submitted an anonymous public records request seeking communications or evidence of

such communications between the Governor’s office and the individuals with whom the Governor consulted. Pet. ¶ 1. Specifically, Petitioner requested:

Any and all materials, on official devices or personal devices used for official business, in whatever form, including *but not limited to* call logs, emails, or texts, between or among Governor Ron DeSantis, Casey DeSantis, the governor’s chief of staff, his executive or personal assistants or aides, his general counsel or anyone within the general counsel’s office, the director of appointments or anyone within the director of appointment’s office, and the “six or seven pretty big legal conservative heavyweights” described by the governor in an interview with Hugh Hewitt on August 25, 2022.

Pet. ¶ 8 (emphasis added); *see also* DeLorenz Aff. ¶ 18. The Governor’s Office of Open Government (“OOG”), which fulfills requests for public records in EOG’s custody, acknowledged receipt of the request the following day. Pet. ¶ 9; DeLorenz Aff. ¶ 19.

Approximately one week later, Petitioner requested an update. Pet. ¶ 10 & Ex. A. Christopher DeLorenz, Director of the OOG, informed Petitioner that the OOG has a “high volume of requests” and that, once documents are compiled and reviewed, they are released. *Id.*; DeLorenz Aff. ¶¶ 4, 21. Three days later, on October 15, 2022, Petitioner revised the request to seek disclosure of the names of the conservative legal heavyweights, the dates and locations of their interviews with the now justices, and the date of the Governor’s (or his agents’) communications with those persons. Pet. ¶ 11; DeLorenz Aff. ¶ 22. On October 18, 2022, Petitioner threatened litigation, and DeLorenz responded that “[i]t would be unfair if we were to prioritize your request over all our other requests.” Pet. ¶ 13; DeLorenz Aff. ¶ 23. That same day, Petitioner informed the OOG:

I will withdraw the request entirely if the governor’s office identifies the conservative legal heavyweights who interviewed the nominees and the vacancies for which the governor consulted them.

Pet. ¶ 14; DeLorenz Aff. ¶ 24. Petitioner thus made clear that he or she does not really want the records but is rather using the public records laws to extract information from the mind of the Governor.

On October 26, 2022, DeLorenz informed Petitioner that he was conducting an investigation to identify the names of the individuals but that further clarification was needed. Pet. ¶ 16; DeLorenz Aff. ¶ 26. Specifically, DeLorenz inquired whether Petitioner was referring to all of the justices appointed by the Governor or only those justices who were up for retention election. *Id.* Petitioner, recognizing that his request was vague, responded that he would like the information for each justice appointed by the Governor, but would be amenable to a partial disclosure as soon as practicable for those justices approaching merit retention elections and a subsequent disclosure of the remaining justices after the elections. Pet. ¶ 17 & Ex. A (noting the request for clarification was a “fair” point).

On October 27, 2022, a Petition in the name of “J. DOE, anonymously and individually, a/k/a ‘FloridaSupremeCourtPRR@protonmail.com’” was filed to compel Respondents to produce the requested information. The Petition includes two different counts: Count I is a claim for mandamus, and Count II is a claim for declaratory relief. Petitioner also asked for entry of an alternative writ of mandamus, an immediate hearing under section 119.11, Florida Statutes, and an award of reasonable costs and attorney’s fees under section 119.12, Florida Statutes. Pet. pp. 11, 12. The following day, the Court ordered Respondents to show cause why the relief requested should not be granted.

As of November 22, 2022, the EOG has approximately 256 pending public record requests, many of which have multiple subparts. DeLorenz Aff. ¶¶ 10, 11-12. There are 165 pending requests ahead of Petitioner’s request. *Id.* ¶ 29. However, because Petitioner threatened and then

brought litigation, the OOG has been forced to accelerate the consideration of Petitioner’s request ahead of others. *Id.* Nevertheless, the OOG is unable to satisfy Petitioner’s request without confirmation of the identities of the “legal conservative heavyweights” referenced in the Governor’s August 25 interview. *Id.* ¶ 30. To prevent the disclosure of their identities, the Governor has invoked the executive privilege. *Id.*

### **Argument**

There are many reasons why the requested relief must be denied in this case. First, as a procedural matter, the requested relief cannot be granted here to an email account or otherwise anonymous petitioner. Second, Petitioner has failed to make a sufficiently specific request for public records. Third, mandamus is improper to compel Respondents to perform an act that is not purely ministerial. Fourth, the information demanded is shielded by the executive privilege. Fifth, Petitioner is not entitled to fees, and the Governor is an improper party. Finally, Petitioner is not entitled to immediate declaratory relief. Each of these points is addressed below.

#### **I. The Petition Is Defective on Its Face Because the Court Cannot Grant the Extraordinary Writ of Mandamus, Nor Award Attorney’s Fees, to an Email Address.**

The Petition purports to seek relief in mandamus under Florida Rule of Civil Procedure 1.630. Pet. ¶ 30. The plain language of Rule 1.630(b)(3), however, requires the litigant to file the petition “in the name of the petitioner in all cases” and does not permit a request (or grant) of mandamus to a fictional or anonymous party. The Petition accordingly does not comply with the express language of the Rule because it is not brought in “the name of the petitioner.” Instead, the Petition was purportedly filed by “J. DOE, anonymously and individually, a/k/a ‘FloridaSupremeCourtPRR@protonmail.com.’” The extraordinary writ of mandamus may not, however, be awarded to an email account.



Rule 1.630's unwavering mandate that a party be named "in all cases" comports with the principles of mandamus as described in Florida case law. Grants of mandamus confer a personal right. *See, e.g., Pace v. Singletary*, 633 So. 2d 516, 518 (Fla. 1st DCA 1994) (finding that an inmate was not entitled to relief in mandamus as he lacked the personal right to receive money). To be entitled to a writ of mandamus, the petitioner must have a clear legal right to the requested relief. *See Chapman v. State*, 910 So. 2d 940, 941 (Fla. 5th DCA 2005) (recognizing that the petitioner had no "personal right to have the arrest warrant executed"); *see also Reese v. Baron*, 256 So. 2d 70, 73 (Fla. 3d DCA 1971) (noting that the executrix may be precluded from bringing a petition for mandamus to require reinstatement of the deceased as reinstatement was a personal right that did not pass to the executrix). Neither the Rule, nor Florida case law, permit an email account to invoke this Court's jurisdiction and receive an extraordinary writ.

Along these same lines, the Court cannot award costs or attorney's fees to an email account. *See* Pet. p. 12 (requesting an award of "his or her costs and attorney's fees"). Instead, an award of mandamus operates to afford complete relief (and that is precisely why the petition must be brought in the name of the petitioner "in all cases"). *See* Fla. R. Civ. P. 1.630(b)(3). Mandamus "will not lie where continued judicial supervision is required." *Town of Manaplan v. Rechler*, 674 So. 2d 789, 790 (Fla. 4th DCA 1996); *see also Stone v. Ward*, 752 So. 2d 100, 101 (Fla. 2d DCA 2000) (finding that mandamus was not appropriate to compel future acts that required regulation of a general course of conduct). Stated differently, the Court cannot award mandamus (or costs or attorney's fees) to an unnamed party and attempt to later correct the matter after issuance of the writ. *See Fla. Agency for Health Care Admin. v. Zuckerman Spaeder, LLP*, 221 So. 3d 1260, 1264 n. 5 (Fla. 1st DCA 2017) (noting the "lower court was without authority to issue mandamus relief and retain jurisdiction for computation of reasonable reimbursement costs at some future date").

In sum, while a citizen may seek public records anonymously, the right to seek an extraordinary writ is very different. *See* Pet. p. 3 n. 2.<sup>1</sup> Because the Petition fails to meet the express requirements of Rule 1.630(b)(3), the Court cannot award mandamus at this time. Accordingly, this Court should deny the requested relief.<sup>2</sup> *See Major v. Hallandale Beach Police Dep’t*, 219 So. 3d 856, 858 (Fla. 4th DCA 2017) (affirming denial of requested mandamus for the petition’s failure to strictly comply with Rule 1.630).

## **II. Petitioner Does Not Seek a Public Record.**

A review of the record in this case reveals that Petitioner does not seek a public record. Instead, Petitioner seeks *information* known only to the Governor and his advisors. Section 119.07(1)(a), Florida Statutes, provides that “[e]very person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.” A public record is defined by statute as “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” § 119.011(12), Fla. Stat. To establish a cause of action under the Public Records Act, a party must “prove that

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<sup>1</sup> Notably, in *Chandler v. City of Greenacres*, 140 So. 3d 1080 (Fla. 4th DCA 2014), a case cited by Petitioner, the plaintiff initially made his public records request anonymously, but filed his petition for mandamus against the City in his full legal name.

<sup>2</sup> Petitioner’s attempt to proceed anonymously also infringes on the public’s fundamental interest in open judicial proceedings. *See Barron v. Fla. Freedom Newspapers, Inc.*, 531 So. 2d 113, 118 (Fla. 1988) (recognizing a “strong presumption of openness . . . for all court proceedings”). The United States Supreme Court in *Craig v. Harney*, 331 U.S. 367, 374 (1947), noted that a trial is a “public event . . . . There is no special prerequisite of the judicial which enables it, as distinguished from other institutions of democratic government, to suppress, edit, or censor events which transpire in proceedings before it.” (emphasis added).

they made a specific request for public records, the [agency] received it, the requested public records exist, and the [agency] improperly refused to produce them in a timely manner.” *O’Boyle v. Town of Gulf Stream*, 257 So. 3d 1036, 1040 (Fla. 4th DCA 2018) (emphasis added) (quoting *Grapski v. City of Alachua*, 31 So. 3d 193, 196 (Fla. 1st DCA 2010)). This case lacks an actionable, specific request.

Petitioner’s initial request, dated October 5, 2022, is not specific in scope or subject matter. In particular, Petitioner requested “any and all materials . . . in whatever form” showing communications between the Governor and persons in the Governor’s office and the “six or seven pretty big legal conservative heavyweights.” Pet. ¶ 8. Petitioner’s request does not delineate a timeframe when these communications may have occurred, nor does Petitioner identify the topic of the communications requested, or even the identities of the “legal conservative heavyweights.” Records custodians should not be made to guess what documents are sought in a public records request. *See Woodard v. State*, 885 So. 2d 444, 445-46 (Fla. 4th DCA 2004) (explaining a records custodian is only required to furnish copies of records after the person requesting them “identifies the portions of the record with sufficient specificity to permit the custodian to identify the record”).

It was only after subsequent communications with Petitioner that it became clear the Petitioner’s request was not about obtaining a specific public record. Instead, Petitioner’s request was an attempt to discover who the Governor conferred with regarding his Supreme Court appointments. *See* Pet. ¶ 14 (“I will withdraw the request entirely if the governor’s office identifies the conservative legal heavyweights who interviewed the nominees and the vacancies for which the governor consulted them.”); *see also id.* ¶ 19 (“Respondents have not disclosed the Requested Records or *identified the ‘legal conservative heavyweights’ who helped the governor decide the makeup of the Supreme Court of Florida.*”) (emphasis added). As such, Petitioner’s request is

nothing more than an interrogatory. It is an attempt to obtain information—the identification of the legal heavyweights—which is not a public record, but instead confidential information known only to the Governor and his advisors. The mere identity of the legal heavyweights does not meet the definition of a public record. It is not a document or other material “made or received pursuant to law or ordinance or in connection with the transaction of official business by an agency.” *See* § 119.011(12), Fla. Stat. Nor is it “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.” *See Shevin v. Byron, Harless, Schaffer, Reid & Assocs., Inc.*, 379 So. 2d 633, 640 (Fla. 1980) (defining a public record under Chapter 119). Without making a sufficiently specific request for a public record (as opposed to mere information), Petitioner cannot be afforded the relief requested in the Petition.<sup>3</sup>

**III. Petitioner Is Not Entitled to a Writ of Mandamus Because Petitioner Has Not Established a Clear Legal Right and Seeks to Compel a Discretionary Duty.**

“Mandamus is a common law remedy used to enforce an ‘established legal right by compelling a person in an official capacity to perform an indisputable ministerial duty required by law.’” *Smith v. State*, 696 So. 2d 814, 815 (Fla. 2d DCA 1997) (citation omitted). To be entitled to a writ of mandamus, 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.” *Zuckerman Spaeder*, 221 So. 3d at 1263 (citations omitted). “The duty of the respondent in a mandamus action must be ministerial in nature, and not

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<sup>3</sup> As shown *infra*, Petitioner has also failed to allege, much less prove, that Respondents “improperly” refused to produce responsive records in a timely manner. The mere refusal to produce public records is insufficient to support a claim under chapter 119, Florida Statutes; the refusal must be improper. *See O’Boyle*, 257 So. 3d at 1040 (citation omitted).

discretionary.” *Id.* A duty is considered ministerial when “there is no room for the exercise of discretion, and the performance being required is directed by law.” *Id.*

Here, Petitioner has not and cannot meet the requirements for a writ of mandamus. First, as discussed above, Petitioner’s request is vague and does not seek a public record. The custodian of public records has an obligation to respond to requests and furnish records only after the “person requesting them identifies the portions of the record with sufficient specificity to permit the custodian to identify the record.” *Woodard*, 885 So. 2d at 446 (emphasis added). Because Petitioner’s request fails to identify any public record with sufficient specificity, Petitioner has no clear legal right to inspect or copy records. *See id.*; *see also O’Boyle*, 257 So. 3d at 1040 (explaining the requester must prove they made a specific request for public records that exist).

Second, Petitioner does not seek to compel a purely ministerial duty. Petitioner’s vague and ill-defined request necessarily requires the EOG to evaluate what potentially responsive materials exists and whether those materials are public records as defined under the law, or whether an exemption or privilege is applicable—conduct that is clearly discretionary. *See DeLorenz Aff.* ¶ 18 (explaining the Petitioner’s request is broad and complex). While providing access to public records is generally considered a duty of each agency, the agency’s records custodian has a concomitant duty to review and redact any exempted portions of public records. § 119.07(1)(c), (d), Fla. Stat.; *see also Zuckerman Spaeder*, 221 So. 3d at 1263 (citation omitted). As such, Petitioner’s right to public records is not absolute, the EOG’s duty is not ministerial, and Petitioner’s right is not indisputable. *See Zuckerman Spaeder*, 221 So. 3d at 1263 (finding the requester’s right to the records was not absolute because AHCA’s “duty to protect exempted information through redaction precedes its duty to provide the documents to” the requester); *see also Lee Cty. v. State Farm Mut. Auto. Ins. Co.*, 634 So. 2d 250, 251 (Fla. 2d DCA 1994)

(“Mandamus was inappropriately issued . . . because the act involved requires discretion. The [governmental entity] is statutorily required to protect the confidentiality of the records.”). Until the EOG identifies, collects, reviews, and redacts any exempted portions of the requested information, it is under no legal obligation to provide Petitioner access to the records. Accordingly, mandamus cannot be issued.

**IV. The Identities of the “Legal Conservative Heavyweights” Are Protected by the Executive Privilege.**

Even if Petitioner requested public records with the requisite specificity and properly stated a claim for mandamus relief, the Petition should nevertheless be denied because the information sought—*i.e.*, the identities of the “legal conservative heavyweights,” which are necessary to satisfy Petitioner’s request—is protected by the executive privilege.

From the beginnings of our nation, “executive officials have claimed a variety of privileges to resist disclosure of information the confidentiality of which they felt was crucial to fulfillment of the unique role and responsibilities of the executive branch of our governments.” *In re Sealed Case*, 121 F.3d 729, 736 (D.C. Cir. 1997). Applicable here are the forms of executive privilege commonly referred to as: (1) the deliberative process privilege; and (2) the communications privilege.

The deliberative process privilege originated in the eighteenth and nineteenth centuries within the concept of the English “crown privilege.” *See* Russel L. Weaver & James T.R. Jones, *The Deliberative Process Privilege*, 54 Mo. L. Rev. 279, 283 (1989). This common law privilege allows the chief executive to “withhold documents and other materials that would reveal ‘advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated.’” *In re Sealed Case*, 121 F.3d at 737 (citing cases). To qualify for the deliberative process privilege, the material must be pre-decisional and deliberative.

*Id.* The purpose of the deliberative process privilege is to “prevent injury to the quality of agency decisions by allowing government officials freedom to debate alternative approaches in private.”

*Id.* (citing *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 151 (1975)).

The communications privilege allows a chief executive to withhold materials that reflect executive decision making and deliberations and that the chief executive believes should remain confidential. *In re Sealed Case*, 121 F.3d at 744; *see also Trump v. Thompson*, 20 F.4th 10, 25 (D.C. Cir. 2021). The privilege applies not only to materials viewed by the chief executive, but also to records solicited or received by the chief executive or his or her immediate advisers who have “broad and significant responsibility” for advising the chief executive. *Trump*, 20 F.4th at 25-26. The privilege is rooted in the separation of powers doctrine and “derives from the supremacy of the Executive Branch within its assigned area of constitutional responsibilities.”

*United States v. Nixon*, 418 U.S. 683, 708 (1974); *see also Trump*, 20 F.4th at 26. As the Supreme Court explained:

The expectation of a President to the confidentiality of his conversations and correspondence, like the claim of confidentiality in judicial deliberations, for example, has all the values to which we accord deference for the privacy of all citizens and, added to those values, is the necessity for protection of the public interest in candid, objective, and even blunt or harsh opinions in Presidential decisionmaking. A President and those who assist him must be free to explore alternatives in the process of shaping policies and making decisions and to do so in a way many would be unwilling to express except privately. These are the considerations justifying a presumptive privilege for Presidential communications. The privilege is fundamental to the operation of Government and inextricably rooted in the separation of powers under the Constitution.

*Nixon*, 418 U.S. at 708. While the privilege is held by the executive, it is not for the benefit of the chief executive as an individual, but “for the benefit of the public.” *Trump*, 20 F.4th at 26 (citing *Nixon v. Adm’r of Gen. Servs.*, 433 U.S. 425, 449 (1977)).

All three branches of government have unique privileges that stem from the separation of powers. For example, the Florida Supreme Court has recognized both a legislative privilege and a judicial privilege. *See, e.g., League of Women Voters of Fla.*, 132 So. 3d at 145 (holding that state legislators and legislative staff members possess a legislative privilege based on the separation of powers doctrine and on “inherent principles of comity that exist between the coequal branches of government”); *Times Pub. Co. v. Ake*, 660 So. 2d 255, 257 (Fla. 1995) (holding that clerks of the court, when acting under their article V powers, are not subject to oversight and control of the legislature under Florida’s public record laws); *State v. Lewis*, 656 So. 2d 1248, 1250 (Fla. 1994) (stating that a judge may not be examined as to his or her thought process in making a decision).

More recently, the First District Court of Appeal in *Florida House of Representatives v. Expedia, Inc.*, 85 So. 3d 517, 523 (Fla. 1st DCA 2012), suggested that the same separation of powers privileges afforded to the legislature also exist for the Governor. The court held that a legislative privilege protected a legislator and his aid from testifying in a civil case, likening the application of the legislative privilege to that held by the executive branch. *Id.* (“Additionally, as with their counterparts in the judiciary and the legislature, public officials in the executive branch are entitled to a testimonial privilege.”). The court specifically held that a legislative privilege existed under common law and was “implicit in the separation of powers provision of the Florida Constitution.” *Id.* at 519. In particular, the court stated “the privileges and immunities protecting all public officials, including members of the legislature, arise from the common law” and continue to exist by virtue of section 2.01, Florida Statutes, which provides that the “common law and statute laws of England which are of a general and not a local nature . . . are declared to be of force in this state.” *Id.* at 523 (emphasis added). The court concluded that the privilege also existed “by



virtue of the separation of powers provision of the Florida Constitution.” *Id.* at 524. The court explained:

The power vested in the legislature under the Florida Constitution would be severely compromised if legislators were required to appear in court to explain why they voted a particular way or to describe their process of gathering information on a bill. Our state government could not maintain the proper “separation” required by Article II, section 3 if the judicial branch could compel an inquiry into these aspects of the legislative process.

*Id.*

Like *Expedia*, other Florida decisions have recognized certain protections against the disclosure of confidential information related to an executive official’s discretionary and constitutional duties, albeit through different terminology.<sup>4</sup> See, e.g., *State, Dep’t of Health & Rehab. Servs. v. Brooke*, 573 So. 2d 363 (Fla. 1st DCA 1991); see also *Chavez v. State*, 132 So. 3d 826, 830-31 (Fla. 2014) (finding the legislature, through enactment of a statute, could not exclude certain clemency materials from confidentiality as the Governor’s clemency powers are derived from the Constitution); *Parole Comm’n v. Lockett*, 620 So. 2d 153, 158 (Fla. 1993) (finding the separation of powers prohibited the court from requiring the Parole Commission from producing investigative files compiled on behalf of the Governor related to his clemency powers); *Girardeau v. State*, 403 So. 2d 513, 517 n.6 (Fla. 1st DCA 1981) (“We are not, however, insensitive to the need for freedom of communication, which often means confidentiality and freedom from compelled disclosure. . . . This has been translated, as to Presidential communications, by the Nixon court . . .”). Most notable of these decisions is *Brooke*, where the

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<sup>4</sup> The Florida Supreme Court has also touched upon the executive privilege when analyzing privileges that are embedded in the Florida Constitution’s separation of powers clause. See *Florida League of Women Voters*, 132 So. 3d at 145 (citing to the United States Supreme Court case of *Nixon*, which outlines the executive privilege, and commenting that “respect between the three branches is inherent in our democratic system” and that the “the privilege can be said to derive from the supremacy of each branch within its own assigned areas of constitutional duties”).

court held that it was an abuse of the trial court’s discretion to require the Secretary of the Department of Health and Rehabilitative Services to appear and provide information that was within the realm of the Secretary’s discretionary authority as it related to the Department’s programs and budgetary decisions. *Brooke*, 573 So. 2d at 370-71. The court’s holding was based on the separation of powers doctrine:

as in any other case involving the discretionary integrity of the respective branches of government, we will not only zealously protect the independence of the judicial branch but will, with equal vigor, guard the constitutional prerogatives of the other branches under the doctrine of the separation of powers.

*Id.* at 371 (emphasis added). Accordingly, Florida decisions have historically recognized certain protections given to each governmental branch, including the executive, rooted in common law and the separation of powers doctrine. These protections should be recognized here.

No doubt, if the above-cited Florida cases recognize an executive privilege that prevents the Governor from testifying or responding to discovery, clearly the executive privilege also serves as an exemption to a public records request.<sup>5</sup> After all, the Florida Constitution itself recognizes that some records are made “confidential by this Constitution,” and the separation of powers principle which underlies the privilege is grounded within constitutional text. *See* Art. I, § 24, Fla. Const.; *see also Expedia*, 85 So. 3d at 519 (noting the legislative privilege is “implicit” in the

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<sup>5</sup> Indeed, other states have held that the executive privilege may be asserted against requests under the states’ respective open government laws. *See, e.g., Nero v. Hyland*, 386 A.2d 846 853 (Vt. 1978) (noting the “Governor, as chief executive, must be accorded a qualified power to protect the confidentiality of communications pertaining to the executive function”); *State ex rel Dann v. Taft*, 848 N.E. 2d 472, 487 (Ohio 2006) (recognizing a gubernatorial-communications privilege); *Freedom Found. v. Gregoire*, 178 Wash. 2d 686, 707-08 (Sup. Ct. Wash. 2013) (applying a gubernatorial communications privilege to a public records request); *Republican Party of New Mexico v. New Mexico Taxing & Rev. Dep’t*, 283 P. 3d 853, 869 (N.M. 2012) (recognizing an executive privilege accorded to the chief executive); *Times Mirror Co. v. Superior Court*, 813 P. 2d 240, 252 (Cal. 1991) (addressing a deliberative process privilege applicable to the Governor’s appointment calendars and schedules).

Florida Constitution’s separation of powers provision). Finding otherwise would render the privilege impotent. Simply put, the absence of a subpoena is even more reason for the Court to find that the Governor should not be compelled to answer questions about the identities of advisors in the appointment process.

Consideration of article I, section 24 of the Florida Constitution does not lead to a different result. That provision provides that “[e]very person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution.” Art. I, § 24, Fla. Const. The Florida Supreme Court, in addressing the legislative privilege, has held that the “strong public policy, as codified in our state constitution, favoring transparency and public access” was not conclusive, and that the doctrine of separation of powers weighed in favor of recognizing a privilege. *League of Women Voters of Fla.*, 132 So. 3d at 144. Here, the separation of powers doctrine likewise favors enforcement of the executive privilege. *See Brooke*, 573 So. 2d at 371 (identifying the importance of guarding the “constitutional prerogatives” of the branches of government under the separation of powers).

The purpose underlying the executive privilege also counsels its recognition here. To effectively discharge his constitutional duty, the Governor must be permitted to have access to candid advice in order to explore policy alternatives and reach appropriate decisions. *See Nixon*, 418 U.S. at 708; *see also Freedom Found.*, 178 Wash. 2d at 698. The interest in maintaining the confidentiality of the executive is vital to the public, as it fosters informed and sound gubernatorial deliberations and decision making. *See Guy v. Judicial Nominating Comm’n*, 659 A.2d 777, 783 (Sup. Ct. Del. 1995). Much like the legislative privilege discussed in *Expedia*, the power vested in

the executive branch, and particularly the chief executive, would be severely compromised if it were required to disclose confidential information concerning its decision making and deliberations as it relates to its constitutionally mandated duties. *Expedia*, 85 So. 3d at 524.

In this case, Petitioner seeks information—the identities of the “legal conservative heavyweights” with whom the Governor consulted in vetting candidates for the Florida Supreme Court—that goes to the heart of one of the Governor’s constitutional functions. The Florida Constitution assigns the power to appoint persons to fill judicial vacancies only to the Governor. Article V, section 11(a) of the Constitution specifically states:

Whenever a vacancy occurs in a judicial office to which election for retention applies, the governor shall fill the vacancy by appointing for a term ending on the first Tuesday after the first Monday in January of the year following the next general election occurring at least one year after the date of appointment, one of not fewer than three persons nor more than six persons nominated by the appropriate judicial nominating commission.

Time and time again, the Florida Supreme Court has noted that the Governor’s power of appointment is a uniquely executive responsibility and an important discretionary function. *See, e.g., In re Advisory Opinion*, 276 So. 2d 25, 30-31 (Fla. 1973) (addressing the governor’s discretion to select appointees while placing a check on the governor’s authority by recognizing the power to promulgate rules of the judicial nominating commission remains with the members of the commission); *In re Advisory Opinion*, 551 So. 2d 1205, 1209 (Fla. 1989) (providing requested advice to the Governor on the appointment process but expressly noting the Court’s limitations and that the Court was not “venturing to advise [him] as to [his] course of action”); *Pleus v. Crist*, 14 So. 3d 941, 945 (Fla. 2009) (“We recognize that, in fulfilling this constitutional duty, the Governor has discretion in his selection of a nominee from the list.”).

As such, both the executive communications and deliberative process privileges apply here to bar the request for mandamus.<sup>6</sup> The information sought is only available from the Governor and his staff and obtaining it would necessarily require him to divulge “deliberations compromising part of the process by which governmental decisions and policies are formulated.” *See In re Sealed*, 121 F.3d at 737 (citations omitted). Such information likewise encompasses gubernatorial decision making and deliberations the Governor believes should remain confidential. *Id.* at 744. Accordingly, the information requested cannot be obtained without probing into the Governor’s consultations and improperly piercing both the deliberative process and communication prongs of the executive privilege.

Should Respondents be required to turn over the requested information, it would undoubtedly impact the judicial appointment process. First, it would be contrary to the public interest. As discussed, the privilege is not for the executive, but for the benefit of the public to protect the “effectiveness of the overall governmental system at stake.” *See Killington, Ltd. v. Lash*, 572 A.2d 1368, 1374 (Vt. 1990); *see also Trump*, 20 F.4th at 76. Second, it would create a chilling effect, limiting the Governor’s ability to seek advice from others. *See Guy*, 659 A.2d at 784-85 (recognizing that the Governor’s responsibility for appointing judges of high integrity and excellent legal abilities would be “compromised if the source and substance of the advice and information provided to the governor by the [judicial nominating] commission were not protected”); *see also Freedom Found.*, 178 Wash. 2d at 698 (finding the refusal to recognize the privilege “would subvert the integrity of the governor’s decision making process, damaging the

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<sup>6</sup> The application of an executive privilege here, like in the cases addressed above, arise from both the constitutional separation of powers doctrine and English common law, which continues to exist today. *See* Art. II, § 3, Fla. Const.; § 2.01, Fla. Stat. (“The common and statute laws of England which are of a general and not local nature . . . are declared to be of force in this state. . . .”); *see also Expedia*, 85 So. 3d at 523.

functionality of the executive branch and transgressing the boundaries set by our separation of powers doctrine”). Accordingly, the executive privilege bars any effort by Petitioner to compel the disclosure of the requested information.

**V. Petitioner Is Not Entitled to Fees, and the Governor Should be Dismissed.**

Petitioner’s Motion also claims that he or she is entitled to attorney’s fees and costs incurred in this action under section 119.12, Florida Statutes. Pet. ¶ 30. Section 119.12(1), Florida Statutes, permits this Court to assess and award attorney’s fees against an agency only if it determines that:

- (a) The agency unlawfully refused to permit a public record to be inspected or copied; and
- (b) The complainant provided written notice identifying the public record request to the agency’s custodian of public records at least 5 business days before filing the civil action, except as provided under subsection (2).

Florida courts have explained that a refusal is unlawful when “a court determines that the reason proffered as a basis to deny a public records request is improper.” *B&L Serv., Inc. v. Broward Cty.*, 300 So. 3d 1205, 1208 (Fla. 4th DCA 2020) (citation omitted). A refusal may also be unlawful if the agency “unjustifiably fails to respond to a public request by delaying until after the enforcement action has been commenced.” *Office of State Attorney for Thirteenth Judicial Circuit v. Gonzalez*, 953 So. 2d 759, 764 (Fla. 2d DCA 2007); *see also Yasir v. Forman*, 149 So. 3d 107, 108 (Fla. 4th DCA 2014). However, delay alone does not create liability under section 119.12. *Gonzalez*, 953 So. 2d at 765. Instead, an award of fees under section 119.12 is proper only if the delay is unjustified. *Consumer Rights, LLC v. Union Cty., Fla.*, 159 So. 3d 882, 885 (Fla. 1st DCA 2015). Stated otherwise, “reasonable delay is allowed,” including the “reasonable custodial delay necessary to retrieve a record and review and excise exempt material.” *Siegmeister v. Johnson*, 240 So. 3d 70, 73 (Fla. 1st DCA 2018) (quoting *Tribune Co. v. Cannella*, 458 So. 2d 1075, 1078

(Fla. 1984)). “If delay were the sole consideration . . . a party could file what appears to be a facially sufficient request, rest on its laurels, let the required period of time pass, and then file suit to obtain the records and a fee award.” *Id.* (citation and quotation marks omitted).

Here, there was no unlawful refusal by Respondents as any minimal delay is justified by the circumstances. The OOG promptly recognized receipt of Petitioner’s public records request and informed Petitioner that the OOG has a “high volume of requests” that it was processing. Pet. ¶¶ 9-10; DeLorenz Aff. ¶ 21. At the time of Petitioner’s request, the OOG had hundreds of open public records requests in the queue that preceded Petitioner’s request, some of which requiring weeks or months to complete. DeLorenz Aff. ¶¶ 14, 29. Nevertheless, the OOG began its investigation for information shortly following Petitioner’s revised request for the identities of the conservative legal heavyweights and within three weeks of Petitioner’s initial request. Pet. ¶¶ 14-16; DeLorenz Aff. ¶ 26. Petitioner filed suit the very next day, and it was only after the initiation of the investigation into Petitioner’s request that the records custodian became aware that Respondents desired to claim the executive privilege. DeLorenz ¶¶ 28, 30. Further, while Petitioner suggests that he or she had to file suit “to ensure that his or her rights under [Chapter 119] are protected,” the mere filing of the suit does not mean that Petitioner’s rights are somehow greater than those whose requests predated Petitioner or those who have not sued. *See* Pet. ¶ 18. Petitioner’s rights are no greater or less than any other citizen. *See Promenade D’Iberville, LLC v. Sundy*, 145 So. 3d 980, 983 (Fla. 1st DCA 2014) (“Florida law doesn’t allow public records custodians to play favorites . . .”). Accordingly, Petitioner’s request for fees must be denied.

Moreover, there can be no fees awarded against the Governor because he is not an “agency.” Section 119.12 only provides for an award of fees and costs “against the responsible agency.” § 119.12(1), Fla. Stat. (emphasis added). An “agency” is defined as “any state, county,

district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.” § 119.011(2), Fla. Stat. The Governor, as a constitutional officer, is not an “agency” under Chapter 119. *See Justice Coal. v. The First District Court of Appeal Judicial Nominating Comm’n*, 823 So. 2d 185, 188 (Fla. 1st DCA 2002) (“Constitutional officers do not generally fall under the chapter 119 definition of ‘agency’”). As such, no fees or costs may be awarded against the Governor in this proceeding. Moreover, because the Governor is not an “agency” under section 119.011(2), Florida Statutes, this public records case, allegedly brought to enforce rights under Chapter 119, should be dismissed against him. *See Locke v. Hawkes*, 595 So. 2d 32, 36-37 (Fla. 1992) (holding the Chapter 119’s definition of agency was inapplicable to the legislature and reinstating the trial court’s decision which dismissed the case on grounds it was without subject matter jurisdiction under the separation of powers doctrine).

**VI. Petitioner Is Not Entitled to Immediate Declaratory Relief Under Rule 1.630.**

Finally, Petitioner’s Motion requests that the Court “declare that Respondents violated the Public Records Act.” *See* Pet. p. 12. Declaratory relief may not be granted, however, in the context of an alternative writ of mandamus pursuant to Rule 1.630. With respect to Petitioner’s claim for declaratory relief, Respondents are entitled to answer the allegations, raise affirmative defenses, and otherwise respond to the request separate and apart from the alternative writ issued in the Order.

Regardless, Petitioner is not entitled to the requested declaratory relief. Section 86.011, Florida Statutes, permits circuit courts to “declare rights, status, and other equitable or legal



relations.” § 86.011, Fla. Stat. Here, Petitioner specifically requests a declaration that Respondents “violated the Public Records Act.” Pet. p. 12. As the party seeking a declaration of rights, Petitioner has the burden to demonstrate entitlement. *Rhea v. Dist. Bd. of Trs. of Santa Fe Coll.*, 109 So. 851, 859 (Fla. 1st DCA 2013) (citation omitted). Petitioner has not met this burden.

As set forth above, Petitioner has failed to establish a right to any specific public record. Instead, Petitioner seeks *information*—the identity of the conservative legal heavyweights—which is not a public record. *See* § 119.011(12), Fla. Stat.; *see also Shevin*, 379 So. 2d at 640. There can be no violation of the Public Records Act if Petitioner has not set forth an appropriate public records request. *See Woodard*, 885 So. 2d at 445-46. Moreover, Respondents have not improperly refused to produce any public records. *See O’Boyle*, 257 So. 3d at 1040 (explaining that to establish a claim under the Public Records Act, the plaintiff must prove, among other things, that the agency improperly refused to produce the requested records). “The [Public Records Act] demands prompt attention and a reasonable response time, not the quickest-possible response.” *Siegmeister*, 240 So. 3d at 74. Here, the OOG began its investigation into responsive records within three weeks of Petitioner’s initial request and within approximately one week of receiving Petitioner’s revised request, despite the hundreds of previously pending public records requests. *See* Pet. ¶¶ 8, 14, 16; DeLorenz Aff. ¶¶ 26, 29. Thereafter, the EOG determined that the requested information is shielded by the executive privilege. DeLorenz Aff. ¶ 30. Under these circumstances, there is no violation of the Public Records Act, and Petitioner’s request for declaratory relief must fail.

### **Conclusion**

For the reasons set forth above, the Petition must be denied.

/s/ Christopher B. Lunny  
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**COUNSEL FOR RESPONDENTS,  
GOVERNOR RON DESANTIS, AND THE  
EXECUTIVE OFFICE OF THE GOVERNOR**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served the Florida  
Courts E-Filing Portal on this 23rd of November, 2022, to all counsel of record.

/s/ Christopher B. Lunny  
Christopher B. Lunny

Filing # 161816105 E-Filed 11/23/2022 01:07:08 PM

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT  
IN AND FOR LEON COUNTY, FLORIDA**

J. DOE, anonymously and individually, a/k/a  
"FloridaSupremeCourtPRR@protonmail.com,"

Petitioner,

v.

Case No.: 2022 CA 1902

GOVERNOR RON DESANTIS, in his official  
capacity as a custodian of public records, and the  
EXECUTIVE OFFICE OF THE GOVERNOR,

Respondents.

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**NOTICE OF FILING AFFIDAVIT OF CHRISTOPHER DELORENZ**

Respondents, Governor Ron DeSantis and the Executive Office of the Governor, hereby  
give Notice of Filing the Affidavit of Christopher DeLorenz.

Dated this 23<sup>rd</sup> day of November, 2022.

*/s/ Christopher B. Lunny*

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EXECUTIVE OFFICE OF THE GOVERNOR**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing document has been served via e-service through the Florida Court's e-Filing Portal, on this 23<sup>rd</sup> day of November, 2022 to:

Justin S. Hemlepp  
6019 Rachel's Way  
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**COUNSEL FOR PETITIONER J. DOE**

/s/ Christopher B. Lunny

Christopher B. Lunny

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT  
IN AND FOR LEON COUNTY, FLORIDA**

J. DOE, anonymously and individually, a/k/a  
"FloridaSupremeCourtPRR@protonmail.com,"

Petitioner,

v.

Case No: 2022 CA-001902

GOVERNOR RON DESANTIS, in his official  
capacity as custodian of public records, and the  
EXECUTIVE OFFICE OF THE GOVERNOR,

Respondents.

\_\_\_\_\_ /

**AFFIDAVIT OF CHRISTOPHER DELORENZ**

STATE OF FLORIDA

COUNTY OF Palm Beach

BEFORE ME, the undersigned authority, personally appeared, Christopher DeLorenz, who,  
upon being duly sworn, deposes and says:

1. My name is Christopher DeLorenz. I am over eighteen (18) years of age, am competent to testify, and have personal knowledge of the facts stated herein.
2. The Executive Office of the Governor ("EOG") is created by section 14.201, Florida Statutes. It is responsible for supporting the Florida Governor's executive functions in government, including but not limited to comprehensive planning, budgeting, revenue forecasting and management improvement. To that end, the EOG has various units with different zones of responsibility.
3. Shortly after being sworn into office, Governor Ron DeSantis (the "Governor") signed Executive Order 19-11, which, among other things, re-established the Governor's Office of Open Government ("OOG") to: (1) facilitate Floridians' right to access the public records of the Executive Office of the Governor; (2) establish and maintain a website providing documents on frequently

requested records; and (3) provide training for employees of EOG on Florida's public records and sunshine laws. *See* Exhibit 1, Executive Order Number 19-11.

4. I am the Director of OOG. I have held this position since January 2022.

5. I have detailed knowledge of EOG's and OOG's process for responding to public records requests.

6. OOG handles all public records requests submitted to EOG.

7. OOG also assists with the collection, review, and redaction of records responsive to discovery requests in litigation involving EOG.

8. OOG has two full-time employees, the Director and an open records coordinator.

9. The duties of OOG include the following:

- a. logging the receipt of public records requests by EOG,
- b. acknowledging receipt of public records requests to requesters,
- c. analyzing the public records request to ascertain what records are being sought,
- d. identifying persons who may have potentially responsive records,
- e. meeting with persons who may have potentially responsive records to assist with locating potentially responsive records,
- f. collecting the potentially responsive records,
- g. reviewing the collected records to determine whether they are in fact responsive to the request,
- h. reviewing the records to determine whether a record is confidential or exempt,
- i. redacting confidential or exempt information,
- j. producing responsive, non-exempt, and non-confidential records to the

requester, and

- k. estimating, charging, and collecting fees associated with public record requests.

10. In January 2022, OOG had approximately 160 public record requests pending. OOG reduced the backlog to approximately 100 open requests by early summer of 2022. However, the number of public records requests has significantly increased since then. As of November 22, 2022, EOG has approximately 256 pending public record requests.

11. Many of these requests are complex. A complex request is one that (1) has multiple subparts, *see, e.g.*, Exhibit 2; (2) seeks records from multiple sources or mediums, *see, e.g.*, Exhibit 3; or (3) broadly covers an entire subject or category, *see, e.g.*, Exhibit 4. I estimate that nearly 150 pending requests are complex.

12. Some requests have so many subparts that they are multiple pages long. For example, one request, received in August, is 41 pages long with 43 separate subparts, each subpart further containing multiple additional subparts. In all, this single request includes more than 350 specific requests for documents. The requester has since supplemented the initial request with an additional 17 pages of requests. *See* Exhibit 5.

13. Broad requests can generate a large volume of records. For instance, OOG is currently processing numerous requests containing thousands of pages of potentially responsive records per request. In May 2022, for example, OOG produced approximately eleven thousand pages of records in response to a single request.

14. Depending on the scope and complexity of the request, the process of locating the documents, collecting them, conducting a thorough legal review, redacting exempt information, and producing the records is time and resource intensive and can often take months.

15. OOG must exercise discretion throughout this process, particularly in determining how

to identify and retrieve responsive records, work with requesters to narrow the scope of broad requests to manageable proportions, manage a large backlog of pending requests to produce records as efficiently and fairly as possible, and review records to ensure that confidential or exempt information is identified and redacted prior to production. In short, production of records by OOG is not a purely ministerial act.

16. According to Petitioner's complaint, on August 25, 2022, the Governor gave a media interview explaining that he had asked a group of people he trusts to interview potential nominees for appointment to the Supreme Court of Florida. Pet. ¶ 6. The Governor referred to these individuals as "six or seven pretty big legal conservative heavyweights." (hereinafter, the "legal conservative heavyweights"). *Id.* The Governor did not reveal the identities of these individuals, saying that "it's private." *Id.*

17. Petitioner's complaint further alleges that, on October 4, 2022, the *Sun-Sentinel* editorial board reported that it had asked the Governor's press office to identify the legal conservative heavyweights, but the office declined to do so. *Id.* ¶ 7.

18. On October 5, 2022, Petitioner, who is only identified by the email address FloridaSupremeCourtPRR@protonmail.com, filed the following public records request:

Any and all materials, on official devices or personal devices used for official business, in whatever form, including *but not limited to* call logs, emails, or texts, between or among Governor Ron DeSantis, Casey DeSantis, the governor's chief of staff, his executive or personal assistants or aides, his general counsel or anyone within the general counsel's office, the director of appointments or anyone within the director of appointment's office, and the "six or seven pretty big legal conservative heavyweights" described by the governor in an interview with Hugh Hewitt on August 25, 2022.

*Id.* Exhibit A (emphasis added). Petitioner's request is broad because it seeks all communications with the legal conservative heavyweights referenced in the interview, regardless of the timeframe of the communications and regardless of whether such communications even involved the vetting of nominees for the Supreme Court of Florida. And it is complex because it seeks records from multiple



sources or mediums.

19. On October 6, 2022, OOG responded to the requester to acknowledge receipt of the request. *Id.*

20. On October 12, 2022, Petitioner requested an update on the status of his or her request. *Id.*

21. That same day, OOG responded to Petitioner, stating that OOG receives a high volume of requests and noting that Petitioner's request was one of the most recent. OOG further informed Petitioner that his or her request is being processed, along with other requests, and once the documents had been compiled and reviewed, they would be released. *Id.*

22. On October 15, 2022, Petitioner communicated the following to OOG: "It should be easy to at least disclose who the outside conservative legal heavyweights are, the dates and locations of their interviews of the now justices, and the dates of the governor's or his agents' communications with those people." *Id.*

23. On October 18, 2022, Petitioner threatened litigation by sending OOG an email stating: "Will I have to file a lawsuit?" *Id.* I responded that same day to Petitioner, stating:

You do not just get to cut the line because you threaten litigation. We are processing your request along with all other requests. It would be unfair if we were to prioritize your request over all our other requests. If you want to discuss this request on the phone, we are happy to do so.

*Id.*

24. In response, Petitioner stated, "I will withdraw the request entirely if the governor's office identifies the conservative legal heavyweights who interviewed the nominees and the vacancies for which the governor consulted them." *Id.*

25. On October 26, 2022, Petitioner again emailed me and stated:

I am preparing to file a lawsuit either today or tomorrow to enforce the public records law. Will the governor's office provide a timely response to my request or, in an effort

to resolve this amicably, take me up on the offer in the last email? [disclose the identity of the legal conservative heavyweights].

*Id.*

26. That same day, I emailed Petitioner:

I am conducting an investigation to identify the names of the individuals who the Governor is referring to in the article that you referenced. It would be extremely helpful to know which justices you were referring to because you mentioned “the approaching merit retention elections for the justices.” Are you referring to all of the justices appointed by Governor DeSantis or just the justices who are up for retention election? Providing this information would help narrow the scope of the investigation.

*Id.*

27. In response, on October 26, 2022, Petitioner stated:

Thank you for the update. Your point is fair. I would like that information for each justice Governor DeSantis has appointed. *However*, I am amenable to a partial production/disclosure as soon as practicable regarding *just* Justices Couriel and Grosshans. Then, the EOG could provide the information for Chief Justice Muniz and Justice Francis later, after the elections. If this is okay, do you think you could make the partial production/disclosure in the next few days? Also, my assumption has been that, when the governor referred to debriefing in the Hewitt interview, he meant by way of a phone call, not by email or text or some other written medium. If my assumption is not correct, please let me know because I would want those communications. Otherwise, if you can just get me the names of the heavyweights and which ones interviewed which justices, that would resolve my request.

*Id.*

28. On October 27, 2022, Petitioner filed his or her Petition for Writ of Mandamus, Complaint to Enforce the Public Records Act, and Ex Parte Motion for Alternative Writ of Mandamus.

29. There are approximately 165 pending public record requests that were submitted before Petitioner’s request. Because Petitioner first threatened and then followed through with litigation, OOG has accelerated Petitioner’s request ahead of the requests that preceded it in time.

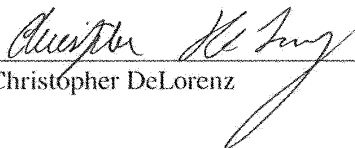
30. At present, I have not received confirmation of the identities of the legal conservative heavyweights to which the Governor allegedly referred in his August 25 interview. OOG cannot complete Petitioner’s request without this information. I have been informed by the Governor’s

General Counsel that, for the time being, I do not need to continue asking for the information because the Governor is asserting an executive privilege to prevent him or his staff from having to disclose the identities of those individuals.

31. The Governor and EOG dispute whether Petitioner has an indisputable right to any specific record at this time because the executive privilege has been invoked.

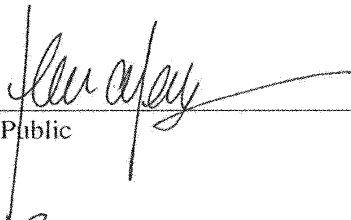
I declare under penalty of perjury that the foregoing is true and correct.

Executed this 23 day of November, 2022.

  
\_\_\_\_\_  
Christopher DeLorenz

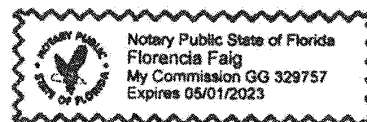
SWORN TO and subscribed before me this 23 day of November, 2022, by Christopher DeLorenz, who is personally known to me or who has produced ✓ as identification.

WITNESS my hand and official seal.

  
\_\_\_\_\_  
Notary Public  
  
FLORENCIA FAIG  
\_\_\_\_\_  
Printed Name of Notary

My Commission Expires: 05/01/2023

Notary Stamp:



# **Exhibit 1**

**STATE OF FLORIDA**  
**OFFICE OF THE GOVERNOR**  
**EXECUTIVE ORDER NUMBER 19-11**  
**(Ethics, Open Government, and Preventing Sexual Harassment)**

**WHEREAS**, maintaining the highest standards of ethics and integrity among public officials and employees is essential to maintaining the public's trust in the operations of government; and

**WHEREAS**, public officers and employees hold their positions not for their own benefit but for the benefit of the public for which they serve; and

**WHEREAS**, the public's confidence in the integrity of government must be maintained by prescribing clear restrictions against conflicts of interest without creating unreasonable or unnecessary barriers for the most qualified individuals to serve and fulfill their public duties; and

**WHEREAS**, this state has also made a commitment within its Constitution and statutes to provide unprecedented public access to the records and proceedings of state and local government; and

**WHEREAS**, providing the utmost transparency fosters a trust in government that ensures the accountability of government and the proper management and expenditure of every taxpayer dollar; and

**WHEREAS**, my administration has a zero-tolerance policy for sexual harassment or misconduct of any kind within the workplace; and

**WHEREAS,** I am committed to ensuring that the Executive Office of the Governor and all state agencies provide a working environment that is free from sexual harassment, and implementing uniform sexual harassment reporting and investigation practices among state agencies is essential to promoting the goal of eradicating sexual harassment and misconduct from government;

**NOW, THEREFORE, I, RON DESANTIS,** Governor of Florida, pursuant to Article IV, section (1)(a) of the Florida Constitution and all other applicable laws, do hereby promulgate the following Executive Order, to take immediate effect:

**Section 1.** I hereby direct the immediate adoption and implementation of a revised Code of Ethics applicable to the Executive Office of the Governor. This revised Code of Ethics applies to all employees within the Executive Office of the Governor, as well as all agency heads, deputy agency heads, and chiefs of staff at executive branch agencies headed by an official serving at the pleasure of the Governor. This Code of Ethics shall impose clear, understandable standards that in many instances will go beyond the statutory Code of Ethics for public officers and employees in Chapter 112, part III, of the Florida Statutes.

The Governor's General Counsel is hereby designated as the Chief Ethics Officer for the Executive Office of the Governor. Each agency head is directed to designate an individual at his or her agency to act as the agency's chief ethics officer.

Each agency head is further directed to immediately evaluate the current ethics policies at their agency and to either adopt the revised Governor's Code of Ethics for their agency or to use it as a standard for adopting an agency code with adjustments made accordingly for the program requirements and variables unique to the agency.

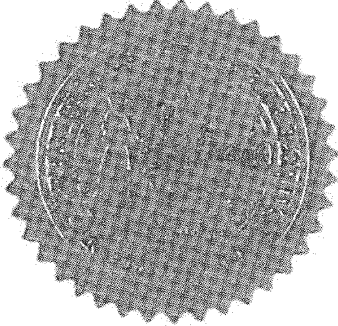
I further direct the Chief Ethics Officer to periodically review and evaluate the Governor's Code of Ethics. The purpose of the periodic review shall be to develop further recommendations as necessary or appropriate to assure that my administration maintains the highest ethical standards for state officials and employees.

**Section 2.** I hereby re-establish the Governor's Office of Open Government previously established by my predecessors in Executive Order 07-01 and Executive Order 11-03 and affirm my administration's commitment to Florida's Sunshine and Public Records Laws. This Office in coordination with the General Counsel will (1) facilitate Floridians' right to access the public records of the Executive Office of the Governor; (2) establish and maintain a website providing information on readily requesting public records; and (3) provide routine training for employees within the Executive Office of the Governor regarding Florida's public records and sunshine laws.


Further, each agency head in coordination with their agency general counsel shall regularly providing training and guidance for all agency officials and employees regarding compliance with Florida's public records and sunshine laws.

**Section 3.** I hereby re-adopt Executive Order 17-319 (Preventing Sexual Harassment in State Agencies), and in light of this Order hereby direct all state agencies headed by an official serving at the pleasure of the Governor and request all other state agencies to review its policies and procedures regarding sexual harassment and misconduct to ensure full compliance including training for employees, investigating and resolving complaints, and notification to employees in an effort to create a workplace environment free from sexual harassment and misconduct.

**Section 4.** All state agencies headed by an official serving at the pleasure of the Governor are hereby directed, and all other state agencies are hereby requested, to provide any assistance necessary to carrying out the principles and directions in this Executive Order.



IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Florida to be affixed, at Tallahassee, this 8th day of January, 2019.

  
RON DESANTIS, GOVERNOR

ATTEST:

  
SECRETARY OF STATE

2019 JAN -9 PM 4:49  
TALLAHASSEE, FLORIDA



# **Exhibit 2**



March 7, 2022

**VIA EMAIL**

Executive Office of Governor Ron DeSantis  
Attn: Office of Open Government  
400 S Monroe St., Suite 209  
Tallahassee, FL 32399  
[desantis.opengov@eog.myflorida.com](mailto:desantis.opengov@eog.myflorida.com)

**Re: Public Records Request**

Dear Public Records Officer:

Pursuant to Article I, section 24(a), of the Florida Constitution, and Florida's public records laws, as codified at Fla. Stat. Chapter 119, American Oversight makes the following request for records.

In January 2022, Governor Ron DeSantis presented his own congressional district boundary proposal to Florida legislative leaders. After the legislature opted not to formally consider his proposal, Governor DeSantis indicated he would veto any map that would keep intact Florida's 5th District.<sup>1</sup> DeSantis also later introduced an additional congressional district boundary proposal.<sup>2</sup>

American Oversight seeks records to shed light on Governor DeSantis' efforts to influence Florida's redistricting processes.

**Requested Records**

American Oversight requests that the Executive Office of Governor Ron DeSantis promptly produce the following:

1. All email communications (including emails, email attachments, calendar invitations, and calendar invitation attachments), text messages (including complete text message threads or conversations), and messages on messaging platforms (such as Slack, GChat, Google Hangouts, Lync, Skype, or WhatsApp) sent or received by any of the Executive Office of Governor Ron DeSantis personnel listed below regarding redistricting in Florida.

---

<sup>1</sup> Jane C. Timm, *DeSantis Digs in on Redistricting Fight Against Fellow Republicans*, NBC News (Feb. 14, 2022, 4:31 AM), <https://www.nbcnews.com/politics/elections/desantis-digs-redistricting-fight-fellow-republicans-rcna15966>.

<sup>2</sup> Kent Justice, *DeSantis Proposes Another Republican-Favored Congressional Map*, WJXT (Feb. 15, 2022, 11:27 PM), <https://www.news4jax.com/news/local/2022/02/16/desantis-proposes-another-republican-favored-congressional-map/>.



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Executive Office of Governor Ron DeSantis Personnel:

- i. Ron DeSantis, Governor
- ii. James Uthmeier, Chief of Staff
- iii. Taylor Schrader, Director of Executive Staff
- iv. Taryn Fenske, Director of Communications
- v. Christina Pushaw, Press Secretary
- vi. Savannah Kelly Jefferson, Director of External Affairs
- vii. Ryan Newman, General Counsel
- viii. Stephanie Kopelousos, Director of Legislative and Intergovernmental Affairs
- ix. Chris Spencer, Director of Policy & Budget
- x. Drew Meiner, Senior Advisor
- xi. Any Executive Office of the Governor employee involved in the drafting or finalization of any congressional district boundary proposals

For part 1 of this request, please note that American Oversight does not seek, and that this request specifically excludes the initial mailing of news clips or other mass-distribution emails. However, subsequent communications forwarding such emails are responsive to this request. In other words, for example, if General Counsel Ryan Newman received a mass-distribution news clip email referencing Florida's congressional redistricting processes, that initial email would not be responsive to this request. However, if General Counsel Newman forwarded that email to another individual with his own commentary, that subsequent message would be responsive to this request and should be produced.

2. All email communications (including emails, email attachments, calendar invitations, and calendar invitation attachments), text messages (including complete text message threads or conversations), and messages on messaging platforms (such as Slack, GChat, Google Hangouts, Lync, Skype, or WhatsApp) between (a) any of the Executive Office of Governor Ron DeSantis personnel listed above in Part 1, and (b) any of the Florida Legislative members or their staff listed below (including, but not limited to, at the listed email addresses).

Florida Legislative Members and Staff:

- i. Rep. Tom Leek ([Thomas.Leek@myfloridahouse.gov](mailto:Thomas.Leek@myfloridahouse.gov) or [tleek@foundationrp.com](mailto:tleek@foundationrp.com)), or Legislative Aide Stephanie Benedict ([Stephanie.Benedict@myfloridahouse.gov](mailto:Stephanie.Benedict@myfloridahouse.gov))
- ii. Rep. Randy Fine ([Randy.Fine@myfloridahouse.gov](mailto:Randy.Fine@myfloridahouse.gov) or [randy@voterandfine.com](mailto:randy@voterandfine.com)), or Legislative Aide Anna Budko ([Anna.Budko@myfloridahouse.gov](mailto:Anna.Budko@myfloridahouse.gov))
- iii. Rep. Tyler Sirois ([Tyler.Sirois@myfloridahouse.gov](mailto:Tyler.Sirois@myfloridahouse.gov) or [tylersiroisfl@gmail.com](mailto:tylersiroisfl@gmail.com)), or Legislative Aide Angelique Rinaldi ([Angelique.Rinaldi@myfloridahouse.gov](mailto:Angelique.Rinaldi@myfloridahouse.gov))

- iv. Rep. Kaylee Tuck ([Kaylee.Tuck@myfloridahouse.gov](mailto:Kaylee.Tuck@myfloridahouse.gov), [kayleetuck@gmail.com](mailto:kayleetuck@gmail.com), or [kaylee@kayleetuck.com](mailto:kaylee@kayleetuck.com)), or Legislative Aide Michael Johnsen ([Michael.Johnsen@myfloridahouse.gov](mailto:Michael.Johnsen@myfloridahouse.gov))
  - v. Leda Kelly, Staff Director – Redistricting Committee ([Leda.Kelly@myfloridahouse.gov](mailto:Leda.Kelly@myfloridahouse.gov))
  - vi. Donna Ellerkamp, Administrative Lead – Redistricting Committee ([Donna.Ellerkamp@myfloridahouse.gov](mailto:Donna.Ellerkamp@myfloridahouse.gov))
  - vii. Sen. Ray Rodrigues ([rodrigues.ray.web@flsenate.gov](mailto:rodrigues.ray.web@flsenate.gov) or [rodrigues.ray@flsenate.gov](mailto:rodrigues.ray@flsenate.gov)), Secretary Alexander Quinones ([quinones.alexander@flsenate.gov](mailto:quinones.alexander@flsenate.gov)), or Legislative Assistants Krissy Kulavic ([kulavic.krissy@flsenate.gov](mailto:kulavic.krissy@flsenate.gov)) and Timothy Morris ([morris.timothy@flsenate.gov](mailto:morris.timothy@flsenate.gov))
  - viii. Sen. Jennifer Bradley ([bradley.jennifer.web@flsenate.gov](mailto:bradley.jennifer.web@flsenate.gov), [bradley.jennifer@flsenate.gov](mailto:bradley.jennifer@flsenate.gov), or [jennifer@votejenniferbradley.com](mailto:jennifer@votejenniferbradley.com)), or Legislative Assistants Katelyn Heffley ([heffley.katelyn@flsenate.gov](mailto:heffley.katelyn@flsenate.gov)), Mary Lee ([lee.mary@flsenate.gov](mailto:lee.mary@flsenate.gov)), and Tonya Shays ([shays.tonya@flsenate.gov](mailto:shays.tonya@flsenate.gov))
  - ix. Sen. Doug Broxson ([broxson.doug.web@flsenate.gov](mailto:broxson.doug.web@flsenate.gov), [broxson.doug@flsenate.gov](mailto:broxson.doug@flsenate.gov), or [doug@dougbroxson.com](mailto:doug@dougbroxson.com)), Secretary Victoria Bell ([bell.victoria@flsenate.gov](mailto:bell.victoria@flsenate.gov)), or Legislative Assistants Janice Gilley ([gilley.janice@flsenate.gov](mailto:gilley.janice@flsenate.gov)) and Hal George ([george.hal@flsenate.gov](mailto:george.hal@flsenate.gov))
  - x. Sen. Aaron Bean ([bean.aaron.web@flsenate.gov](mailto:bean.aaron.web@flsenate.gov), [bean.aaron@flsenate.gov](mailto:bean.aaron@flsenate.gov), or [aaron@aaronbean.com](mailto:aaron@aaronbean.com)), or Legislative Assistants Chad Corcoran ([corcoran.chad@flsenate.gov](mailto:corcoran.chad@flsenate.gov)), Chesten Goodman ([goodman.chesten@flsenate.gov](mailto:goodman.chesten@flsenate.gov)), Dee Alexander ([alexander.dee@flsenate.gov](mailto:alexander.dee@flsenate.gov)), and Henry Mahler ([mahler.henry@flsenate.gov](mailto:mahler.henry@flsenate.gov))
  - xi. Sen. Gayle Harrell ([harrell.gayle.web@flsenate.gov](mailto:harrell.gayle.web@flsenate.gov), [harrell.gayle@flsenate.gov](mailto:harrell.gayle@flsenate.gov), or [gharrell@gayleharrell.com](mailto:gharrell@gayleharrell.com)), or Legislative Assistants Ann Bolduc ([bolduc.ann@flsenate.gov](mailto:bolduc.ann@flsenate.gov)), Carrie Lira ([lira.carrie@flsenate.gov](mailto:lira.carrie@flsenate.gov)), and Karen Sweeney ([sweeney.karen@flsenate.gov](mailto:sweeney.karen@flsenate.gov))
  - xii. Jay Ferrin, Staff Director – Committee on Reapportionment ([ferrin.jay@flsenate.gov](mailto:ferrin.jay@flsenate.gov))
  - xiii. Danna Ivey, Committee Administrative Assistant – Committee on Reapportionment ([ivey.dana@flsenate.gov](mailto:ivey.dana@flsenate.gov))
3. All email communications (including emails, email attachments, calendar invitations, and calendar invitation attachments), text messages (including complete text message threads or conversations), and messages on messaging platforms (such as Slack, GChat, Google Hangouts, Lync, Skype, or WhatsApp) between (a) any of the Executive Office of Governor Ron DeSantis personnel listed above in Part 1, and (b) any of the external individuals listed below or anyone communicating on behalf of any of the organizations listed below (including, but not limited to, at the listed email addresses and domains).

External Parties:

- i. Adam Kincaid, Guy Harrison, Scott Walker, Jason Torchinsky ([jtorchinsky@hvjt.law](mailto:jtorchinsky@hvjt.law) or [jtorchinsky@holtzmanvogel.com](mailto:jtorchinsky@holtzmanvogel.com)), Gail Gitcho, Lauren Bryan, Mike Pompeo, Chris Christie, Karl Rove, or anyone communicating on behalf of National Republican Redistricting Trust or National Republican Redistricting PAC
- ii. Fair Lines America or the Fair Lines Foundation
- iii. Steve Bannon
- iv. Republican Party of Florida Chair Joe Gruters ([joegruters@gmail.com](mailto:joegruters@gmail.com) or [gruters.joe@flsenate.gov](mailto:gruters.joe@flsenate.gov)), Vice Chair Christian Ziegler ([christian@christiangop.com](mailto:christian@christiangop.com) or [chiegler@scgov.net](mailto:chiegler@scgov.net)), Secretary Kristy Banks, or Assistant Secretary Clint Pate
- v. Pat Bainter, Dan Ball, Matt Pesek, or anyone communicating on behalf of Data Targeting Inc. ([@datatargeting.com](mailto:@datatargeting.com))
- vi. National Republican Congressional Committee ([@nrcc.org](mailto:@nrcc.org))
- vii. Republican State Leadership Committee ([@rslc.gop](mailto:@rslc.gop))
- viii. John Morgan, or anyone communicating on behalf of Applied Research Coordinates
- ix. Clark Bensen, or anyone communicating on behalf of PoliData ([@polidata.org](mailto:@polidata.org))

Please provide all responsive records from December 1, 2021, through the date the search is conducted.

Please notify American Oversight of any anticipated fees or costs in excess of \$100 prior to incurring such costs or fee.

American Oversight seeks all responsive records regardless of format, medium, or physical characteristics. In conducting your search, please understand the term “record” in its broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages and transcripts, notes, or minutes of any meetings, telephone conversations or discussions. Our request includes any attachments to these records. **No category of material should be omitted from search, collection, and production.**

In addition, American Oversight insists that your agency use the most up-to-date technologies to search for responsive information and take steps to ensure that the most complete repositories of information are searched. American Oversight is available to work with you to craft appropriate search terms. **However, custodian searches are still required; your office may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.**

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the

requested records. If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

Please take appropriate steps to ensure that records responsive to this request are not deleted by your office before the completion of processing for this request. If records potentially responsive to this request are likely to be located on systems where they are subject to potential deletion, including on a scheduled basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold on those records.

To ensure that this request is properly construed, that searches are conducted in an adequate but efficient manner, and that extraneous costs are not incurred, American Oversight welcomes an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, American Oversight and your agency can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in electronic format by email or in PDF or TIF format on a USB drive. Please send any responsive material being sent by mail to American Oversight, 1030 15th Street NW, Suite B255, Washington, DC 20005. If it will accelerate release of responsive records to American Oversight, please also provide responsive material on a rolling basis.

### **Conclusion**

American Oversight is a 501(c)(3) nonprofit with the mission to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government officials. American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight also makes materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and Twitter.<sup>8</sup>

We share a common mission to promote transparency in government. American Oversight looks forward to working with your agency on this request. If you do not understand any part of this request, have any questions, or foresee any problems in fully

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<sup>8</sup> American Oversight currently has approximately 15,700 page likes on Facebook and 117,800 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Mar. 7, 2022); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited Mar. 7, 2022).

releasing the requested records, please contact Taylor Stoneman at  
[records@americanoversight.org](mailto:records@americanoversight.org) or (202) 848-1319.

Sincerely,

/s/ Taylor Stoneman  
Taylor Stoneman  
on behalf of  
American Oversight



March 7, 2022

**VIA EMAIL**

Executive Office of Governor Ron DeSantis  
Attn: Office of Open Government  
400 S Monroe St., Suite 209  
Tallahassee, FL 32399  
[desantis.opengov@co.gov.myflorida.com](mailto:desantis.opengov@co.gov.myflorida.com)

**Re: Public Records Request**

Dear Public Records Officer:

Pursuant to Article I, section 24(a), of the Florida Constitution, and Florida's public records laws, as codified at Fla. Stat. Chapter 119, American Oversight makes the following request for records.

In January 2022, Governor Ron DeSantis presented his own congressional district boundary proposal to Florida legislative leaders. After the legislature opted not to formally consider his proposal, Governor DeSantis indicated he would veto any map that would keep intact Florida's 5th District.<sup>1</sup> DeSantis also later introduced an additional congressional district boundary proposal.<sup>2</sup>

American Oversight seeks records to shed light on Governor DeSantis' efforts to influence Florida's redistricting processes.

**Requested Records**

American Oversight requests that the Executive Office of Governor Ron DeSantis promptly produce the following:

1. A complete copy (including any attachments) of any contract, amendment, memorandum of understanding, or other written agreement regarding external entities providing services relevant to the state legislative or congressional redistricting process, including, but not limited to, agreements with providers of map-drawing software, consultants, advisors, or legal counsel.

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<sup>1</sup> Jane C. Timm, *DeSantis Digs in on Redistricting Fight Against Fellow Republicans*, NBC News (Feb. 14, 2022, 4:31 AM), <https://www.nbcnews.com/politics/elections/desantis-digs-redistricting-fight-fellow-republicans-rcna15966>.

<sup>2</sup> Kent Justice, *DeSantis Proposes Another Republican-Favored Congressional Map*, WJXT (Feb. 15, 2022, 11:27 PM), <https://www.news4jax.com/news/local/2022/02/16/desantis-proposes-another-republican-favored-congressional-map/>.



1030 15th Street NW, Suite B255, Washington, DC 20005 | [AmericanOversight.org](https://AmericanOversight.org)



This request should be interpreted to include any copies of contractual documents pertaining to redistricting in the possession of any Executive Office of Governor Ron DeSantis personnel, including those to which the Governor Ron DeSantis is not party.

2. A complete copy of any unpublished formal or informal guidance, directives, memoranda, criteria, or other policy document pertaining to redistricting.
3. Any records containing assessments, interpretations, or opinions concerning data from the 2020 Census or the 2020 American Community Survey (ACS).
4. Any records containing assessments, interpretations, or opinions concerning past election results.
5. Any records containing assessments, interpretations, or opinions concerning political party affiliation data, racial demographic data, or present incumbency.
6. Any records reflecting or identifying any drafter or reviewer of the congressional district boundary proposals submitted by General Counsel Ryan Newman on behalf of the Executive Office of Governor Ron DeSantis in January 2022 and February 2022, including, but not limited to, drafters or reviewers commissioned or contracted by the Executive Office of Governor Ron DeSantis.
7. Any district boundary proposals produced or received by any Executive Office of Governor Ron DeSantis personnel, including proposals produced by any entity commissioned or contracted by the Executive Office of Governor Ron DeSantis, as well as any email, text message, or messaging platform threads/conversations to which the proposals are attached.

To be clear, to the extent any communications (such as emails or text messages) are responsive to any part of this request, American Oversight requests that full email, text message, or message threads/conversations be produced. For example, regarding text message communications, if Chief of Staff Uthmeier received a text message containing a district boundary proposal, the complete thread/conversation spanning at least 7 days preceding receipt of the message through at least 7 days following receipt of the message should be produced, and not just the message containing the district boundary proposal.

Please provide all responsive records from January 1, 2022, through the date the search is conducted.

Please notify American Oversight of any anticipated fees or costs in excess of \$100 prior to incurring such costs or fee.

American Oversight seeks all responsive records regardless of format, medium, or physical characteristics. In conducting your search, please understand the term “record” in its broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages and transcripts, notes, or minutes of any meetings, telephone conversations or discussions. Our request includes any attachments to these records. **No category of material should be omitted from search, collection, and production.**

In addition, American Oversight insists that your agency use the most up-to-date technologies to search for responsive information and take steps to ensure that the most complete repositories of information are searched. American Oversight is available to work with you to craft appropriate search terms. **However, custodian searches are still required; your office may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.**

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

Please take appropriate steps to ensure that records responsive to this request are not deleted by your office before the completion of processing for this request. If records potentially responsive to this request are likely to be located on systems where they are subject to potential deletion, including on a scheduled basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold on those records.

To ensure that this request is properly construed, that searches are conducted in an adequate but efficient manner, and that extraneous costs are not incurred, American Oversight welcomes an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, American Oversight and your agency can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in electronic format by email or in PDF or TIF format on a USB drive. Please send any responsive material being sent by mail to American Oversight, 1030 15th Street NW, Suite B255, Washington, DC 20005. If it will accelerate release of responsive records to American Oversight, please also provide responsive material on a rolling basis.

### Conclusion

American Oversight is a 501(c)(3) nonprofit with the mission to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government officials. American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight also makes materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and Twitter.<sup>3</sup>

We share a common mission to promote transparency in government. American Oversight looks forward to working with your agency on this request. If you do not understand any part of this request, have any questions, or foresee any problems in fully releasing the requested records, please contact Taylor Stoneman at [records@americanoversight.org](mailto:records@americanoversight.org) or (202) 848-1319.

Sincerely,

/s/ Taylor Stoneman

Taylor Stoneman  
on behalf of  
American Oversight

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<sup>3</sup> American Oversight currently has approximately 15,700 page likes on Facebook and 117,800 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Mar. 7, 2022); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited Mar. 7, 2022).



May 4, 2022

**VIA EMAIL**

Director, Office of Open Government  
Executive Office of the Governor  
400 S. Monroe Street  
Tallahassee, FL 32399  
[Desantis.open.gov@eo.gov.florida.com](mailto:Desantis.open.gov@eo.gov.florida.com)

**Re: Public Records Request**

Dear Public Records Officer:

Pursuant to Article I, section 24(a), of the Florida Constitution, and Florida's public records laws, as codified at Fla. Stat. Chapter 119, American Oversight makes the following request for records.

**Requested Records**

American Oversight requests that your office promptly produce the following:

1. All electronic communications (including email messages, complete email chains, calendar invitations, text messages, and any attachments) between (A) the officials listed in Column A, below, and (B) the individuals listed in Column B, below, including anyone communicating from the listed email address(es) or an email address ending in the listed domain(s).

Column A: Florida Governor's Office	Column B: Outside Organizations and Individuals
<ul style="list-style-type: none"><li>a) Governor Ron DeSantis</li><li>b) Chief of Staff James Uthmeier</li><li>c) Anyone serving in the role of Deputy Chief of Staff (including, but not limited to, Anna DeCerchio, Katie Strickland, Alex Kelly, or Beau Beaubien)</li><li>d) Director of External Affairs Savannah Kelly Jefferson</li><li>e) Communications Director Taryn Fenske</li><li>f) Press Secretary Christina Pushaw</li></ul>	<ul style="list-style-type: none"><li>a) Center for Renewing America (@americarenewing.com)</li><li>b) Christopher Rufo (ajt@christopherrufo.com, chrisrufo@protonmail.com, or crufo@manhattan-institute.org)</li><li>c) Fight for Schools (@fightforschools.com)</li><li>d) Free to Learn (@freetolearn.org)</li><li>e) Foundation Against Intolerance and Racism (@fairforall.org)</li><li>f) Heritage Foundation (@heritage.org or @heritageaction.com)</li></ul>

g) General Counsel Ryan Newman	g) International Organization for the Family (@profam.org)
	h) Moms for America (@momsforAmerica.net or @mfaaction.com)
	i) Moms for Liberty (@momsforliberty.org)
	j) No Left Turn in Education (@noleftturn.us)
	k) Parents Defending Education (@defendinged.org)
	l) PragerU (@prageruniversity.com or @prageru.com)
	m) Esther Byrd (@cordbyrdlaw.com or Esther.Byrd@fldoe.org)
	n) Ben Gibson (Ben.Gibson@fldoe.org)

Please provide all responsive records from September 1, 2021, through the date the search is conducted.

2. All email communications (including any email messages, attachments, or calendar invitations) sent by any of the officials below containing any of the following key terms:

Governor's Office officials

- a) Governor Ron DeSantis
- b) Chief of Staff James Uthmeier
- c) Anyone serving in the role of Deputy Chief of Staff (including, but not limited to, Anna DeCerchio, Katie Strickland, Alex Kelly, or Beau Beaubien)
- d) Director of External Affairs Savannah Kelly Jefferson
- e) Communications Director Taryn Fenske
- f) Press Secretary Christina Pushaw
- g) General Counsel Ryan Newman

Key terms

- a) CRT
- b) "Critical Race Theory"
- c) "Social Emotional Learning"
- d) SEL
- e) Marxist
- f) Marxism
- g) Racist
- h) Racism
- i) Curriculum
- j) Textbook

Please provide all responsive records from September 1, 2021, through the date the search is conducted.

For part 2 of this request, in an effort to accommodate your office and reduce the number of potentially responsive records to be processed and produced, American Oversight has limited its request to emails sent by the listed individuals. To be clear, however, American Oversight still requests that complete email chains be produced, displaying both sent and received messages. This means, for example, that both a response to an email from General Counsel Ryan Newman and the initial received message are responsive to this request and should be produced.

Please notify American Oversight of any anticipated fees or costs in excess of \$100 prior to incurring such costs or fee.

American Oversight seeks all responsive records regardless of format, medium, or physical characteristics. In conducting your search, please understand the term “record” in its broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages and transcripts, notes, or minutes of any meetings, telephone conversations or discussions. Our request includes any attachments to these records. **No category of material should be omitted from search, collection, and production.**

Please search all locations and systems likely to have responsive records regarding official business. **You may not exclude searches of files or emails in the personal custody of your officials, such as personal email accounts.** Emails or texts conducting government business sent or received on the personal account of the government official constitutes a record for purposes of Florida’s public records laws.<sup>1</sup>

In addition, American Oversight insists that your agency use the most up-to-date technologies to search for responsive information and take steps to ensure that the most complete repositories of information are searched. American Oversight is available to work with you to craft appropriate search terms. **However, custodian searches are still required; your office may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.**

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document. If a request is denied in

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<sup>1</sup> Cf. *State v. City of Clearwater*, 863 So. 2d 149, 154 (Fla. 2003) (“The determining factor is the nature of the record, not its physical location.”).

whole, please state specifically that it is not reasonable to segregate portions of the record for release.

Please take appropriate steps to ensure that records responsive to this request are not deleted by your office before the completion of processing for this request. If records potentially responsive to this request are likely to be located on systems where they are subject to potential deletion, including on a scheduled basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold on those records.

To ensure that this request is properly construed, that searches are conducted in an adequate but efficient manner, and that extraneous costs are not incurred, American Oversight welcomes an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, American Oversight and your agency can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in electronic format by email or in PDF or TIF format on a USB drive. Please send any responsive material being sent by mail to American Oversight, 1030 15th Street NW, Suite B255, Washington, DC 20005. If it will accelerate release of responsive records to American Oversight, please also provide responsive material on a rolling basis.

### **Conclusion**

American Oversight is a 501(c)(3) nonprofit with the mission to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government officials. American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight also makes materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and Twitter.<sup>2</sup>

We share a common mission to promote transparency in government. American Oversight looks forward to working with your agency on this request. If you do not understand any part of this request, have any questions, or foresee any problems in fully

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<sup>2</sup> American Oversight currently has approximately 15,720 page likes on Facebook and 117,200 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited May 3, 2022); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited May 3, 2022).

releasing the requested records, please contact Taylor Stoneman at  
records@americanoversight.org or (202) 848-1319.

Sincerely,

/s/ Taylor Stoneman  
Taylor Stoneman  
on behalf of  
American Oversight



# **Exhibit 3**

## **Nennstiel, Gatlin**

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**From:** Online, Dynamics  
**Sent:** Thursday, September 15, 2022 8:23 PM  
**To:** Desantis.OpenGovernment  
**Subject:** New PR Request added from Web tag: EOG:000088302  
  
**Categories:** Open PRR

A new request has been added on the web site:

**Description:**

I am looking for all planning and details concerning Governor DeSantis arrangement to tly asylum seekers to to other states including Texas before sending them to their final destination in Massachusetts.

The details i seek include all logistical, planning, media preparation. It includes coordination with State and local agencies.

It shall including meeting notes, financial records, and emails with all relevant local and national agencies/  
THis includes flight records and records for airplanes used in this situation.

-----  
[Click to access record in Dynamics](#)

First Name:  
Last Name:  
Email: jim.hofer.jh@gmail.com

July 20, 2022

Dear Public Records Officer:

Pursuant to Florida's public records laws, as codified at Fla. Stat. Chapter 119, ProPublica requests the following records:

All email communications (including emails, email attachments, calendar invitations, and calendar invitation attachments), text messages (including complete text message threads or conversations), and messages on messaging platforms (such as Slack, GChat, Google Hangouts, Lync, Skype, or WhatsApp) that meet all of the following three criteria:

- 1) Sent or received by any of the following Executive Office of the Governor personnel. For email communications, please include all communications in which they appear in to, from, cc, or bcc field:
  - a) Ron DeSantis, Governor
  - b) James Uthmeier, Chief of Staff
  - c) Alex Kelly, Deputy Chief of Staff
  - d) Chris Spencer, Director of Policy & Budget
  - e) Ryan Newman, General Counsel
  - f) Joshua Pratt, Deputy General Counsel
  - g) Nicholas Meros, Deputy General Counsel
  - h) Stephanie Kopelousos, Director of Legislative and Intergovernmental Affairs
  - i) All individuals who served as Director of Scheduling or executive assistant for the governor for any period of time between Nov. 1, 2021 and Apr. 30, 2022, including but not limited to Casey Smith
- 2) Sent or received between Nov. 1, 2021 and Apr. 30, 2022
- 3) Sent or received by any one or more of the following external parties (including, but not limited to, at the listed email addresses and domains). For email communications, please include all communications in which they appear in to, from, cc, or bcc field:
  - a) National Republican Redistricting Trust executive director Adam Kincaid
  - b) National Republican Redistricting Trust advisor and OnMessage Inc partner Guy Harrison (guy@onmessageinc.com)
  - c) Former Wisconsin Governor Scott Walker
  - d) National Republican Redistricting Trust advisor Lauren Bryan
  - e) Former New Jersey Governor Chris Christie
  - f) Former White House Deputy Chief of Staff Karl Rove
  - g) Bradley Foundation chairman James Arthur Pope (aka Art Pope)
  - h) Republican State Leadership Committee vice chair Christopher Rants
  - i) Former U.S. Representative Diane Black
  - j) Anyone using the email domains @thenrrt.org or @fairlines.org
  - k) Anyone using the email domains @gop.com, @nrcc.org, or @rslc.gop
  - l) Adam Foltz

- m) Thomas Bryan ([tom@bryangeodemo.com](mailto:tom@bryangeodemo.com)), as well as anyone else using the email domain [@bryangeodemo.com](mailto:@bryangeodemo.com)
- n) Anyone using the email domain [@magellanstrategies.com](mailto:@magellanstrategies.com)
- o) Alexandra Preate ([apreate@capitalhq.com](mailto:apreate@capitalhq.com))

Please provide responsive material via email in an electronic format, if possible.

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

Please take appropriate steps to ensure that records responsive to this request are not deleted by your office before the completion of processing for this request. If records potentially responsive to this request are likely to be located on systems where they are subject to potential deletion, including on a scheduled basis, please take steps to prevent that deletion.

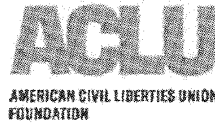
To ensure that this request is properly construed, that searches are conducted in an adequate but efficient manner, and that extraneous costs are not incurred, ProPublica welcomes an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs.

Please waive any applicable fees. This information is being sought on behalf of ProPublica, an independent non-profit news organization, for dissemination to the general public. This request is not being made for commercial purposes. As a non-profit, non-partisan journalistic entity, ProPublica does not have the same commercial interests of other news organizations.

I look forward to your reply. Please do not hesitate to contact me if you have any questions, and thank you very much for your assistance.

Sincerely,  
**Joshua Kaplan**

**ProPublica**  
155 Avenue of the Americas, 13th Floor  
New York, NY 11012  
Phone: 734-834-9383  
[Joshua.Kaplan@ProPublica.org](mailto:Joshua.Kaplan@ProPublica.org)



Florida

4343 W Flagler St #400, Miami, FL 33134

September 23, 2022

Sent via email to:

Executive Office of Governor Ron DeSantis  
Attn: Office of Open Government  
400 S Monroe St.  
Suite 209  
Tallahassee, FL 32399  
(850) 717-9248  
desantis.opengov@eog.myflorida.com

**Re: Public Records Request for Immigration Related Documents and Emails**

Dear Custodian of Public Records:

In accordance with Article I, section 24 of the Florida Constitution, and pursuant to the Florida Public Records Law, Fla. Stat. § 119, et. seq., I am writing to request access to and a copy of the following public records in your possession:

1. Any and all policies, protocols, guidelines, or other written guidance to State of Florida agencies, departments, or staff, created by your office, pursuant to:
  - Executive Order 21-223;
  - Senate Bill 1808;
  - Any program “to facilitate the transport of unauthorized aliens” pursuant to Section 185 of the 2022 General Appropriations Act.
2. Any and all written orders, directives, reports, evaluations, PowerPoints and other written presentations, issued or received by your office, pursuant to:
  - Executive Order 21-223;
  - Senate Bill 1808;
  - Any program “to facilitate the transport of unauthorized aliens” pursuant to Section 185 of the 2022 General Appropriations Act.
3. Any and all authorizations, vouchers, receipts, invoices, reports, or other records of any interstate travel in 2022 by your staff related to:
  - Executive Order 21-223;
  - Senate Bill 1808;
  - Any program “to facilitate the transport of unauthorized aliens” pursuant to Section 185 of the 2022 General Appropriations Act;
  - Immigration, migration, human trafficking, smuggling, asylum, or border security.

4. Any and all records of communications by your leadership or staff, including but not limited to emails, email attachments, text messages, call logs, recordings, and meeting notes, from September 9 to September 16, 2022, with Fox News or Fox Corporation, or any employee or agent thereof.
5. Any and all emails, email attachments, electronic spreadsheets and other word-searchable electronic documents, created or received by your office, on or after July 1, 2022, that include any of the following terms:
  - unauthorized alien
  - unauthorized aliens
  - illegal aliens
  - illegal alien
  - Vertol
  - Perla
  - Ultimate Air
  - Ultimate Jetcharters
  - Ultimate Jet
  - Del Rio
  - San Antonio
  - San Pedro
  - San Pedro 7000
  - Migrant Resource Center
  - Migrant Resource Centre
  - Eagle Pass
  - Martha's Vineyard
  - Marthas Vineyard
  - Boston
  - Massachusetts Refugee Benefits
  - AR-11
  - consent to transport
  - texas.gov
  - txdot.gov
  - gov.texas.gov
  - tdem.texas.gov
  - ltgov.texas.gov
  - sanantonio.gov

#### **GENERAL INFORMATION ABOUT THE REQUEST**

Please interpret the word "or" inclusively throughout this request.

As required by law, please acknowledge that you have received this public records request and provide an estimated timeframe in which you believe that you will be able to provide the requested information. *See* § 119.07(1)(c), Fla. Stat.

If you are unable or refuse to provide part or all of the requested public information, please explain in writing and with particularity the reasons for not providing the requested public information in its entirety, as required by Section 119.07(1), Fla. Stat. If any exemption that you assert applies to only

a portion of the records (as opposed to the entire record), please redact the portion you claim is exempt, provide copies of the remainder of the record or records, and detail your reasons for the modification as required by Section 119.07(1), Fla. Stat.

I request that you produce responsive materials in their entirety, including all attachments, appendices, enclosures and/or exhibits. To the extent that a response to this request would require you to provide multiple copies of identical material, the request is limited so that only one copy of the identical material is requested.

**If any of the requested records are maintained in a common-format electronic-medium, please provide these records in such native electronic medium and not in paper form.** See § 119.083(5), Fla. Stat. For purposes of this request, common electronic formats include (1) American Standard Code for Information Interchange ("ASCII"), (2) files formatted in one of the Microsoft Office Suite, Corel Suite, OpenOffice Suite, or IBM's Lotus Suite applications (.doc, .xls, .ppt, .mdb, .wpd, etc.), (3) a text file (.txt), (4) hypertext markup language (.html) or similar web page language, or (5) common media file formats, including mp3, mp4, wma, wav. These common formats are the preferred electronic mediums for production. However, if any of the requested records are only maintained or only can be produced as electronic images, for example a portable document format (.pdf), (n.b., it is possible to print documents into a PDF format either by using Acrobat Professional or a free PDF driver like [cutePDF.com](http://cutePDF.com)), then as an alternative, we request an electronic-image format, preferably PDF. See § 119.01(2), Fla. Stat.

The ACLU of Florida is a non-profit tax-exempt organization dedicated to the protection of civil liberties and constitutional rights of all people. The ACLU serves an important public education function, regularly disseminating information of interest to the public through newsletters, news briefings, right-to-know brochures, and other public education materials. The disclosure of the requested information will "promote public awareness and knowledge of governmental actions in order to ensure that governmental officials and agencies remain accountable to the people." *Forsberg v. Housing Authority of the City of Miami Beach*, 455 So.2d 373, 378 (Fla. 1984). Therefore, we request that you produce the requested records free of charge. However, if you are unable to do so, the ACLU will reimburse you for the reasonable costs associated with fulfilling this request, if your office has a policy of requiring the payment of a copying charge for such records. The fees and costs you may charge are governed by Section 119.07(4), Fla. Stat.

Thank you for your prompt attention to this request. If you have any questions about the nature of the records in which we are interested, or need more information in order to expedite this request, please do not hesitate to contact me at [akacou@aclufl.org](mailto:akacou@aclufl.org) or (813) 288-8390.

Sincerely,



Amien Kacou  
American Civil Liberties Union of Florida

# **Exhibit 4**



## Nennstiel, Gatlin

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**From:** Mike Damiano <mike.damiano@globe.com>  
**Sent:** Tuesday, October 4, 2022 12:36 PM  
**To:** Desantis.OpenGovernment  
**Subject:** Public records request re chartered flights to Martha's Vineyard and related matters

**Categories:** Open PRR

Hello,

This is a public records request under Florida public records law. I'm a journalist with the Boston Globe. I'm requesting the following records:

-All correspondence from the year 2022 received, sent, or possessed by personnel, including Governor Ron DeSantis, and contract affiliated with the Executive Office of Governor Ron DeSantis, including but not limited to emails, written or printed correspondence, text messages, messages sent on messaging apps such as WhatsApp or Facebook messenger, and recordings of voicemails **related to the chartering of flights to transport migrants to Martha's Vineyard.**

-All correspondence from the year 2022 received, sent, or possessed by personnel, including Governor Ron DeSantis, and contract affiliated with the Executive Office of Governor Ron DeSantis, including but not limited to emails, written or printed correspondence, text messages, messages sent on messaging apps such as WhatsApp or Facebook messenger, and recordings of voicemails **related to the chartering of flights to transport migrants to any U.S. destination.**

-All correspondence from the year 2022 received, sent, or possessed by personnel, including Governor Ron DeSantis, and contract affiliated with the Executive Office of Governor Ron DeSantis, including but not limited to emails, written or printed correspondence, text messages, messages sent on messaging apps such as WhatsApp or Facebook messenger, and recordings of voicemails **with or about Perla Huerta aka Perla aka Perla Haydee Huerta.**

-All correspondence from the year 2022 received, sent, or possessed by personnel, including Governor Ron DeSantis, and contract affiliated with the Executive Office of Governor Ron DeSantis, including but not limited to emails, written or printed correspondence, text messages, messages sent on messaging apps such as WhatsApp or Facebook messenger, and recordings of voicemails **with or about Vertol Systems.**

-**All records related to payment, compensation, reimbursement, or any other exchange of money, services, or things of value to or with Vertol Systems during the past five years and Perla Huerta aka Perla aka Perla Haydee Huerta in any year.**

I'm willing to pay reasonable fees as laid out by Florida public records law.

Thank you for your attention to this request.

Mike Damiano  
The Boston Globe  
(203) 561-0318

**KING, BLACKWELL, ZEHNDER & WERMUTH, P.A.**

ATTORNEYS AND COUNSELLORS AT LAW  
25 EAST PINE STREET  
POST OFFICE BOX 1631  
ORLANDO, FLORIDA 32802-1631  
[www.kbzwlaw.com](http://www.kbzwlaw.com)

DAVID B. KING [1941 – 2020]

BRUCE B. BLACKWELL [RETIRED]

THOMAS A. ZEHNDER

FREDERICK S. WERMUTH

KIMBERLY D. HEALY

ROBYN M. KRAMER

DUSTIN MAUSER-CLAASSEN

TELEPHONE  
(407) 422-2472

FACSIMILE  
(407) 648-0161

[FWERMUTH@KBZWLA.COM](mailto:FWERMUTH@KBZWLA.COM)

October 18, 2021

**VIA EMAIL ONLY**

[desantis.open@gov@eo.g.mvflorida.com](mailto:desantis.open@gov@eo.g.mvflorida.com)

Executive Office of Governor Ron DeSantis  
Office of Open Government  
400 South Monroe Street  
Suite 209  
Tallahassee, FL 32399

**Re: Public Records Request – Executive Office of Governor Ron DeSantis**

Dear Executive Office of Governor Ron DeSantis,

Pursuant to Article I, § 24 of the Florida Constitution, Florida Statutes 119.07(1)(a), this letter is to request copies of all records responsive to the numbered requests listed below. Please produce records responsive to this request to King, Blackwell, Zehnder & Wermuth, P.A. (to the extent possible via email to [fweremuth@kbzwlaw.com](mailto:fweremuth@kbzwlaw.com), [khealy@kbzwlaw.com](mailto:khealy@kbzwlaw.com), and [aprice@kbzwlaw.com](mailto:aprice@kbzwlaw.com)), in the format in which the records were originally created; and, if the records are available only in hardcopy format, please copy the records on a document-by-document basis in Adobe (.pdf) format and produce them on a standard electronically readable medium, such as a compact disc.

This request should be construed in the following manner:

**Inclusive construction of grammar.** The use, in this request, of the singular form should be construed to include the plural form and the terms “and” and “or” should be interpreted liberally, as conjunctive, disjunctive or both depending on the context, so as to assure that the fullest disclosure of information and records is achieved.

**Inclusive construction of terms.** The terms used in this request should be construed in the broadest sense, so as to assure that no form of record (whether electronic, hardcopy, or other embodied instance of recorded expression or information) is excluded from this request.

Executive Office of Governor Ron DeSantis  
October 18, 2021  
Page 2 of 5

**Inclusive scope of records.** The records being requested include records however stored or recorded (including, for electronic documents, those in active and inactive drive space, and for example, deleted files in drive slack space and documents stored in recycle bins) on all devices used at any time, including building security and surveillance devices, state-owned computers and mobile devices, personal computers and mobile devices, or any other computer or mobile device used by Governor DeSantis, or any employee, agent, volunteer, advisor, attorney, or consultant (whether on the staff or not, paid or unpaid) of Governor DeSantis at any time since January 1, 2020, and including all metadata, and all drafts and non-identical copies of the foregoing.

This request pertains to records in the possession, custody or control of Governor DeSantis, or any employee, agent, volunteer, advisor, attorney, or consultant (whether on the staff or not, paid or unpaid) of Governor DeSantis. This request does not, however, require delivery of duplicate copies.

**Expedited Timing.** You are requested to provide documents as they become available, and without waiting for all responsive documents to be gathered.

**Continuing Request.** This is a continuing request for any documents responsive to the following request that exist or come into existence at any time until the conclusion of (including any appeals related to) the pending civil action short-styled, *United Faculty of Florida et al. v. Corcoran et al.*, 4:21-cv-000271-MW-MAF (N.D. Fla.).

#### **PUBLIC RECORDS REQUESTS**

1. All documents and communications related to HB 233 (2021) or its predecessors, including but not limited to its anticipated and/or potential effects.
2. All documents and communications related to the Survey Provisions of HB 233 (2021) or the Survey that it requires.<sup>1</sup> This includes but is not limited to any documents or communications related to any state interests that the Survey Provisions or the Survey serve, promote, or further, as well as any documents or communications related to the creation, drafting, scope, or potential use of the Survey or Survey Provisions.
3. All documents and communications related to the Anti-Shielding Provisions of HB 233 (2021).<sup>2</sup> This includes but is not limited to any documents or communications related to any state interests that the Anti-Shielding Provisions serve, promote, or further.

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<sup>1</sup> “Survey Provisions” refers to the provisions under Fla. Stat. §§ 1001.03 and 1001.706, which provide that: The Board of Education and the Board of Governors “shall require each [Florida College System institution and state university] to conduct an annual assessment of the intellectual freedom and viewpoint diversity at that institution.”

<sup>2</sup> “Anti-Shielding Provisions” means the provisions under Fla. Sta. §§ 1001.03, 1001.706, and 1004.097, which provide that: The Board of Education and Board of Governors “may not shield students, faculty, or staff” by “limit[ing] students’, faculty members’, or staff members’ access to,

Executive Office of Governor Ron DeSantis  
October 18, 2021  
Page 3 of 5

4. All documents and communications related to the Recording Provisions of HB 233 (2021).<sup>3</sup> This includes but is not limited to any documents or communications related to any state interests that the Recording Provisions serve, promote, or further.
5. All documents and communications related to the Cause of Action Provisions of HB 233 (2021).<sup>4</sup> This includes but is not limited to any documents or communications related to any state interests that the Cause of Action Provisions serve, promote, or further.
6. All documents and communications using one or more of the following terms: “indoctrination,” “liberal ideology,” “stale ideology,” “liberal agenda,” “liberal bias,” “progressive agenda,” “socialism,” “woke mob,” “cancel culture,” “radical left,” “censorship,” “intellectual freedom,” or “academic freedom” from January 2019 to the present. This includes not only documents or communications that use one or more of the identified terms but all other communications in the same conversational chain or related to the documents or communications using the terms.
7. All documents and communications related to concerns about or infringement on academic freedom, forced ideology, liberal bias and/or indoctrination in Florida’s schools, colleges, and universities. This includes, but is not limited to any reports, complaints, or evidence regarding the same.
8. All documents and communications regarding or related to the ideological makeup or viewpoint diversity of faculty, students, and staff in Florida’s public schools, colleges, and universities.
9. All documents and communications related to any personnel decisions, including decisions about whether to promote, censor, discipline, fire, or terminate any faculty, teachers, or staff in Florida’s public schools, colleges, or universities where the decision involved concerns that the individual was perceived to be indoctrinating students, imposing upon students a political or ideological viewpoint, or was otherwise related to a political or ideological viewpoint expressed or taught by the individual in question.

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or observation of, ideas and opinions that they may find uncomfortable, unwelcome, disagreeable, or offensive.”

<sup>3</sup> “Recording Provisions” refers to provisions under Fla. Sta. § 1004.097, which provide that: “[A] student may record video or audio of class lectures for their own personal educational use, in connection with a complaint to the public institution of higher education where the recording was made, or as evidence in, or in preparation for, a criminal or civil proceeding.”

<sup>4</sup> “Cause of Action Provisions” refer to the provisions under Fla. Sta. § 1004.097(4)(a), which provide that: “[A] person injured in violation of this section may bring an action . . . [a]gainst a public institution of higher education based on the violation of the individual’s expressive rights in a court of competent jurisdiction to obtain declaratory and injunctive relief and may be entitled to damages plus court costs and reasonable fees, which may only be paid from nonstate funds.”

Executive Office of Governor Ron DeSantis  
October 18, 2021  
Page 4 of 5

10. All documents and communications related to providing, restricting, or withholding resources or funding from Florida's public schools, colleges, or universities based on considerations of the viewpoints that exist on their campuses, including but not limited to a public school's, college's, or university's decision to mandate the wearing of masks in response to the COVID pandemic. Your response should include proposals or ideas about providing, restricting, or withholding resources or funding to Florida's public schools, colleges, or universities (including how it might or could be done) based on (entirely or in part) ideologies or viewpoints on campus, as well as any documents or communications related to situations in which such decisions have in fact been proposed, discussed, or made.
11. All documents and communications related to Senate Bill 242 (2022) or House Bill 57 (2022), including but not limited to documents or communications referring to race or sex stereotyping, race or sex scapegoating, "divisive concepts," or critical race theory.
12. All documents and communications related to your statement in June 2021 following the signing of HB 233 (2021) that "[w]e obviously want our universities to be focused on critical thinking, academic rigor . . . we do not want them as basically hotbeds for stale ideology. That's not worth tax dollars and it's not something that we will be supporting." This includes but is not limited to all documents or communications that evidence or indicate that any of Florida's public colleges or universities are not focused on critical thinking or academic rigor, but instead have become or are at risk of becoming "basically hotbeds for stale ideology." It includes any reports, documents, communications, or other information that relate to how HB 233 (2021) would address this issue. And it includes any documents or communications related to your statement indicating that Florida's tax dollars will not be used to support such institutions, including how funding or spending would be denied, withheld, reallocated, diverted, or otherwise not used for this purpose, and any relationship between HB 233 (2021) and the financial support of Florida's public colleges or universities.
13. All documents and communications concerning potential action that might be taken by you, the Florida Board of Governors, the Florida Board of Education, the Commissioner of Education, trustees at Florida's public colleges or universities, administration at Florida's public colleges or universities, the Legislature, or anyone else in state or local government (including, without limitation, new legislation or executive action) as a result of or in response to results from the survey that HB 233 (2021) authorizes.
14. All documents and communications concerning "outside activity" engaged in by faculty or staff of any of Florida's public colleges or universities. "Outside activity" means any private practice, private consulting, additional teaching or research, or other activity, compensated or uncompensated, which is not part of the employee's assigned duties and for which the college or university has provided no compensation. This request specifically includes any documents and communications regarding the specific outside activity of any specific faculty or staff member of any Florida public college or university, as well as any communications related to limitations that can, should, have been, are, or will be imposed on outside activity of any faculty or staff of Florida's public colleges or universities, including specifically on the grounds that

Executive Office of Governor Ron DeSantis  
October 18, 2021  
Page 5 of 5

the activity is potentially adverse to the State of Florida, its Executive Branch, or any office, entity or person within it.

15. All documents and communications concerning what constitutes a prohibited "conflict of interest" for any employee (including faculty or staff) of any Florida public college or university.
16. All documents and communications related to your appointment of any trustee to the Board of Trustees at any of Florida's public colleges or universities, and any and all communications with any persons considered for appointment by you as a trustee at a Florida college or university, whether they were ultimately appointed or not.

If you anticipate that the response to any part of this request will require extensive use of information technology resources or extensive clerical or supervisory assistance, as defined for purposes of Section 119.07(4)(d), Florida Statutes, please provide a written estimate and justification of any special service charge you anticipate charging as to any such part of the requested records. I do not agree to pay a special service charge unless it has been approved in advance.

If you decline to grant this request in whole or in part in reliance on a statutory exemption, I request that you provide the statutory citation and "state in writing and with particularity the reasons for the conclusion that the record is exempt," as required by Sections 119.07(1)(e) and (f), Florida Statutes.

Sincerely,



Frederick S. Wermuth

FSW/ap



June 29, 2022

**BY EMAIL:** [desantis.opengov@eog.myflorida.com](mailto:desantis.opengov@eog.myflorida.com)

Executive Office of Governor Ron DeSantis  
400 S Monroe St. Suite 209  
Tallahassee, FL 32399

Dear Public Information Officer:

Citizens for Responsibility and Ethics in Washington ("CREW") makes this request for records from the Executive Office of the Governor pursuant to the Public Records Act, Chapter 119 of the Florida Statutes.

Specifically, CREW requests:

1. All communications between the office of Governor Ron DeSantis, or any individual acting on behalf of the office of the Governor and any outside parties regarding funding for a new Pasco County sports facility (including but not limited to mentions of political activism, gun control, the Tampa Bay Rays, or vetoing funding) from March 9, 2022, to the date this request is processed.
2. All communications between the office of Gov. DeSantis, or any individual acting on behalf of the office of the Governor and the Department of Economic Opportunity regarding funding for the Pasco County sports facility (including but not limited to mentions of political activism, gun control, the Tampa Bay Rays, or vetoing funding) from March 9, 2022, to the date this request is processed.
3. All communications between the office of Gov. DeSantis, or any individual acting on behalf of the office of the Governor and the Florida Senate Committee on Commerce and Tourism regarding the Pasco County sports facility (including but not limited to mentions of political activism, gun control, the Tampa Bay Rays, or vetoing funding) from March 9, 2022, to the date this request is processed.

Please search for responsive records regardless of format, medium, or physical characteristics. We seek records of any kind, including paper records, electronic records, audiotapes, videotapes, photographs, data, and graphical material. Our request includes without limitation all correspondence, letters, emails, text messages, facsimiles, telephone messages, voice mail messages, and transcripts, notes, or minutes of any meetings,

1331 F St NW, Suite 900, Washington, DC 20004  
[info@citizensforethics.org](mailto:info@citizensforethics.org) 202.408.5565

[CITIZENSFORETHICS.ORG](http://CITIZENSFORETHICS.ORG)

June 29, 2022

Page 2

telephone conversations, or discussions. Our request also includes any attachments to emails and other records, as well as emails to which the subjects of this request were cc'ed or bcc'ed.

By way of background, on March 9, 2022, Florida lawmakers proposed allocating \$35 million towards a new sports facility in Pasco County that was under consideration to become the Tampa Bay Rays' spring training site.<sup>1</sup> Following this proposal, public outrage at mass shootings in Buffalo, New York, and Uvalde, Texas pressured government officials to address gun safety concerns.<sup>2</sup> In response, the Rays announced a partnership with gun violence prevention group, Everytown for Gun Safety, on Twitter.<sup>3</sup> A week after the Rays' announcement, Gov. DeSantis, who was endorsed by the NRA during his gubernatorial campaign, vetoed the \$35 million dollar sports facility proposal, noting that he believes the money should be spent on the Florida public's benefit, not a single company or franchise.<sup>4</sup> The proposal, however, classified the facility as open to the public for tournaments and events during the Rays' offseason, making DeSantis's veto explanation inconsistent with the proposal.<sup>5</sup>

Given that DeSantis recently signed a bill revoking Disney's "independent special district" status in response to the CEO announcing his support for repealing Florida's "Don't Say Gay" bill, it seems DeSantis is willing to punish companies for political disagreements.<sup>6</sup> The requested records will clarify DeSantis's reasons for vetoing the new Pasco County sports facility's funding. There is sufficient public interest in knowing if Gov. DeSantis was motivated by personal or campaign-related interests.

If it is your position that any portion of the requested records is exempt from disclosure, Chapter 119 requires you to state the basis of the exemption you contend is applicable. Fla. Stat. § 119.07(1)(e). CREW further requests that you state in writing and with particularity the reasons for any conclusion that a record is exempt or confidential. Fla. Stat. § 119.07(1)(f). If some portions of the requested records are properly exempt from disclosure, Chapter 119 requires you to redact those portions and produce the remainder of the requested records. Fla. Stat. § 119.07(1)(d).

CREW agrees to pay up to \$100 for copies of the requested records. If copying fees are expected to exceed this amount, or if you anticipate that "extensive use" of information technology resources or extensive clerical or supervisory assistance as defined in section 119.07(4)(d) will be needed to fulfill this request, please contact me at (202) 408-5565 or nsus@citizensforethics.org.

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<sup>1</sup> Aaron Parseghian, Pasco County Leaders Still Hopeful for Future Baseball Complex, WTSP, June 7, 2022, available at [WTSP](#)

<sup>2</sup> Louis Cappelli Jr., After Uvalde, Buffalo and dozens more, action is needed on gun control now! Opinion, Courier Post, June 9, 2022, available at [Courier Post](#)

<sup>3</sup> Tampa Bay Rays, Twitter Statement, May 26, 2022, available at [Twitter](#)

<sup>4</sup> Katherine Fung, Is Ron DeSantis Taking His Culture War to the Tampa Bay Rays?, Newsweek, June 3, 2022, available at [Newsweek](#)

<sup>5</sup> Parseghian, available at [WTSP](#)

<sup>6</sup> Bill Chapell, DeSantis wanted to punish Disney. Repealing its tax status may hurt taxpayers instead, NPR, April 22, 2022, available at [NPR](#)



June 29, 2022  
Page 3

Where possible, please produce records in electronic format. Please send the requested records to me at either [ghonig@citizensforethics.org](mailto:ghonig@citizensforethics.org) or Grace Honig, Citizens for Responsibility and Ethics in Washington, 1331 F Street, NW, Suite 900, Washington, DC 20004.

Please contact me if you have any questions about this request or foresee any problems in fully releasing the requested records. We anticipate you will fulfill your obligations under Chapter 119. If it is necessary to file an action to enforce the Public Records Act, the court may award reasonable costs of enforcement, including attorneys' fees. Fla. Stat. § 119.12. Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Grace Honig". The signature is fluid and cursive, with the first name "Grace" written in a smaller, more compact script than the last name "Honig".

Grace Honig  
Research Intern

**Nennstiel, Gatlin**

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**From:** Swisher, Skyler <sswisher@orlandosentinel.com>  
**Sent:** Tuesday, October 4, 2022 3:57 PM  
**To:** Desantis.OpenGovernment  
**Subject:** Orlando Sentinel public records request  
  
**Categories:** Open PRR

Hi,

Pursuant to Article I, section 24 of the Florida Constitution, and chapter 119, F.S., I am requesting an opportunity to obtain copies of the following public records.

-- All public records related to the Sept. 14, 2022, flights of about 50 Venezuelan migrants from San Antonio, Texas, through Florida to Martha's Vineyard, including invoices, receipts, consent forms, legal opinions, meeting agendas, memos, contracts, text messages, emails and other communications related to the flights.

If there are any fees for searching or copying these records, please inform me before filling my request. I request a waiver of all fees for this request since the disclosure of the information I seek is likely to contribute significantly to public understanding of the operations or activities of the government, making the disclosure a matter of public interest.

Please provide the records in an electronic format.

Should you deny my request, or any part of the request, please state in writing the basis for the denial, including the exact statutory exemption.

Given the public's interest and the need for transparency, I would request these records be provided as quickly as possible on a rolling basis as the documents become available.

If you have any questions, you may contact me at 954-200-9418.

Thanks,

---  
**Skyler Swisher**  
Reporter  
Orlando Sentinel

:: c 954 200 9418  
:: t @SkylerSwisher

OrlandoSentinel.com  
*a Tribune Online Content company*

# **Exhibit 5**



Lawrence J. "Larry" Dougherty  
Direct Dial (813) 347-5115  
[ldougherty@guerraking.com](mailto:ldougherty@guerraking.com)

August 31, 2022

**VIA E-MAIL** [desantis.opengov@eog.myflorida.com](mailto:desantis.opengov@eog.myflorida.com)  
Executive Office of Governor Ron DeSantis  
Attn: Office of Open Government  
400 S Monroe St.  
Suite 209  
Tallahassee, FL 32399

**Re: Request for Public Records**

Dear Public Records Custodian:

Pursuant to Article I, Section 24 of Florida's Constitution, and in accordance with Executive Order 19-11, I respectfully request copies of the following public records as that term is defined by § 119.011(12), Florida Statutes:

**RECORDS GENERATED OR RECEIVED BY GOVERNOR RON DESANTIS**

1. **Electronic copies of Executive Order Number 22-176.** In native format with all metadata preserved, electronic copies of Executive Order 22-176, and all drafts thereof.
2. **Electronic copies of Governor DeSantis' prepared statements.** In their native format with all metadata preserved, electronic copies of any documents prepared by Governor Ron DeSantis (or his agents) containing the statements expressed at his press conference with Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody on August 4, 2022, including drafts thereof.
3. **Letters, memoranda, and reports.** All tangible letters, memoranda, and reports (including drafts thereof) within the custody or control of Governor Ron DeSantis relating to the following:
  - 3.1. Any investigation relating to the suspension of State Attorney Andrew Warren;
  - 3.2. Communications transmitted to, or received from, Taryn Fenske, Christina Pushaw, Melissa Smith, James Uthmeier, Sheriff Chad Chronister (or his agents), Sheriff Grady

The Towers at Westshore | 1408 N. Westshore Blvd. | Suite 1010 | Tampa, FL | 33607 | 813.347.5100 [guerraking.com](http://guerraking.com)

To Executive Office of Governor Ron DeSantis  
Page 2 of 42

Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;

3.3. The planning, coordination, and execution of the August 4, 2022 press conference with Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.

**4. Electronic documents and messages on publicly owned devices. In native format with all metadata preserved,** all electronic documents and messages generated, sent, and received by Governor Ron DeSantis between January 1, 2021 and August 25, 2022 on the hard drives of any publicly owned devices that relate to the following matters:

4.1. Any investigation relating to the suspension of State Attorney Andrew Warren;

4.2. Communications transmitted to, or received from, Taryn Fenske, Christina Pushaw, Melissa Smith, James Uthmeier, Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;

4.3. The planning, coordination, and execution of the August 4, 2022 press conference with Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.

This request extends to copies of all electronic messages that may be recoverable from the devices' local hard drive, remote servers, any removable media (*e.g.* external hard drives, thumb drives, *et cetera*), back up tapes, and deleted documents within forensically accessible areas of the devices.

**5. Electronic messages on privately owned communications devices. In native format with all metadata preserved,** all electronic documents and messages generated, sent, and received by Governor Ron DeSantis between January 1, 2021 and August 25, 2022 on the hard drives of any personal electronic devices that relate to the following matters:

5.1. Any investigation relating to the suspension of State Attorney Andrew Warren;

5.2. Communications transmitted to, or received from, Taryn Fenske, Christina Pushaw, Melissa Smith, James Uthmeier, Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or

To Executive Office of Governor Ron DeSantis  
Page 3 of 42

his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;

- 5.3. The planning, coordination, and execution of the August 4, 2022 press conference with Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.

This request extends to copies of all electronic messages that may be recoverable from the devices' local hard drive, remote servers, any removable media (e.g. external hard drives, thumb drives, *et cetera*), back up tapes, and deleted documents within forensically accessible areas of the devices.

6. **Phone log.** Log of all calls generated and received from Governor Ron DeSantis' publicly owned communication device (and to the extent it was used to conduct public business, his private communication device) between August 1, 2022 and August 5, 2022.

7. **Electronic messages on cloud-based communications fora.** In native format with all metadata preserved, all electronic messages sent and received by Governor Ron DeSantis via any electronic communication media platform between January 1, 2021 and August 25, 2022, whatsoever, that relate to the investigation, potential suspension, and eventual suspension, of State Attorney Andrew Warren. These include, but are not limited to, the following:

- 7.1. *iMessage.* All electronic messages sent and received by Governor Ron DeSantis via any iMessage accounts within his custody or control that relate that relate to the following matters:

7.1.1. Any investigation relating to the suspension of State Attorney Andrew Warren;

7.1.2. Communications transmitted to, or received from, Taryn Fenske, Christina Pushaw, Melissa Smith, James Uthmeier, Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;

7.1.3. The planning, coordination, and execution of the August 4, 2022 press conference with Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.

- 7.2. *Facebook Messenger.* All electronic messages sent and received by Ron DeSantis via any Facebook Messenger accounts within his custody or control that relate to the following matters:

To Executive Office of Governor Ron DeSantis  
Page 4 of 42

- 7.2.1. Any investigation relating to the suspension of State Attorney Andrew Warren;
  - 7.2.2. Communications transmitted to, or received from, Taryn Fenske, Christina Pushaw, Melissa Smith, James Uthmeier, Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;
  - 7.2.3. The planning, coordination, and execution of the August 4, 2022 press conference with Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.
- 7.3. *WhatsApp*. All electronic messages sent and received by Governor Ron DeSantis via any WhatsApp accounts within his custody or control that relate to the following matters:
- 7.3.1. Any investigation relating to the suspension of State Attorney Andrew Warren;
  - 7.3.2. Communications transmitted to, or received from, Taryn Fenske, Christina Pushaw, Melissa Smith, James Uthmeier, Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;
  - 7.3.3. The planning, coordination, and execution of the August 4, 2022 press conference with Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.
- 7.4. *Signal*. All electronic messages sent and received by Governor Ron DeSantis via any Signal accounts within his custody or control that relate to the following matters:
- 7.4.1. Any investigation relating to the suspension of State Attorney Andrew Warren;
  - 7.4.2. Communications transmitted to, or received from, Taryn Fenske, Christina Pushaw, Melissa Smith, James Uthmeier, Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or

To Executive Office of Governor Ron DeSantis  
Page 5 of 42

Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;

- 7.4.3. The planning, coordination, and execution of the August 4, 2022 press conference with Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.
- 7.5. *Twitter*. All electronic messages, including direct messages, sent and received by Governor Ron DeSantis via any Twitter accounts within his custody or control that relate to the following matters:
  - 7.5.1. Any investigation relating to the suspension of State Attorney Andrew Warren;
  - 7.5.2. Communications transmitted to, or received from, Taryn Fenske, Christina Pushaw, Melissa Smith, James Uthmeier, Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;
  - 7.5.3. The planning, coordination, and execution of the August 4, 2022 press conference with Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.
- 7.6. *Instagram*. All electronic messages, including direct messages, sent and received by Governor Ron DeSantis via any Instagram accounts within his custody or control that relate to the following matters:
  - 7.6.1. Any investigation relating to the suspension of State Attorney Andrew Warren;
  - 7.6.2. Communications transmitted to, or received from, Taryn Fenske, Christina Pushaw, Melissa Smith, James Uthmeier, Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;
  - 7.6.3. The planning, coordination, and execution of the August 4, 2022 press conference with Representative Michael Beltran, Sheriff Chad Chronister,



To Executive Office of Governor Ron DeSantis  
Page 6 of 42

Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.

7.7. *Truth Social*. All electronic messages, including direct messages, sent and received by Governor Ron DeSantis via any Truth Social accounts within his custody or control that relate to the following matters:

- 7.7.1. Any investigation relating to the suspension of State Attorney Andrew Warren;
- 7.7.2. Communications transmitted to, or received from, Taryn Fenske, Christina Pushaw, Melissa Smith, James Uthmeier, Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;
- 7.7.3. The planning, coordination, and execution of the August 4, 2022 press conference with Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.

7.8. *Microsoft Teams*. All electronic messages, including the messages in the chat function, sent and received by Governor Ron DeSantis via any Microsoft Teams accounts within his custody or control that relate to the following matters:

- 7.8.1. Any investigation relating to the suspension of State Attorney Andrew Warren;
- 7.8.2. Communications transmitted to, or received from, Taryn Fenske, Christina Pushaw, Melissa Smith, James Uthmeier, Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;
- 7.8.3. The planning, coordination, and execution of the August 4, 2022 press conference with Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.

To Executive Office of Governor Ron DeSantis  
Page 7 of 42

- 7.9. *Zoom*. All electronic messages, including the messages in the chat function, sent and received by Governor Ron DeSantis via any Zoom accounts within his custody or control that relate to the following matters:
- 7.9.1. Any investigation relating to the suspension of State Attorney Andrew Warren;
  - 7.9.2. Communications transmitted to, or received from, Taryn Fenske, Christina Pushaw, Melissa Smith, James Uthmeier, Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;
  - 7.9.3. The planning, coordination, and execution of the August 4, 2022 press conference with Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.
- 7.10. *Telegram*. All electronic messages, sent and received by Governor Ron DeSantis via any Telegram accounts within his custody or control that relate to the following matters:
- 7.10.1. Any investigation relating to the suspension of State Attorney Andrew Warren;
  - 7.10.2. Communications transmitted to, or received from, Taryn Fenske, Christina Pushaw, Melissa Smith, James Uthmeier, Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;
  - 7.10.3. The planning, coordination, and execution of the August 4, 2022 press conference with Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.
8. **Results of keyword Boolean searches of all emails the within the custody or control of Governor Ron DeSantis.** In their native format with all metadata preserved, the results of certain keyword Boolean searches of all sent and received emails, all archived emails, all deleted emails still on the server, and all emails still present in all inboxes within the custody or control of Governor Ron DeSantis for the limited period of January 1, 2022 to August 25, 2022:

To Executive Office of Governor Ron DeSantis  
Page 8 of 42

8.1. "Andrew Warren"

8.2. "Susan Lopez"

8.3. Chronister

8.4. Beltran

8.5. Nocco

8.6. Judd

8.7. Dugan

This request extends to copies of all electronic messages that may be recoverable from the devices' local hard drive, remote servers, any removable media (*e.g.* external hard drives, thumb drives, *et cetera*), back up tapes, and deleted documents within forensically accessible areas of the devices.

RECORDS GENERATED OR RECEIVED BY DIRECTOR OF COMMUNICATIONS TARYN FENSKE

**9. Letters, memoranda, and reports.** All tangible letters, memoranda, and reports (including drafts thereof) within the custody or control of Taryn Fenske relating to the following:

9.1. Any investigation relating to the suspension of State Attorney Andrew Warren;

9.2. Communications transmitted to, or received from, Christina Pushaw, Governor Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;

9.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.

**10. Electronic documents and messages on publicly owned devices.** In native format with all metadata preserved, all electronic documents and messages generated, sent, and received by Taryn Fenske between January 1, 2021 and August 25, 2022 on the hard drives of any publicly owned devices that relate to the following matters:

10.1. Any investigation relating to the suspension of State Attorney Andrew Warren;

To Executive Office of Governor Ron DeSantis  
Page 9 of 42

- 10.2. Communications transmitted to, or received from, Christina Pushaw, Governor Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;
- 10.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.

This request extends to copies of all electronic messages that may be recoverable from the devices' local hard drive, remote servers, any removable media (*e.g.* external hard drives, thumb drives, *et cetera*), back up tapes, and deleted documents within forensically accessible areas of the devices.

**11. Electronic messages on privately owned communications devices.** In native format with all metadata preserved, all electronic documents and messages generated, sent, and received by Taryn Fenske between January 1, 2021 and August 25, 2022 on the hard drives of any personal electronic devices that relate to the following matters:

- 11.1. Any investigation relating to the suspension of State Attorney Andrew Warren;
- 11.2. Communications transmitted to, or received from, Christina Pushaw, Governor Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;
- 11.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.

This request extends to copies of all electronic messages that may be recoverable from the devices' local hard drive, remote servers, any removable media (*e.g.* external hard drives, thumb drives, *et cetera*), back up tapes, and deleted documents within forensically accessible areas of the devices.

**12. Phone log.** Log of all calls generated and received from Taryn Fenske publicly owned communication device (and to the extent it was used to conduct public business, her private communication device) between August 1, 2022 and August 5, 2022.

To Executive Office of Governor Ron DeSantis  
Page 10 of 42

**13. Electronic messages on cloud-based communications fora. In native format with all metadata preserved,** all electronic messages sent and received by Taryn Fenske via any electronic communication media platform between January 1, 2021 and August 25, 2022, whatsoever, that relate to the potential suspension, and eventual suspension, of State Attorney Andrew Warren. These include, but are not limited to, the following:

13.1. *iMessage*. All electronic messages sent and received by Taryn Fenske via any iMessage accounts within her custody or control that relate that relate to the following matters:

13.1.1. Any investigation relating to the suspension of State Attorney Andrew Warren;

13.1.2. Communications transmitted to, or received from, Christina Pushaw, Governor Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;

13.1.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.

13.2. *Facebook Messenger*. All electronic messages sent and received by Taryn Fenske via any Facebook Messenger accounts within her custody or control that relate to the following matters:

13.2.1. Any investigation relating to the suspension of State Attorney Andrew Warren;

13.2.2. Communications transmitted to, or received from, Christina Pushaw, Governor Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;

13.2.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.

13.3. *WhatsApp*. All electronic messages sent and received by Taryn Fenske via any WhatsApp accounts within her custody or control that relate to the following matters:

13.3.1. Any investigation relating to the suspension of State Attorney Andrew Warren;

To Executive Office of Governor Ron DeSantis  
Page 11 of 42

- 13.3.2. Communications transmitted to, or received from, Christina Pushaw, Governor Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;
- 13.3.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.
- 13.4. *Signal*. All electronic messages sent and received by Taryn Fenske via any Signal accounts within her custody or control that relate to the following matters:
  - 13.4.1. Any investigation relating to the suspension of State Attorney Andrew Warren;
  - 13.4.2. Communications transmitted to, or received from, Christina Pushaw, Governor Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;
  - 13.4.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.
- 13.5. *Twitter*. All electronic messages, including direct messages, sent and received by Taryn Fenske via any Twitter accounts within her custody or control that relate to the following matters:
  - 13.5.1. Any investigation relating to the suspension of State Attorney Andrew Warren;
  - 13.5.2. Communications transmitted to, or received from, Christina Pushaw, Governor Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;
  - 13.5.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian

To Executive Office of Governor Ron DeSantis  
Page 12 of 42

Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.

13.6. *Instagram*. All electronic messages, including direct messages, sent and received by Taryn Fenske via any Instagram accounts within her custody or control that relate to the following matters:

13.6.1. Any investigation relating to the suspension of State Attorney Andrew Warren;

13.6.2. Communications transmitted to, or received from, Christina Pushaw, Governor Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;

13.6.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.

13.7. *Truth Social*. All electronic messages, including direct messages, sent and received by Taryn Fenske via any Truth Social accounts within her custody or control that relate to the following matters:

13.7.1. Any investigation relating to the suspension of State Attorney Andrew Warren;

13.7.2. Communications transmitted to, or received from, Christina Pushaw, Governor Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;

13.7.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.

13.8. *Microsoft Teams*. All electronic messages, including the messages in the chat function, sent and received by Taryn Fenske via any Microsoft Teams accounts within her custody or control that relate to the following matters:

13.8.1. Any investigation relating to the suspension of State Attorney Andrew Warren;

To Executive Office of Governor Ron DeSantis  
Page 13 of 42

- 13.8.2. Communications transmitted to, or received from, Christina Pushaw, Governor Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;
- 13.8.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.
- 13.9. *Zoom*. All electronic messages, including the messages in the chat function, sent and received by Taryn Fenske via any Zoom accounts within her custody or control that relate to the following matters:
  - 13.9.1. Any investigation relating to the suspension of State Attorney Andrew Warren;
  - 13.9.2. Communications transmitted to, or received from, Christina Pushaw, Governor Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;
  - 13.9.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.
- 13.10. *Telegram*. All electronic messages sent and received by Taryn Fenske via any Telegram accounts within her custody or control that relate to the following matters:
  - 13.10.1. Any investigation relating to the suspension of State Attorney Andrew Warren;
  - 13.10.2. Communications transmitted to, or received from, Christina Pushaw, Governor Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;
  - 13.10.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian



To Executive Office of Governor Ron DeSantis  
Page 14 of 42

Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.

**14. Taryn Fenske's calendar.** In its native format with all metadata preserved, an electronic copy of Taryn Fenske's Microsoft Outlook Calendar (or equivalent) for the following months:

- 14.1. *August 2022;*
- 14.2. *July 2022;*
- 14.3. *June 2022;*
- 14.4. *May 2022;*
- 14.5. *April 2022;*
- 14.6. *March 2022;*
- 14.7. *February 2022; and,*
- 14.8. *January 2022.*

**15. Results of keyword Boolean searches of all emails the within the custody or control of Taryn Fenske.** In their native format with all metadata preserved, the results of certain keyword Boolean searches of all sent and received emails, all archived emails, all deleted emails still on the server, and all emails still present in all inboxes within the custody or control of Taryn Fenske for the limited period of January 1, 2022 to August 25, 2022:

- 15.1. "Andrew Warren"
- 15.2. "Susan Lopez"
- 15.3. Chronister
- 15.4. Beltran
- 15.5. Nocco
- 15.6. Judd
- 15.7. Dugan

This request extends to copies of all electronic messages that may be recoverable from the devices' local hard drive, remote servers, any removable media (*e.g.* external hard drives, thumb drives, *et cetera*), back up tapes, and deleted documents within forensically accessible areas of the devices.

To Executive Office of Governor Ron DeSantis  
Page 15 of 42

RECORDS GENERATED OR RECEIVED BY PRESS SECRETARY CHRISTINA PUSHAW

**16. Letters, memoranda, and reports.** All tangible letters, memoranda, and reports (including drafts thereof) within the custody or control of Christina Pushaw relating to the following:

- 16.1. Any investigation relating to the suspension of State Attorney Andrew Warren;
- 16.2. Communications transmitted to, or received from, Taryn Fenske, Governor Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;
- 16.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.

**17. Electronic documents and messages on publicly owned devices.** In native format with all metadata preserved, all electronic documents and messages generated, sent, and received by Christina Pushaw between January 1, 2021 and August 25, 2022 on the hard drives of any publicly owned devices that relate to the following matters:

- 17.1. Any investigation relating to the suspension of State Attorney Andrew Warren;
- 17.2. Communications transmitted to, or received from, Taryn Fenske, Governor Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;
- 17.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.

This request extends to copies of all electronic messages that may be recoverable from the devices' local hard drive, remote servers, any removable media (e.g. external hard drives, thumb drives, *et cetera*), back up tapes, and deleted documents within forensically accessible areas of the devices.

**18. Electronic messages on privately owned communications devices.** In native format with all metadata preserved, all electronic documents and messages generated, sent, and received by

To Executive Office of Governor Ron DeSantis  
Page 16 of 42

Christina Pushaw between January 1, 2021 and August 25, 2022 on the hard drives of any personal electronic devices that relate to the following matters:

- 18.1. Any investigation relating to the suspension of State Attorney Andrew Warren;
- 18.2. Communications transmitted to, or received from, Taryn Fenske, Governor Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;
- 18.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.

This request extends to copies of all electronic messages that may be recoverable from the devices' local hard drive, remote servers, any removable media (*e.g.* external hard drives, thumb drives, *et cetera*), back up tapes, and deleted documents within forensically accessible areas of the devices.

19. **Phone log.** Log of all calls generated and received from Christina Pushaw's publicly owned communication device (and to the extent it was used to conduct public business, her private communication device) between August 1, 2022 and August 5, 2022.

20. **Christina Pushaw's calendar.** In its native format with all metadata preserved, an electronic copy of Christina Pushaw's Microsoft Outlook Calendar (or equivalent) for the following months:

- 20.1. *August 2022;*
- 20.2. *July 2022;*
- 20.3. *June 2022;*
- 20.4. *May 2022;*
- 20.5. *April 2022;*
- 20.6. *March 2022;*
- 20.7. *February 2022; and,*
- 20.8. *January 2022.*

21. **Electronic messages on cloud-based communications fora.** In native format with all metadata preserved, all electronic messages sent and received by Christina Pushaw via any

To Executive Office of Governor Ron DeSantis  
Page 17 of 42

electronic communication media platform between January 1, 2021 and August 25, 2022, whatsoever, that relate to the potential suspension, and eventual suspension, of State Attorney Andrew Warren. These include, but are not limited to, the following:

21.1. *iMessage*. All electronic messages sent and received by Christina Pushaw via any iMessage accounts within her custody or control that relate that relate to the following matters:

21.1.1. Any investigation relating to the suspension of State Attorney Andrew Warren;

21.1.2. Communications transmitted to, or received from, Taryn Fenske, Governor Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;

21.1.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.

21.2. *Facebook Messenger*. All electronic messages sent and received by Christina Pushaw via any Facebook Messenger accounts within her custody or control that relate to the following matters:

21.2.1. Any investigation relating to the suspension of State Attorney Andrew Warren;

21.2.2. Communications transmitted to, or received from, Taryn Fenske, Governor Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;

21.2.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.

21.3. *WhatsApp*. All electronic messages sent and received by Christina Pushaw via any WhatsApp accounts within her custody or control that relate to the following matters:

21.3.1. Any investigation relating to the suspension of State Attorney Andrew Warren;

To Executive Office of Governor Ron DeSantis  
Page 18 of 42

- 21.3.2. Communications transmitted to, or received from, Taryn Fenske, Governor Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;
- 21.3.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.
- 21.4. *Signal*. All electronic messages sent and received by Christina Pushaw via any Signal accounts within her custody or control that relate to the following matters:
- 21.4.1. Any investigation relating to the suspension of State Attorney Andrew Warren;
- 21.4.2. Communications transmitted to, or received from, Taryn Fenske, Governor Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;
- 21.4.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.
- 21.5. *Twitter*. All electronic messages, including direct messages, sent and received by Christina Pushaw via any Twitter accounts within her custody or control that relate to the following matters:
- 21.5.1. Any investigation relating to the suspension of State Attorney Andrew Warren;
- 21.5.2. Communications transmitted to, or received from, Taryn Fenske, Governor Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;
- 21.5.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian

To Executive Office of Governor Ron DeSantis  
Page 19 of 42

Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.

21.6. *Instagram*. All electronic messages, including direct messages, sent and received by Christina Pushaw via any Instagram accounts within her custody or control that relate to the following matters:

21.6.1. Any investigation relating to the suspension of State Attorney Andrew Warren;

21.6.2. Communications transmitted to, or received from, Taryn Fenske, Governor Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;

21.6.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.

21.7. *Truth Social*. All electronic messages, including direct messages, sent and received by Christina Pushaw via any Truth Social accounts within her custody or control that relate to the following matters:

21.7.1. Any investigation relating to the suspension of State Attorney Andrew Warren;

21.7.2. Communications transmitted to, or received from, Taryn Fenske, Governor Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;

21.7.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.

21.8. *Microsoft Teams*. All electronic messages, including the messages in the chat function, sent and received by Christina Pushaw via any Microsoft Teams accounts within her custody or control that relate to the following matters:

21.8.1. Any investigation relating to the suspension of State Attorney Andrew Warren;

To Executive Office of Governor Ron DeSantis  
Page 20 of 42

- 21.8.2. Communications transmitted to, or received from, Taryn Fenske, Governor Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;
- 21.8.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.
- 21.9. *Zoom*. All electronic messages, including the messages in the chat function, sent and received by Christina Pushaw via any Zoom accounts within her custody or control that relate to the following matters:
  - 21.9.1. Any investigation relating to the suspension of State Attorney Andrew Warren;
  - 21.9.2. Communications transmitted to, or received from, Taryn Fenske, Governor Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;
  - 21.9.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.
- 21.10. *Telegram*. All electronic messages sent and received by Christina Pushaw via any Telegram accounts within her custody or control that relate to the following matters:
  - 21.10.1. Any investigation relating to the suspension of State Attorney Andrew Warren;
  - 21.10.2. Communications transmitted to, or received from, Taryn Fenske, Governor Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;
  - 21.10.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian

To Executive Office of Governor Ron DeSantis  
Page 21 of 42

Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.

**22. Results of keyword Boolean searches of all emails the within the custody or control of Christina Pushaw.** In their native format with all metadata preserved, the results of certain keyword Boolean searches of all sent and received emails, all archived emails, all deleted emails still on the server, and all emails still present in all inboxes within the custody or control of Christina Pushaw for the limited period of January 1, 2022 to August 25, 2022:

- 22.1. "Andrew Warren"
- 22.2. "Susan Lopez"
- 22.3. Chronister
- 22.4. Beltran
- 22.5. Nocco
- 22.6. Judd
- 22.7. Dugan

This request extends to copies of all electronic messages that may be recoverable from the devices' local hard drive, remote servers, any removable media (*e.g.* external hard drives, thumb drives, *et cetera*), back up tapes, and deleted documents within forensically accessible areas of the devices.

**RECORDS GENERATED OR RECEIVED BY DEPUTY CHIEF OF STAFF MELISSA SMITH**

**23. Letters, memoranda, and reports.** All tangible letters, memoranda, and reports (including drafts thereof) within the custody or control of Melissa Smith relating to the following:

- 23.1. Any investigation relating to the suspension of State Attorney Andrew Warren;
- 23.2. Communications transmitted to, or received from, Taryn Fenske, Christina Pushaw, Governor Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;
- 23.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.



To Executive Office of Governor Ron DeSantis  
Page 22 of 42

**24. Electronic documents and messages on publicly owned devices. In native format with all metadata preserved,** all electronic documents and messages generated, sent, and received by Melissa Smith between January 1, 2021 and August 25, 2022 on the hard drives of any publicly owned devices that relate to the following matters:

- 24.1. Any investigation relating to the suspension of State Attorney Andrew Warren;
- 24.2. Communications transmitted to, or received from, Taryn Fenske, Christina Pushaw, Governor Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;
- 24.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.

This request extends to copies of all electronic messages that may be recoverable from the devices' local hard drive, remote servers, any removable media (*e.g.* external hard drives, thumb drives, *et cetera*), back up tapes, and deleted documents within forensically accessible areas of the devices.

**25. Electronic messages on privately owned communications devices. In native format with all metadata preserved,** all electronic documents and messages generated, sent, and received by Melissa Smith between January 1, 2021 and August 25, 2022 on the hard drives of any personal electronic devices that relate to the following matters:

- 25.1. Any investigation relating to the suspension of State Attorney Andrew Warren;
- 25.2. Communications transmitted to, or received from, Taryn Fenske, Christina Pushaw, Governor Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;
- 25.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.

This request extends to copies of all electronic messages that may be recoverable from the devices' local hard drive, remote servers, any removable media (*e.g.* external hard drives,

To Executive Office of Governor Ron DeSantis  
Page 23 of 42

thumb drives, *et cetera*), back up tapes, and deleted documents within forensically accessible areas of the devices.

**26. Phone log.** Log of all calls generated and received from Melissa Smith's publicly owned communication device (and to the extent it was used to conduct public business, her private communication device) between August 1, 2022 and August 5, 2022.

**27. Electronic messages on cloud-based communications fora.** In native format with all metadata preserved, all electronic messages sent and received by Melissa Smith via any electronic communication media platform between January 1, 2021 and August 25, 2022, whatsoever, that relate to the potential suspension, and eventual suspension, of State Attorney Andrew Warren. These include, but are not limited to, the following:

**27.1. iMessage.** All electronic messages sent and received by Melissa Smith via any iMessage accounts within her custody or control that relate that relate to the following matters:

27.1.1. Any investigation relating to the suspension of State Attorney Andrew Warren;

27.1.2. Communications transmitted to, or received from, Christina Pushaw, Taryn Fenske, Governor Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;

27.1.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.

**27.2. Facebook Messenger.** All electronic messages sent and received by Melissa Smith via any Facebook Messenger accounts within her custody or control that relate to the following matters:

27.2.1. Any investigation relating to the suspension of State Attorney Andrew Warren;

27.2.2. Communications transmitted to, or received from, Christina Pushaw, Taryn Fenske, Governor Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;

27.2.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian

To Executive Office of Governor Ron DeSantis  
Page 24 of 42

Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.

27.3. *WhatsApp*. All electronic messages sent and received by Melissa Smith via any WhatsApp accounts within her custody or control that relate to the following matters:

27.3.1. Any investigation relating to the suspension of State Attorney Andrew Warren;

27.3.2. Communications transmitted to, or received from, Christina Pushaw, Taryn Fenske, Governor Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;

27.3.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.

27.4. *Signal*. All electronic messages sent and received by Melissa Smith via any Signal accounts within her custody or control that relate to the following matters:

27.4.1. Any investigation relating to the suspension of State Attorney Andrew Warren;

27.4.2. Communications transmitted to, or received from, Christina Pushaw, Taryn Fenske, Governor Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;

27.4.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.

27.5. *Twitter*. All electronic messages, including direct messages, sent and received by Melissa Smith via any Twitter accounts within her custody or control that relate to the following matters:

27.5.1. Any investigation relating to the suspension of State Attorney Andrew Warren;

27.5.2. Communications transmitted to, or received from, Christina Pushaw, Taryn Fenske, Governor Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney

To Executive Office of Governor Ron DeSantis  
Page 25 of 42

General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;

27.5.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.

27.6. *Instagram*. All electronic messages, including direct messages, sent and received by Melissa Smith via any Instagram accounts within her custody or control that relate to the following matters:

27.6.1. Any investigation relating to the suspension of State Attorney Andrew Warren;

27.6.2. Communications transmitted to, or received from, Christina Pushaw, Taryn Fenske, Governor Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;

27.6.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.

27.7. *Truth Social*. All electronic messages, including direct messages, sent and received by Melissa Smith via any Truth Social accounts within her custody or control that relate to the following matters:

27.7.1. Any investigation relating to the suspension of State Attorney Andrew Warren;

27.7.2. Communications transmitted to, or received from, Christina Pushaw, Taryn Fenske, Governor Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;

27.7.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.

To Executive Office of Governor Ron DeSantis  
Page 26 of 42

27.8. *Microsoft Teams*. All electronic messages, including the messages in the chat function, sent and received by Melissa Smith via any Microsoft Teams accounts within her custody or control that relate to the following matters:

27.8.1. Any investigation relating to the suspension of State Attorney Andrew Warren;

27.8.2. Communications transmitted to, or received from, Christina Pushaw, Taryn Fenske, Governor Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;

27.8.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.

27.9. *Zoom*. All electronic messages, including the messages in the chat function, sent and received by Melissa Smith via any Zoom accounts within her custody or control that relate to the following matters:

27.9.1. Any investigation relating to the suspension of State Attorney Andrew Warren;

27.9.2. Communications transmitted to, or received from, Christina Pushaw, Taryn Fenske, Governor Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;

27.9.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.

27.10. *Telegram*. All electronic messages sent and received by Melissa Smith via any Telegram accounts within her custody or control that relate to the following matters:

27.10.1. Any investigation relating to the suspension of State Attorney Andrew Warren;

27.10.2. Communications transmitted to, or received from, Christina Pushaw, Taryn Fenske, Governor Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran

To Executive Office of Governor Ron DeSantis  
Page 27 of 42

(or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;

27.10.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.

**28. Melissa Smith's calendar.** In its native format with all metadata preserved, an electronic copy of Melissa Smith's Microsoft Outlook Calendar (or equivalent) for the following months:

- 28.1. *August 2022;*
- 28.2. *July 2022;*
- 28.3. *June 2022;*
- 28.4. *May 2022;*
- 28.5. *April 2022;*
- 28.6. *March 2022;*
- 28.7. *February 2022; and,*
- 28.8. *January 2022.*

**29. Results of keyword Boolean searches of all emails the within the custody or control of Melissa Smith.** In their native format with all metadata preserved, the results of certain keyword Boolean searches of all sent and received emails, all archived emails, all deleted emails still on the server, and all emails still present in all inboxes within the custody or control of Melissa Smith for the limited period of January 1, 2022 to August 25, 2022:

- 29.1. "Andrew Warren"
- 29.2. "Susan Lopez"
- 29.3. Chronister
- 29.4. Beltran
- 29.5. Nocco
- 29.6. Judd
- 29.7. Dugan

This request extends to copies of all electronic messages that may be recoverable from the devices' local hard drive, remote servers, any removable media (e.g. external hard drives,

To Executive Office of Governor Ron DeSantis  
Page 28 of 42

thumb drives, *et cetera*), back up tapes, and deleted documents within forensically accessible areas of the devices.

RECORDS GENERATED OR RECEIVED BY CHIEF OF STAFF JAMES UTHMEIER

**30. Letters, memoranda, and reports.** All tangible letters, memoranda, and reports (including drafts thereof) within the custody or control of James Uthmeier relating to the following:

- 30.1. Any investigation relating to the suspension of State Attorney Andrew Warren;
- 30.2. Communications transmitted to, or received from, Taryn Fenske, Christina Pushaw, Melissa Smith, Gov. Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;
- 30.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.

**31. Electronic documents and messages on publicly owned devices.** In native format with all metadata preserved, all electronic documents and messages generated, sent, and received by James Uthmeier between January 1, 2021 and August 25, 2022 on the hard drives of any publicly owned devices that relate to the following matters:

- 31.1. Any investigation relating to the suspension of State Attorney Andrew Warren;
- 31.2. Communications transmitted to, or received from, Taryn Fenske, Christina Pushaw, Melissa Smith, Gov. Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;
- 31.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.

This request extends to copies of all electronic messages that may be recoverable from the devices' local hard drive, remote servers, any removable media (*e.g.* external hard drives, thumb drives, *et cetera*), back up tapes, and deleted documents within forensically accessible areas of the devices.

To Executive Office of Governor Ron DeSantis  
Page 29 of 42

**32. Electronic messages on privately owned communications devices.** In native format with all metadata preserved, all electronic documents and messages generated, sent, and received by James Uthmeier between January 1, 2021 and August 25, 2022 on the hard drives of any personal electronic devices that relate to the following matters:

- 32.1. Any investigation relating to the suspension of State Attorney Andrew Warren;
- 32.2. Communications transmitted to, or received from, Taryn Fenske, Christina Pushaw, Melissa Smith, Gov. Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;
- 32.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.

This request extends to copies of all electronic messages that may be recoverable from the devices' local hard drive, remote servers, any removable media (*e.g.* external hard drives, thumb drives, *et cetera*), back up tapes, and deleted documents within forensically accessible areas of the devices.

**33. Phone log.** Log of all calls generated and received from James Uthmeier's publicly owned communication device (and to the extent it was used to conduct public business, his private communication device) between August 1, 2022 and August 5, 2022.

**34. Electronic messages on cloud-based communications fora.** In native format with all metadata preserved, all electronic messages sent and received by James Uthmeier via any electronic communication media platform between January 1, 2021 and August 25, 2022, whatsoever, that relate to the potential suspension, and eventual suspension, of State Attorney Andrew Warren. These include, but are not limited to, the following:

- 34.1. *iMessage*. All electronic messages sent and received by James Uthmeier via any iMessage accounts within his custody or control that relate that relate to the following matters:
  - 34.1.1. Any investigation relating to the suspension of State Attorney Andrew Warren;
  - 34.1.2. Communications transmitted to, or received from, Taryn Fenske, Christina Pushaw, Melissa Smith, Gov. Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents),



To Executive Office of Governor Ron DeSantis  
Page 30 of 42

Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;

- 34.1.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.
- 34.2. *Facebook Messenger*. All electronic messages sent and received by James Uthmeier via any Facebook Messenger accounts within his custody or control that relate to the following matters:
  - 34.2.1. Any investigation relating to the suspension of State Attorney Andrew Warren;
  - 34.2.2. Communications transmitted to, or received from, Taryn Fenske, Christina Pushaw, Melissa Smith, Gov. Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;
  - 34.2.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.
- 34.3. *WhatsApp*. All electronic messages sent and received by James Uthmeier via any WhatsApp accounts within his custody or control that relate to the following matters:
  - 34.3.1. Any investigation relating to the suspension of State Attorney Andrew Warren;
  - 34.3.2. Communications transmitted to, or received from, Taryn Fenske, Christina Pushaw, Melissa Smith, Gov. Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;
  - 34.3.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan

To Executive Office of Governor Ron DeSantis  
Page 31 of 42

Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.

34.4. *Signal*. All electronic messages sent and received by James Uthmeier via any Signal accounts within his custody or control that relate to the following matters:

34.4.1. Any investigation relating to the suspension of State Attorney Andrew Warren;

34.4.2. Communications transmitted to, or received from, Taryn Fenske, Christina Pushaw, Melissa Smith, Gov. Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;

34.4.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.

34.5. *Twitter*. All electronic messages, including direct messages, sent and received by James Uthmeier via any Twitter accounts within his custody or control that relate to the following matters:

34.5.1. Any investigation relating to the suspension of State Attorney Andrew Warren;

34.5.2. Communications transmitted to, or received from, Taryn Fenske, Christina Pushaw, Melissa Smith, Gov. Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;

34.5.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.

34.6. *Instagram*. All electronic messages, including direct messages, sent and received by James Uthmeier via any Instagram accounts within his custody or control that relate to the following matters:

To Executive Office of Governor Ron DeSantis  
Page 32 of 42

- 34.6.1. Any investigation relating to the suspension of State Attorney Andrew Warren;
  - 34.6.2. Communications transmitted to, or received from, Taryn Fenske, Christina Pushaw, Melissa Smith, Gov. Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;
  - 34.6.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.
- 34.7. *Truth Social*. All electronic messages, including direct messages, sent and received by James Uthmeier via any Truth Social accounts within his custody or control that relate to the following matters:
- 34.7.1. Any investigation relating to the suspension of State Attorney Andrew Warren;
  - 34.7.2. Communications transmitted to, or received from, Taryn Fenske, Christina Pushaw, Melissa Smith, Gov. Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;
  - 34.7.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.
- 34.8. *Microsoft Teams*. All electronic messages, including the messages in the chat function, sent and received by James Uthmeier via any Microsoft Teams accounts within his custody or control that relate to the following matters:
- 34.8.1. Any investigation relating to the suspension of State Attorney Andrew Warren;
  - 34.8.2. Communications transmitted to, or received from, Taryn Fenske, Christina Pushaw, Melissa Smith, Gov. Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris

To Executive Office of Governor Ron DeSantis  
Page 33 of 42

Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;

34.8.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.

34.9. *Zoom*. All electronic messages, including the messages in the chat function, sent and received by James Uthmeier via any Zoom accounts within his custody or control that relate to the following matters:

34.9.1. Any investigation relating to the suspension of State Attorney Andrew Warren;

34.9.2. Communications transmitted to, or received from, Taryn Fenske, Christina Pushaw, Melissa Smith, Gov. Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;

34.9.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.

34.10. *Telegram*. All electronic messages sent and received by James Uthmeier via any Telegram accounts within his custody or control that relate to the following matters:

34.10.1. Any investigation relating to the suspension of State Attorney Andrew Warren;

34.10.2. Communications transmitted to, or received from, Taryn Fenske, Christina Pushaw, Melissa Smith, Gov. Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;

To Executive Office of Governor Ron DeSantis  
Page 34 of 42

34.10.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.

**35. James Uthmeier's calendar.** In its native format with all metadata preserved, an electronic copy of James Uthmeier's Microsoft Outlook Calendar (or equivalent) for the following months:

- 35.1. *August 2022;*
- 35.2. *July 2022;*
- 35.3. *June 2022;*
- 35.4. *May 2022;*
- 35.5. *April 2022;*
- 35.6. *March 2022;*
- 35.7. *February 2022; and,*
- 35.8. *January 2022.*

**36. Results of keyword Boolean searches of all emails the within the custody or control of James Uthmeier.** In their native format with all metadata preserved, the results of certain keyword Boolean searches of all sent and received emails, all archived emails, all deleted emails still on the server, and all emails still present in all inboxes within the custody or control of James Uthmeier for the limited period of January 1, 2022 to August 25, 2022:

- 36.1. "Andrew Warren"
- 36.2. "Susan Lopez"
- 36.3. Chronister
- 36.4. Beltran
- 36.5. Nocco
- 36.6. Judd
- 36.7. Dugan

This request extends to copies of all electronic messages that may be recoverable from the devices' local hard drive, remote servers, any removable media (*e.g.* external hard drives, thumb drives, *et cetera*), back up tapes, and deleted documents within forensically accessible

To Executive Office of Governor Ron DeSantis  
Page 35 of 42

areas of the devices.

RECORDS GENERATED OR RECEIVED BY FRED PICCOLO

**37. Letters, memoranda, and reports.** All tangible letters, memoranda, and reports (including drafts thereof) within the custody or control of Fred Piccolo relating to the following:

- 37.1. Any investigation relating to the suspension of State Attorney Andrew Warren;
- 37.2. Communications transmitted to, or received from, Taryn Fenske, Christina Pushaw, Melissa Smith, James Uthmeier, Gov. Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;
- 37.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.

**38. Electronic documents and messages on publicly owned devices.** In their native format with all metadata preserved, all electronic documents and messages generated, sent, and received by Fred Piccolo between January 1, 2021 and August 25, 2022 on the hard drives of any publicly owned devices that relate to the following matters:

- 38.1. Any investigation relating to the suspension of State Attorney Andrew Warren;
- 38.2. Communications transmitted to, or received from, Taryn Fenske, Christina Pushaw, Melissa Smith, James Uthmeier, Gov. Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;
- 38.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.

This request extends to copies of all electronic messages that may be recoverable from the devices' local hard drive, remote servers, any removable media (*e.g.* external hard drives, thumb drives, *et cetera*), back up tapes, and deleted documents within forensically accessible areas of the devices.

To Executive Office of Governor Ron DeSantis  
Page 36 of 42

**39. Electronic messages on privately owned communications devices.** In native format with all metadata preserved, all electronic documents and messages generated, sent, and received by Fred Piccolo between January 1, 2021 and August 25, 2022 on the hard drives of any personal electronic devices that relate to the following matters:

- 39.1. Any investigation relating to the suspension of State Attorney Andrew Warren;
- 39.2. Communications transmitted to, or received from, Taryn Fenske, Christina Pushaw, Melissa Smith, James Uthmeier, Gov. Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;
- 39.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.

This request extends to copies of all electronic messages that may be recoverable from the devices' local hard drive, remote servers, any removable media (*e.g.* external hard drives, thumb drives, *et cetera*), back up tapes, and deleted documents within forensically accessible areas of the devices.

**40. Phone log.** Log of all calls generated and received from Fred Piccolo's publicly owned communication device (and to the extent it was used to conduct public business, his private communication device) between August 1, 2022 and August 5, 2022.

**41. Electronic messages on cloud-based communications fora.** In native format with all metadata preserved, all electronic messages sent and received by Fred Piccolo via any electronic communication media platform between January 1, 2021 and August 25, 2022, whatsoever, that relate to the potential suspension, and eventual suspension, of State Attorney Andrew Warren. These include, but are not limited to, the following:

- 41.1. *iMessage*. All electronic messages sent and received by Fred Piccolo via any iMessage accounts within his custody or control that relate that relate to the following matters:
  - 41.1.1. Any investigation relating to the suspension of State Attorney Andrew Warren;
  - 41.1.2. Communications transmitted to, or received from, Taryn Fenske, Christina Pushaw, Melissa Smith, James Uthmeier, Gov. Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;

To Executive Office of Governor Ron DeSantis  
Page 37 of 42

- 41.1.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.
- 41.2. *Facebook Messenger*. All electronic messages sent and received by Fred Piccolo via any Facebook Messenger accounts within his custody or control that relate to the following matters:
  - 41.2.1. Any investigation relating to the suspension of State Attorney Andrew Warren;
  - 41.2.2. Communications transmitted to, or received from, Taryn Fenske, Christina Pushaw, Melissa Smith, James Uthmeier, Gov. Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;
  - 41.2.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.
- 41.3. *WhatsApp*. All electronic messages sent and received by Fred Piccolo via any WhatsApp accounts within his custody or control that relate to the following matters:
  - 41.3.1. Any investigation relating to the suspension of State Attorney Andrew Warren;
  - 41.3.2. Communications transmitted to, or received from, Taryn Fenske, Christina Pushaw, Melissa Smith, James Uthmeier, Gov. Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;
  - 41.3.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.



To Executive Office of Governor Ron DeSantis  
Page 38 of 42

41.4. *Signal*. All electronic messages sent and received by Fred Piccolo via any Signal accounts within his custody or control that relate to the following matters:

41.4.1. Any investigation relating to the suspension of State Attorney Andrew Warren;

41.4.2. Communications transmitted to, or received from, Taryn Fenske, Christina Pushaw, Melissa Smith, James Uthmeier, Gov. Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;

41.4.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.

41.5. *Twitter*. All electronic messages, including direct messages, sent and received by Fred Piccolo via any Twitter accounts within his custody or control that relate to the following matters:

41.5.1. Any investigation relating to the suspension of State Attorney Andrew Warren;

41.5.2. Communications transmitted to, or received from, Taryn Fenske, Christina Pushaw, Melissa Smith, James Uthmeier, Gov. Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;

41.5.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.

41.6. *Instagram*. All electronic messages, including direct messages, sent and received by Fred Piccolo via any Instagram accounts within his custody or control that relate to the following matters:

41.6.1. Any investigation relating to the suspension of State Attorney Andrew Warren;

To Executive Office of Governor Ron DeSantis  
Page 39 of 42

- 41.6.2. Communications transmitted to, or received from, Taryn Fenske, Christina Pushaw, Melissa Smith, James Uthmeier, Gov. Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;
- 41.6.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.
- 41.7. *Truth Social*. All electronic messages, including direct messages, sent and received by Fred Piccolo via any Truth Social accounts within his custody or control that relate to the following matters:
  - 41.7.1. Any investigation relating to the suspension of State Attorney Andrew Warren;
  - 41.7.2. Communications transmitted to, or received from, Taryn Fenske, Christina Pushaw, Melissa Smith, James Uthmeier, Gov. Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;
  - 41.7.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.
- 41.8. *Microsoft Teams*. All electronic messages, including the messages in the chat function, sent and received by Fred Piccolo via any Microsoft Teams accounts within his custody or control that relate to the following matters:
  - 41.8.1. Any investigation relating to the suspension of State Attorney Andrew Warren;
  - 41.8.2. Communications transmitted to, or received from, Taryn Fenske, Christina Pushaw, Melissa Smith, James Uthmeier, Gov. Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;

To Executive Office of Governor Ron DeSantis  
Page 40 of 42

agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;

41.8.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.

41.9. *Zoom*. All electronic messages, including the messages in the chat function, sent and received by Fred Piccolo via any Zoom accounts within his custody or control that relate to the following matters:

41.9.1. Any investigation relating to the suspension of State Attorney Andrew Warren;

41.9.2. Communications transmitted to, or received from, Taryn Fenske, Christina Pushaw, Melissa Smith, James Uthmeier, Gov. Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;

41.9.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.

41.10. *Telegram*. All electronic messages sent and received by Fred Piccolo via any Telegram accounts within his custody or control that relate to the following matters:

41.10.1. Any investigation relating to the suspension of State Attorney Andrew Warren;

41.10.2. Communications transmitted to, or received from, Taryn Fenske, Christina Pushaw, Melissa Smith, James Uthmeier, Gov. Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;

41.10.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan

To Executive Office of Governor Ron DeSantis  
Page 41 of 42

Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.

**42. Fred Piccolo's calendar.** In its native format with all metadata preserved, an electronic copy of Fred Piccolo's Microsoft Outlook Calendar (or equivalent) for the following months:

- 42.1. *August 2022;*
- 42.2. *July 2022;*
- 42.3. *June 2022;*
- 42.4. *May 2022;*
- 42.5. *April 2022;*
- 42.6. *March 2022;*
- 42.7. *February 2022; and,*
- 42.8. *January 2022.*

**43. Results of keyword Boolean searches of all emails the within the custody or control of Fred Piccolo.** In their native format with all metadata preserved, the results of certain keyword Boolean searches of all sent and received emails, all archived emails, all deleted emails still on the server, and all emails still present in all inboxes within the custody or control of Fred Piccolo for the limited period of January 1, 2022 to August 25, 2022:

- 43.1. "Andrew Warren"
- 43.2. "Susan Lopez"
- 43.3. Chronister
- 43.4. Beltran
- 43.5. Nocco
- 43.6. Judd
- 43.7. Dugan

This request extends to copies of all electronic messages that may be recoverable from the devices' local hard drive, remote servers, any removable media (*e.g.* external hard drives, thumb drives, *et cetera*), back up tapes, and deleted documents within forensically accessible areas of the devices.

To Executive Office of Governor Ron DeSantis  
Page 42 of 42

We appreciate your prompt attention and diligence in responding to these requests. If you contend that all or part of a record is exempt or confidential from disclosure, we request that you state in writing and with particularity the reasons for the conclusion that the record is exempt or confidential, including a citation to the specific exemption. Furthermore, if an exemption applies only to a portion of a record, we expect you to redact only the exempted portion and produce the remainder.

Please call me at (813) 347-5115 or e-mail me at [ldougherty@guerraking.com](mailto:ldougherty@guerraking.com) if you have a question about the foregoing.

Very truly yours,



Lawrence J. Dougherty

LJD/CG



GUERRA KING

Lawrence J. "Larry" Dougherty  
Direct Dial (813) 347-5115  
[ldougherty@guerraking.com](mailto:ldougherty@guerraking.com)

October 5, 2022

**VIA E-MAIL** [desantis.opengov@eo.state.fl.us](mailto:desantis.opengov@eo.state.fl.us)

Executive Office of Governor Ron DeSantis  
Attn: Office of Open Government  
400 S Monroe St.  
Suite 209  
Tallahassee, FL 32399

**Re: Request for Public Records**

Dear Public Records Custodian:

Pursuant to Article I, Section 24 of Florida's Constitution, and in accordance with Executive Order 19-11, I respectfully request copies of the following public records as that term is defined by § 119.011(12), Florida Statutes:

**RECORDS GENERATED OR RECEIVED BY PUBLIC SAFETY CZAR LARRY KEEFE**

**44. Letters, memoranda, and reports.** All tangible letters, memoranda, and reports (including drafts thereof) within the custody or control of Larry Keefe relating to the following:

- 44.1. Any investigation relating to the suspension of State Attorney Andrew Warren;
- 44.2. Communications transmitted to, or received from, Taryn Fenske, Christina Pushaw, Melissa Smith, Gov. Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;
- 44.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.

To Executive Office of Governor Ron DeSantis  
Page 2 of 11

- 44.4. The planning, coordination, and execution of the arrests of approximately 20 ex-felons that was announced on August 18, 2022.
- 44.5. The planning, coordination, and execution of the suspension of Broward School Board Members Patricia Good, Donna Korn, Ann Murray and Laurie Rich Levinson announced on August 26, 2022.
- 44.6. The planning, coordination, and execution of the September 14, 2022 flights of Venezuelan asylum seekers to Martha's Vineyard, Massachusetts.
- 45. Electronic documents and messages on publicly owned devices.** In native format with all metadata preserved, all electronic documents and messages generated, sent, and received by Larry Keefe between January 1, 2021 and October 4, 2022 on the hard drives of any publicly owned devices that relate to the following matters:
- 45.1. Any investigation relating to the suspension of State Attorney Andrew Warren;
- 45.2. Communications transmitted to, or received from, Taryn Fenske, Christina Pushaw, Melissa Smith, Gov. Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;
- 45.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.
- 45.4. The planning, coordination, and execution of the arrests of approximately 20 ex-felons that was announced on August 18, 2022.
- 45.5. The planning, coordination, and execution of the suspension of Broward School Board Members Patricia Good, Donna Korn, Ann Murray and Laurie Rich Levinson announced on August 26, 2022.
- 45.6. The planning, coordination, and execution of the September 14, 2022 flights of Venezuelan asylum seekers to Martha's Vineyard, Massachusetts.
- This request extends to copies of all electronic messages that may be recoverable from the devices' local hard drive, remote servers, any removable media (*e.g.* external hard drives, thumb drives, *et cetera*), back up tapes, and deleted documents within forensically accessible areas of the devices.

- 46. Electronic messages on privately owned communications devices.** In native format with all metadata preserved, all electronic documents and messages generated, sent, and received by

To Executive Office of Governor Ron DeSantis  
Page 3 of 11

Larry Keefe between January 1, 2021 and October 4, 2022 on the hard drives of any personal electronic devices that relate to the following matters:

- 46.1. Any investigation relating to the suspension of State Attorney Andrew Warren;
- 46.2. Communications transmitted to, or received from, Taryn Fenske, Christina Pushaw, Melissa Smith, Gov. Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;
- 46.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.
- 46.4. The planning, coordination, and execution of the arrests of approximately 20 ex-felons that was announced on August 18, 2022.
- 46.5. The planning, coordination, and execution of the suspension of Broward School Board Members Patricia Good, Donna Korn, Ann Murray and Laurie Rich Levinson announced on August 26, 2022.
- 46.6. The planning, coordination, and execution of the September 14, 2022 flights of Venezuelan asylum seekers to Martha's Vineyard, Massachusetts.

This request extends to copies of all electronic messages that may be recoverable from the devices' local hard drive, remote servers, any removable media (*e.g.* external hard drives, thumb drives, *et cetera*), back up tapes, and deleted documents within forensically accessible areas of the devices.

47. **Phone log.** Log of all calls generated and received from Larry Keefe's publicly owned communication device (and to the extent it was used to conduct public business, his private communication device) between August 1, 2022 and October 4, 2022.
48. **Electronic messages on cloud-based communications fora.** In native format with all metadata preserved, all electronic messages sent and received by Larry Keefe via any electronic communication media platform between January 1, 2021 and October 4, 2022, whatsoever, that relate to the following matters:
  - 48.1. *iMessage.* All electronic messages sent and received by Larry Keefe via any iMessage accounts within his custody or control that relate that relate to the following matters:
    - 48.1.1. Any investigation relating to the suspension of State Attorney Andrew Warren;



To Executive Office of Governor Ron DeSantis  
Page 4 of 11

- 48.1.2. Communications transmitted to, or received from, Taryn Fenske, Christina Pushaw, Melissa Smith, Gov. Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;
- 48.1.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.
- 48.1.4. The planning, coordination, and execution of the arrests of approximately 20 ex-felons that was announced on August 18, 2022.
- 48.1.5. The planning, coordination, and execution of the suspension of Broward School Board Members Patricia Good, Donna Korn, Ann Murray and Laurie Rich Levinson announced on August 26, 2022.
- 48.1.6. The planning, coordination, and execution of the September 14, 2022 flights of Venezuelan asylum seekers to Martha's Vineyard, Massachusetts.
- 48.2. *Facebook Messenger*. All electronic messages sent and received by Larry Keefe via any Facebook Messenger accounts within his custody or control that relate to the following matters:
  - 48.2.1. Any investigation relating to the suspension of State Attorney Andrew Warren;
  - 48.2.2. Communications transmitted to, or received from, Taryn Fenske, Christina Pushaw, Melissa Smith, Gov. Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;
  - 48.2.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.

To Executive Office of Governor Ron DeSantis  
Page 5 of 11

- 48.2.4. The planning, coordination, and execution of the arrests of approximately 20 ex-felons that was announced on August 18, 2022.
- 48.2.5. The planning, coordination, and execution of the suspension of Broward School Board Members Patricia Good, Donna Korn, Ann Murray and Laurie Rich Levinson announced on August 26, 2022.
- 48.2.6. The planning, coordination, and execution of the September 14, 2022 flights of Venezuelan asylum seekers to Martha's Vineyard, Massachusetts.
- 48.3. *WhatsApp*. All electronic messages sent and received by Larry Keefe via any WhatsApp accounts within his custody or control that relate to the following matters:
  - 48.3.1. Any investigation relating to the suspension of State Attorney Andrew Warren;
  - 48.3.2. Communications transmitted to, or received from, Taryn Fenske, Christina Pushaw, Melissa Smith, Gov. Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;
  - 48.3.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.
  - 48.3.4. The planning, coordination, and execution of the arrests of approximately 20 ex-felons that was announced on August 18, 2022.
  - 48.3.5. The planning, coordination, and execution of the suspension of Broward School Board Members Patricia Good, Donna Korn, Ann Murray and Laurie Rich Levinson announced on August 26, 2022.
  - 48.3.6. The planning, coordination, and execution of the September 14, 2022 flights of Venezuelan asylum seekers to Martha's Vineyard, Massachusetts.
- 48.4. *Signal*. All electronic messages sent and received by Larry Keefe via any Signal accounts within his custody or control that relate to the following matters:
  - 48.4.1. Any investigation relating to the suspension of State Attorney Andrew Warren;
  - 48.4.2. Communications transmitted to, or received from, Taryn Fenske, Christina Pushaw, Melissa Smith, Gov. Ron DeSantis (or his agents), Sheriff Chad

To Executive Office of Governor Ron DeSantis  
Page 6 of 11

Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;

- 48.4.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.
- 48.4.4. The planning, coordination, and execution of the arrests of approximately 20 ex-felons that was announced on August 18, 2022.
- 48.4.5. The planning, coordination, and execution of the suspension of Broward School Board Members Patricia Good, Donna Korn, Ann Murray and Laurie Rich Levinson announced on August 26, 2022.
- 48.4.6. The planning, coordination, and execution of the September 14, 2022 flights of Venezuelan asylum seekers to Martha's Vineyard, Massachusetts.
- 48.5. *Twitter*. All electronic messages, including direct messages, sent and received by Larry Keefe via any Twitter accounts within his custody or control that relate to the following matters:
  - 48.5.1. Any investigation relating to the suspension of State Attorney Andrew Warren;
  - 48.5.2. Communications transmitted to, or received from, Taryn Fenske, Christina Pushaw, Melissa Smith, Gov. Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;
  - 48.5.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.
  - 48.5.4. The planning, coordination, and execution of the arrests of approximately 20 ex-felons that was announced on August 18, 2022.

To Executive Office of Governor Ron DeSantis  
Page 7 of 11

- 48.5.5. The planning, coordination, and execution of the suspension of Broward School Board Members Patricia Good, Donna Korn, Ann Murray and Laurie Rich Levinson announced on August 26, 2022.
- 48.5.6. The planning, coordination, and execution of the September 14, 2022 flights of Venezuelan asylum seekers to Martha's Vineyard, Massachusetts.
- 48.6. *Instagram*. All electronic messages, including direct messages, sent and received by Larry Keefe via any Instagram accounts within his custody or control that relate to the following matters:
  - 48.6.1. Any investigation relating to the suspension of State Attorney Andrew Warren;
  - 48.6.2. Communications transmitted to, or received from, Taryn Fenske, Christina Pushaw, Melissa Smith, Gov. Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;
  - 48.6.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.
  - 48.6.4. The planning, coordination, and execution of the arrests of approximately 20 ex-felons that was announced on August 18, 2022.
  - 48.6.5. The planning, coordination, and execution of the suspension of Broward School Board Members Patricia Good, Donna Korn, Ann Murray and Laurie Rich Levinson announced on August 26, 2022.
  - 48.6.6. The planning, coordination, and execution of the September 14, 2022 flights of Venezuelan asylum seekers to Martha's Vineyard, Massachusetts.
- 48.7. *Truth Social*. All electronic messages, including direct messages, sent and received by Larry Keefe via any Truth Social accounts within his custody or control that relate to the following matters:
  - 48.7.1. Any investigation relating to the suspension of State Attorney Andrew Warren;
  - 48.7.2. Communications transmitted to, or received from, Taryn Fenske, Christina Pushaw, Melissa Smith, Gov. Ron DeSantis (or his agents), Sheriff Chad

To Executive Office of Governor Ron DeSantis  
Page 8 of 11

Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;

- 48.7.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.
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- 48.7.5. The planning, coordination, and execution of the suspension of Broward School Board Members Patricia Good, Donna Korn, Ann Murray and Laurie Rich Levinson announced on August 26, 2022.
- 48.7.6. The planning, coordination, and execution of the September 14, 2022 flights of Venezuelan asylum seekers to Martha's Vineyard, Massachusetts.
- 48.8. *Microsoft Teams*. All electronic messages, including the messages in the chat function, sent and received by Larry Keefe via any Microsoft Teams accounts within his custody or control that relate to the following matters:
  - 48.8.1. Any investigation relating to the suspension of State Attorney Andrew Warren;
  - 48.8.2. Communications transmitted to, or received from, Taryn Fenske, Christina Pushaw, Melissa Smith, Gov. Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;
  - 48.8.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.
  - 48.8.4. The planning, coordination, and execution of the arrests of approximately 20 ex-felons that was announced on August 18, 2022.

To Executive Office of Governor Ron DeSantis  
Page 9 of 11

- 48.8.5. The planning, coordination, and execution of the suspension of Broward School Board Members Patricia Good, Donna Korn, Ann Murray and Laurie Rich Levinson announced on August 26, 2022.
- 48.8.6. The planning, coordination, and execution of the September 14, 2022 flights of Venezuelan asylum seekers to Martha's Vineyard, Massachusetts.
- 48.9. *Zoom*. All electronic messages, including the messages in the chat function, sent and received by Larry Keefe via any Zoom accounts within his custody or control that relate to the following matters:
  - 48.9.1. Any investigation relating to the suspension of State Attorney Andrew Warren;
  - 48.9.2. Communications transmitted to, or received from, Taryn Fenske, Christina Pushaw, Melissa Smith, Gov. Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;
  - 48.9.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.
  - 48.9.4. The planning, coordination, and execution of the arrests of approximately 20 ex-felons that was announced on August 18, 2022.
  - 48.9.5. The planning, coordination, and execution of the suspension of Broward School Board Members Patricia Good, Donna Korn, Ann Murray and Laurie Rich Levinson announced on August 26, 2022.
  - 48.9.6. The planning, coordination, and execution of the September 14, 2022 flights of Venezuelan asylum seekers to Martha's Vineyard, Massachusetts.
- 48.10. *Telegram*. All electronic messages sent and received by Larry Keefe via any Telegram accounts within his custody or control that relate to the following matters:
  - 48.10.1. Any investigation relating to the suspension of State Attorney Andrew Warren;
  - 48.10.2. Communications transmitted to, or received from, Taryn Fenske, Christina Pushaw, Melissa Smith, Gov. Ron DeSantis (or his agents), Sheriff Chad Chronister (or his agents), Sheriff Grady Judd (or his agents), Sheriff Chris

To Executive Office of Governor Ron DeSantis  
Page 10 of 11

Nocco (or his agents), Attorney General Ashley Moody (or her agents), Representative Michael Beltran (or his agents), Brian Dugan (or his agents), Susan Lopez (or her agents), or Officer Darla Portman (or her agents) concerning State Attorney Andrew Warren;

- 48.10.3. The planning, coordination, and execution of the August 4, 2022 press conference with Governor Ron DeSantis, Representative Michael Beltran, Sheriff Chad Chronister, Sheriff Grady Judd, Sheriff Chris Nocco, Judge Susan Lopez, Brian Dugan, and Attorney General Ashley Moody concerning the suspension of State Attorney Andrew Warren.
- 48.10.4. The planning, coordination, and execution of the arrests of approximately 20 ex-felons that was announced on August 18, 2022.
- 48.10.5. The planning, coordination, and execution of the suspension of Broward School Board Members Patricia Good, Donna Korn, Ann Murray and Laurie Rich Levinson announced on August 26, 2022.
- 48.10.6. The planning, coordination, and execution of the September 14, 2022 flights of Venezuelan asylum seekers to Martha's Vineyard, Massachusetts.

**49. Larry Keefe's calendar.** In its native format with all metadata preserved, an electronic copy of Larry Keefe's Microsoft Outlook Calendar (or equivalent) for the following months:

- 49.1. September 2022;
- 49.2. August 2022;
- 49.3. July 2022;
- 49.4. June 2022;
- 49.5. May 2022;
- 49.6. April 2022;
- 49.7. March 2022;
- 49.8. February 2022; and,
- 49.9. January 2022.

**50. Results of keyword Boolean searches of all emails the within the custody or control of Larry Keefe.** In their native format with all metadata preserved, the results of certain keyword Boolean searches of all sent and received emails, all archived emails, all deleted emails still on the server, and all emails still present in all inboxes within the custody or control of Larry Keefe for the limited period of January 1, 2022 to October 4, 2022:

To Executive Office of Governor Ron DeSantis  
Page 11 of 11

- 50.1. "Andrew Warren"
- 50.2. "Susan Lopez"
- 50.3. Chronister
- 50.4. Beltran
- 50.5. Nocco
- 50.6. Judd
- 50.7. Dugan
- 50.8. migrant
- 50.9. Martha
- 50.10. Vineyard
- 50.11. Perla
- 50.12. Huerta
- 50.13. Vertol
- 50.14. "voter fraud"
- 50.15. "Broward School Board"

This request extends to copies of all electronic messages that may be recoverable from the devices' local hard drive, remote servers, any removable media (*e.g.* external hard drives, thumb drives, *et cetera*), back up tapes, and deleted documents within forensically accessible areas of the devices.

We appreciate your prompt attention and diligence in responding to these requests. If you contend that all or part of a record is exempt or confidential from disclosure, we request that you state in writing and with particularity the reasons for the conclusion that the record is exempt or confidential, including a citation to the specific exemption. Furthermore, if an exemption applies only to a portion of a record, we expect you to redact only the exempted portion and produce the remainder. Section 119.07(1)(d)–(f), Florida Statutes. Please call me at (813) 347-5115 or e-mail me at [ldougherty@guerraking.com](mailto:ldougherty@guerraking.com) if you have a question about the foregoing.

Very truly yours,



Lawrence J. Dougherty

LJD/CG







Lawrence J. "Larry" Dougherty  
Direct Dial (813) 347-5115  
[ldougherty@guerraking.com](mailto:ldougherty@guerraking.com)

October 31, 2022

**VIA E-MAIL** [desantis.opengov@eog.myflorida.com](mailto:desantis.opengov@eog.myflorida.com)  
Executive Office of Governor Ron DeSantis  
Attn: Office of Open Government  
400 S Monroe St.  
Suite 209  
Tallahassee, FL 32399

**Re: Request for Public Records**

Dear Public Records Custodian:

I am writing pursuant to Florida's Constitution Article I, Section 24, and § 11.0431, Florida Statutes to follow up on my previous public records requests to your office dated August 31, 2022 and October 5, 2022. This request for public records clarifies and supplements those earlier requests:

**RECORDS GENERATED OR RECEIVED BY GOVERNOR RON DESANTIS AND THE EXECUTIVE  
OFFICE OF THE GOVERNOR**

**51. Letters, memoranda, and reports.** All tangible letters, memoranda, and reports (including drafts thereof) within the custody or control of Governor Ron DeSantis and the Executive Office of the Governor between January 1, 2021 and October 31, 2022 relating to the following:

- 51.1. Any investigation relating to the suspension of State Attorney Andrew Warren;
- 51.2. Communications transmitted to, or received from, Andrew Madry concerning State Attorney Andrew Warren, including but not limited to any investigation, report, summary, and memorandum from former law clerk Andrew Madry to Chief Deputy General Counsel Ray Treadwell, including, but not limited to, the memorandum from Andrew Madry to Ray Treadwell dated on or about July 25, 2022.
- 51.3. Any communications or outreach to media related to the suspension of State Attorney Andrew Warren, including, but not limited to, press releases, press statements, article pitches, television segments pitches, reporter interviews, or communications to reporters,

To Executive Office of Governor Ron DeSantis  
Page 2 of 6

including but not limited to all communications with Tucker Carlson (and his agents) regarding the August 4, 2022 segment on his show.

51.4. Any public opinion polling related to the suspension of State Attorney Andrew Warren, including the polling questions, polling results, analysis of polling results, and any communications or documents from any third-party polling organization.

51.5. The planning, coordination, and execution of Governor DeSantis' trip to Montana for the July 4, 2022 holiday weekend, including any meetings, photographs, or communications with Sheriff Chad Chronister (or his agents).

51.6. Any and all text messages, including iMessages, related to the matters discussed in paragraphs 1-50 of the previous requests.

51.7. The application, investigation, candidacy, nomination, selection, and possible or actual appointment of State Representative Michael Beltran by Governor Ron DeSantis to a judgeship on the new Florida 6<sup>th</sup> District Court of Appeal.

**52. Electronic documents and messages on publicly owned devices.** In native format with all metadata preserved, all electronic documents and messages generated, sent, and received by Governor Ron DeSantis between January 1, 2021 and October 31, 2022 on the hard drives of any publicly owned devices that relate to the matters discussed in paragraph 51.

This request extends to copies of all electronic messages that may be recoverable from the devices' local hard drive, remote servers, any removable media (e.g. external hard drives, thumb drives, *et cetera*), back up tapes, and deleted documents within forensically accessible areas of the devices.

**53. Electronic messages on privately owned communications devices.** In native format with all metadata preserved, all electronic documents and messages generated, sent, and received by Governor Ron DeSantis between January 1, 2021 and October 31, 2022 on the hard drives of any publicly owned devices that relate to the matters discussed in paragraph 51.

This request extends to copies of all electronic messages that may be recoverable from the devices' local hard drive, remote servers, any removable media (e.g. external hard drives, thumb drives, *et cetera*), back up tapes, and deleted documents within forensically accessible areas of the devices.

**54. Electronic messages on cloud-based communications fora.** In native format with all metadata preserved, all electronic messages sent and received by Governor Ron DeSantis via any electronic communication media platform between January 1, 2021 and October 31, 2022 on the hard drives of any publicly owned devices that relate to the matters discussed in paragraph 51.

This request extends to copies of all electronic messages that may be recoverable from the devices' local hard drive, remote servers, any removable media (e.g. external hard drives, thumb drives, *et cetera*), back up tapes, and deleted documents within forensically accessible

To Executive Office of Governor Ron DeSantis  
Page 3 of 6

areas of the devices.

RECORDS GENERATED OR RECEIVED BY KYLE LAMB

**55. Letters, memoranda, and reports.** All tangible letters, memoranda, and reports (including drafts thereof) within the custody or control of Kyle Lamb between January 1, 2021 and October 31, 2022 relating to the following:

- 55.1. Any investigation relating to the suspension of State Attorney Andrew Warren;
- 55.2. Communications transmitted to, or received from, Taryn Fenske, Christina Pushaw, Gov. Ron DeSantis (or his agents) or Larry Keefe concerning State Attorney Andrew Warren;
- 55.3. Any communications or outreach to media related to the suspension of State Attorney Andrew Warren, including, but not limited to, press releases, press statements, article pitches, television segments pitches, reporter interviews, or communications to reporters.
- 55.4. Any public opinion polling related to the suspension of State Attorney Andrew Warren, including the polling questions, polling results, analysis of polling results, and any communications or documents from any third-party polling organization.
- 55.5. Any research, survey, polling, statistics, or analytical data regarding the suspension of State Attorney Andrew Warren, George Soros, or the so-called "Soros Plan."

**56. Electronic documents and messages on publicly owned devices.** In their native format with all metadata preserved, all electronic documents and messages generated, sent, and received by Kyle Lamb between January 1, 2022 and October 31, 2022 on the hard drives of any publicly owned devices that relate to the matters discussed in paragraph 55.

This request extends to copies of all electronic messages that may be recoverable from the devices' local hard drive, remote servers, any removable media (*e.g.* external hard drives, thumb drives, *et cetera*), back up tapes, and deleted documents within forensically accessible areas of the devices.

**57. Electronic messages on privately owned communications devices.** In native format with all metadata preserved, all electronic documents and messages generated, sent, and received by Kyle Lamb between January 1, 2022 and October 31, 2022 on the hard drives of any publicly owned devices that relate to the matters discussed in paragraph 55.

This request extends to copies of all electronic messages that may be recoverable from the devices' local hard drive, remote servers, any removable media (*e.g.* external hard drives, thumb drives, *et cetera*), back up tapes, and deleted documents within forensically accessible areas of the devices.

**58. Phone log.** Log of all calls generated and received from Kyle Lamb's publicly owned communication device (and to the extent it was used to conduct public business, his private communication device) between August 1, 2022 and August 5, 2022.

To Executive Office of Governor Ron DeSantis  
Page 4 of 6

**59. Electronic messages on cloud-based communications fora.** In native format with all metadata preserved, all electronic messages sent and received by Kyle Lamb via any electronic communication media platform between January 1, 2022 and October 31, 2022 on the hard drives of any publicly owned devices that relate to the matters discussed in paragraph 55.

59.1. *iMessage*. All electronic messages sent and received by Kyle Lamb via any iMessage accounts within his custody or control that relate to the matters discussed in paragraph 55.

59.2. *Facebook Messenger*. All electronic messages sent and received by Kyle Lamb via any Facebook Messenger accounts within his custody or control relate to the matters discussed in paragraph 55.

59.3. *WhatsApp*. All electronic messages sent and received by Kyle Lamb via any WhatsApp accounts within his custody or control that relate to the matters discussed in paragraph 55.

59.4. *Signal*. All electronic messages sent and received by Kyle Lamb via any Signal accounts within his custody or control that relate to the matters discussed in paragraph 55.

59.5. *Twitter*. All electronic messages, including direct messages, sent and received by Kyle Lamb via any Twitter accounts within his custody or control that relate to the matters discussed in paragraph 55.

59.6. *Instagram*. All electronic messages, including direct messages, sent and received by Kyle Lamb via any Instagram accounts within his custody or control that relate to the matters discussed in paragraph 55.

59.7. *Truth Social*. All electronic messages, including direct messages, sent and received by Kyle Lamb via any Truth Social accounts within his custody or control that relate to the matters discussed in paragraph 55.

59.8. *Microsoft Teams*. All electronic messages, including the messages in the chat function, sent and received by Kyle Lamb via any Microsoft Teams accounts within his custody or control that relate to the matters discussed in paragraph 55.

59.9. *Zoom*. All electronic messages, including the messages in the chat function, sent and received by Kyle Lamb via any Zoom accounts within his custody or control that relate to the matters discussed in paragraph 55.

59.10. *Telegram*. All electronic messages sent and received by Kyle Lamb via any Telegram accounts within his custody or control that relate to the matters discussed in paragraph 55.

**60. Kyle Lamb's calendar.** In its native format with all metadata preserved, an electronic copy of Kyle Lamb's Microsoft Outlook Calendar (or equivalent) for the following months:

60.1. October 2022;

To Executive Office of Governor Ron DeSantis  
Page 5 of 6

- 60.2. September 2022;
- 60.3. August 2022;
- 60.4. July 2022;
- 60.5. June 2022;
- 60.6. May 2022;
- 60.7. April 2022;
- 60.8. March 2022;
- 60.9. February 2022; and,
- 60.10. January 2022.

**61. Results of keyword Boolean searches of all emails the within the custody or control of Kyle Lamb.** In their native format with all metadata preserved, the results of certain keyword Boolean searches of all sent and received emails, all archived emails, all deleted emails still on the server, and all emails still present in all inboxes within the custody or control of Kyle Lamb for the limited period of January 1, 2022 and October 31, 2022:

- 61.1. “Andrew Warren”
- 61.2. “Susan Lopez”
- 61.3. Chronister
- 61.4. Beltran
- 61.5. Nocco
- 61.6. Judd
- 61.7. Dugan
- 61.8. Soros

This request extends to copies of all electronic messages that may be recoverable from the devices’ local hard drive, remote servers, any removable media (*e.g.* external hard drives, thumb drives, *et cetera*), back up tapes, and deleted documents within forensically accessible areas of the devices.

To Executive Office of Governor Ron DeSantis  
Page 6 of 6

We appreciate your prompt attention and diligence in responding to these requests. If you contend that all or part of a record is exempt or confidential from disclosure, we request that you state in writing and with particularity the reasons for the conclusion that the record is exempt or confidential, including a citation to the specific exemption. Furthermore, if an exemption applies only to a portion of a record, we expect you to redact only the exempted portion and produce the remainder.

Please call me at (813) 347-5115 or e-mail me at [ldougherty@guerraking.com](mailto:ldougherty@guerraking.com) if you have a question about the foregoing.

Very truly yours,



Lawrence J. Dougherty

LJD/CG

Filing # 162316725 E-Filed 12/02/2022 07:36:57 PM

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT  
IN AND FOR LEON COUNTY, FLORIDA  
CIVIL DIVISION**

J. DOE, anonymously and individually,  
a/k/a “FloridaSupremeCourtPRR@pro-  
tonmail.com,”

Petitioner,

Case No: 2022-CA-1902

v.

**IMMEDIATE HEARING  
REQUESTED PURSUANT TO  
§ 119.11(1), FLA. STAT.**

GOVERNOR RON DESANTIS, in his  
official capacity as custodian of public  
records, and the EXECUTIVE OFFICE  
OF THE GOVERNOR,

\_\_\_\_\_  
Respondents. /

**PETITIONER’S REPLY**  
**TO RESPONDENTS’ RESPONSE TO ORDER TO SHOW CAUSE**

**Introduction**

There is no polite way to say it: Every argument advanced by Respondents is wrong. Were the Court to accept them, it would render Florida’s Public Records Act meaningless and impotent.

Respondents advance arguments as if Governor DeSantis were the president of the United States. They invite the Court to invent a broad, seemingly absolute executive privilege in Florida law against the required disclosure of public records by trying to cloak records of his official business in a privilege found in the United States Constitution and federal common law.



Governor DeSantis is not the president of the United States, however. He is the governor of the State of Florida. He is bound by the laws of our state. Under those laws, Respondents are required to produce the documents Petitioner has requested. Respondents have unlawfully refused to do, as exemplified perfectly by their response to the Court’s order. In their twenty-three-page response, they cite not one of the 1,159 current exemptions.<sup>1</sup>

Before replying to Respondents’ arguments, Petitioner notes the Court’s statement that it “will review the case and decide whether a hearing is necessary.” (Order at 1.) Respectfully, a hearing is mandatory. Fla. Stat. § 119.11(1) (“Whenever an action is filed to enforce the provisions of this chapter, the court shall set an immediate hearing, giving the case priority over other pending cases.”); *Kline v. Univ. of Florida*, 200 So. 3d 271 (Fla. 1st DCA 2016).

### **Argument**

#### **I. Petitioner is not required to identify him- or herself to enforce article I, section 24, Florida Constitution, and chapter 119, Florida Statutes.**

Respondents’ first argument is that the Court cannot grant mandamus relief or attorney’s fees to an email address. It should not be necessary to say this, but Petitioner is a person, identified by the pseudonym J. Doe. Petitioner included the alias “FloridaSupremeCourtPRR@protonmail.com” to assure Respondents and the

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<sup>1</sup> First Amendment Found., <https://floridafaf.org/>.

Court that Petitioner is the person who made the anonymous request that is the subject of this lawsuit. *See Chandler v. City of Greenacres*, 140 So. 3d 1080, 1083 (Fla. 4th DCA 2014) (“Accepting the well-pled allegations as true, as we must, the petition showed that appellant had sent appellee an e-mail request for documents. No more is required to show standing. We therefore reverse.”). As a person, Petitioner possesses the personal right to mandamus relief.

Respondents rely on Florida Rule of Civil Procedure 1.630(b). However, they omit material language in their quotation of the relevant sentence: “The caption must show the action filed in the name of the plaintiff in all cases ***and not on the relation of the state.***” (Emphasis added.) Respondents can be forgiven for not knowing the development of Florida law and procedure behind this provision. The language was added in 1984. *In re Amendments to Rules of Civil Procedure*, 458 So. 2d 245, 257 (Fla. 1984) (mem.). Things were different before that. As explained in the context of quo warranto:

The writ is brought by the state on relation of someone, usually our Attorney General; but, if he cannot be persuaded to apply for it, any private citizen with a specific personal interest in the alleged usurpation of the office or franchise, whether he be a claimant of the former or adversely affected by the existence or misuse of the latter, can institute the action as relator.

Alto Adams<sup>2</sup> & George J. Miller, *Origins and Current Florida Status of the Extraordinary Writ*s, 4 Fla. L. Rev. 421, 453 (1951).

“[I]n the name of the plaintiff” in rule 1.630(b) refers not to any requirement that the petitioner identify him- or herself, but the capacity in which the suit is brought—in a personal capacity, not on behalf of the state. *See in the name of*, MacMillan Dictionary, <https://www.macmillandictionary.com/us/dictionary/american/in-the-name-of> (definition 1, “representing someone or something”; definition 2: “using the authority given by someone or something”). There simply is no identification requirement in rule 1.630(b).

Florida public-records law actually protects a requester from forced identification, though Respondents minimize the significance of the point. The Fourth District Court of Appeal said in *Chandler*:

We agree with the Attorney General that “[a] person requesting access to or copies of public records, therefore, may not be required to disclose his [or her] name, address, telephone number or the like to the custodian, unless the custodian is required by law to obtain this information prior to releasing the records.” Op. Att’y Gen. Fla. 92-38 (1992) ... ; *see also* Op. Att’y Gen. Fla. (May 27, 2011) (informal opinion) (reiterating that an anonymous requestor may not be forced to disclose his or her name, address, telephone number, or similar identifying information).

....

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<sup>2</sup> When the article was published, Adams had just retired as a justice of the Florida Supreme Court.

[T]he city could not properly condition disclosure of the public records, to the then-anonymous requester on filling out the city’s form and giving an “address or other identifiable source for payment of the associated costs.” ... ***Requiring appellant to provide further identifying information prior to disclosure could have a chilling effect on access to public records and is not required by the Public Records Act.***  
...

140 So. 3d at 1084–85 (emphasis added) (footnote omitted).<sup>3</sup>

If a requestor can request records anonymously, it follows they can enforce the public-records laws the same way. Requiring a requester to identify him- or herself when filing a lawsuit to enforce the law would allow the government to evade the restriction articulated in *Chandler*. All the government would have to do when faced with an anonymous request is sit back hoping that the requester would drop the matter instead of filing a lawsuit forcing him or her to disclose his or her identify.

This Court cannot invent an identification requirement here for the same reason the Fourth District said the government cannot in *Chandler*. Such a requirement would have a chilling effect on the exercise of the right to make anonymous requests.

In self-defeating fashion, Respondents cite federal law to support their argument. Federal law allows anonymous plaintiffs, subject to the court’s discretion. *See, e.g., Doe v. Frank*, 951 F.2d 320 (11th Cir. 1992). So do other jurisdictions. *See generally* 67A C.J.S. *Parties* § 174.

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<sup>3</sup> That the plaintiff in *Chandler* decided to identify himself when he filed a lawsuit was his choice; Petitioner’s choice is to remain anonymous.

But this Court does not have the discretion to deny Petitioner the ability to proceed anonymously. Petitioner has that right per *Chandler*. There is no “continued judicial supervision” problem. Accordingly, the Court must reject Respondents’ first argument.

**II. Petitioner seeks a public record and has not propounded a mere interrogatory.**

In their second argument, Respondents say that Petitioner is not seeking a public record. Distorting the facts, they argue that the request is not sufficiently specific and that, really, Petitioner has propounded an interrogatory.

Here is the request:

Any and all materials, on official devices or personal devices used for official business, in whatever form, including but not limited to call logs, emails, or texts, between or among Governor Ron DeSantis, Casey DeSantis, the governor’s chief of staff, his executive or personal assistants or aides, his general counsel or anyone within the general counsel’s office, the director of appointments or anyone within the director of appointment’s office, and the “six or seven pretty big legal conservative heavyweights” described by the governor in an interview with Hugh Hewitt on August 25, 2022.

Petitioner included a link to the interview as transcribed on Hewitt’s website. *See* Hugh Hewitt, *Florida Governor Ron DeSantis On The Great Biden Give-Away*, HughHewitt.com, <https://hughhewitt.com/florida-governor-ron-desantis-on-the-great-biden-give-away/> (Aug. 25, 2022).

Respondents contend that the request “is not specific in scope or subject matter,” “does not delineate a timeframe when these communications may have

occurred, nor does Petitioner identify the topic of the communications requested, or even the identities of the ‘legal conservative heavyweights.’” (Resp. at 8.)

Balderdash. The governor spoke about the “six or seven pretty big legal conservative heavyweights” during a lengthy answer about his appointments to the Supreme Court of Florida. The governor made three waves of appointments to the Supreme Court: in January 2019 (Lagoa, Luck, and Muñiz), in 2020 (Couriel and Grosshans), and in 2022 (Francis). Thus, the topic and timeframes are clear. Respondents’ suggestion that they could not know what the request was about is not credible. And it is absurd to fault Petitioner for not identifying the heavyweights—the very information Petitioner seeks to piece together from the responsive public records Respondents unlawfully refuse to produce.

Next, Respondents claim that “Petitioner’s request is nothing more than an interrogatory” seeking information that is not itself a public record. (Resp. at 8–9.) Of course Petitioner seeks information. That is the whole point of access to public records. The information sought—the heavyweights’ identities—would be pieced together from the public records.

To make their argument, Respondents perversely rely on Petitioner’s offers to settle this matter. Had they accepted the offers, some of which postdate the Court’s

order and were not responded to,<sup>4</sup> Respondents would have been able to provide the information that would be gleaned from the records without having to conduct a formal, full-blown, time- and resource-consuming search of the EOG’s records.

It should be clear that, without acceptance of the settlement offers, Petitioner would have insisted on Respondents responding to the records request—as Petitioner does in this lawsuit—which was not some kind of interrogatory. Respondents have twisted Petitioner’s good-faith efforts to avoid wasting judicial resources into an alleged “interrogatory.” It’s wrong.

Accordingly, Petitioner did make “a sufficiently specific request for a public record (as opposed to mere information).” (Resp. at 9.) If no responsive records exist, Respondents should say so. The Court must reject Respondents’ second argument.

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<sup>4</sup> Email from Petitioner to Respondents (Nov. 3, 2022) (Exhibit A) (“As I said before, I would like to resolve this matter. I explained in the petition that I filed in the circuit court that it appears we can resolve it, and I filed because of the timing issues and to protect my rights under the PRA. Will the EOG take me up on the offer below for a partial production/disclosure before the election and the rest after? If the EOG does, and I am satisfied with the responses, I will voluntarily dismiss the petition upon the EOG’s complete performance and waive any claim to fees and costs. In the meantime, if the EOG agrees, we can notify the court and ask the judge to vacate the order to show cause and abate the case.”); Email from Petitioner to Respondents (Nov. 22, 2022) (Exhibit A) (“I am reiterating this offer to resolve the matter, with the modification that, since the election has passed, the EOG would have to make a complete production. Please respond to acknowledge receipt of this offer.”).

**III. Petitioner has sufficiently alleged a cause of action for mandamus relief.**

Respondents’ third argument is that Petitioner has not sufficiently alleged a cause of action for mandamus relief because Petitioner has neither established that he or she has a clear legal right to the production of the public records nor that Respondents have an indisputable ministerial duty to produce them. This is a meritless argument.

**A. Petitioner has a clear legal right to the requested records.**

The Florida Constitution provides: “Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution.” Fla. Const. art. I, § 24(a); *see also* Fla. Stat. § 119.07(3)(a) (“Any person shall have the right of access to public records....”).

As already shown above, Petitioner made a public-records request that is sufficiently specific. It is not vague in any way. Petitioner has established that he or she has a clear legal right to the production of the requested records, as conferred upon Petitioner by Florida constitutional and statutory law.

**B. Respondents have an indisputable legal duty to disclose the records.**

Respondents’ position that they do not have an indisputable legal duty is meritless. Since Petitioner’s request is neither vague nor ill defined, Respondents’



seeming assertion that responding to the request requires the exercise of discretion amounts to an argument that every response to any request is discretionary and not subject to mandamus relief.

But the district courts, including the First District Court of Appeal, have long recognized that “mandamus is an appropriate means of compelling compliance” with the public-records law. *Weeks v. Golden*, 764 So. 2d 633, 634 (Fla. 1st DCA 2000) (citing *Smith v. State*, 696 So. 2d 814 (Fla. 2d DCA 1997)); *see also Blackshear v. State*, 115 So. 3d 1093 (Fla. 1st DCA 2013); *Barfield v. City of Tallahassee*, 171 So. 3d 239 (Fla. 1st DCA 2015); *Chandler v. City of Greenacres*, 140 So. 3d 618 (Fla. 4th DCA 2015); *Poole v. City of Port Orange*, 33 So. 3d 739 (Fla. 5th DCA 2010).

They have said: “Disclosure of public records is not a discretionary act; it is a mandatory act.” *Promenade D’Iberville, LLC v. Sundry*, 145 So. 3d 980, 983 (Fla. 1st DCA 2014) (quoting *Mills v. Doyle*, 407 So. 2d 348, 350 (Fla. 4th DCA 1981)); *see also Smith*, 696 So. 2d at 816 (“For purposes of mandamus relief under the public records act, disclosure of public records is a ‘mandatory act.’” (quoting *Mills*)); *Weeks*, 764 So. 2d at 634 (“To the extent that records in his possession are subject to disclosure by law, the State Attorney has a ministerial duty to make them available in response to a proper request...” (citing *Smith*)); *Consumer Rights v. Bradford Cnty.*, 153 So. 3d 394, 397 (Fla. 1st DCA 2014) (“Disclosure of public records is not

a discretionary act, it is mandatory and directed by Chapter 119.” (citing *Promenade*)).

Even before the adoption of article I, section 24, the First District explained this binary ministerial duty:

In most cases, a determination of exemption from the Public Records Act does not involve an exercise of discretion, but merely a comparison of the document in question with the pertinent exemption provision. If the document contains the information specified in the exemption provision, it is exempt; if it does not, it is not exempt and must be made available. In the latter case, because the complainant can show a “clear legal duty” under the Public Records Act to disclose the information, mandamus will lie to compel that ministerial act.<sup>5</sup>

*Fla. Soc. of Newspaper Editors v. Fla. Pub. Serv. Comm’n*, 543 So. 2d 1262, 1264–65 (Fla. 1st DCA 1989) (citing *Gadd v. News-Press Publ’g Co.*, 412 So.2d 894 (Fla. 2d DCA 1982)). There are very few instances when an exemption gives the government discretion so that its duty is not ministerial. *Id.*

Thus, as the Second District Court of Appeal has stated: “[A] petition for writ of mandamus is an appropriate vehicle to challenge the denial of a public records request, *even where an exemption has been asserted*.” *Deeson Media v. City of Tampa*, 291 So. 3d 974, 975 (Fla. 2d DCA 2019) (emphasis added) (footnote

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<sup>5</sup> See also *Town of Manalapan v. Rechler*, 674 So. 2d 789, 790 (Fla. 4th DCA 1996) (“At bar, mandamus was an appropriate remedy to compel the timely production of public records request under Chapter 119. **The production of public records requests is ministerial**, as it is a duty imposed by Chapter 119. Additionally, the Rechlers have a legally vested right to the production of those documents, and **their production is nondiscretionary**.” (emphasis added)).

omitted) (citing *Gonzalez v. State*, 240 So. 3d 99, 101 (Fla. 2d DCA 2018) (quoting *Walton v. Dugger*, 634 So. 2d 1059, 1061–62 (Fla. 1993)); *Lorei v. Smith*, 464 So. 2d 1330, 1331–32 (Fla. 2d DCA 1985); *Gadd*, 412 So. 2d at 895–96).

Respondents have not pointed to any possibly applicable constitutional or statutory exemption that, unlike most exemptions, involves some discretion. *Cf. Fla. Soc. of Newspaper Editors*, 543 So. 2d at 1265. In fact, they have not pointed to ***any exemption at all***, which Petitioner discusses in the next part.

It is clear, then, that Respondents have an indisputable legal duty to produce the requested records. The Court should not join Respondents in their quest to hollow out Florida law on public-records access and mandamus.

The cases Respondents cite are inapposite. In *Florida Agency for Health Care Administration v. Zuckerman Spaeder LLP*, 221 So. 3d 1260, 1263 (Fla. 1st DCA 2017), where a law firm sought records from the Agency for Health Care Administration, the First District Court of Appeal did say: “[T]his Court has recognized a records custodian’s duty to redact exempted portions of public records before they are released. There are numerous categories of records that are [by statutes] exempt from disclosure in a public records request.” (Citations omitted.) The district court then stated later in the opinion:

Here, the elements for mandamus relief were not met. ... [The agency’s] duty to protect exempted information through redaction precedes its duty to provide the documents to Zuckerman. Zuckerman’s right to the records is not absolute. The applicable statute provides that

Zuckerman is not entitled to receive exempted information in connection with a public records request. AHCA's duty is not ministerial, and Zuckerman's right is not indisputable. Mandamus requires both elements to be met.

*Id.* at 1264.

It is likely that *Zuckerman Spaeder* involved exemptions giving the agency a measure of discretion; such a reading harmonizes the district court's statements with the cases stating that mandamus is the appropriate remedy to enforce public-records laws and that the government has a ministerial duty to produce public records. As the First District recognized in *Florida Society of Newspaper Editors*, those are very few. However, the First District did not describe the exemptions the agency in *Zuckerman Spaeder* asserted. *See id.* at 1262 ("The time and effort were expended, in part, to review and redact any confidential information from the documents."). Because of that silence, *Zuckerman Spaeder* is not particularly helpful. *See Shaw v. Jain*, 914 So. 2d 458, 461 (Fla. 1st DCA 2005) ("A prior opinion has precedential value only to the extent that it is possible to determine from the opinion that the material facts are sufficiently similar." (citations omitted)). In any case, Respondents have not pointed to any exemption that may apply.

*Lee County v. State Farm Mutual Automobile Insurance Co.*, 634 So. 2d 250 (Fla. 2d DCA 1994), also is distinguishable. That case involved a request for medical records, which were subject to a specific exemption from production unless the person the records pertained to consented. *Id.* at 250. The county to which the request

was made had “implemented a procedure to ensure that these confidential records were not improperly released.” *Id.* The requester objected to the required procedure, namely, the patient’s notarized signature on all release forms. *Id.* The Second District Court of Appeal said: “The County is statutorily required to protect the confidentiality of the records. We conclude it is reasonable for the County to ensure proper consent before the records are released. This necessarily involves more than a mere ministerial function.” *Id.* at 251.

Here, Respondents do not claim that they implemented and are merely following a procedure, formulated by them exercising their discretion, to ensure compliance with a statutory exemption. No, they object to production at all, which they have no discretion to refuse in the absence of an applicable exemption, which they have not identified.

Petitioner sufficiently alleged that he or she has a clear legal right to the production of the records that are the subject of the request, and that Respondents have an indisputable legal duty to produce them. The Court must, therefore, reject Respondents’ third argument.

**IV. There is no “executive privilege” exemption from article I, section 24, of the Florida Constitution or chapter 119 of the Florida Statutes.**

Less than two months ago in another public-records lawsuit, Respondents admitted that executive privilege was “not yet specifically recognized in Florida”<sup>6</sup>—that it does not exist in Florida law. That is a significant fact given the office of governor has existed since Florida became a state in 1845.

Yet in their fourth argument, Respondents contend that the identities of the “legal conservative heavyweights” are protected by a broad, seemingly absolute executive privilege. This despite article I, section 24, of the Florida Constitution—the constitutional public-records provision—which prescribes the manner of recognizing and creating exemptions to the required disclosure of public records. Respondents fail to identify any specific exemption recognized by the Constitution or enacted by the legislature pursuant to section 24.

Perhaps understanding this, Respondents rely primarily on federal case law and inapposite Florida case law, giving short shrift to section 24. But section 24 and

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<sup>6</sup> Defendants and Third Parties’ Motion to Quash, Motion for Protection from Subpoena for Testimony, and Motion for Emergency Hearing at 6, *Fla. Ctr. for Gov’t Accountability v. DeSantis*, No. 2022 CA 001785 (Fla. 2d Jud. Cir. Oct. 20, 2022); *see also* Governor and J. Alex Kelly’s Motion to Quash & for Protection from Subpoenas Duces Tecum for Deposition at 8, *Fla. Black Voters Matter Capacity Building Inst. v. Byrd*, No. 2002 CA 000666 (Fla. 2d Jud. Cir. Sept. 6, 2022) (same).

chapter 119 of the Florida Statutes<sup>7</sup> are what control. As Respondents conceded in other litigation, there is no executive privilege in Florida. More importantly, even if there were, there is no executive privilege against the disclosure of public records mandated by section 24 and chapter 119.

**A. The historical background of section 24.**

“A citizen’s access to public records is a fundamental constitutional right in Florida.” *Rhea v. Dist. Bd. of Trustees of Santa Fe Coll.*, 109 So. 3d 851, 855 (Fla. 1st DCA 2013) (footnote omitted). The citizens of Florida amended the constitution in 1992 to include this right, codified in section 24. The vote in favor of passage of the proposed amendment was overwhelming, with 83% voting yes. Fla. Div. of Elections, Initiative Information, Access to Public Records and Meetings, <https://dos.elections.myflorida.com/initiatives/initdetail.asp?account=10&seqnum=8>.

The commentary to section 24 provides an illuminating overview of the historical background:

Florida’s public records and open meetings laws have been a matter of statute since 1967. (Earlier requirements for public records had existed for some time.<sup>8</sup>) Those statutes were not designed to apply

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<sup>7</sup> Section 24 gave the legislature the authority to enact laws to enforce the section. Fla. Const. art. I, § 24(c) (“The legislature shall enact laws governing the enforcement of this section....”).

<sup>8</sup> See ch. 5942, at 132, Laws of Fla. (1909), available at [http://edocs.dlis.state.fl.us/fldocs/leg/actsflorida/1909/LOF1909VIP1%20General%20Laws%20\(pt1\).pdf](http://edocs.dlis.state.fl.us/fldocs/leg/actsflorida/1909/LOF1909VIP1%20General%20Laws%20(pt1).pdf).

to the legislative or judicial branches of state government, but were expressly intended to apply throughout the executive branch and to local governments, including counties, municipalities, and districts. The Supreme Court, the Senate and the House of Representatives each provided some form of access to records and proceedings by rule. In 1978, the Constitution Revision Commission proposed elevating these laws to constitutional status and applying them to records and meetings of the Legislature. That proposal was not adopted.

In *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992), the Florida Supreme Court determined that, based on separation of powers requirements, the public records law did not apply to the legislative branch, nor to constitutional officers of the other branches. ***The decision meant that records of legislators, as well as those of the governor and cabinet officers, at least with respect to the exercise of their constitutional powers, were not subject to the law.*** The decision caused a stir among the public and particularly the press. Efforts were quickly begun for constitutional change, which concluded with the successful passage of this amendment.

Fla. Const. art. I, § 24, editors' notes, commentary to 1992 addition (emphasis added).

Clearly, voters intended section 24 to foreclose the argument Respondents make here: that there is some executive privilege against the required disclosure of public records inhering in the governor's exercise of his constitutional powers. (*See* Resp. at 17.) And in adopting section 24, voters necessarily intended to alter separation of powers and relations between the branches of government when it comes to public records.

It is important to note that section 24 became effective July 1, 1993. Respondents' citation of *Parole Commission v. Lockett*, 620 So. 2d 153 (Fla. 1993), is



unavailing because it was decided before the constitutional amendment was effective. In fact, the Supreme Court said: “We note that the public records amendment to article I of the Florida Constitution, approved by the electorate on November 3, 1992, does not become effective until July 1, 1993, and is not an issue in this cause.” *Id.* at 154 n.2. The same is true of the “[m]ost notable” decision Respondents rely on, *State, Department of Health & Rehabilitative Services v. Brooke*, 573 So. 2d 363 (Fla. 1st DCA 1991), and *Girardeau v. State*, 403 So. 2d 513 (Fla. 1st DCA 1981), both decided before the amendment.<sup>9</sup>

**B. The text of section 24.**

With this background in mind, consider the constitutional text, subsection 24(a):

Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. ***This section specifically includes*** the legislative, ***executive***, and judicial branches of government ***and each agency or department created thereunder***; counties,

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<sup>9</sup> Subsection 24(d) states: “All laws that are in effect on July 1, 1993 that limit public access to records or meetings shall remain in force, and such laws apply to records of the legislative and judicial branches, until they are repealed. Rules of court that are in effect on the date of adoption of this section that limit access to records shall remain in effect until they are repealed.” One might argue that this applies to pre-amendment judicial decisions. In context, however, “All laws” naturally refers to statutes. *See Wait v. Fla. Power & Light*, 372 So. 2d 420, 424 (Fla. 1979) (“If the common law privileges are to be included as exemptions, it is up to the legislature, and not this Court, to amend the statute.”).

municipalities, and districts; and each constitutional officer, board, and commission, or entity *created pursuant to law or this Constitution*.

Fla. Const. art. I, § 24(a) (emphasis added).

The text tells us, first, that the constitutional right to public records applies to Respondents. Again, voters’ adoption of section 24 necessarily altered separation of powers for the purposes of public records.

Importantly, the text also tells us what the rules are for exemptions. The only exempted public records are those “exempted pursuant to this section or specifically made confidential by this Constitution.”

The Fifth District Court of Appeal has explained how courts are to interpret section 24:

This constitutional right of public access to government records is virtually unfettered save for certain constitutional and statutory exemptions. As repeatedly recognized by this court and others, *courts must construe the public records law liberally in favor of openness and any exemptions from disclosure are construed narrowly and limited to their designated purpose*.

*Chandler v. City of Sanford*, 121 So. 3d 657, 660 (Fla. 5th DCA 2013) (cleaned up) (emphasis added).

**C. Respondents have not pointed to any legitimate exemption.**

Respondents have not pointed to any provision of the Constitution “specifically” making confidential the public records at issue. All they do is point to the constitutional separation-of-powers provision: “The powers of the state government

shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.” Fla. Const. art. II, § 3.

With respect to the public records Petitioner seeks, article II, section 3, can hardly be sufficient to satisfy the specificity requirement of subsection 24(a). Article II, section 3, does not say anything about executive privilege against article I, section 24. There is no constitutional provision specifically recognizing an executive privilege. On this point, it is telling indeed that Respondents attempt to mislead the Court by writing “specifically” out of subsection 24(a), saying: “After all, the Florida Constitution itself recognizes that some records are made ‘confidential by this Constitution,’ and the separation of powers principle which underlies the privilege is grounded within constitutional text.” (Resp. at 15.)

Respondents also have not pointed to any statutory exemption. “[P]ursuant to this section” is a reference to subsection 24(c), which provides in part:

This section shall be self-executing. The legislature, however, may provide by general law passed by a two-thirds vote of each house for the exemption of records from the requirements of subsection (a) ... , provided that such law shall state with specificity the public necessity justifying the exemption and shall be no broader than necessary to accomplish the stated purpose of the law.

The Supreme Court has stated unequivocally: “[A]n exemption from public records access is available *only* after the legislature has followed the express procedure provided in article I, section 24(c) of the Florida Constitution.” *Mem’l Hosp.-*

*W. Volusia v. News-Journal Corp.*, 729 So. 2d 373, 380 (Fla. 1999) (emphasis added) (footnote omitted); *see also Media Gen. Operation v. Feeney*, 849 So. 2d 3, 6–7 (Fla. 1st DCA 2003) (“Although we agree with the House that the disclosure of these telephone numbers may result in unreasonable consequences to the persons called, this argument should be made to the Florida Legislature, which has specified various public record exemptions for disclosure of telephone numbers.” (citing, *inter alia*, *Memorial Hospital* and *Wait*, 372 So. 2d at 424)).

Even before section 24, the Supreme Court said: “If the common law privileges are to be included as exemptions, it is up to the legislature, and not this Court, to amend the statute.” *Wait*, 372 So. 2d at 424. Respondents concede that executive privilege is a common-law privilege. (*See Resp.* at 11, 13, 15.)

Again, Respondents have not pointed to any statutory exemption enacted under subsection 24(c). They are asking this Court to do exactly what the Supreme Court said in *Wait* that courts cannot do: judicially invent an exemption to article I, section 24, that includes a common-law privilege not specifically in the Constitution or enacted by the legislature. The Constitution permits ***only*** those two ways for recognition of an exemption from our public-records laws.

#### **D. Respondents’ cases.**

Now, Petitioner will address and dispose of the cases relied upon by Respondents.

First, the Florida cases. As already noted, three of them (*Lockett*, *Brooke*, and *Girardeu*) predate July 1, 1993, and thus did not implicate section 24. Petitioner is not aware of any post-July 1, 1993, Supreme Court or district court opinion that recognizes the existence of an executive privilege against required disclosure under section 24 and chapter 119.

Two of Respondents' Florida cases involve legislative privilege, and specifically testimonial privilege. *League of Women Voters of Fla. v. Fla. House of Representatives*, 132 So. 3d 135 (Fla. 2013) (holding there is a qualified legislative privilege against testifying while *also* stating: "In addition, because of Florida's broad public records laws, the challengers have received 16,000 e-mails, including e-mails between legislators and legislative staff, as part of the discovery process." (footnote omitted)); *Fla. House of Representatives v. Expedia*, 85 So. 3d 517 (Fla. 1st DCA 2012) (holding there is a legislative testimonial privilege and noting that, "as with their counterparts in the judiciary and the legislature, public officials in the executive branch are entitled to a testimonial privilege"). Respondents are not in the legislature.

Two cases do not involve privileges at all. *Times Publ'g Co. v. Ake*, 660 So. 2d 255, 257 (Fla. 1995) (judicial records maintained by the clerk of the circuit court are not subject to chapter 119 because, for those records, the clerk is acting as an arm of the court and subject to the oversight and control of the Supreme Court, not

under the supervisory authority of the legislature); *State v. Lewis*, 656 So. 2d 1248 (Fla. 1994) (involving testimony of judges in post-conviction proceedings and not mentioning privilege or immunity). Respondents are not judges or clerks of court.

The only case that arguably supports Respondents' position still does not, and this requires some explanation. In *Chaves v. State*, 132 So. 3d 826, 828 (Fla. 2014), a prisoner under sentence of death filed a second successive motion for postconviction relief under Florida Rule of Criminal Procedure 3.851. The prisoner filed many public-records requests under rule 3.851(i), including to the Florida Parole Commission and its Office of Executive Clemency. *Id.* at 829. The prisoner contended he was entitled to non-investigatory records from the commission and office because of a statute, Florida Statutes § 14.28. *Id.* at 830. However, the Supreme Court pointed to a rule of the Florida Rules of Executive Clemency that made all clemency records confidential unless the governor himself decided to allow access. *Id.* The Supreme Court held:

This Court has stated that “[n]o aspect of clemency powers exist[s] by virtue of a legislative enactment, and none could. These powers are ‘derived’ solely from the Constitution.” *Parole Comm’n v. Lockett*, 620 So. 2d 153, 157 (Fla. 1993) (quoting *In re Advisory Op. to the Governor, In re Admin. Procedure Act, Exec. Clemency*, 334 So. 2d 561, 562 (Fla. 1976) (footnote omitted)). Thus, to the extent section 14.28 could be read to exclude certain clemency materials from confidentiality, Rule of Executive Clemency 16, which provides that all records in the clemency process are confidential, controls pursuant to *Lockett*.

*Id.* at 830–31.

*Lockett* is the case discussed above that the court decided before article I, section 24, became effective. *Lockett*, 620 So. 2d at 154 n.2. Nonetheless, *Lockett* establishes why ***clemency is different*** than Supreme Court appointments. In *Lockett*, the court said:

[O]ur constitution expressly vests the power to grant pardons and clemency solely with the executive branch. [Citations omitted.] This Court has been very clear in construing the Governor’s clemency powers and holding that this power is independent of both the Legislature and the judiciary. [Citations omitted.] ... In *Sullivan* [v. *Askew*], 348 So. 2d [312,] 316 [(Fla. 1977)], we have stated that we would not “intrude on the proper execution of the executive [clemency] power.”

*Id.* at 157. Quoting a decision of the First District, the Supreme Court also stated that “the people of this state chose to vest sole, unrestricted, unlimited discretion exclusively in the executive in exercising this act of grace [pardon].” *Id.* at 158 (quoting *Turner v. Wainwright*, 379 So. 2d 148, (Fla. 1st DCA 1980) (citing *Sullivan*), *approved*, 389 So. 2d 1181 (Fla. 1980)).

Now, turning to *Sullivan*, the Supreme Court said there:

An executive may grant [or deny] a pardon for good reasons or bad, or for any reason at all, and his act is final and irrevocable. Even for the grossest abuse of this discretionary power the law affords no remedy; the courts have no concern with the reasons which actuated the executive. The constitution clothes him with the power to grant [or deny] pardons, and this power is beyond the control, or even the legitimate criticism, of the judiciary. Whatever may have been the reasons for granting [or denying] the pardon, the courts cannot decline to give [the decision] effect ... and no court has the power to review grounds or motives for the action of the executive in granting [or denying] a pardon, for that would be the exercise of the pardoning power in part, and any attempt of the courts to interfere with the governor in the exercise

of the pardoning power would be manifest usurpation of authority, no matter how flagrant the breach of duty upon the part of the executive, unless granted the power by competent authority or unless fraud has entered into the case.

*Sullivan*, 348 So. 2d at 315 (quoting 59 Am. Jur. 2d *Pardon & Parole* § 43 (1971)).

The Supreme Court did not mention “privilege” in *Sullivan*, *Lockett*, or *Chaves*.

Returning to our case, the Constitution did not vest sole, unrestricted, unlimited discretion in the governor in the appointment of Supreme Court justices. It actually divides the power of appointment between the judicial nominating commissions, which nominate candidates for vacancies on the court, and the governor, who makes an appointment from the list of nominees. This was a deliberate choice made by Florida voters. See Scott D. Hawkins, *Perspective on Judicial Merit Retention in Florida*, 64 Fla. L. Rev. 1421, 1426–27 (2012).

Further, the governor’s exercise of the appointment power is not beyond the reach of the judiciary. The Supreme Court demonstrated that recently in *Thompson v. DeSantis*, 301 So. 3d 180 (Fla. 2020). The governor’s judicial-appointment power is not like his clemency power; it is circumscribed and its exercise reviewable by another branch of government. Thus, *Chaves*’s holding that clemency records are not subject to public-records law does not apply in this case involving judicial appointments.

After all of this, it should be clear why Respondents’ heavy reliance on federal law is misplaced: The United States Constitution does not contain a right to access



to public records. Neither do the constitutions of New Jersey, Ohio, Washington, New Mexico, and California, jurisdictions whose case law Respondents cite.

But as is so often the case, Florida is different. We elevated the right to public records to the status of a constitutional right. This fundamentally changes the analysis. As the Supreme Court of Washington recognized in one of Respondents' cases:

The Foundation's reading of RCW 42.56.070(1) [a statute that is part of the Public Records Act] fails to recognize that the governor raises a constitutional privilege. We have recognized that the PRA must give way to constitutional mandates. These decisions recognize that the constitution supersedes contrary statutory laws, even those enacted by initiative. If the governor has correctly ascertained that constitutional principles provide her with a privilege, the Foundation's PRA claim must fail.

*Freedom Found. v. Gregoire*, 310 P.3d 1252, 1258 (Wash. 2013) (citations omitted).

In Florida, however, the Constitution requires Respondents to disclose the requested records.

#### **E. Conclusion to part IV.**

This case does not pit the Florida Constitution against a Florida statute; it involves constitutional provisions of equal stature. A court is "precluded from construing one constitutional provision in a manner which would render another provision superfluous, meaningless, or inoperative." *Chiles v. Phelps*, 714 So. 2d 453, 459 (Fla. 1998) (citing *State v. Butler*, 69 So. 771, 781 (Fla. 1915)).

Respondents want the Court to accept their claim of a broad, seemingly absolute executive privilege against disclosure of public records required by article I,

section 24, based on a common-law privilege allegedly implicit in the separation-of-powers provision, article II, section 3, that has never been recognized in Florida.

Despite subsection 24(a), stating: “This section specifically includes the legislative, *executive*, and judicial branches of government.” (Emphasis added.) Despite how, under subsection 24(a), only a constitutional provision that “specifically” makes a public record “confidential” exempts that record. And despite the Florida Supreme Court’s admonition even before the constitutional amendment that, “[i]f the common law privileges are to be included as exemptions, it is up to the legislature, and not this Court, to amend the statute.” *Wait*, 372 So. 2d at 424.

If the Court accepts Respondents’ claim, the Court would render article I, section 24, superfluous, meaningless, and inoperative against the governor. No court in this state has the authority to rewrite our Constitution. The Court must reject Respondents’ fourth argument.

**V. Petitioner is entitled to fees and costs, and the governor cannot be dismissed.**

“News delayed is news denied.” *State ex rel. Miami Herald Publ’g v. McIntosh*, 340 So. 2d 904, 910 (Fla. 1976). The election has long passed, and the public still does not have the full picture of how several of their justices were picked.

Florida Statutes § 119.12(1) requires the trial court to award a requester his or her reasonable attorney’s fees and costs if it “determines that: (a) The agency unlawfully refused to permit a public record to be inspected or copied[.]” “Unlawful

refusal under section 119.12 includes not only affirmative refusal to produce records, but also unjustified delay in producing them.” *Lilker v. Suwannee Valley Transit Auth.*, 133 So. 3d 654, 655 (Fla. 1st DCA 2014) (citation omitted).

Petitioner’s request was sent on October 5, 2022. Respondents acknowledged the request the following day. Having not heard anything after that, Petitioner followed up on October 12, and was essentially rebuffed. On October 15, Petitioner followed up and explained the urgency given the imminent election. No response. Petitioner followed up again on October 18, and Respondents responded that day. In a second email on October 18, Petitioner actually offered to resolve the matter; Petitioner would withdraw the request entirely if Respondents would simply identify the so-called “heavyweights” who advised the governor. No response.

Finally, Petitioner tried one last time, on October 26, to avert litigation. Far from indicating Respondents intended to raise any “executive privilege,” Mr. Lorenz said he was “conducting an investigation to identify” the individuals and asked for clarification. Petitioner provided clarification regarding the timing of production and reaffirmed his offer to resolve the matter. After Mr. DeLorenz did not respond, Petitioner filed this action. The Court entered its order to show cause the next day, and yet Petitioner again offered to settle on November 3 and 22. No response.

Instead of responding to Petitioner’s entreaties or producing the requested records, Respondents waited to the last day under the Court’s order, November 23—

the day before Thanksgiving—to file a response in which they continued to refuse to produce documents. Rather, among other things, they asserted a nonexistent “executive privilege” exception to the Public Records Act. This was the first time Respondents had ever asserted such a thing. In fact, Respondents claim that it was only after Petitioner filed suit “that the records custodian became aware that Respondents decided to claim the executive privilege.” (Resp. at 20.) As explained above, there is no executive privilege, either in general or against the public-records laws, that is recognized in Florida. Yet Respondents have not just asserted that nonexistent privilege to justify their refusal; the governor’s general counsel instructed Mr. DeLorenz that he does not have to continue processing the request because of this nonexistent privilege. (DeLorenz Aff. at 6–7 at ¶ 30.)

This affirmative refusal to produce documents on the basis of a nonexistent privilege is a clear case of an unlawful refusal mandating an award of fees and costs.

Moreover, Respondents claim only two employees handle all the records requests received by Respondents. It is not Petitioner’s or the Court’s fault, nor their problem, that Respondents have chosen to understaff their public-records office. One might even question whether the choice is intentional.<sup>10</sup> Governor DeSantis is the

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<sup>10</sup> The governor’s former press secretary, Christina Pushaw, recently testified by deposition in a federal case that the governor does not text or email regarding official business. He communicates orally only, either in person, by phone, or over electronic communications like Zoom. Jason Garcia, Twitter (Nov. 22, 2022, 10:44 a.m.), [https://twitter.com/Jason\\_Garcia/status/1595080714390851584](https://twitter.com/Jason_Garcia/status/1595080714390851584).

governor of the third largest state in the union. He is a national political figure. His official actions often engender controversy and attract scrutiny. As Mr. DeLorenz’s affidavit attests, Respondents receive a great deal of public-records requests. Yet the governor’s office has only two full-time employees in his Office of Open Government: a director (Mr. DeLorenz) and “an open records coordinator.” (DeLorenz Aff. at 2, ¶ 8.) This is a terrifying revelation and evidence of extreme negligence.

Next, Respondents argue that the governor is not “an agency” within the meaning of § 119.12(1). This is another bad-faith argument. As Respondents recognize (*see* Resp. at 20–21), the legislature has defined “Agency” to mean any state ... officer....”<sup>11</sup> § 119.011(2). The constitution expressly states that the governor is a state officer: “The governor shall be the chief administrative officer of the state....” Fla. Const. art. IV, § 1(a). When interpreting its constitutional authority to issue writs of quo warranto to “state officers,” the Supreme Court stated: “The Governor is a state officer.” *Israel v. DeSantis*, 269 So. 3d 491, 494 (Fla. 2019) (citing *Whiley v. Scott*, 79 So. 3d 702, 707 (Fla. 2011), which in turn cited article IV, subsection 1(a)). Because the governor is a state officer, chapter 119 is properly enforceable against him, and he, in his official capacity, is liable for attorney’s fees and costs.

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<sup>11</sup> Section 24 gave the legislature the authority to enact laws to enforce the section. Fla. Const. art. I, § 24(c) (“The legislature shall enact laws governing the enforcement of this section....”).

**VI. Petitioner is entitled to immediate declaratory relief.**

Respondents' claim that Petitioner is not entitled to declaratory relief holds no merit. Petitioner has an actual, present, adverse, and antagonistic interest in the subject matter of this action, and the relief sought in this case is not merely the giving of legal advice by the Court or the satisfaction of mere curiosity. Petitioner wants the requested records and a declaration that Respondents violated the law.

**Conclusion**

A citizen's access to public records is a fundamental constitutional right in Florida. Article I, section 24(a) of the Florida Constitution (the "Sunshine Amendment") grants "[e]very person ... the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf." This "self-executing" right to open records is enforced through the Public Records Law, chapter 119 of the Florida Statutes. It is the duty of each agency to provide access to such records. § 119.01(1), Fla. Stat. (2009).

*Rhea v. Dist. Bd. of Trustees of Santa Fe Coll.*, 109 So. 3d 851, 855 (Fla. 1st DCA 2013) (footnote omitted).

What would be left of this fundamental constitutional right if the Court agreed with Respondents? Not much when it concerns a governor. The Court must apply the Constitution and the enforcement provisions of chapter 119 as written. Applying those laws, Petitioner has established that he or she has a clear legal right to the public records Petitioner requested, and that Respondents have an indisputable legal

duty to produce those records. They have not asserted any legitimate constitutional or statutory exemption.

Petitioner asks the Court to grant the petition for writ of mandamus, issue the writ to Respondents commanding them to produce the public records responsive to the request, and find that Petitioner is entitled to an award of attorney's fees and costs from Respondents.

Dated: December 2, 2022

Respectfully submitted,

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Radey Law Firm

Post Office Box 10967 (32302)

301 South Bronough Street, Suite 200

Tallahassee, Florida 32301

on this the 2<sup>nd</sup> day of December, 2022.

/s/Justin S. Hemlepp

**Justin S. Hemlepp, Esq.**



12/2/22, 11:35 AM

Sent | FloridaSupremeCourtPRR@protonmail.com | Proton Mail

## RE: Public records request

From FloridaSupremeCourtPRR@protonmail.com <FloridaSupremeCourtPRR@protonmail.com>

To DeLorenz, Christopher <Christopher.DeLorenz@eog.myflorida.com>

CC andrew.king@eog.myflorida.com, Justin Hemlepp <jhemlepp@gmail.com>

Date Tuesday, November 22nd, 2022 at 11:43 AM

I am reiterating this offer to resolve the matter, with the modification that, since the election has passed, the EOG would have to make a complete production.

Please respond to acknowledge receipt of this offer.

Sent with [Proton Mail](#) secure email.

----- Original Message -----

On Thursday, November 3rd, 2022 at 4:35 PM, <FloridaSupremeCourtPRR@protonmail.com> wrote:

As I said before, I would like to resolve this matter. I explained in the petition that I filed in the circuit court that it appears we can resolve it, and I filed because of the timing issues and to protect my rights under the PRA. Will the EOG take me up on the offer below for a partial production/disclosure before the election and the rest after? If the EOG does, and I am satisfied with the responses, I will voluntarily dismiss the petition upon the EOG's complete performance and waive any claim to fees and costs. In the meantime, if the EOG agrees, we can notify the court and ask the judge to vacate the order to show cause and abate the case.

Sent with [Proton Mail](#) secure email.

----- Original Message -----

On Wednesday, October 26th, 2022 at 6:26 PM,  
<FloridaSupremeCourtPRR@protonmail.com> wrote:

Thank you for the update. Your point is fair. I would like that information for each justice Governor DeSantis has appointed. *However*, I am amenable to a partial production/disclosure as soon as practicable regarding *just* Justices Couriel and Grosshans. Then, the EOG could provide the information for Chief Justice Muniz and Justice Francis later, after the elections. If this is okay, do you think you could make the partial production/disclosure in the next few days? Also, my assumption has been that, when the governor referred to debriefing in the Hewitt interview, he meant by way of a phone call, not by email or text or some other written medium. If my assumption is not correct, please let me know because I would want those communications. Otherwise, if you can just get me the names of the heavyweights and which ones interviewed which justices, that would resolve my request.

[https://mail.proton.me/u/0/sent/uh0CrH-sU0zeXe3v-bsLU47FhDRqJcIeHOK-SjD4LZW59dUgwkoixsd\\_hN\\_rxhVpM0zXHPUGivirI57EzvA==/7dH5jHtUe...](https://mail.proton.me/u/0/sent/uh0CrH-sU0zeXe3v-bsLU47FhDRqJcIeHOK-SjD4LZW59dUgwkoixsd_hN_rxhVpM0zXHPUGivirI57EzvA==/7dH5jHtUe...) 1/7

Exhibit A

12/2/22, 11:35 AM

Sent | FloridaSupremeCourtPRR@protonmail.com | Proton Mail

To be completely forthcoming, my current plan is to still file the lawsuit in order to start that process given the timing issues, but note that in the petition and that we are trying to reach an agreement.

Sent with Proton Mail secure email.

----- Original Message -----

On Wednesday, October 26th, 2022 at 5:45 PM, DeLorenz, Christopher  
<Christopher.DeLorenz@eog.myflorida.com> wrote:

Good afternoon,

I am conducting an investigation to identify the names of the individuals who the Governor is referring to in the article that you referenced. It would be extremely helpful to know which justices you were referring to because you mentioned "the approaching merit retention elections for the justices." Are you referring to all of the justices appointed by Governor DeSantis or just the justices who are up for retention election? Providing this information would help narrow the scope of the investigation.

Sincerely,

Christopher DeLorenz

*Director, Office of Open Government*

*Office of the General Counsel*

*Executive Office of the Governor*

*Personal Line:* [REDACTED]

**From:** FloridaSupremeCourtPRR@protonmail.com

<FloridaSupremeCourtPRR@protonmail.com>

**Sent:** Wednesday, October 26, 2022 3:15 PM

[https://mail.proton.me/u/0/sent/uh0CrH-sU0zeXe3v-bsLU47FhDRqJcIeIhOK-SjD4IZW59dUgwkoixsd\\_\\_hN\\_rxhVpM0zXHPUGiviri57EzvA==/7dH5jHtUe...](https://mail.proton.me/u/0/sent/uh0CrH-sU0zeXe3v-bsLU47FhDRqJcIeIhOK-SjD4IZW59dUgwkoixsd__hN_rxhVpM0zXHPUGiviri57EzvA==/7dH5jHtUe...) 2/7

Exhibit A

12/2/22, 11:35 AM

Sent | FloridaSupremeCourtPRR@protonmail.com | Proton Mail

**To:** DeLorenz, Christopher <Christopher.DeLorenz@eog.myflorida.com>  
**Subject:** RE: Public records request

I am preparing to file a lawsuit either today or tomorrow to enforce the public records law. Will the governor's office provide a timely response to my request or, in an effort to resolve this amicably, take me up on the offer in the last email?

Sent with Proton Mail secure email.

----- Original Message -----

On Tuesday, October 18th, 2022 at 1:46 PM,  
<FloridaSupremeCourtPRR@protonmail.com> wrote:

Thank you for your response. I will withdraw the request entirely if the governor's office identifies the conservative legal heavyweights who interviewed the nominees and the vacancies for which the governor consulted them. I really am not trying to be difficult. This is an easy question to answer and the merit retention elections are on November 8.

Sent with Proton Mail secure email.

----- Original Message -----

On Tuesday, October 18th, 2022 at 1:31 PM, DeLorenz, Christopher  
<Christopher.DeLorenz@eog.myflorida.com> wrote:

Good afternoon,

Your request is one of hundreds of public records requests. Your request is less than two weeks old. You do not just get to cut the line because you threaten litigation. We

12/2/22, 11:35 AM

Sent | FloridaSupremeCourtPRR@protonmail.com | Proton Mail

are processing your request along with all other requests. It would be unfair if we were to prioritize your request over all our other requests. If you want to discuss this request on the phone, we are happy to do so.

Sincerely,

Christopher DeLorenz

*Director, Office of Open Government*

*Office of the General Counsel*

*Executive Office of the Governor*

*Personal Line:* [REDACTED]

**From:** FloridaSupremeCourtPRR@protonmail.com

<FloridaSupremeCourtPRR@protonmail.com>

**Sent:** Tuesday, October 18, 2022 12:26 PM

**To:** Desantis.OpenGovernment <Desantis.OpenGov@eog.myflorida.com>

**Subject:** RE: Public records request

Will I have to file a lawsuit?

Sent with Proton Mail secure email.

----- Original Message -----

On Saturday, October 15th, 2022 at 10:27 AM,

<FloridaSupremeCourtPRR@protonmail.com> wrote:

12/2/22, 11:35 AM

Sent | FloridaSupremeCourtPRR@protonmail.com | Proton Mail

This is a matter of some urgency given the approaching merit retention elections for the justices. It should be easy to at least disclose who the outside conservative legal heavyweights are, the dates and locations of their interviews of the now justices, and the dates of the governor's or his agents' communications with those people. I will file a lawsuit if I have to in order to receive a timely response to my request.

Sent from Proton Mail for iOS

On Wed, Oct 12, 2022 at 10:46 AM, Desantis.OpenGovernment  
<[Desantis.OpenGov@eog.myflorida.com](mailto:Desantis.OpenGov@eog.myflorida.com)> wrote:

Good morning,

The Office of Open Government receives a high volume of requests and yours is one of the most recent. We are processing your request along with all others. Once documents are compiled and reviewed, they are released.

Sincerely,

Office of Open Government

**From:** [FloridaSupremeCourtPRR@protonmail.com](mailto:FloridaSupremeCourtPRR@protonmail.com)

<[FloridaSupremeCourtPRR@protonmail.com](mailto:FloridaSupremeCourtPRR@protonmail.com)>

**Sent:** Wednesday, October 12, 2022 9:48 AM

**To:** Desantis.OpenGovernment

12/2/22, 11:35 AM

Sent | FloridaSupremeCourtPRR@protonmail.com | Proton Mail

<Desantis.OpenGov@eog.myflorida.com>

**Subject:** RE: Public records request

Please provide an update on this request.

Sent from Proton Mail for iOS

On Thu, Oct 6, 2022 at 10:12 AM, Desantis.OpenGovernment  
<Desantis.OpenGov@eog.myflorida.com> wrote:

Good afternoon,

The Governor's Office of Open Government is in receipt of your request for records as stated in your email below. If there is a fee associated with your request, you will be provided with a fee estimate for your review. Thank you for contacting the Executive Office of the Governor.

Sincerely,

Office of Open Government

**From:** FloridaSupremeCourtPRR@protonmail.com

<FloridaSupremeCourtPRR@protonmail.com>

**Sent:** Wednesday, October 5, 2022 5:27 PM

[https://mail.proton.me/u/0/sent/uh0CrH-sU0zeXe3v-bsLU47FhDRqJcIothK-SjD4IZW59dUgwkoixsd\\_hN\\_rxhVpM0zXHPUgiviri57EzvA==/7dH5jHtUe...](https://mail.proton.me/u/0/sent/uh0CrH-sU0zeXe3v-bsLU47FhDRqJcIothK-SjD4IZW59dUgwkoixsd_hN_rxhVpM0zXHPUgiviri57EzvA==/7dH5jHtUe...) 6/7

Exhibit A

12/2/22, 11:35 AM

Sent | FloridaSupremeCourtPRR@protonmail.com | Proton Mail

**To:** Desantis.OpenGovernment  
<[Desantis.OpenGov@eog.myflorida.com](mailto:Desantis.OpenGov@eog.myflorida.com)>  
**Subject:** Public records request

Any and all materials, on official devices or personal devices used for official business, in whatever form, including *but not limited to* call logs, emails, or texts, between or among Governor Ron DeSantis, Casey DeSantis, the governor's chief of staff, his executive or personal assistants or aides, his general counsel or anyone within the general counsel's office, the director of appointments or anyone within the director of appointment's office, and the "six or seven pretty big legal conservative heavyweights" described by the governor in [an interview with Hugh Hewitt on August 25, 2002](#).

Sent with [Proton Mail](#) secure email.

Please note that under Florida law correspondence sent to the Governor's Office, which is not confidential or exempt pursuant to chapter 119 of the Florida Statutes, is a public record made available upon request.

Filing # 163330106 E-Filed 12/19/2022 04:26:37 PM

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT  
IN AND FOR LEON COUNTY, FLORIDA  
CIVIL DIVISION**

J. DOE, anonymously and individually, a/k/a  
“FloridaSupremeCourtPRR@protonmail.com,”

Petitioner,

Case No: 2022-CA-1902

v.

GOVERNOR RON DESANTIS, in his  
official capacity as custodian of public records,  
and the EXECUTIVE OFFICE OF THE  
GOVERNOR,

Respondents. /

**PETITIONER’S NOTICE OF SUPPLEMENTAL AUTHORITY**

Petitioner J. DOE hereby gives notice of the following supplemental authority  
which was decided after briefing in this case was complete:

*Boan v. Fla. 5th Dist. Ct. of App. Nominating Com’n*, Case Nos.: SC22-1557  
and SC22-1558 (Fla. Dec. 15, 2022) (attached). In *Boan*, the court found:

As to standing, we see a close analogy to cases where this Court has recognized ‘citizen and taxpayer’ standing to challenge a governor’s alleged noncompliance with constitutional provisions regulating the judicial appointment process.” *See Thompson v. DeSantis*, 301 So. 3d 180 (Fla. 2020); *Pleus v. Crist*, 14 So. 3d 941. (Fla. 2009). Petitioners’ claims are similar in kind, even if directed at a different actor in the constitution’s appointment process.

*Id.*, at 5-6.



This case is relevant to Petitioner' arguments in the reply brief, in particular  
at page 25:

[T]he Constitution did not vest sole, unrestricted, unlimited discretion  
in the governor in the appointment of Supreme Court justices. It actu-  
ally divides the power of appointment between the judicial nominating  
commissions, which nominate candidates for vacancies on the court,  
and the governor, who makes an appointment from the list of nominees.

Dated: December 19, 2022

Respectfully submitted,

/s/Justin S. Hemlepp

**Justin S. Hemlepp, Esq.**

Fla. Bar No.: 58991

6019 Rachel's Way

Ashland, KY 41102

Telephone: (606) 694-2285

E-mail: jhemlepp@gmail.com

*Attorney for Petitioner J. Doe*

**CERTIFICATE OF SERVICE**

I hereby certify that this document was served to the parties below with the Florida e-filing portal:

CHRISTOPHER B. LUNNY

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Radey Law Firm

Post Office Box 10967 (32302)

301 South Bronough Street, Suite 200

Tallahassee, Florida 32301

on this the 19th day of December, 2022.

/s/Justin S. Hemlepp

**Justin S. Hemlepp, Esq.**

Cc: Client

# Supreme Court of Florida

---

No. SC22-1557

---

**WHITNEY BOAN,**  
Petitioner,

vs.

**FLORIDA FIFTH DISTRICT COURT OF APPEAL JUDICIAL  
NOMINATING COMMISSION, et al.,**  
Respondents.

---

No. SC22-1558

---

**GERALDINE F. THOMPSON, etc.,**  
Petitioners,

vs.

**FLORIDA SIXTH DISTRICT COURT OF APPEAL JUDICIAL  
NOMINATING COMMISSION, et al.,**  
Respondents.

---

December 15, 2022

MUÑIZ, C.J.

When a judicial vacancy is to be filled by appointment, the  
Florida Constitution requires a judicial nominating commission to

certify nominees for the governor’s consideration. Here, in connection with pending judicial vacancies, two judicial nominating commissions certified nominees who did not at the time of their nominations reside in the territorial jurisdiction of the applicable court. The petitioners in these consolidated cases allege that the nomination of nonresident candidates violated the Florida Constitution and the commissions’ own rules of procedure. As a remedy, the petitioners ask us to issue writs of quo warranto invalidating the nominations of the disputed candidates, leaving the Governor to make his appointments from among the remaining nominees. We deny the petitions.

I.

Through its enactment of chapter 2022-163, Laws of Florida, the Legislature created a new, sixth district court of appeal and made corresponding changes to the boundaries of the existing First, Second, and Fifth District Courts of Appeal. That same legislation also authorized several new judgeships, effective January 1, 2023, for the reconfigured Fifth District Court of Appeal and the new Sixth District Court of Appeal. To begin the process of filling those vacancies—four in the Fifth District and three in the Sixth

District—the Governor asked each district’s judicial nominating commission to convene and to submit nominees for his consideration. *See* art. V, § 11(a), Fla. Const. (“Whenever a vacancy occurs in a judicial office to which election for retention applies, the governor shall fill the vacancy by appointing for a term . . . one of not fewer than three persons nor more than six persons nominated by the appropriate judicial nominating commission.”).

The judicial nominating commissions completed their respective tasks in October of this year. It is undisputed that each commission’s list of nominees included individuals who did not, at the time of nomination, reside in the territorial jurisdiction of the court of appointment. Two of the fifteen nominees for the Fifth District vacancies are nonresidents, as are four of the eighteen nominees for the Sixth District vacancies.

Roughly one month after the judicial nominating commissions certified their lists of nominees, Whitney S. Boan (as to the Fifth District) and Geraldine F. Thompson (as to the Sixth District) filed separate petitions in this Court seeking a writ of quo warranto directed to each judicial nominating commission. Each petition

names as a respondent the applicable judicial nominating commission and its chairman in his official capacity.

The petitioners allege that the inclusion of nonresidents on each commission's list of nominees violated the Florida Constitution and the commissions' rules of procedure. As relief, the petitioners ask this Court to declare that the nomination of nonresidents exceeded each commission's authority and to invalidate the disputed nominations, leaving the Governor to make his appointments from among the remaining nominees. We have consolidated the petitions because they raise identical legal arguments.

## II.

### A.

We begin with the threshold issues of jurisdiction and standing. Article V, section 3(b)(8) of the Florida Constitution gives this Court discretionary jurisdiction to issue writs of quo warranto "to state officers and state agencies." The writ of quo warranto "historically has been used to determine whether a state officer or agency has improperly exercised a power or right derived from the State." *Fla. House of Representatives v. Crist*, 999 So. 2d 601, 607

(Fla. 2008). These jurisdictional criteria are satisfied here: members of Florida’s judicial nominating commissions are state officers; the governmental actions at issue—the commissions’ certification of nonresident nominees to the Governor—are complete; and the petitions allege that the commissions’ actions exceeded the authority granted by the Florida Constitution.

The respondents say that, because the Governor has yet to make his appointments from among the lists of nominees, the petitioners challenge only future action. According to the respondents, the petitioners here seek the equivalent of an (unauthorized) advisory opinion. That is incorrect. The challenged actions (the nomination of nonresident candidates) and the requested remedy (the invalidation of those nominations) are directed at the judicial nominating commissions, not at the Governor.

As to standing, we see a close analogy to cases where this Court has recognized “citizen and taxpayer” standing to challenge a governor’s alleged noncompliance with constitutional provisions regulating the judicial appointment process. *See Thompson v. DeSantis*, 301 So. 3d 180 (Fla. 2020); *Pleus v. Crist*, 14 So. 3d 941

(Fla. 2009). Petitioners’ claims are similar in kind, even if directed at a different actor in the constitution’s appointment process. Assuming the correctness of our precedents on standing in quo warranto cases, we conclude that the petitioners’ constitution-based allegations suffice to establish standing here. We note that, although the Sixth District’s nominating commission contests the petitioners’ standing, the commission did not take on the burden of establishing that our precedents in analogous cases are “clearly erroneous.” *See State v. Poole*, 297 So. 3d 487, 507 (Fla. 2020) (explaining this Court’s stare decisis criteria).

B.

Turning to the merits of the petitioners’ constitutional claim, we emphasize at the outset that our focus must be on what the constitution does and does not *require* of a judicial nominating commission. It is not our role to sit in judgment of a commission’s discretionary choices or to impose our own views of what nomination process would be most practical or efficient.

The judicial eligibility criterion at issue here is found in article V, section 8 of the Florida Constitution: “No person shall be eligible for office of justice or judge of any court unless the person . . .



resides in the territorial jurisdiction of the court.” The petitioners maintain that this provision prevents a judicial nominating commission from nominating any candidate who does not reside in the territorial jurisdiction of the corresponding court at the time of nomination.

We disagree. First, the text of article V, section 8, on its face does not speak to the nomination process, and it does not explicitly contain the limitation urged by the petitioners. Second, article V, section 11, which specifies the judicial nominating commissions’ role in the appointment process, also does not explicitly contain such a limitation. Instead, article V, section 11(d), mandates a separate nominating commission for each district court of appeal, without saying anything more specific about the commissions’ duties; article V, section 11(a), says only that a commission must nominate “not fewer than three persons nor more than six persons” per vacancy; and article V, section 11(c), sets forth the deadlines within which the commissions must make their nominations. Finally, one cannot *infer* an “eligible at the time of nomination” requirement from any constitutional provision in isolation, from the structural relationship between article V, sections 8 and 11, or from

the relevant provisions' evident purpose. *Cf. Verizon Md., Inc. v. Pub. Serv. Comm'n of Md.*, 535 U.S. 635, 644 (2002) (“[W]e will not presume that the statute means what it neither says nor fairly implies.”).

Instead, we think that our holding in *Thompson v. DeSantis*, 301 So. 3d 180 (Fla. 2020), points to the correct resolution of the petitioners' constitutional claim. *Thompson* involved a different article V, section 8, judicial eligibility requirement, namely, that a justice of the supreme court have been a member of the Florida Bar for the preceding ten years. That case required us to consider the interaction of that requirement with the article V, section 11, requirement that the governor “fill [a] judicial vacancy” by making an appointment within 60 days of the certification of nominees. Reading the relevant provisions *in pari materia*, and seeking to give effect to each, we concluded that “the Bar eligibility requirement attaches at the time of appointment.” *Id.* at 185. We said that our conclusion followed from the constitutional text's focus on the governor's obligation to “fill the vacancy” by making an appointment, an action which necessarily requires a constitutionally eligible nominee.

Consistent with our decision in *Thompson*, we hold that the article V, section 8, residency requirement likewise attaches at the time of appointment. Given that the constitution provides for a 60-day period between a commission’s certification of nominations and the gubernatorial appointment deadline, and in the absence of clear textual direction to the contrary, we cannot say that the constitution imposes an “eligible at the time of nomination” requirement. Rather, we believe that the constitution leaves to the commissions’ discretion whether to nominate only candidates who are residents at the time of nomination. In so holding, we note that the petitioners here do not allege that it would be impossible for any of the disputed nominees to satisfy the constitutional residency requirement by the appointment deadline.

C.

That leaves us with the petitioners’ claim that the judicial nominating commissions violated their own rules of procedure by nominating nonresident candidates. *See* art. V, § 11(d), Fla. Const. (“Uniform rules of procedure shall be established by the judicial nominating commissions at each level of the court system.”)

The petitioners point to sections II, V, and VI of the Uniform Rules of Procedure for District Courts of Appeal Judicial Nominating Commissions. Section II says that the commission shall not classify an applicant as “ ‘most qualified’ ” unless “the commission affirmatively determines that the applicant meets all legal requirements for that judicial office.” Section V says that “[n]o nominee shall be recommended to the governor for appointment unless the commission finds that the nominee meets all constitutional and statutory requirements.” Section VI says that the commission shall select applicants “who meet all legal requirements for the judicial office.” The petitioners emphasize that these provisions’ consistent use of the present tense means that a commission may not nominate a nonresident candidate in the hope or expectation that he or she will become a resident before being appointed.

The respondents in turn maintain that they have not violated these rules. They also suggest that, in any event, it would be impermissible for rules of procedure to impose a nominee eligibility requirement more stringent than what the constitution demands.

Last, the respondents say that the petitioners' rule-based claim is not properly before this Court.

We need not and do not decide the merits of the petitioners' procedural-rule-based claim, because we conclude that the commissions' compliance with their procedural rules is not the proper subject of a quo warranto proceeding. For starters, the petitioners have not identified any precedent where this Court exercised its discretionary quo warranto jurisdiction to review a comparable procedural-rule-based claim. On the contrary, our precedents in this area consistently involved claims that official action exceeded limits imposed by the constitution or by a statute.

Just as important, the uniform procedural rules themselves indicate that alleged violations are to be evaluated and dealt with by the governor rather than by a court. Indeed, the rules give the governor the sole authority to decide whether a rule violation of the kind alleged here has occurred, and if so, what to do about it.

The relevant rule provisions are contained in Section IX, under the title "Misconduct." There the rules say: "A complaint alleging the misconduct of a judicial nominating commission chair and one or more commissioners of a judicial nominating commission shall

be reported in writing to the Governor for action.” It further says: “The Governor shall investigate any complaint if the allegations are in writing, signed by the complainant, and deemed sufficient.” Then: “A complaint is sufficient if the Governor determines that it contains allegations which if proven would be a violation of these rules or reflects discredit on the judicial selection process.” And finally: “Upon determination of sufficiency each charge may be disposed of by the Governor solely, [subject to consultation with commission members uninvolved in the disposition or in the alleged misconduct.]” Whatever behavior one might intuitively associate with the label “misconduct,” the text says that Section IX applies to all alleged rules violations, not just to ethics-related violations.

Given our quo warranto precedents and the rule provisions we have just described, we conclude that the petitioners’ procedural-rule-based claim is not the proper subject of a quo warranto proceeding. In so holding, we reiterate that we take no position on whether the judicial nominating commissions here complied with their rules. Nor do we take up the respondents’ argument that the constitution prohibits a procedural rule that disallows nominees who are nonresidents at the time of nomination. Finally, we note

that this portion of our analysis is limited to the petitioners' claim that is based solely on alleged noncompliance with the nominating commissions' procedural rules, which we distinguish from the petitioners' constitutional claim.

III.

Consistent with our decision in *Thompson*, we hold that the constitutional residency requirement for judges attaches at the time of appointment—not at the time of nomination. Therefore, the respondent judicial nominating commissions did not exceed their constitutional authority by nominating nonresident candidates. We do not reach the merits of the petitioners' procedural-rule-based challenge to the disputed nominations, because alleged noncompliance with the nominating commissions' rules of procedure is not the proper subject of a quo warranto proceeding. The petitions are denied.

It is so ordered.

POLSTON and FRANCIS, JJ., and IVAN F. FERNANDEZ, Associate Justice, concur.

LABARGA, J., concurs in part and dissents in part with an opinion. CANADY, COURIEL, and GROSSHANS, JJ., recused.

NO MOTION FOR REHEARING WILL BE ALLOWED.

LABARGA, J., concurring in part and dissenting in part.

I concur with the majority that under this Court’s holding in *Thompson v. DeSantis*, 301 So. 3d 180 (Fla. 2020), the constitutional residency requirement attaches at the time of the governor’s appointment. However, as to the petitioners’ argument that the judicial nominating commissions violated their own rules in nominating nonresident candidates, I strongly disagree with the majority’s analysis.

Like the petitioners’ claim that the judicial nominating commissions violated the Florida Constitution, the petitioners’ rules-based claim is properly before this Court. However, the majority concludes that the petitioners’ rules-based claim is not appropriately considered in this quo warranto proceeding. The majority reaches this conclusion despite the fact that the rule-making authority of the judicial nominating commissions is derived from the Florida Constitution. Under article V, section 11(d) of the Florida Constitution, “[u]niform rules of procedure shall be established by the judicial nominating commissions at each level of the court system.” This constitutional authority is essential to properly invoking this Court’s quo warranto jurisdiction.



What is more, under the majority’s interpretation of the Uniform Rules of Procedure for District Court of Appeal Judicial Nominating Commissions, the majority concludes that the petitioners’ rules-based claim is properly brought before the governor and not this Court. This Court, in fact, has the constitutional authority under article V, section 11(d) to repeal all or part of those very rules: “Such rules, or any part thereof, may be repealed by general law enacted by a majority vote of the membership of each house of the legislature, *or by the supreme court, five justices concurring.*” (Emphasis added.) Surely then, this Court is the appropriate body to consider whether the respondent judicial nominating commissions violated their own rules.

Because the petitioners’ claim properly falls under this Court’s quo warranto jurisdiction, I cannot agree with the majority’s interpretation on this issue. Thus, I dissent in part.

Original Proceeding – Quo Warranto

William R. Ponall and Eric J. Sorice of Ponall Law, Maitland, Florida; and Lisabeth J. Fryer and Laura Cepero of Lisabeth J. Fryer, P.A., Sanford, Florida,

for Petitioners, Whitney Boan, and Geraldine F. Thompson, in her Official Capacity as a Senator in the Florida Senate

Kenneth B. Bell of Gunster, Yoakley & Stewart, P.A., Tallahassee, Florida, and Joseph W. Jacquot of Gunster, Yoakley & Stewart, P.A., Jacksonville, Florida,

for Respondents, Florida Fifth District Court of Appeal Judicial Nominating Commission, et al.

Mayanne Downs and Jason A. Zimmerman of GrayRobinson, P.A, Orlando, Florida; and Michael A. Sasso of Sasso & Sasso, P.A., Winter Park, Florida,

for Respondents, Florida Sixth District Court of Appeal Judicial Nominating Commission, et al.

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2022 CA 001902

J. Doe

vs.

Governor Ron DeSantis


---

Hearing Before:

Judge Angela Dempsey

**December 20, 2022**

---

PHIPPS REPORTING is now  LEXITAS™

Judge Angela Dempsey  
December 20, 2022

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT  
IN AND FOR LEON COUNTY, FLORIDA

Case No. 2022 CA 1902

J. DOE, anonymously and  
individually, a/k/a  
"FloridaSupremeCourtPRR@protonmail.com,"

Petitioner,

vs.

GOVERNOR RON DESANTIS,  
in his official capacity  
as a custodian of public  
records, and the EXECUTIVE  
OFFICE OF THE GOVERNOR,

Respondents.

\_\_\_\_\_  
Transcript of Remote Proceedings  
before the Honorable ANGELA DEMPSEY

Court's Ruling on  
Petitioner's Petition for Writ of  
Mandamus and Complaint to Enforce the  
Public Records Act, Respondent's  
Response to Order to Show Cause, and  
Petitioner's Reply To Respondents'  
Response to Order to Show Cause

\_\_\_\_\_  
Via Zoom  
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Judge Angela Dempsey  
December 20, 2022

Page 2

1 APPEARANCES: (All parties appeared via Zoom:)

2

3 Appearing on behalf of the Petitioner:

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20

21

22 ALSO PRESENT: Andrew T. King  
23 Executive Office of the Governor

24 Paul Fleming  
25 Journalist

Mark Stern  
Journalist

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Judge Angela Dempsey  
December 20, 2022

Page 3

1 THE COURT: Good morning. This is Judge  
2 Dempsey. We're here on '22 CA 1902. Who is here  
3 for the plaintiff?

4 MR. HEMLEPP: Good morning, your Honor.  
5 My name is Justin Hemlepp on behalf of petitioner,  
6 J. Doe.

7 THE COURT: Okay. And how about for the  
8 respondent?

9 MR. LUNNY: Christopher Lunny with the  
10 Radey firm. With me, your Honor, on Zoom is  
11 Mr. Drew Parker, my partner, for the respondents.  
12 In addition Andrew T. King I see is here as well.  
13 He's in-house counsel for the Executive Office of  
14 the Governor.

15 THE COURT: Okay, great.

16 Go ahead, please, Mr. Hemlepp.

17 MR. HEMLEPP: Well, your Honor, we're here  
18 seeking a writ of mandamus requiring the  
19 respondents, the Governor and the Executive Office  
20 of the Governor, to disclose the requested records  
21 and declaration that the Public Records Act was  
22 violated.

23 We filed our petition for an  
24 alternative in a writ of mandamus. The Court  
25 entered an order to show cause and, so, I believe at

Judge Angela Dempsey  
December 20, 2022

Page 4

1 this point the burden of proof is on the  
2 respondents.

3 THE COURT: Okay. I still think it's your  
4 burden to go forward and prove that there are  
5 records under the case law. So, I want you to go  
6 forward, Mr. Hemlepp.

7 MR. HEMLEPP: Well, in all candor, your  
8 Honor, we don't know whether there are records  
9 because they won't respond. I mean if this is the  
10 way you'd like to proceed, I will, of course, do so.

11 But I believe that under existing case  
12 law and the Public Records Act, if we have  
13 established a prima facie case that the Act has been  
14 violated, then it's up to the Governor's Office to  
15 either show cause why they don't have to produce the  
16 records or that there are no records that exist or  
17 produce the records, perhaps for in-camera review by  
18 the Court to determine whether any exemption is  
19 applicable.

20 THE COURT: Okay. I am not going to argue  
21 with you. This is your opportunity to present what  
22 you want to present.

23 MR. HEMLEPP: Okay. Yes, Ma'am.

24 Well, like I said, I represent the  
25 petitioner, J. Doe. And we brought a relatively

Judge Angela Dempsey  
December 20, 2022

Page 5

1 simple case. My client requested records on  
2 October 5th, about a month before the election,  
3 after the Governor made some statements on a radio  
4 interview with a talk show host that there were six  
5 or seven pretty big legal conservative heavyweights  
6 that are involved in the selection of justices for  
7 the Supreme Court of the State of Florida.

8 My client requested pretty much  
9 standard form, you know, all materials, logs,  
10 e-mails, text messages among the Governor, First  
11 Lady, Chief of Staff, any other personnel or any of  
12 the General Counsel' Office with those individuals.

13 So, we're looking basically for e-mails  
14 and phone conversations and stuff like that. We  
15 understand that the Governor doesn't really use  
16 e-mail or anything like that. I guess we can get to  
17 that a little bit later.

18 To date my client tried to narrow the  
19 responses -- or, I'm sorry, tried to narrow the  
20 requests in order to achieve a more rapid response.

21 And instead of working with my client  
22 towards a reasonable and amicable settlement of the  
23 dispute, they waited until the very last minute and  
24 then all of a sudden said that, A, they have too  
25 many requests to deal with and, B, by the way, the



Judge Angela Dempsey  
December 20, 2022

Page 6

1 executive privilege applies and, so, they are not  
2 even going to bother looking for these documents at  
3 all. And they swore that in an affidavit.

4 And I assume that these documents have  
5 not been presented to the Court for in-camera review  
6 but is denying the Court of Its ability to, you  
7 know, make that review.

8 It's now been two-and-a-half months  
9 since the records request. The election has long  
10 since passed. News delayed is news denied, your  
11 Honor. And I believe if the Governor was simply  
12 going to assert an exemption, they should have done  
13 that long ago. And this suit could have been  
14 resolved before the election.

15 It's also unreasonable to believe that  
16 every word in the requested records is exempt. And  
17 to that extent if there are exempt items in the  
18 record, they're still supposed to produce the  
19 remainder.

20 There are 1,159 exemptions to the  
21 Public Records Act, your Honor, and the Governor did  
22 not sign -- or cite one of them whatsoever.

23 That's the summary of my argument.

24 THE COURT: Okay. And I understand under  
25 the case law that one can request records

Judge Angela Dempsey  
December 20, 2022

Page 7

1 anonymously but generally a person has to disclose  
2 their identity to file a lawsuit unless there is  
3 some statutory provision otherwise. What is your  
4 authority for the plaintiff proceeding anonymously?

5 MR. HEMLEPP: I'm unaware of any authority  
6 other than Chandler, which is a 4th DCA case,  
7 Chandler v. Greenacres, it's cited in the brief, and  
8 the position here is that if you're allowed to  
9 request records anonymously, they must be allowed to  
10 enforce a records request anonymously. So, my  
11 client -- and I have to be careful what I say here  
12 because of privilege, right, but I believe that my  
13 client has a reasonable belief that there would be  
14 possible consequences to his or her livelihood if  
15 their identity was disclosed.

16 And, so, in Chandler, you know, the  
17 Court said requiring the appellant to provide  
18 further identifying information prior to disclosure  
19 could have a chilling effect on access to public  
20 records and is not required by the Public Records  
21 Act.

22 And, so, if it's not required for the  
23 request, then it's our position and there is no  
24 contrary authority that I am aware of that would say  
25 that we cannot enforce that with a John or Jane Doe

Judge Angela Dempsey  
December 20, 2022

Page 8

1 case.

2 We're not asking for damages here.

3 There is no damages in public records lawsuits. We  
4 don't have to prove that my client was hurt in any  
5 way whatsoever. We just have to prove that they  
6 made a request for the records, that the records  
7 request was either denied or unjustifiably delayed.

8 THE COURT: In Chandler, though, the  
9 petitioner was named. I mean -- based on the title  
10 of the case and what have you, I mean Joel Edward  
11 Chandler was the petitioner and appellant in that  
12 case, right?

13 MR. HEMLEPP: That is correct. The  
14 petitioner or plaintiff in that case elected to  
15 identify themselves after the fact.

16 THE COURT: Then they filed the lawsuit.

17 MR. HEMLEPP: When they filed the lawsuit.

18 THE COURT: Okay. I've never seen a  
19 public records request by a John or Jane Doe. The  
20 only time I have seen that nomenclature used is with  
21 like a parental waiver on abortion or similar case  
22 where, you know, the statute allows for that. I  
23 have had a couple cases where people have moved to  
24 proceed anonymously, which didn't occur in this  
25 case.

Judge Angela Dempsey  
December 20, 2022

Page 9

1 MR. HEMLEPP: We'd be happy to file such a  
2 motion if that would be the Court's preference. But  
3 I do think that this largely follows if the  
4 government can sit back and not respond to a records  
5 request until a lawsuit is filed and demand that the  
6 person identify themselves, it defeats the entire  
7 purpose of the ruling in Chandler, is to protect the  
8 ability of the public to request information from  
9 their government.

10 So, let's just pretend, and I'm not  
11 saying that this is the fact, but let's just pretend  
12 that my client was, say, a clerk at this Florida  
13 Supreme Court. If they were to be identified as  
14 filing this lawsuit, that could be absolutely  
15 catastrophic to their career.

16 And, so, I think based on -- and that's  
17 not what's happening. I'm not saying that that's  
18 exactly what's happening but it's kind of like that.  
19 And, so, I think my client has a reasonable basis  
20 for disclosing his or her -- not disclosing his or  
21 her identity until ordered to do so.

22 THE COURT: Okay.

23 MR. HEMLEPP: Now, I have discussed with  
24 my client that the Court may compel disclosure of  
25 the identity and my client knows that that might

Judge Angela Dempsey  
December 20, 2022

Page 10

1    happen. But I am in agreement with them that they  
2    don't have to do that in this case especially  
3    because -- this isn't a car accident. We don't have  
4    to prove that they broke their leg or anything. All  
5    we're trying to prove is that they requested records  
6    and those records were not provided. And I think at  
7    this time it's appropriate for me to say it's not  
8    me.

9                   THE COURT: Okay. Okay, thank you,  
10   Mr. Hemlepp.

11                   Mr. Lunny?

12                   MR. LUNNY: Thank you, your Honor. I do  
13   think there are procedural and substantive issues  
14   here that would preclude entry of mandamus. We know  
15   from Zuckerman that mandamus, you have to have an  
16   indisputable right and it has to be a ministerial  
17   act.

18                   With respect to the indisputable right,  
19   I think that we have a fundamental procedural  
20   problem and that is that there is no rule of  
21   procedure, no statute, no case that authorizes  
22   mandamus to be granted to an anonymous petitioner.

23                   The rule is the exact opposite.  
24   Rule 1.63(o) says that the case has to be filed and  
25   must show the name or must be -- let's see, must

Judge Angela Dempsey  
December 20, 2022

Page 11

1 show the action filed in the name of the plaintiff  
2 in all cases. It just doesn't have an exception to  
3 that and that's probably because we know from the  
4 cases that we cited that mandamus confers a  
5 personal right.

6 That would be even more appropriate  
7 here where there's a request for attorneys' fees.  
8 You can't have attorneys' fees be granted to an  
9 e-mail account. You can't cut a check to an e-mail  
10 account for attorneys' fees. And, so, there really  
11 is no basis for this case to proceed anonymously and  
12 receive mandamus as an indisputable right when the  
13 rules aren't being complied with.

14 I think that there is a difference  
15 between tendering a public records request  
16 anonymously and invoking mandamus and seeking  
17 mandamus. Certainly there is a public fundamental  
18 interest in open judicial proceedings. We know that  
19 from the Baron vs. Florida Freedom Newspaper's case.  
20 And there is a right to confront anyone who is an  
21 accuser. And, so, I think there are different  
22 rights that come to play and the rules of procedure  
23 acknowledge that. And, so, there is a genuine  
24 dispute as to whether or not this is even  
25 procedurally accurate.

Judge Angela Dempsey  
December 20, 2022

Page 12

1                   Moving beyond that, Judge, I think that  
2     there are some issues with respect to the actual  
3     request itself. The request is kind of ill defined  
4     in this process of back and forth and it started  
5     with a very lengthy any and all materials from the  
6     Governor, the Governor's wife, the Chief of Staff  
7     and six or seven heavyweights that were described  
8     only by the Governor in an interview.

9                   I would submit to you that those  
10    requested materials could include personal  
11    communication, which are clearly not a public  
12    record, and that the Governor has invoked an  
13    executive privilege and he certainly timely invoked  
14    that privilege.

15                  It is unclear to us in petitioner's  
16    petition at paragraph 22 when he or she or it says  
17    that they want all materials described herein what  
18    they are really discussing. There isn't really a  
19    record that can be identified, particularly if the  
20    Governor doesn't wish to surrender his executive  
21    privilege, and that's the case.

22                  There is no indication that the  
23    Governor wishes to forfeit that privilege, he's  
24    claimed it. The petition says at paragraph 4 that  
25    he was questioned about it and he's repeatedly said

Judge Angela Dempsey  
December 20, 2022

Page 13

1 that he will not identify those people and that he  
2 believes it's a private privilege matter.

3 I think this also fails under the  
4 Chevin test, perpetuating, communicating, and  
5 formalizing knowledge. And, so, for that reason,  
6 Judge, I think, you know, it's really not a public  
7 record request, it doesn't identify itself like  
8 that. And that, you know, in Zuckerman the only  
9 time you can have a mandamus to produce the record  
10 is if there is, quote, no room for exercise of  
11 discretion.

12 And here it's the exact opposite. We  
13 have an ill-defined request that would include  
14 personal communications and certainly could infringe  
15 on the Governor's executive privilege. I'll speak  
16 to that briefly, your Honor, because I know you've  
17 got limited time. But really the issue here is can  
18 you use a public records request to compel the  
19 Governor to answer questions about the identity of  
20 legal heavyweights that he consulted in the  
21 appointment process when he's declined to do so to  
22 date and invoked his executive privilege.

23 And the answer is no. The privilege is  
24 rooted in the separation of powers. We know that.  
25 It's codified in the Constitution at Article II,



Judge Angela Dempsey  
December 20, 2022

Page 14

1 Section 3. We know from Bush v. Chivo and other  
2 cases that Florida's courts have repeatedly  
3 described that separation of powers as the  
4 cornerstone of American democracy, and it's  
5 critical. And here we're talking about the  
6 Governor's power to appoint Florida Supreme Court  
7 Justices.

8 In our response to the order to show  
9 cause we cited a number of advisory opinions where  
10 the Florida Supreme Court has been very mindful of  
11 that territorial contour and has said we're not  
12 going to advise you on your course of action, that  
13 the Governor has discretion to pick those  
14 individuals from the list the Governor's provided.  
15 And that is a check and balance and that is in the  
16 separation of powers and that raises the executive  
17 privilege.

18 Now, the Federal cases on this are  
19 clearly better at describing the executive privilege  
20 in the In Re. Sealed case that we've provided your  
21 Honor as well as U.S. versus Nixon. The courts are  
22 talking about the deliberative privilege and the  
23 communications privilege, though we certainly know  
24 from the Expedia case, which is 85 Southern 3d, 517  
25 and especially at page 523, which we provided your

Judge Angela Dempsey  
December 20, 2022

Page 15

1 Honor, that the 1st DCA and Judge Padovano  
2 recognized in the executive privilege and in fact  
3 cited to the U.S. versus Nixon case when he said  
4 additionally, quote, as with their counterparts in  
5 the judiciary and the legislature, public officials  
6 in the executive branch are entitled to a  
7 testimonial privilege.

8 There is no reason for the Governor to  
9 have a testimonial privilege and not also find that  
10 he has a privilege to not respond to questions about  
11 identifying legal heavyweights.

12 And, so, Expedia, I think, makes this  
13 pretty clear. It talks about, quote, the privileges  
14 and immunities protecting all public officials  
15 including members of the legislature arise from  
16 common law.

17 There is no argument the Governor isn't  
18 a public official. There is no argument that the  
19 separation of powers doesn't create privileges. It  
20 creates it for the executive, it creates it for the  
21 legislature, and it creates it for the judicial. We  
22 know that because there are a series of cases after  
23 Article I Section 24 like the League of Women  
24 Voters, a 2013 Florida Supreme Court case, that  
25 looked at that issue and talked about a legislative

Judge Angela Dempsey  
December 20, 2022

Page 16

1 privilege arising from the separation of powers.

2 And in that case you may have recall,  
3 your Honor, that the petitioner said well, there  
4 really isn't a privilege because there is no speech  
5 or debate clause. And the Florida Supreme Court  
6 rejected that argument in 2013 and found that the  
7 legislative privilege arose under the separation of  
8 powers.

9 Similarly with respect to the judicial  
10 privilege, your Honor, we know from Times Publishing  
11 Company versus Ake that there is a judicial  
12 privilege that arises from separation of powers.

13 Clearly Rule 2.051 and Rule 2.420 go  
14 well beyond the scope of 119 exemptions. What does  
15 that mean? It means that the judiciary has created  
16 its own exemption process that expands upon 119.

17 And, so, if the judiciary can have its  
18 powers and have a judicial privilege to declare  
19 things exempt, if your bench memos can be exempt,  
20 your draft opinions, and if the legislature has a  
21 privilege against testifying, why can't the Governor  
22 have an executive privilege. Of course he has it.  
23 And Expedia recognized that.

24 There is absolutely nothing in Article  
25 1 Section 24 that requires this Governor or any

Judge Angela Dempsey  
December 20, 2022

Page 17

1 other to have to answer questions about the identity  
2 of individuals that the Governor consulted in the  
3 appointment process.

4 If you went down that road you would  
5 have essentially an intrusion into the privilege and  
6 there is no reason to do it. The Governor should  
7 have as a matter of policy, whoever the governor is,  
8 they should have the ability to consult with anyone  
9 and everyone about that appointment process.

10 Now, your Honor, briefly, there was in  
11 the petition also a request for declaratory relief.  
12 At this stage we think that's inappropriate for the  
13 reasons that we briefed but primarily if a dec.  
14 action was to continue, we're entitled to answer and  
15 raise affirmative defenses and respond to it.

16 In addition, your Honor, there is a  
17 request for fees. I covered that at the front with  
18 this anonymous component that we have here. But  
19 also there really isn't a way that we're aware of  
20 where the Governor can be responsible for fees  
21 because that only arises under 119 against an  
22 agency. So, clearly the Governor isn't subjected to  
23 that.

24 But also we've offered a Delorenz  
25 affidavit, which I would move in now, which I think

Judge Angela Dempsey  
December 20, 2022

Page 18

1 maps out a very compelling point and that is that  
2 this was -- I think it was 252 or so pending public  
3 record requests. 150 or so were ahead of  
4 Mr. Hemlepp's client.

5 And, you know, frankly I don't think  
6 there has been an unreasonable or untoward delay in  
7 this case. We attached examples of the kinds of  
8 public records requests that are being received and  
9 processed and handled by this office. And it is a  
10 massive amount of information. And they're doing  
11 the best that they can.

12 But the problem here is you cannot  
13 identify records unless the Governor chooses to  
14 surrender a privilege, which he has not made that  
15 decision. He does not intend to surrender that  
16 executive privilege. So, if they had asked for  
17 specific records that could be identified, that  
18 would be a different animal.

19 But what we have here is an improper  
20 anonymous plaintiff seeking mandamus under a right  
21 that is clearly disputed and requires discretionary  
22 acts. And for those reasons we think that really  
23 mandamus must be denied.

24 THE COURT: Okay. Thank you, Mr. Lunny.

25 Mr. Hemlepp, did you want to reply?

Judge Angela Dempsey  
December 20, 2022

Page 19

1 MR. HEMLEPP: Yes, your Honor. There is a  
2 lot to unpack there, if I could have at least half  
3 as much time. Where do I start?

4 First of all, the request was very  
5 specific. It uses language out of the statute. It  
6 requested specifically materials, call-outs,  
7 e-mails, texts, between the Governor, these other  
8 people, and these so-called six or seven pretty big  
9 legal conservative heavyweights. We obviously don't  
10 know who those people are so we cannot identify  
11 them.

12 And any -- to the extent that executive  
13 privilege is being cited, I've got 300-and-something  
14 pages of the sunshine manual written by the Attorney  
15 General of the State of Florida in conjunction with  
16 the First Amendment Foundation, the term executive  
17 privilege doesn't even show up.

18 I have been dealing with public records  
19 since I was in my twenties and I've never heard that  
20 come up before. And the fact that we're citing to  
21 case law from Federal Courts in Vermont and  
22 President Nixon is -- you know, this isn't a  
23 testimonial privilege. This is an invented  
24 exception to the sunshine law.

25 And any exemption to Article 1 Section

Judge Angela Dempsey  
December 20, 2022

Page 20

1 24 has to be specifically made constitutional by the  
2 Constitution. It applies explicitly to the  
3 executive branch and each constitutional officer.  
4 And obviously the Governor is a constitutional  
5 officer.

6 The Governor and the Executive Office  
7 of the Governor has no discretion whatsoever whether  
8 or not to disclose public records. It's a mandatory  
9 act. Under Prominade, 145 2d Second, 980, you know,  
10 for purposes of mandamus under Public Records Act  
11 disclosure of the public records is a mandatory act.

12 Same thing Mills, Weeks, Smithey  
13 (phonetic) Estate, discloser of public records is  
14 not a discretionary act, it is mandatory and  
15 directed by Chapter 119. And any exemption -- you  
16 know, the courts are required to construe the public  
17 records law liberally in favor of openness and any  
18 exemptions from disclosure are to be construed  
19 narrowly and limited to their designated purpose.  
20 That's from Chandler, City of Sanford.

21 Here the Governor has stated no  
22 exemption, no statutory exemption, no constitutional  
23 exemption. There is no text at all. They have  
24 invented it out of whole cloth and certainly not one  
25 with a stated purpose. They have to have a stated

Judge Angela Dempsey  
December 20, 2022

Page 21

1 purpose and for a stated purpose to exist it has to  
2 be in writing and it's only available, an exemption,  
3 after a super majority of the legislature passes it  
4 as follows the procedures set forth in the  
5 Constitution.

6 And here, just less than two months ago  
7 in another public records case, the Governor  
8 admitted that the executive privilege, quote, not  
9 yet specifically recognized in Florida. It doesn't  
10 exist.

11 And that's significant given that the  
12 Office of the Governor has existed since the state  
13 was founded in 1845. So, only now in this case are  
14 we bringing up executive privilege. It's being made  
15 up.

16 So, when the voters in Florida passed  
17 in 1992, I think, the public records and sunshine  
18 law as to constitutional stature, it's precisely  
19 because the court -- I don't have the cite in front  
20 of me but a court ruled that there was -- that there  
21 was privilege for legislature and certain -- certain  
22 officers in the executive branch and the judiciary.  
23 And the public freaked out. The press lost their  
24 minds, and then all of a sudden a constitutional  
25 amendment was passed.



Judge Angela Dempsey  
December 20, 2022

Page 22

1                   And obviously that constitutional  
2   amendment was passed to overturn that case. And in  
3   fact the editor's notes to that -- please pardon me  
4   for a second. I'm just going to read what used to  
5   be the rule and why they changed it. Florida  
6   Supreme Court determined that based on separation of  
7   powers requirements, the public records law did not  
8   apply to the legislative branch nor to  
9   constitutional officers of other branches.

10                  The decision meant that records of  
11   legislators as well as those of the Governor and  
12   cabinet officers at least with respect to the  
13   exercise of constitutional powers were not subject  
14   to the law.

15                  To continue, the decision caused a stir  
16   among the public and particularly the press.  
17   Efforts were quickly begun for a constitutional  
18   change, which concluded with the successful passage  
19   of this amendment.

20                  377 pages of the sunshine manual, your  
21   Honor, and there is not one mention of executive  
22   privilege in there.

23                  At the end of the day every person, my  
24   8 year old daughter could request public records and  
25   be entitled to receive them unless they are exempted

Judge Angela Dempsey  
December 20, 2022

Page 23

1 pursuant to the section or specifically made  
2 constitutional by the Constitution.

3 And the Constitution did not pass sole  
4 unrestricted, unlimited discretion in the Governor  
5 for the appointment of Supreme Court Justices.  
6 There's the Judicial Nominating Commission. It's  
7 constrained in other ways. You can't just have a  
8 shadow kitchen cabinet that's making decisions on  
9 behalf of the voters of the State of Florida.

10 And the Governor has exercised this  
11 appointment power is not beyond the reach of the  
12 judiciary. And the Supreme Court demonstrated that  
13 recently in Thompson v. DeSantis, 301 So. 3d, 180,  
14 and they did deny the writ to the senator or  
15 representative that filed the case. But the Court  
16 did recognize that the Governor exceeded his  
17 appointment of power by appointing a judge without  
18 correct qualifications. I believe they lived  
19 outside the state or something like that.

20 And, so, if the Governor has his way,  
21 in this case Chapter 119 would be turned completely  
22 inside out. It wouldn't even be applicable at all.  
23 The Governor could just say no, executive privilege.

24 We don't have, your Honor, executive  
25 privilege in Florida for the Governor when it comes

Judge Angela Dempsey  
December 20, 2022

Page 24

1 to public records law. Under the Constitution it's  
2 not in the statutes and the Governor does not get to  
3 it in a court case where it's inconvenient for him  
4 to disclose the information that might be  
5 uncomfortable. I don't even know if it would be  
6 uncomfortable. I just know my client wants the  
7 information and that they're entitled to it.

8 THE COURT: Okay. Thank you.

9 So, based on everything including that  
10 petition, the response, the reply, the affidavit,  
11 and all of the case law, I am going to deny the  
12 petition for all of the reasons articulated by the  
13 respondent including the fact that this doesn't  
14 qualify as a public record under Chevin and under  
15 the Expedia and other cases. This is the Governor's  
16 thought process. It's -- there is not a particular  
17 public record that addresses this thought process.

18 So, I am going to deny the petition.  
19 And I think the respondent already --

20 MR. HEMLEPP: Your Honor, just one thing,  
21 though, if I may, I know that this is bad to say  
22 something when you're making the ruling, but we  
23 can't possibly know what records we're requesting if  
24 we don't know what they are. So, that's why you  
25 request records in categories and with descriptions.

Judge Angela Dempsey  
December 20, 2022

Page 25

1 THE COURT: Mr. Lunny, did you already  
2 provide a proposed order?

3 MR. LUNNY: I think we e-mailed it in on  
4 the 19th of November so -- to Ms. Shuper (phonetic).  
5 I don't know if she was in at that time but we  
6 copied Mr. Hemlepp. We can send it again, your  
7 Honor.

8 THE COURT: Okay. I guess maybe send it  
9 again just in case. I think we have it and so I'll  
10 take a look at that and edit that if needed. Was  
11 it in Word?

12 MR. LUNNY: Yes, your Honor.

13 THE COURT: Okay. Anything else from you,  
14 Mr. Lunny?

15 MR. LUNNY: No, your Honor.

16 THE COURT: Mr. Hemlepp?

17 MR. HEMLEPP: No, your Honor. Thank you.  
18 Happy holidays.

19 THE COURT: Okay, thank you. Merry  
20 Christmas.

21 (Proceedings concluded at 10:34 a.m.)  
22  
23  
24  
25

Judge Angela Dempsey  
December 20, 2022

Page 26

1

2

REPORTER'S CERTIFICATE

3

4 STATE OF FLORIDA )

5 COUNTY OF PALM BEACH )

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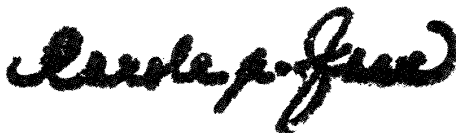
8 I, Carole A. Glass, Stenographic Reporter,  
9 certify that I was authorized to and did  
10 stenographically report the foregoing remote hearing  
11 proceedings and that the transcript is a true and  
12 complete record of my stenographic notes.

13

14 Dated this 27th day of December, 2022.

15

16



17

18 Carole A. Glass

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25

Judge Angela Dempsey  
 December 20, 2022

1

<b>1</b>	<b>2013</b> 15:24 16:6	<b>5th</b> 5:2	<b>act</b> 3:21 4:12,13 6:21 7:21 10:17 20:9, 10,11,14
<b>1</b> 16:25 19:25	<b>22</b> 3:2 12:16	<b>8</b>	<b>action</b> 11:1 14:12 17:14
<b>1,159</b> 6:20	<b>24</b> 15:23 16:25 20:1	<b>8</b> 22:24	<b>acts</b> 18:22
<b>1.63(o)</b> 10:24	<b>252</b> 18:2	<b>85</b> 14:24	<b>actual</b> 12:2
<b>10:34</b> 25:21	<b>2d</b> 20:9	<b>9</b>	<b>addition</b> 3:12 17:16
<b>119</b> 16:14,16 17:21 20:15 23:21	<b>3</b>	<b>980</b> 20:9	<b>additionally</b> 15:4
<b>145</b> 20:9	<b>3</b> 14:1	<b>A</b>	<b>addresses</b> 24:17
<b>150</b> 18:3	<b>300-and-something</b> 19:13	<b>a.m.</b> 25:21	<b>admitted</b> 21:8
<b>180</b> 23:13	<b>301</b> 23:13	<b>ability</b> 6:6 9:8 17:8	<b>advise</b> 14:12
<b>1845</b> 21:13	<b>377</b> 22:20	<b>abortion</b> 8:21	<b>advisory</b> 14:9
<b>1902</b> 3:2	<b>3d</b> 14:24 23:13	<b>absolutely</b> 9:14 16:24	<b>affidavit</b> 6:3 17:25 24:10
<b>1992</b> 21:17	<b>4</b>	<b>access</b> 7:19	<b>affirmative</b> 17:15
<b>19th</b> 25:4	<b>4</b> 12:24	<b>accident</b> 10:3	<b>agency</b> 17:22
<b>1st</b> 15:1	<b>4th</b> 7:6	<b>account</b> 11:9,10	<b>agreement</b> 10:1
<b>2</b>	<b>5</b>	<b>accurate</b> 11:25	<b>ahead</b> 3:16 18:3
<b>2.051</b> 16:13	<b>517</b> 14:24	<b>accuser</b> 11:21	<b>Ake</b> 16:11
<b>2.420</b> 16:13	<b>523</b> 14:25	<b>achieve</b> 5:20	
		<b>acknowledge</b> 11:23	

Judge Angela Dempsey  
 December 20, 2022

2

<b>allowed</b> 7:8,9	<b>argue</b> 4:20	9:4 12:4	<b>briefly</b> 13:16 17:10
<b>alternative</b> 3:24	<b>argument</b> 6:23 15:17,18	<b>bad</b> 24:21	<b>bringing</b> 21:14
<b>amendment</b> 19:16 21:25 22:2,19	16:6	<b>balance</b> 14:15	<b>broke</b> 10:4
<b>American</b> 14:4	<b>arise</b> 15:15	<b>Baron</b> 11:19	<b>brought</b> 4:25
<b>amicable</b> 5:22	<b>arises</b> 16:12 17:21	<b>based</b> 8:9 9:16 22:6 24:9	<b>burden</b> 4:1,4
<b>amount</b> 18:10	<b>arising</b> 16:1	<b>basically</b> 5:13	<b>Bush</b> 14:1
<b>Andrew</b> 3:12	<b>arose</b> 16:7	<b>basis</b> 9:19 11:11	<hr/> <b>C</b> <hr/>
<b>animal</b> 18:18	<b>Article</b> 13:25 15:23 16:24 19:25	<b>begun</b> 22:17	<b>CA</b> 3:2
<b>anonymous</b> 10:22 17:18 18:20	<b>articulated</b> 24:12	<b>behalf</b> 3:5 23:9	<b>cabinet</b> 22:12 23:8
<b>anonymously</b> 7:1,4,9,10 8:24 11:11,16	<b>assert</b> 6:12	<b>belief</b> 7:13	<b>call-outs</b> 19:6
<b>appellant</b> 7:17 8:11	<b>assume</b> 6:4	<b>believes</b> 13:2	<b>candor</b> 4:7
<b>applicable</b> 4:19 23:22	<b>attached</b> 18:7	<b>bench</b> 16:19	<b>car</b> 10:3
<b>applies</b> 6:1 20:2	<b>Attorney</b> 19:14	<b>big</b> 5:5 19:8	<b>career</b> 9:15
<b>apply</b> 22:8	<b>attorneys'</b> 11:7,8,10	<b>bit</b> 5:17	<b>careful</b> 7:11
<b>appoint</b> 14:6	<b>authority</b> 7:4,5,24	<b>bother</b> 6:2	<b>case</b> 4:5,11,13 5:1 6:25 7:6 8:1, 10,12,14,21, 25 10:2,21,24 11:11,19 12:21 14:20, 24 15:3,24 16:2 18:7 19:21 21:7,13
<b>appointing</b> 23:17	<b>authorizes</b> 10:21	<b>branch</b> 15:6 20:3 21:22 22:8	
<b>appointment</b> 13:21 17:3,9 23:5,11,17	<b>aware</b> 7:24 17:19	<b>branches</b> 22:9	
	<hr/> <b>B</b> <hr/>	<b>briefed</b> 17:13	
	<b>back</b>		

Judge Angela Dempsey  
 December 20, 2022

3

22:2 23:15,21 24:3,11 25:9	<b>cite</b> 6:22 21:19	<b>compel</b> 9:24 13:18	<b>consult</b> 17:8
<b>cases</b> 8:23 11:2,4 14:2,18 15:22 24:15	<b>cited</b> 7:7 11:4 14:9 15:3 19:13	<b>compelling</b> 18:1	<b>consulted</b> 13:20 17:2
<b>catastrophic</b> 9:15	<b>citing</b> 19:20	<b>completely</b> 23:21	<b>continue</b> 17:14 22:15
<b>categories</b> 24:25	<b>City</b> 20:20	<b>complied</b> 11:13	<b>contour</b> 14:11
<b>caused</b> 22:15	<b>claimed</b> 12:24	<b>component</b> 17:18	<b>contrary</b> 7:24
<b>Chandler</b> 7:6,7,16 8:8, 11 9:7 20:20	<b>clause</b> 16:5	<b>concluded</b> 22:18 25:21	<b>conversations</b> 5:14
<b>change</b> 22:18	<b>clear</b> 15:13	<b>confers</b> 11:4	<b>copied</b> 25:6
<b>changed</b> 22:5	<b>clerk</b> 9:12	<b>confront</b> 11:20	<b>cornerstone</b> 14:4
<b>Chapter</b> 20:15 23:21	<b>client</b> 5:1,8,18,21 7:11,13 8:4 9:12,19,24,25 18:4 24:6	<b>conjunction</b> 19:15	<b>correct</b> 8:13 23:18
<b>check</b> 11:9 14:15	<b>codified</b> 13:25	<b>consequences</b> 7:14	<b>counsel</b> 3:13
<b>Chevin</b> 13:4 24:14	<b>cloth</b> 20:24	<b>conservative</b> 5:5 19:9	<b>Counsel'</b> 5:12
<b>Chief</b> 5:11 12:6	<b>Commission</b> 23:6	<b>Constitution</b> 13:25 20:2 21:5 23:2,3 24:1	<b>counterparts</b> 15:4
<b>chilling</b> 7:19	<b>common</b> 15:16	<b>constitutional</b> 20:1,3,4,22 21:18,24 22:1,9,13,17 23:2	<b>couple</b> 8:23
<b>Chivo</b> 14:1	<b>communicating</b> 13:4	<b>constrained</b> 23:7	<b>court</b> 3:1,7,15,24 4:3,18,20 5:7 6:5,6,24 7:17 8:8,16,18 9:13,22,24 10:9 14:6,10 15:24 16:5 18:24 21:19, 20 22:6 23:5, 12,15 24:3,8 25:1,8,13,16,
<b>chooses</b> 18:13	<b>communication</b> 12:11	<b>construe</b> 20:16	
<b>Christmas</b> 25:20	<b>communications</b> 13:14 14:23	<b>construed</b> 20:18	
<b>Christopher</b> 3:9	<b>Company</b> 16:11		



Judge Angela Dempsey  
 December 20, 2022

4

19	<b>dec</b>	<b>denied</b>	20:7 23:4
<b>Court's</b>	17:13	6:10 8:7	<b>discretionary</b>
9:2	<b>decision</b>	18:23	18:21 20:14
<b>courts</b>	18:15 22:10,	<b>deny</b>	<b>discussed</b>
14:2,21 19:21	15	23:14 24:11,	9:23
20:16	<b>decisions</b>	18	<b>discussing</b>
<b>covered</b>	23:8	<b>denying</b>	12:18
17:17	<b>declaration</b>	6:6	<b>dispute</b>
<b>create</b>	3:21	<b>Desantis</b>	5:23 11:24
15:19	<b>declaratory</b>	23:13	<b>disputed</b>
<b>created</b>	17:11	<b>describing</b>	18:21
16:15	<b>declare</b>	14:19	<b>documents</b>
<b>creates</b>	16:18	<b>descriptions</b>	6:2,4
15:20,21	<b>declined</b>	24:25	<b>Doe</b>
<b>critical</b>	13:21	<b>designated</b>	3:6 4:25 7:25
14:5	<b>defeats</b>	20:19	8:19
<b>cut</b>	9:6	<b>determine</b>	<b>draft</b>
11:9	<b>defenses</b>	4:18	16:20
	17:15	<b>determined</b>	<b>Drew</b>
<hr/>	<b>defined</b>	22:6	3:11
<b>D</b>	12:3	<b>difference</b>	<hr/>
<b>damages</b>	<b>delay</b>	11:14	<b>E</b>
8:2,3	18:6	<b>directed</b>	
<b>date</b>	<b>delayed</b>	20:15	<b>e-mail</b>
5:18 13:22	6:10 8:7	<b>disclose</b>	5:16 11:9
<b>daughter</b>	<b>deliberative</b>	3:20 7:1 20:8	<b>e-mailed</b>
22:24	14:22	24:4	25:3
<b>day</b>	<b>Delorenz</b>	<b>disclosed</b>	<b>e-mails</b>
22:23	17:24	7:15	5:10,13 19:7
<b>DCA</b>	<b>demand</b>	<b>discloser</b>	<b>edit</b>
7:6 15:1	9:5	20:13	25:10
<b>deal</b>	<b>democracy</b>	<b>disclosing</b>	<b>editor's</b>
5:25	14:4	9:20	22:3
<b>dealing</b>	<b>demonstrated</b>	<b>disclosure</b>	<b>Edward</b>
19:18	23:12	7:18 9:24	8:10
<b>debate</b>	<b>Dempsey</b>	20:11,18	<b>effect</b>
16:5	3:2	<b>discretion</b>	7:19
		13:11 14:13	

Judge Angela Dempsey  
 December 20, 2022

5

<b>Efforts</b>	15:2,6,20		<b>forfeit</b>
22:17	16:22 18:16		12:23
<b>elected</b>	19:12,16	<b>F</b>	<b>form</b>
8:14	20:3,6 21:8,	<b>facie</b>	5:9
<b>election</b>	14,22 22:21	4:13	<b>formalizing</b>
5:2 6:9,14	23:23,24	<b>fact</b>	13:5
<b>end</b>	<b>exempt</b>	8:15 9:11	<b>forward</b>
22:23	6:16,17 16:19	15:2 19:20	4:4,6
<b>enforce</b>	<b>exempted</b>	22:3 24:13	<b>found</b>
7:10,25	22:25	<b>fails</b>	16:6
<b>entered</b>	<b>exemption</b>	13:3	<b>Foundation</b>
3:25	4:18 6:12	<b>favor</b>	19:16
<b>entire</b>	16:16 19:25	20:17	<b>founded</b>
9:6	20:15,22,23	<b>Federal</b>	21:13
<b>entitled</b>	21:2	14:18 19:21	<b>frankly</b>
15:6 17:14	<b>exemptions</b>	<b>fees</b>	18:5
22:25 24:7	6:20 16:14	11:7,8,10	<b>freaked</b>
<b>entry</b>	20:18	17:17,20	21:23
10:14	<b>exercise</b>	<b>file</b>	<b>Freedom</b>
<b>essentially</b>	13:10 22:13	7:2 9:1	11:19
17:5	<b>exercised</b>	<b>filed</b>	<b>front</b>
<b>established</b>	23:10	3:23 8:16,17	17:17 21:19
4:13	<b>exist</b>	9:5 10:24	<b>fundamental</b>
<b>Estate</b>	4:16 21:1,10	11:1 23:15	10:19 11:17
20:13	<b>existed</b>	<b>filing</b>	
<b>exact</b>	21:12	9:14	<b>G</b>
10:23 13:12	<b>existing</b>	<b>find</b>	<b>General</b>
<b>examples</b>	4:11	15:9	5:12 19:15
18:7	<b>expands</b>	<b>firm</b>	<b>generally</b>
<b>exceeded</b>	16:16	3:10	7:1
23:16	<b>Expedia</b>	<b>Florida</b>	<b>genuine</b>
<b>exception</b>	14:24 15:12	5:7 9:12	11:23
11:2 19:24	16:23 24:15	11:19 14:6,10	<b>Good</b>
<b>executive</b>	<b>explicitly</b>	15:24 16:5	3:1,4
3:13,19 6:1	20:2	19:15 21:9,16	<b>government</b>
12:13,20	<b>extent</b>	22:5 23:9,25	9:4,9
13:15,22	6:17 19:12	<b>Florida's</b>	
14:16,19		14:2	

Judge Angela Dempsey  
 December 20, 2022

6

<b>governor</b> 3:14,19,20 5:3,10,15 6:11,21 12:6, 8,12,20,23 13:19 14:13 15:8,17 16:21,25 17:2,6,7,20, 22 18:13 19:7 20:4,6,7,21 21:7,12 22:11 23:4,10,16, 20,23,25 24:2 <b>Governor's</b> 4:14 12:6 13:15 14:6,14 24:15 <b>granted</b> 10:22 11:8 <b>great</b> 3:15 <b>Greenacres</b> 7:7 <b>guess</b> 5:16 25:8 <hr/> <b>H</b> <hr/> <b>half</b> 19:2 <b>handled</b> 18:9 <b>happen</b> 10:1 <b>happening</b> 9:17,18 <b>happy</b> 9:1 25:18	<b>heard</b> 19:19 <b>heavyweights</b> 5:5 12:7 13:20 15:11 19:9 <b>Hemlepp</b> 3:4,5,16,17 4:6,7,23 7:5 8:13,17 9:1, 23 10:10 18:25 19:1 24:20 25:6, 16,17 <b>Hemlepp's</b> 18:4 <b>holidays</b> 25:18 <b>Honor</b> 3:4,10,17 4:8 6:11,21 10:12 13:16 14:21 15:1 16:3,10 17:10,16 19:1 22:21 23:24 24:20 25:7, 12,15,17 <b>host</b> 5:4 <b>hurt</b> 8:4 <hr/> <b>I</b> <hr/> <b>identified</b> 9:13 12:19 18:17 <b>identify</b> 8:15 9:6 13:1,7 18:13	19:10 <b>identifying</b> 7:18 15:11 <b>identity</b> 7:2,15 9:21, 25 13:19 17:1 <b>II</b> 13:25 <b>ill</b> 12:3 <b>ill-defined</b> 13:13 <b>immunities</b> 15:14 <b>improper</b> 18:19 <b>in-camera</b> 4:17 6:5 <b>in-house</b> 3:13 <b>inappropriate</b> 17:12 <b>include</b> 12:10 13:13 <b>including</b> 15:15 24:9,13 <b>inconvenient</b> 24:3 <b>indication</b> 12:22 <b>indisputable</b> 10:16,18 11:12 <b>individuals</b> 5:12 14:14 17:2 <b>information</b>	7:18 9:8 18:10 24:4,7 <b>infringe</b> 13:14 <b>inside</b> 23:22 <b>intend</b> 18:15 <b>interest</b> 11:18 <b>interview</b> 5:4 12:8 <b>intrusion</b> 17:5 <b>invented</b> 19:23 20:24 <b>invoked</b> 12:12,13 13:22 <b>invoking</b> 11:16 <b>involved</b> 5:6 <b>issue</b> 13:17 15:25 <b>issues</b> 10:13 12:2 <b>items</b> 6:17 <hr/> <b>J</b> <hr/> <b>Jane</b> 7:25 8:19 <b>Joel</b> 8:10 <b>John</b> 7:25 8:19
---	---	---	--

Judge Angela Dempsey  
 December 20, 2022

7

<b>judge</b> 3:1 12:1 13:6 15:1 23:17	24 20:17 21:18 22:7,14 24:1,11	<b>long</b> 6:9,13	<b>massive</b> 18:10
<b>judicial</b> 11:18 15:21 16:9,11,18 23:6	<b>lawsuit</b> 7:2 8:16,17 9:5,14	<b>looked</b> 15:25	<b>materials</b> 5:9 12:5,10, 17 19:6
<b>judiciary</b> 15:5 16:15,17 21:22 23:12	<b>lawsuits</b> 8:3	<b>lost</b> 21:23	<b>matter</b> 13:2 17:7
<b>justices</b> 5:6 14:7 23:5	<b>League</b> 15:23	<b>lot</b> 19:2	<b>means</b> 16:15
<b>Justin</b> 3:5	<b>leg</b> 10:4	<b>Lunny</b> 3:9 10:11,12 18:24 25:1,3, 12,14,15	<b>meant</b> 22:10
<hr/>	<b>legal</b> 5:5 13:20 15:11 19:9	<hr/>	<b>members</b> 15:15
<b>K</b>	<b>legislative</b> 15:25 16:7 22:8	<b>M</b>	<b>memos</b> 16:19
<b>kind</b> 9:18 12:3	<b>legislators</b> 22:11	<b>made</b> 5:3 8:6 18:14 20:1 21:14 23:1	<b>mention</b> 22:21
<b>kinds</b> 18:7	<b>legislature</b> 15:5,15,21 16:20 21:3,21	<b>majority</b> 21:3	<b>Merry</b> 25:19
<b>King</b> 3:12	<b>lengthy</b> 12:5	<b>make</b> 6:7	<b>messages</b> 5:10
<b>kitchen</b> 23:8	<b>liberally</b> 20:17	<b>makes</b> 15:12	<b>Mills</b> 20:12
<b>knowledge</b> 13:5	<b>limited</b> 13:17 20:19	<b>making</b> 23:8 24:22	<b>mindful</b> 14:10
<hr/>	<b>list</b> 14:14	<b>mandamus</b> 3:18,24 10:14,15,22 11:4,12,16,17 13:9 18:20,23 20:10	<b>minds</b> 21:24
<b>L</b>	<b>lived</b> 23:18	<b>mandatory</b> 20:8,11,14	<b>ministerial</b> 10:16
<b>Lady</b> 5:11	<b>livelihood</b> 7:14	<b>manual</b> 19:14 22:20	<b>minute</b> 5:23
<b>language</b> 19:5	<b>logs</b> 5:9	<b>maps</b> 18:1	<b>month</b> 5:2
<b>largely</b> 9:3			<b>months</b> 6:8 21:6
<b>law</b> 4:5,12 6:25 15:16 19:21,			<b>morning</b> 3:1,4

Judge Angela Dempsey  
 December 20, 2022

8

<b>motion</b> 9:2			<b>personnel</b> 5:11
<b>move</b> 17:25	<b>O</b>	<b>P</b>	<b>petition</b> 3:23 12:16,24 17:11 24:10, 12,18
<b>moved</b> 8:23	<b>occur</b> 8:24	<b>Padovano</b> 15:1	<b>petitioner</b> 3:5 4:25 8:9, 11,14 10:22 16:3
<b>Moving</b> 12:1	<b>October</b> 5:2	<b>pages</b> 19:14 22:20	<b>petitioner's</b> 12:15
<b>N</b>	<b>offered</b> 17:24	<b>paragraph</b> 12:16,24	<b>phone</b> 5:14
<b>named</b> 8:9	<b>office</b> 3:13,19 4:14 5:12 18:9 20:6 21:12	<b>pardon</b> 22:3	<b>phonetic</b> 20:13 25:4
<b>narrow</b> 5:18,19	<b>officer</b> 20:3,5	<b>parental</b> 8:21	<b>pick</b> 14:13
<b>narrowly</b> 20:19	<b>officers</b> 21:22 22:9,12	<b>Parker</b> 3:11	<b>plaintiff</b> 3:3 7:4 8:14 11:1 18:20
<b>needed</b> 25:10	<b>official</b> 15:18	<b>partner</b> 3:11	<b>play</b> 11:22
<b>news</b> 6:10	<b>officials</b> 15:5,14	<b>pass</b> 23:3	<b>point</b> 4:1 18:1
<b>Newspaper's</b> 11:19	<b>open</b> 11:18	<b>passage</b> 22:18	<b>policy</b> 17:7
<b>Nixon</b> 14:21 15:3 19:22	<b>openness</b> 20:17	<b>passed</b> 6:10 21:16,25 22:2	<b>position</b> 7:8,23
<b>nomenclature</b> 8:20	<b>opinions</b> 14:9 16:20	<b>passes</b> 21:3	<b>possibly</b> 24:23
<b>Nominating</b> 23:6	<b>opportunity</b> 4:21	<b>pending</b> 18:2	<b>power</b> 14:6 23:11,17
<b>notes</b> 22:3	<b>opposite</b> 10:23 13:12	<b>people</b> 8:23 13:1 19:8,10	<b>powers</b> 13:24 14:3,16 15:19 16:1,8, 12,18 22:7,13
<b>November</b> 25:4	<b>order</b> 3:25 5:20 14:8 25:2	<b>perpetuating</b> 13:4	
<b>number</b> 14:9	<b>ordered</b> 9:21	<b>person</b> 7:1 9:6 22:23	
	<b>overturn</b> 22:2	<b>personal</b> 11:5 12:10 13:14	

Judge Angela Dempsey  
 December 20, 2022

9

<b>precisely</b> 21:18	21:8,14,21 22:22 23:23, 25	<b>protect</b> 9:7	<hr/> <b>Q</b> <hr/>
<b>preclude</b> 10:14	<b>privileges</b> 15:13,19	<b>protecting</b> 15:14	<b>qualifications</b> 23:18
<b>preference</b> 9:2	<b>problem</b> 10:20 18:12	<b>prove</b> 4:4 8:4,5 10:4,5	<b>qualify</b> 24:14
<b>present</b> 4:21,22	<b>procedural</b> 10:13,19	<b>provide</b> 7:17 25:2	<b>questioned</b> 12:25
<b>presented</b> 6:5	<b>procedurally</b> 11:25	<b>provided</b> 10:6 14:14, 20,25	<b>questions</b> 13:19 15:10 17:1
<b>President</b> 19:22	<b>procedure</b> 10:21 11:22	<b>provision</b> 7:3	<b>quickly</b> 22:17
<b>press</b> 21:23 22:16	<b>procedures</b> 21:4	<b>public</b> 3:21 4:12 6:21 7:19,20 8:3,19 9:8 11:15,17 12:11 13:6,18 15:5,14,18 18:2,8 19:18 20:8,10,11, 13,16 21:7, 17,23 22:7, 16,24 24:1, 14,17	<b>quote</b> 13:10 15:4,13 21:8
<b>pretend</b> 9:10,11	<b>proceed</b> 4:10 8:24 11:11		<hr/> <b>R</b> <hr/>
<b>pretty</b> 5:5,8 15:13 19:8	<b>proceeding</b> 7:4		<b>Radey</b> 3:10
<b>prima</b> 4:13	<b>proceedings</b> 11:18 25:21		<b>radio</b> 5:3
<b>primarily</b> 17:13	<b>process</b> 12:4 13:21 16:16 17:3,9 24:16,17		<b>raise</b> 17:15
<b>prior</b> 7:18		<b>Publishing</b> 16:10	<b>raises</b> 14:16
<b>private</b> 13:2	<b>processed</b> 18:9	<b>purpose</b> 9:7 20:19,25 21:1	<b>rapid</b> 5:20
<b>privilege</b> 6:1 7:12 12:13,14,21, 23 13:2,15, 22,23 14:17, 19,22,23 15:2,7,9,10 16:1,4,7,10, 12,18,21,22 17:5 18:14,16 19:13,17,23	<b>produce</b> 4:15,17 6:18 13:9	<b>purposes</b> 20:10	<b>reach</b> 23:11
	<b>Promenade</b> 20:9	<b>pursuant</b> 23:1	<b>read</b> 22:4
	<b>proof</b> 4:1		<b>reason</b> 13:5 15:8 17:6
	<b>proposed</b> 25:2		<b>reasonable</b> 5:22 7:13

Judge Angela Dempsey  
 December 20, 2022

10

9:19	<b>remainder</b>	10:18 12:2	
<b>reasons</b>	6:19	16:9 22:12	<b>S</b>
17:13 18:22	<b>repeatedly</b>	<b>respond</b>	<b>Sanford</b>
24:12	12:25 14:2	4:9 9:4 15:10	20:20
<b>recall</b>	<b>reply</b>	17:15	<b>scope</b>
16:2	18:25 24:10	<b>respondent</b>	16:14
<b>receive</b>	<b>represent</b>	3:8 24:13,19	<b>Sealed</b>
11:12 22:25	4:24	<b>respondents</b>	14:20
<b>received</b>	<b>representative</b>	3:11,19 4:2	<b>section</b>
18:8	23:15	<b>response</b>	14:1 15:23
<b>recently</b>	<b>request</b>	5:20 14:8	16:25 19:25
23:13	6:9,25 7:9,	24:10	23:1
<b>recognize</b>	10,23 8:6,7,	<b>responses</b>	<b>seeking</b>
23:16	19 9:5,8	5:19	3:18 11:16
<b>recognized</b>	11:7,15 12:3	<b>responsible</b>	18:20
15:2 16:23	13:7,13,18	17:20	<b>selection</b>
21:9	17:11,17 19:4	<b>review</b>	5:6
<b>record</b>	22:24 24:25	4:17 6:5,7	<b>senator</b>
6:18 12:12,19	<b>requested</b>	<b>rights</b>	23:14
13:7,9 18:3	3:20 5:1,8	11:22	<b>send</b>
24:14,17	6:16 10:5	<b>road</b>	25:6,8
<b>records</b>	12:10 19:6	17:4	<b>separation</b>
3:20,21 4:5,	<b>requesting</b>	<b>room</b>	13:24 14:3,16
8,12,16,17	24:23	13:10	15:19 16:1,7,
5:1 6:9,16,	<b>requests</b>	<b>rooted</b>	12 22:6
21,25 7:9,10,	5:20,25 18:3,	13:24	<b>series</b>
20 8:3,6,19	8	<b>rule</b>	15:22
9:4 10:5,6	<b>required</b>	10:20,23,24	<b>set</b>
11:15 13:18	7:20,22 20:16	16:13 22:5	21:4
18:8,13,17	<b>requirements</b>	<b>ruled</b>	<b>settlement</b>
19:18 20:8,	22:7	21:20	5:22
10,11,13,17	<b>requires</b>	<b>rules</b>	<b>shadow</b>
21:7,17 22:7,	16:25 18:21	11:13,22	23:8
10,24 24:1,	<b>requiring</b>	<b>ruling</b>	<b>show</b>
23,25	3:18 7:17	9:7 24:22	3:25 4:15 5:4
<b>rejected</b>	<b>resolved</b>		10:25 11:1
16:6	6:14		14:8 19:17
<b>relief</b>	<b>respect</b>		
17:11			

Judge Angela Dempsey  
 December 20, 2022

11

<b>Shuper</b> 25:4	<b>standard</b> 5:9	5:24 21:24	14:11
<b>sign</b> 6:22	<b>start</b> 19:3	<b>suit</b> 6:13	<b>test</b> 13:4
<b>significant</b> 21:11	<b>started</b> 12:4	<b>summary</b> 6:23	<b>testifying</b> 16:21
<b>similar</b> 8:21	<b>state</b> 5:7 19:15	<b>sunshine</b> 19:14,24	<b>testimonial</b> 15:7,9 19:23
<b>Similarly</b> 16:9	21:12 23:9,19	21:17 22:20	<b>text</b> 5:10 20:23
<b>simple</b> 5:1	<b>stated</b> 20:21,25 21:1	<b>super</b> 21:3	<b>texts</b> 19:7
<b>simply</b> 6:11	<b>statements</b> 5:3	<b>supposed</b> 6:18	<b>thing</b> 20:12 24:20
<b>sit</b> 9:4	<b>stature</b> 21:18	<b>Supreme</b> 5:7 9:13	<b>things</b> 16:19
<b>Smithey</b> 20:12	<b>statute</b> 8:22 10:21	14:6,10 15:24	<b>Thompson</b> 23:13
<b>so-called</b> 19:8	19:5	16:5 22:6	<b>thought</b> 24:16,17
<b>sole</b> 23:3	<b>statutes</b> 24:2	23:5,12	<b>time</b> 8:20 10:7
<b>Southern</b> 14:24	<b>statutory</b> 7:3 20:22	<b>surrender</b> 12:20 18:14,15	13:9,17 19:3
<b>speak</b> 13:15	<b>stir</b> 22:15	<b>swore</b> 6:3	25:5
<b>specific</b> 18:17 19:5	<b>stuff</b> 5:14	<b>T</b>	<b>timely</b> 12:13
<b>specifically</b> 19:6 20:1	<b>subject</b> 22:13	<b>talk</b> 5:4	<b>Times</b> 16:10
21:9 23:1	<b>subjected</b> 17:22	<b>talked</b> 15:25	<b>title</b> 8:9
<b>speech</b> 16:4	<b>submit</b> 12:9	<b>talking</b> 14:5,22	<b>turned</b> 23:21
<b>Staff</b> 5:11 12:6	<b>substantive</b> 10:13	<b>talks</b> 15:13	<b>twenties</b> 19:19
<b>stage</b> 17:12	<b>successful</b> 22:18	<b>tendering</b> 11:15	<b>two-and-a-half</b> 6:8
	<b>sudden</b>	<b>term</b> 19:16	
		<b>territorial</b>	



Judge Angela Dempsey  
 December 20, 2022

12

<b>U</b>	<b>W</b>	<b>Zuckerman</b> 10:15 13:8	
<b>U.S.</b> 14:21 15:3	<b>waited</b> 5:23		
<b>unaware</b> 7:5	<b>waiver</b> 8:21		
<b>unclear</b> 12:15	<b>ways</b> 23:7		
<b>uncomfortable</b> 24:5,6	<b>Weeks</b> 20:12		
<b>understand</b> 5:15 6:24	<b>whatsoever</b> 6:22 8:5 20:7		
<b>unjustifiably</b> 8:7	<b>wife</b> 12:6		
<b>unlimited</b> 23:4	<b>wishes</b> 12:23		
<b>unpack</b> 19:2	<b>Women</b> 15:23		
<b>unreasonable</b> 6:15 18:6	<b>word</b> 6:16 25:11		
<b>unrestricted</b> 23:4	<b>working</b> 5:21		
<b>untoward</b> 18:6	<b>writ</b> 3:18,24 23:14		
<b>V</b>	<b>writing</b> 21:2		
<b>Vermont</b> 19:21	<b>written</b> 19:14		
<b>versus</b> 14:21 15:3 16:11	<b>Y</b>		
<b>violated</b> 3:22 4:14	<b>year</b> 22:24		
<b>voters</b> 15:24 21:16 23:9	<b>Z</b>		
	<b>Zoom</b> 3:10		

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**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT  
IN AND FOR LEON COUNTY, FLORIDA**

J. DOE, anonymously and individually, a/k/a  
"FloridaSupremeCourtPRR@protonmail.com,"

Petitioner,

v.

CASE NO.: 2022 CA 1902

GOVERNOR RON DESANTIS, in his official  
capacity as a custodian of public records, and the  
EXECUTIVE OFFICE OF THE GOVERNOR,

Respondents.

**ORDER DENYING PETITION FOR WRIT OF MANDAMUS  
AND DISMISSING COMPLAINT**

This cause came before the Court upon: (1) the Petition for Writ of Mandamus, Complaint to Enforce the Public Records Act, and Ex Parte Motion for Alternative Writ of Mandamus ("Petition") filed by J. Doe, anonymously and individually, a/k/a "FloridaSupremeCourtPRR@protonmail.com" ("Petitioner"); and (2) the Response to this Court's Order to Show Cause ("Response") filed by Governor Ron DeSantis ("Governor"), in his official capacity as a custodian of public records, and the Executive Office of the Governor ("EOG")(collectively "Respondents"). This Court, having considered the Petition, the Response, Petitioner's Reply, exhibits, affidavits, statutes, and case law, and having held a hearing on December 20, 2022, finds as follows:

**FINDINGS OF FACT AND PROCEDURAL BACKGROUND**

1. During an interview on August 25, 2022, the Governor stated that he asked a group of people he trusts to interview potential nominees for appointment to the Supreme Court of Florida. Pet. ¶ 6. The Governor referred to these individuals as "six or seven pretty big legal conservative heavyweights." *Id.* The Governor declined to identify the legal heavyweights, saying simply that "it's private." *Id.* Shortly thereafter, the *Sun-Sentinel* editorial board asked the Governor's staff to identify these individuals, but they declined to do so. Pet. ¶ 7.

2. On October 5, 2022, Petitioner submitted an anonymous public records request seeking communications or evidence of such communications between the Governor's office and the "legal conservative heavyweights" with whom the Governor consulted. Pet. ¶ 1. Specifically, the Petitioner requested:

Any and all materials, on official devices or personal devices used for official business in whatever form, including but not limited to call logs, emails, or texts between or among Governor Ron DeSantis, Casey DeSantis, the governor's chief of staff, his executive or personal assistants or aides, his general counsel or anyone within the general counsel's office, the director of appointments or anyone within the director of appointment's office, and the "six or seven pretty big legal conservative heavyweights" described by the governor in an interview with Hugh Hewitt on August 25, 2022.

Pet. ¶ 8 & Ex. A; DeLorenz Aff. ¶ 18. The Governor's Office of Open Government ("OOG"), which fulfills requests for public records in EOG's custody, acknowledged receipt of the request the following day. Pet. ¶ 9 & Ex. A; DeLorenz Aff. ¶ 19.

3. On October 12, 2022, Petitioner requested an update on the status of the request. Pet. ¶ 10 & Ex. A. Christopher DeLorenz, Director of the OOG, informed Petitioner that it has a "high volume of requests" and that once documents are compiled and reviewed, they are released." Id.; DeLorenz Aff. ¶¶ 4, 21. According to DeLorenz, as of November 22, 2022, the EOG had approximately 256 pending public records requests, many with multiple subparts. DeLorenz Decl. ¶¶ 10, 11-12. This includes approximately 165 pending requests ahead of Petitioner's. Id. ¶ 29.

4. On October 15, 2022, Petitioner revised the request to seek the disclosure of the names of the conservative legal heavyweights, the dates and locations of their interviews with the now justices, and the date of the Governor's (or his agents') communications with those persons. Pet. ¶ 11 & Ex. A. On October 18, 2022, Petitioner threatened litigation and DeLorenz responded that "[i]t would be unfair if we were to prioritize your request over all our other requests." Pet. ¶ 13 & Ex. A; see also DeLorenz Aff. ¶ 23. That same day, Petitioner informed the OOG that he or she would withdraw the request entirely "if the governor's office identifies the conservative legal

heavyweights who interviewed the nominees and the vacancies for which the governor consulted them.” Pet. ¶ 14 & Ex. A.

5. On October 26, 2022, DeLorenz informed Petitioner that he was conducting an investigation to identify the names of the individuals, but that further clarification was required. Pet. ¶ 16; DeLorenz Aff. ¶ 26. DeLorenz specifically inquired whether Petitioner was referring to all of the justices appointed by the Governor or only those justices up for retention election. *Id.* Petitioner responded that he or she would like the information for each justice appointed by the Governor, but would be amenable to a partial disclosure as soon as practicable for those justices approaching merit retention elections followed by a later disclosure of the remaining justices. Pet. ¶ 17 & Ex. A. The OOG now asserts that it is unable to satisfy Petitioner’s request without confirmation of the identities of the “legal conservative heavyweights,” and to prevent disclosure of their identities, the Governor has invoked the executive privilege. DeLorenz Aff. ¶ 30.

6. The day after the Petitioner clarified the request, a Petition in the name of “J. DOE, anonymously and individually, a/k/a ‘FloridaSupremeCourtPRR@protonmail.com’” was filed seeking to compel Respondents to produce the requested information. The Petition includes two claims: Count I is a claim for mandamus, and Count II is a claim for declaratory relief. Petitioner also asked for entry of an alternative writ of mandamus, an immediate hearing, and an award of reasonable costs and attorney’s fees.

### **DISCUSSION**

7. This Court denies the Petition for several reasons, each sufficient standing on its own. First, this Court cannot issue a writ of mandamus, or award fees and costs, to an email account or otherwise anonymous party. Second, Petitioner is not entitled to relief as he or she failed to submit a sufficiently specific request for public records. Third, this Court cannot issue a writ of mandamus because Petitioner has not established a clear legal right and improperly seeks

to compel a discretionary duty. Fourth, this Court cannot compel Respondents to produce the information requested because it is protected by the executive privilege. In addition, Petitioner's request for declaratory relief and attorney's fees and costs is denied, and the Governor is dismissed from this action. Each of these points is addressed below.

**I. A Writ of Mandamus is Not Available to an Anonymous Petitioner.**

8. Petitioner seeks relief in mandamus under Rule 1.630 of the Florida Rules of Civil Procedure. Rule 1.630 requires a petition for an extraordinary writ, including a writ of mandamus, be filed "in the name of the petitioner in all cases." The Rule does not allow a request (or a grant) of mandamus to a fictional or anonymous party. The Petition fails to comply with Rule 1.630 as it was purportedly filed by "J. DOE, anonymously and individually, a/k/a 'FloridaSupremeCourtPRR@protonmail.com.'" This Court may not, however, award a writ of mandamus to an email account.

9. Rule 1.630's mandate that a party be named in "all cases" comports with the principles of mandamus as set forth in Florida case law. Grants of mandamus confer a *personal* right. See, e.g., Pace v. Singletary, 633 So. 2d 516 (Fla. 1st DCA 1994)(finding the inmate was not entitled to relief in mandamus as he lacked the personal right to receive money). To be entitled to a writ of mandamus, the *petitioner* must have a clear legal right to the requested relief. See Chapman v. State, 910 So. 2d 940 (Fla. 5th DCA 2005)(recognizing the petitioner had no "personal right to have the arrest warrant executed"). Neither Rule 1.630 nor Florida case law permit an email account to invoke this Court's jurisdiction and receive an extraordinary writ. Lawsuits are public events. Federal caselaw provides anonymity only where matters are of a highly sensitive and personal nature, there is a real risk of physical harm, or the purpose of the lawsuit is to preserve an existing form of anonymity. The risk that a plaintiff may suffer some embarrassment is not enough. See Doe v. Frank, 951 F. 2d 320, 322 (11<sup>th</sup> Cir 1992).

10. Similarly, this Court cannot award costs or attorney's fees to an email account. Because an award of mandamus operates to afford complete relief, a petition seeking the same must be brought in the name of the petitioner "in all cases." See Fla. R. Civ. P. 1.630. Mandamus "will not lie where continued judicial supervision is required." Town of Manaplan v. Rechler, 674 So. 2d 789, 790 (Fla. 4th DCA 1996); see also Stone v. Ward, 752 So. 2d 100, 101 (Fla. 2d DCA 2000). As such, this Court cannot award mandamus, or costs or attorney's fees, to an unnamed party and later attempt to correct the matter after issuance of the writ. See Fla. Agency for Health Care Admin. v. Zuckerman Spaeder, LLP, 221 So. 3d 1260, 1264 n. 5 (Fla. 1st DCA 2017) (noting the "lower court was without authority to issue mandamus relief and retain jurisdiction for computation of reasonable reimbursement costs at some future date"). Because the Petition fails to meet the express requirements of Rule 1.630, Petitioner's request for mandamus is denied.<sup>1</sup> See Major v. Hallandale Beach Police Dep't, 219 So. 3d 856, 858 (Fla. 4th DCA 2017) (affirming denial of requested mandamus for the petitioner's failure to strictly comply with Rule 1.630).

**II. Petitioner is Not Entitled to Relief Because Petitioner Failed to Submit a Sufficiently Specific Request for Public Records.**

11. Section 119.07(1)(a), Florida Statutes, provides that "[e]very person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records." A public record is defined by statute as "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance in connection with the transaction of official business by any agency." § 119.011(12), Fla. Stat. The Florida Supreme Court has further defined a public

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<sup>1</sup> In addition, Petitioner's attempt to proceed anonymously infringes on the public's fundamental interest in open judicial proceedings. See Barron v. Fla. Freedom Newspapers, Inc., 531 So. 2d 113, 118 (Fla. 1988).

record as “material prepared in connection with official business which is intended to perpetuate, communicate, or formalize knowledge of some type.” Shevin v. Byron, Harless, Schaffer, Reid & Assocs., Inc., 379 So. 2d 633, 640 (Fla. 1980). To establish a cause of action under the Public Records Act, a party must “prove that they made a specific request for public records, the [agency] received it, the requested public records exist, and the [agency] improperly refused to produce them in a timely manner.” O’Boyle v. Town of Gulf Stream, 257 So. 3d 1036, 1040 (Fla. 4th DCA 2018) (quoting Grapski v. City of Alachua, 31 So. 3d 193, 196 (Fla. 1st DCA 2010)).

12. Petitioner has not established that it submitted a sufficiently specific request for public records. Petitioner’s initial request of October 5, 2022, requested “any and all materials . . . in whatever form” showing communications between the Governor and persons in his office and the “six or seven pretty big legal conservative heavyweights.” Petitioner’s initial request is vague and not specific in scope or subject matter, as it does not delineate when these communications occurred, or identify the topic of the communications requested, or specify the identities of the “legal conservative heavyweights.”

13. However, subsequent correspondence between Petitioner and the OOG, and Petitioner’s argument at the hearing, made clear that Petitioner’s request was not about obtaining a specific public record. Instead, Petitioner’s request was an attempt to determine who the Governor conferred with regarding his Supreme Court appointments. Indeed, the Petitioner informed the OOG that he or she would “withdraw the request entirely if the governor’s office identifies the conservative legal heavyweights who interviewed the nominees and the vacancies for which the governor consulted them.” Pet. ¶ 14 (emphasis added). Moreover, the Petition asserts that Respondents have not disclosed “the ‘legal conservative heavyweights’ who helped the governor decide the makeup of the Supreme Court of Florida.” Pet. ¶ 18. It is clear the Petitioner seeks information—the identification of the legal heavyweights—which is not a public record, but

is instead information known only to the Governor and his advisors. The mere identity of the legal heavyweights meets neither the statutory definition of a public record nor the definition set forth by the Florida Supreme Court in Shevin. In the absence of a sufficiently specific request for a public record, Petitioner is not entitled to the relief requested in the Petition.

**III. Petitioner Is Not Entitled to a Writ of Mandamus Because Petitioner Has Not Established a Clear Legal Right and Seeks to Compel a Discretionary Duty.**

14. Petitioner's request for a writ of mandamus is also denied because Petitioner has not established a clear legal right and improperly seeks to compel a discretionary duty. To be entitled to a writ of mandamus, 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." Zuckerman Spaeder, 221 So. 3d at 1263 (citations omitted). "The duty of the respondent in a mandamus action must be ministerial in nature, and not discretionary." Id. A duty is considered ministerial when "there is no room for the exercise of discretion, and the performance being required is directed by law." Id.

15. Petitioner has not met the requirements for a writ of mandamus. Petitioner's request is vague and does not seek a public record. A public records custodian has an obligation to furnish records *only after* the "person requesting them identifies the portions of the record with sufficient specificity to permit the custodian to identify the record." Woodard, 885 So. 2d at 446. Because Petitioner's request fails to identify any public record with the requisite specificity, there is no clear legal right for Petitioner to inspect or copy records. Id.; see also O'Boyle, 257 So. 3d at 1040.

16. Additionally, Petitioner does not seek to compel a purely ministerial duty. Petitioner's vague and ill-defined request requires the EOG to evaluate what potentially responsive materials exist and determine whether those materials are public record or exempt or privileged. Under the facts of this case, this is a discretionary act. While an agency has a general duty to provide access to public records, the agency's records custodian has a concomitant duty to review



and redact any exempted portions of public records. See § 119.07(1)(c), (d), Fla. Stat.; see also Zuckerman Spaeder, 221 So. 3d at 1263. Accordingly, Petitioner’s right to public records is not absolute, the EOG’s duty is not ministerial, and Petitioner’s right is not indisputable. See Zuckerman Spaeder, 221 So. 3d at 1263 (holding the requester’s right to the records was not absolute because AHCA’s “duty to protect exempted information through redaction precedes its duty to provide the documents” to the requester); see also Lee Cty. v. State Farm Mut. Ins. Co., 634 So. 2d 250, 251 (Fla. 2d DCA 1994) (“Mandamus was inappropriately issued . . . because the act involved requires discretion. The [governmental entity] is statutorily required to protect the confidentiality of the records.”). Petitioner’s request for a writ of mandamus is therefore denied.

**IV. The Identities of the “Legal Conservative Heavyweights” Are Protected by the Executive Privilege.**

17. Even if Petitioner requested public records with sufficient specificity and properly stated a claim for mandamus, the Petition must still be denied because the information sought, the identities of the “legal heavyweight conservatives,” which are necessary to satisfy Petitioner’s request, is protected by executive privilege.

18. From the beginnings of our nation, “executive officials have claimed a variety of privileges to resist disclosure of information the confidentiality of which they felt was crucial to fulfillment of the unique role and responsibilities of the executive branch of our governments.” In re Sealed Case, 121 F.3d 729, 736 (D.C. Cir. 1997). Applicable to the instant case are limited forms of the executive privilege referred to as: (1) the deliberative process privilege; and (2) the communications privilege.

19. The deliberative process privilege originated in the eighteenth and nineteenth centuries within the concept of the English “crown privilege.” See Russel L. Weaver & James T.R. Jones, The Deliberative Process Privilege, 54 Mo. L. Rev. 279, 283 (1989). This common law privilege allows a chief executive to “withhold documents and other materials that would reveal

‘advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated.’” In re Sealed Case, 121 F.3d at 737 (citing cases). To qualify for the deliberative process privilege, the material must be pre-decisional and deliberative. Id. The purpose of the deliberative process privilege is to “prevent injury to the quality of agency decisions by allowing government officials freedom to debate alternative approaches in private.” Id. (citing NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 151 (1975)).

20. The communications privilege allows a chief executive to withhold materials that reflect executive decision making and deliberations and that the chief executive believes should remain confidential. In re Sealed Case, 121 F.3d at 744; see also Trump v. Thompson, 20 F.4th 10, 25 (D.C. Cir. 2021). The privilege applies not only to materials viewed by the chief executive, but also to records solicited or received by the chief executive or his or her immediate advisers who have “broad and significant responsibility” for advising the chief executive. Trump, 20 F.4th at 25-26. The privilege is rooted in the separation of powers doctrine and “derives from the supremacy of the Executive Branch within its assigned area of constitutional responsibilities.” United States v. Nixon, 418 U.S. 683, 708 (1974); see also Trump, 20 F.4th at 26. As the Supreme Court explained:

The expectation of a President to the confidentiality of his conversations and correspondence, like the claim of confidentiality in judicial deliberations, for example, has all the values to which we accord deference for the privacy of all citizens and, added to those values, is the necessity for protection of the public interest in candid, objective, and even blunt or harsh opinions in Presidential decisionmaking. A President and those who assist him must be free to explore alternatives in the process of shaping policies and making decisions and to do so in a way many would be unwilling to express except privately. These are the considerations justifying a presumptive privilege for Presidential communications. The privilege is fundamental to the operation of Government and inextricably rooted in the separation of powers under the Constitution.

Nixon, 418 U.S. at 708. While this qualified privilege is held by the executive, it is not for the benefit of the chief executive as an individual, but “for the benefit of the public.” Trump, 20 F.4th

at 26 (citing Nixon v. Adm'r of Gen. Servs., 433 U.S. 425, 449 (1977)).

21. Florida courts have likewise recognized that all three branches of government, including the executive, have unique privileges that stem from the separation of powers. For example, the Florida Supreme Court has recognized both a legislative privilege and a judicial privilege. See, e.g., League of Women Voters of Fla., 132 So. 3d at 145 (recognizing a legislative privilege based on “inherent principles of comity that exist between the coequal branches of government”); Times Pub. Co. v. Ake, 660 So. 2d 255, 257 (Fla. 1995) (holding clerks of the court, when acting under their article V powers, are not subject to oversight and control of the legislature under Florida’s public records laws); State v. Lewis, 656 So. 2d 1248, 1250 (Fla. 1994) (stating a judge may not be examined as to his or her thought process in making a decision).

22. More recently, the First District Court of Appeal in Florida House of Representatives v. Expedia, Inc., 85 So. 3d 517, 523 (Fla. 1st DCA 2012), suggested that the same separation of powers privileges afforded to the legislature also exist for the Governor. While addressing a legislative privilege, the court likened the application of the legislative privilege to that held by the executive branch. Id. (“Additionally, as with their counterparts in the judiciary and the legislature, public officials in the executive branch are entitled to a testimonial privilege.”). The court held that “the privileges and immunities protecting all public officials, including members of the legislature, arise from the common law,” and continue to exist by virtue of section 2.01, Florida Statutes, which provides that the “common law and statute laws of England which are of a general and not local nature . . . are declared to be of force in this state.” Id. at 523. The court also held that the legislative privilege existed by “virtue of the separation of powers provision in the Florida Constitution,” explaining that

The power vested in the legislature under the Florida Constitution would be severely compromised if legislators were required to appear in court to explain why they voted a particular way or to describe their process of gathering information on a bill. Our state government could not maintain the proper “separation” required by

Article II, section 3 if the judicial branch could compel an inquiry into these aspects of the legislative process.

Id. at 524.

23. Like Experia, other Florida decisions have recognized certain protections against the disclosure of confidential information related to an executive official's discretionary and constitutional duties, albeit through different terminology.<sup>2</sup> See, e.g., State, Dep't of Health & Rehab. Servs. v. Brooke, 573 So. 2d 363 (Fla. 1st DCA 1991); see also Chavez v. State, 132 So. 3d 826, 830-31 (Fla. 2014) (finding the legislature, through enactment of a statute, could not exclude certain clemency materials from confidentiality as the Governor's clemency powers are derived from the Constitution); Parole Comm'n v. Lockett, 620 So. 2d 153, 158 (Fla. 1993) (finding the separation of powers prohibited the court from requiring the Parole Commission from producing investigative files compiled on behalf of the Governor related to his clemency powers); Girardeau v. State, 403 So. 2d 513, 517 n.6 (Fla. 1st DCA 1981) ("We are not, however, insensitive to the need for freedom of communication, which often means confidentiality and freedom from compelled disclosure"). For example, the Brooke Court held it was an abuse of the trial court's discretion to require the Secretary of the Department of Health and Rehabilitative Services to appear and provide information that was within the realm of the Secretary's discretionary authority related to the Department's programs and budgetary decisions. Brooke, 573 So. 2d at 370-71. Like the other cases addressed herein, the holding in Brooke was based on separation of powers:

as in any other case involving the discretionary integrity of the respective branches of government, we will not only zealously protect the independence of the judicial branch but will, with equal vigor, guard the constitutional prerogatives of the other branches under the doctrine of the separation of powers.

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<sup>2</sup> The Florida Supreme Court has also touched upon the executive privilege when analyzing privileges that are embedded in the Florida Constitution's separation of powers clause. See Florida League of Women Voters, 132 So. 3d at 145 (citing to the United States Supreme Court case of Nixon, which outlines the executive privilege, and commenting that "respect between the three branches is inherent in our democratic system" and that the "the privilege can be said to derive from the supremacy of each branch within its own assigned areas of constitutional duties").

Id. at 371 (emphasis added). Accordingly, Florida decisions have historically recognized certain protections afforded to each governmental branch, including the executive, rooted in common law and the separation of powers doctrine. This executive privilege is likewise recognized here.

24. Additionally, the Florida Constitution recognizes that some records are made “confidential by this Constitution,” and the separation of powers principle that underlies the privilege is firmly grounded within constitutional text. See Art. I, § 24, Fla. Const.; see also Expedia, 85 So. 3d at 519 (noting the legislative privilege is “implicit” in the Florida Constitution’s separation of power provision). Simply put, the absence of a subpoena is even more reason for this Court to find that the Governor should not be compelled to answer questions about the identities of advisors in the appointment process. While addressing a legislative privilege, the Florida Supreme Court held that the “strong public policy, as codified in our state constitution, favoring transparency and public access” was not conclusive, and that the doctrine of separation of powers weighed in favor of recognizing the privilege. League of Women Voters of Fla., 132 So. 3d at 144. Here, the separation of powers doctrine likewise favors enforcement of the executive privilege.<sup>3</sup> See Brooke, 573 So. 2d at 371 (identifying the importance of guarding the “constitutional prerogatives” of the branches of government under the separation of powers).

26. This Court also finds that the purpose underlying the executive privilege supports its recognition here. To effectively discharge his constitutional duty, the Governor must be permitted to have access to candid advice in order to explore policy alternatives and reach appropriate decisions. See Nixon, 418 U.S. at 708; see also Freedom Found. v. Gregoire, 178 Wash. 2d 686, 698 (Sup. Ct. Wash. 2013). The interest in maintaining the confidentiality of the executive is vital to the public, as it fosters informed and sound gubernatorial deliberations and

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<sup>3</sup> Constitutional context aside, the privilege likewise arises from English common law which continues to exist today. See § 2.01, Fla. Stat. (“The common and statute laws of England which are of a general and not local nature . . . are declared to be of force in this state. . . .”); see also Expedia, 85 So. 3d at 523.

decision making. See Guy v. Judicial Nominating Comm'n, 659 A.2d 777, 783 (Sup. Ct. Del. 1995). Much like the legislative privilege discussed in Expedia, the power vested in the executive branch, and particularly in the chief executive, would be severely compromised if it were required to disclose confidential information concerning its decision making and deliberations as it relates to its constitutionally mandated duties. Expedia, 85 So. 3d at 524.

27. In this case, Petitioner seeks information related to the Governor's constitutional duty to fill judicial vacancies, and, in particular, the identity of the "conservative legal heavyweights" consulted by the Governor with respect to such appointments. The Florida Constitution assigns the power to appoint persons to fill judicial vacancies only to the Governor. Article V, section 11(a) of the Constitution specifically states:

Whenever a vacancy occurs in a judicial office to which election for retention applies, the governor shall fill the vacancy by appointing for a term ending on the first Tuesday after the first Monday in January of the year following the next general election occurring at least one year after the date of appointment, one of not fewer than three persons nor more than six persons nominated by the appropriate judicial nominating commission.

The Florida Supreme Court has consistently recognized that the Governor's power of appointment is a uniquely executive responsibility and an important discretionary function. See, e.g., In re Advisory Opinion, 276 So. 2d 25, 30-31 (Fla. 1973) (addressing the governor's discretion to select appointees while placing a check on the governor's authority by recognizing the power to promulgate rules of the judicial nominating commission remains with the members of the commission); In re Advisory Opinion, 551 So. 2d 1205, 1209 (Fla. 1989) (providing requested advice to the Governor on the appointment process, but expressly noting the Court's limitations and that the Court was not "venturing to advise [him] as to [his] course of action"); Pleus v. Crist, 14 So. 3d 941, 945 (Fla. 2009) ("We recognize that, in fulfilling this constitutional duty, the Governor has discretion in his selection of a nominee from the list.").

28. This Court finds that both the executive communications and deliberative process privileges apply to bar the request for mandamus here because the information sought is only available from the Governor and his staff and obtaining it would necessarily require him to divulge “deliberations compromising part of the process by which governmental decisions and policies are formulated.” See In re Sealed, 121 F.3d at 737 (citations omitted). Such information likewise encompasses gubernatorial decision making and deliberations the Governor believes should remain confidential. Id. at 744. Accordingly, the information requested cannot be obtained without probing into the Governor’s consultations and improperly piercing both the deliberative process and communication prongs of the executive privilege.

29. Were this Court to grant the Petition and require Respondents to turn over the requested information, it would undoubtedly impact the judicial appointment process. First, it would be contrary to the public interest. The privilege is not for the executive, but for the benefit of the public to protect the “effectiveness of the overall governmental system at stake.” See Killington, Ltd. v. Lash, 572 A.2d 1368, 1374 (Vt. 1990); see also Trump, 20 F.4th at 76. Second, it would create a chilling effect on the Governor’s ability to seek advice from others. See Guy, 659 A.2d at 784-85 (recognizing that the Governor’s responsibility for appointing judges of high integrity and excellent legal abilities would be “compromised if the source and substance of the advice and information provided to the governor by the [judicial nominating] commission were not protected”); see also Freedom Found., 178 Wash. 2d at 698 (finding the refusal to recognize the privilege “would subvert the integrity of the governor’s decision making process, damaging the functionality of the executive branch and transgressing the boundaries set by our separation of powers doctrine”). Therefore, this Court finds that the executive privilege bars Petitioner’s request to compel the disclosure of the requested information and serves as a basis to deny the Petition.

**V. Petitioner Is Not Entitled to Fees, and the Governor is Dismissed.**

30. Petitioner's Motion seeks attorney's fees and costs under Section 119.12, Florida Statutes. Pet. ¶ 30. Section 119.12(1), Florida Statutes, permits an award of attorney's fees against an agency only if:

(a) The agency unlawfully refused to permit a public record to be inspected or copied; and

(b) The complainant provided written notice identifying the public record request to the agency's custodian of public records at least 5 business days before filing the civil action, except as provided under subsection (2).

A refusal is unlawful under the statute when "a court determines that the reason proffered as a basis to deny a public records request is improper." B&L Serv., Inc. v. Broward Cty., 300 So. 3d 1205, 1208 (Fla. 4th DCA 2020) (citation omitted). A refusal may also be unlawful if the agency "unjustifiably fails to respond to a public request by delaying until after the enforcement action has been commenced." Office of State Attorney for Thirteenth Judicial Circuit v. Gonzalez, 953 So. 2d 759, 764 (Fla. 2d DCA 2007). However, delay alone does not create liability under section 119.12. Id. at 765. Instead, an award of fees under Section 119.12 is proper only if the delay is unjustified. Consumer Rights, LLC v. Union Cty., Fla., 159 So. 3d 882, 885 (Fla. 1st DCA 2015). Stated otherwise, "reasonable delay is allowed," including the "reasonable custodial delay necessary to retrieve a record and review and excise exempt material." Siegmeister v. Johnson, 240 So. 3d 70, 73 (Fla. 1st DCA 2018) (quotation omitted).

31. Any minimal delay by Respondents here is well justified by the circumstances. The OOG promptly recognized receipt of Petitioner's request and informed Petitioner that the OOG was processing a "high volume of requests." At the time of filing the Response, Petitioner's request was one of hundreds in the queue, many of which preceded Petitioner's request.<sup>4</sup>

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<sup>4</sup> The Petitioner is not entitled to skip over those requesters that precede him or her simply because he or she has the ability and means to file suit. Petitioner's rights to public records are not greater or less than



Nevertheless, the OOG began its investigation shortly after Petitioner revised his or her request to seek the identities of the conservative legal heavyweights. After the initiation of the investigation, and after Petitioner filed suit, the records custodian became aware of Respondents' desire to assert the executive privilege. Accordingly, this Court finds that there was no unlawful refusal by Respondents and denies Petitioner's request for fees and costs.

32. Moreover, because the Governor is not an "agency" Petitioner's request for fees and costs as against the Governor is denied. Section 119.12, Florida Statutes, provides for an award of fees and costs "against the responsible agency." § 119.12(1), Fla. Stat. (emphasis added). As a constitutional officer, the Governor is not an "agency" under Chapter 119. See Justice Coal. v. The First District Court of Appeal Judicial Nominating Comm'n, 823 So. 2d 185, 188 (Fla. 1st DCA 2002) ("Constitutional officers do not generally fall under the chapter 119 definition of 'agency.'"). Likewise, because the Governor is not an "agency," this public records case, which seeks to enforce Petitioner's rights under Chapter 119, is not appropriately brought against the Governor and is therefore dismissed as to Governor. See Lock v. Hawkes, 595 So. 2d 32, 36-37 (Fla. 1992) (holding that Chapter 119's definition of agency was inapplicable to the legislature and reinstating the trial court's decision which dismissed the case on grounds it was without subject matter jurisdiction under the separation of powers doctrine).

#### **VI. Petitioner Is Not Entitled to Immediate Declaratory Relief.**

33. Lastly, this Court denies Petitioner's request in the Motion that this Court "declare that Respondents violated the Public Records Act." See Pet. p. 12. Declaratory relief may not be granted in the context of an alternative writ of mandamus brought under Rule 1.630.

34. Nevertheless, Petitioner has failed to meet his or her burden to show that they are

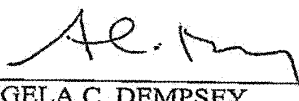
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any other citizen. Stated differently, the fact that Petitioner filed suit does not warrant a complete toppling of the OOG's intended processing of its many pending requests. See Promenade D'Iberville, LLC v. Sundry, 145 So. 3d 980, 983 (Fla. 1st DCA 2014) ("Florida law doesn't allow public records custodians to play favorites . . .").

entitled to declaratory relief. See Rhea v. Dist. Bd. of Trs. of Santa Fe Coll., 109 So. 851, 859 (Fla. 1st DCA 2013). Section 86.011, Florida Statutes, permits this Court to “declare rights, status, and other equitable or legal relations.” Petitioner has not established a “right” to any specific public record. Instead, Petitioner seeks information—the identity of the conservative legal heavyweights—which is not a public record. See § 119.011(12), Fla. Stat.; see also Shevin, 379 So. 2d at 640. This Court cannot declare that Respondents violated the Public Records Act in the absence of an appropriate public records request. See Woodard, 885 So. 2d at 445-46. Nor can this Court declare that Respondents violated the Public Records Act when there has been no improper refusal to produce any public records and the information requested is shielded by the executive privilege. See O’Boyle, 257 So. 3d at 1040 (requiring a sufficiently specific request of public records). Accordingly, Petitioner is not entitled to declaratory relief. Based on the foregoing, it is therefore **ORDERED** and **ADJUDGED**:

1. The Petition for Writ of Mandamus is **DENIED**;
2. The Complaint to Enforce the Public Records Act is **DISMISSED WITHOUT PREJUDICE**;
3. Petitioner’s request for a Declaration that Respondents violated the Public Records Act is **DENIED**; and
4. Petitioner’s request for attorney’s fees and costs is **DENIED**.

**DONE and ORDERED** in Tallahassee, Leon County, Florida, on January 3, 2023.

  
ANGELA C. DEMPSEY  
Circuit Judge

Copies to: Counsel of Record via the e-portal

20230002702 ELECTRONICALLY RECORDED IN THE PUBLIC RECORDS OF LEON COUNTY, FL  
BK: 5809 PG: 2010 01/19/2023 at 10:21 AM GWEN MARSHALL, CLERK OF COURTS

Filing # 164845766 E-Filed 01/17/2023 12:03:33 PM

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT  
IN AND FOR LEON COUNTY, FLORIDA  
CIVIL DIVISION**

J. DOE, anonymously and individually, a/k/a  
"FloridaSupremeCourtPRR@protonmail.com,"

Petitioner,

Case No: 2022-CA-1902

v.

GOVERNOR RON DESANTIS, in his  
official capacity as custodian of public records,  
and the EXECUTIVE OFFICE OF THE  
GOVERNOR,

\_\_\_\_\_  
Respondents. /

**NOTICE OF APPEAL**

NOTICE IS GIVEN that Petitioner J. DOE appeals to the First District Court  
of Appeal the order of this court, Order Denying Petition for Writ of Mandamus and  
Dismissing Complaint, rendered January 5, 2023. The nature of the order is a final  
order.

Dated: January 17, 2023

Respectfully submitted,

/s/Justin S. Hemlepp

**Justin S. Hemlepp, Esq.**

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OR BK: 5809 PG: 2011

**CERTIFICATE OF SERVICE**

I hereby certify that this document was served to the parties below with the Florida e-filing portal:

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on this the 17th day of January, 2023.

/s/Justin S. Hemlepp  
**Justin S. Hemlepp, Esq.**

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IN THE CIRCUIT COURT, SECOND  
JUDICIAL CIRCUIT, IN AND FOR  
LEON COUNTY, FLORIDA

CASE NO.: 2022-CA-1902

J. DOE, anonymously and individually, a/k/a  
"FloridaSupremeCourtPRR@protonmail.com,"

Petitioner,

vs.

GOVERNOR RON DESANTIS, in his official  
capacity as a custodian of public records, and the  
EXECUTIVE OFFICE OF THE GOVERNOR,

Respondents.

---

**PETITIONER'S NOTICE OF FILING RESPONDENTS'  
PROPOSED ORDER FOR INCLUSION IN THE RECORD ON APPEAL**

Petitioner J. Doe hereby gives notice of filing Respondents' Proposed Order,  
which is attached hereto as Exhibit A, for inclusion in the record on appeal.

DATED this 8th day of February, 2023.

BEDELL, DITTMAR, DeVAULT, PILLANS & COXE  
Professional Association

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 8th day of February, 2023, a true and correct copy of the foregoing has been electronically filed with the Clerk of the Court by utilizing the Florida Courts E-Filing Portal, which will send a notice of electronic filing to the following:

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\_\_\_\_\_  
s/John G. Woodlee  
Attorney

# Exhibit A



**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT  
IN AND FOR LEON COUNTY, FLORIDA**

J. DOE, anonymously and individually, a/k/a  
“FloridaSupremeCourtPRR@protonmail.com,”

Petitioner,

v.

CASE NO.: 2022 CA 1902

GOVERNOR RON DESANTIS, in his official  
capacity as a custodian of public records, and the  
EXECUTIVE OFFICE OF THE GOVERNOR,

Respondents.

**ORDER DENYING PETITION FOR WRIT OF MANDAMUS  
AND DISMISSING COMPLAINT**

This cause came before the Court upon: (1) the Petition for Writ of Mandamus, Complaint to Enforce the Public Records Act, and Ex Parte Motion for Alternative Writ of Mandamus (“Petition”) filed by J. Doe, anonymously and individually, a/k/a “FloridaSupremeCourtPRR@protonmail.com” (“Petitioner”); and (2) the Response to this Court’s Order to Show Cause (“Response”) filed by Governor Ron DeSantis (“Governor”), in his official capacity as a custodian of public records, and the Executive Office of the Governor (“EOG”) (collectively “Respondents”). This Court, having received and considered the Petition, the Response, exhibits, affidavits, statutes, and case law, and being otherwise fully advised in the premises, finds as follows:

**FINDINGS OF FACT AND PROCEDURAL BACKGROUND**

During an interview on August 25, 2022, the Governor stated that he asked a group of people he trusts to interview potential nominees for appointment to the Supreme Court of Florida. Pet. ¶ 6. The Governor referred to these individuals as “six or seven pretty big legal conservative

heavyweights.” *Id.* The Governor declined to identify the legal heavyweights, saying simply that “it’s private.” *Id.* Shortly thereafter, the *Sun-Sentinel* editorial board asked the Governor’s staff to identify these individuals, but they declined to do so. Pet. ¶ 7.

On October 5, 2022, Petitioner submitted an anonymous public records request seeking communications or evidence of such communications between the Governor’s office and the “legal conservative heavyweights” with whom the Governor consulted. Pet. ¶ 1. Specifically, the Petitioner requested:

Any and all materials, on official devices or personal devices used for official business in whatever form, including but not limited to call logs, emails, or texts between or among Governor Ron DeSantis, Casey DeSantis, the governor’s chief of staff, his executive or personal assistants or aides, his general counsel or anyone within the general counsel’s office, the director of appointments or anyone within the director of appointment’s office, and the “six or seven pretty big legal conservative heavyweights” described by the governor in an interview with Hugh Hewitt on August 25, 2022.

Pet. ¶ 8 & Ex. A; DeLorenz Aff. ¶ 18. The Governor’s Office of Open Government (“OOG”), which fulfills requests for public records in EOG’s custody, acknowledged receipt of the request the following day. Pet. ¶ 9 & Ex. A; DeLorenz Aff. ¶ 19.

On October 12, Petitioner requested an update on the status of his or her request. Pet. ¶ 10 & Ex. A. Christopher DeLorenz, Director of the OOG, informed Petitioner that it has a “high volume of requests” and that once documents are compiled and reviewed, they are released.” *Id.*; DeLorenz Aff. ¶¶ 4, 21. According to DeLorenz, as of November 22, 2022, the EOG has approximately 256 pending public records requests, many of which have multiple subparts. DeLorenz Decl. ¶¶ 10, 11-12. In fact, there are approximately 165 pending requests ahead of Petitioner’s request. *Id.* ¶ 29.

On October 15, 2022, Petitioner revised the request to seek the disclosure of the names of the conservative legal heavyweights, the dates and locations of their interviews with the now

justices, and the date of the Governor’s (or his agents’) communications with those persons. Pet. ¶ 11 & Ex. A. Three days later, on October 18, 2022, Petitioner threatened litigation and DeLorenz responded that “[i]t would be unfair if we were to prioritize your request over all our other requests.” Pet. ¶ 13 & Ex. A; *see also* DeLorenz Aff. ¶ 23. That same day, Petitioner informed the OOG that he or she would withdraw the request entirely “if the governor’s office identifies the conservative legal heavyweights who interviewed the nominees and the vacancies for which the governor consulted them.” Pet. ¶ 14 & Ex. A.

On October 26, 2022, DeLorenz informed Petitioner that he was conducting an investigation to identify the names of the individuals, but that further clarification was required. Pet. ¶ 16; DeLorenz Aff. ¶ 26. DeLorenz specifically inquired whether Petitioner was referring to all of the justices appointed by the Governor or only those justices who were up for retention election. *Id.* Petitioner responded that he or she would like the information for each justice appointed by the Governor, but would be amenable to a partial disclosure as soon as practicable for those justices approaching merit retention elections followed by a subsequent disclosure of the remaining justices after the elections. Pet. ¶ 17 & Ex. A. The OOG now asserts that it is unable to satisfy Petitioner’s request without confirmation of the identities of the “legal conservative heavyweights,” and to prevent disclosure of their identities, the Governor has invoked the executive privilege. DeLorenz Aff. ¶ 30.

The day after the Petitioner clarified his or her request, a Petition in the name of “J. DOE, anonymously and individually, a/k/a ‘FloridaSupremeCourtPRR@protonmail.com’” was filed seeking to compel Respondents to produce the requested information. The Petition includes two claims: Count I is a claim for mandamus, and Count II is a claim for declaratory relief. Petitioner also asked for entry of an alternative writ of mandamus, an immediate hearing under section

119.11, Florida Statutes, and an award of reasonable costs and attorney’s fees under section 119.12, Florida Statutes. Pet. pp. 11-12.

On October 28, 2022, this Court issued an Order to Show Cause (the “Order”) why the relief requested in the Petition should not be granted. Respondents timely submitted a Response to the Order.

### **DISCUSSION**

This Court denies the Petition for several reasons, each sufficient standing on its own. First, this Court cannot issue a writ of mandamus, or award fees and costs, to an email account or otherwise anonymous party. Second, Petitioner is not entitled to relief as he or she failed to submit a sufficiently specific request for public records. Third, this Court cannot issue a writ of mandamus because Petitioner has not established a clear legal right and improperly seeks to compel a discretionary duty. Fourth, this Court cannot compel Respondents to produce the information requested because it is protected by the executive privilege. In addition, Petitioner’s request for declaratory relief and attorney’s fees and costs is denied, and the Governor is dismissed from this action. Each of these points is addressed below.

#### **I. A Writ of Mandamus is Not Available to an Anonymous Petitioner.**

Petitioner seeks relief in mandamus under Rule 1.630 of the Florida Rules of Civil Procedure. Rule 1.630 requires a petition for an extraordinary writ, including a writ of mandamus, to be filed “in the name of the petitioner in all cases.” The Rule does not allow a request (or a grant) of mandamus to a fictional or anonymous party. The Petition fails to comply with Rule 1.630 as it was purportedly filed by “J. DOE, anonymously and individually, a/k/a ‘FloridaSupremeCourtPRR@protonmail.com.’” This Court may not, however, award a writ of mandamus to an email account.

Rule 1.630's mandate that a party be named in "all cases" comports with the principles of mandamus as set forth in Florida case law. Grants of mandamus confer a *personal* right. *See, e.g., Pace v. Singletary*, 633 So. 2d 516, 518 (Fla. 1st DCA 1994) (finding the inmate was not entitled to relief in mandamus as he lacked the personal right to receive money). To be entitled to a writ of mandamus, the *petitioner* must have a clear legal right to the requested relief. *See Chapman v. State*, 910 So. 2d 940, 941 (Fla. 5th DCA 2005) (recognizing the petitioner had no "personal right to have the arrest warrant executed"); *see also Reese v. Baron*, 256 So. 2d 70, 73 (Fla. 3d DCA 1971). Neither Rule 1.630 nor Florida case law permit an email account to invoke this Court's jurisdiction and receive an extraordinary writ.

Along these same lines, this Court cannot award costs or attorney's fees to an email account as requested in the Petition. Because an award of mandamus operates to afford complete relief, a petition seeking the same must be brought in the name of the petitioner "in all cases." *See Fla. R. Civ. P. 1.630*. Mandamus "will not lie where continued judicial supervision is required." *Town of Manaplan v. Rechler*, 674 So. 2d 789, 790 (Fla. 4th DCA 1996); *see also Stone v. Ward*, 752 So. 2d 100, 101 (Fla. 2d DCA 2000). As such, this Court cannot award mandamus, or costs or attorney's fees, to an unnamed party and later attempt to correct the matter after issuance of the writ. *See Fla. Agency for Health Care Admin. v. Zuckerman Spaeder, LLP*, 221 So. 3d 1260, 1264 n. 5 (Fla. 1st DCA 2017) (noting the "lower court was without authority to issue mandamus relief and retain jurisdiction for computation of reasonable reimbursement costs at some future date"). Because the Petition fails to meet the express requirements of Rule 1.630, Petitioner's request for mandamus is denied.<sup>1</sup> *See Major v. Hallandale Beach Police Dep't*, 219 So. 3d 856, 858 (Fla. 4th

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<sup>1</sup> In addition, the Petitioner's attempt to proceed anonymously infringes on the public's fundamental interest in open judicial proceedings. *See Barron v. Fla. Freedom Newspapers, Inc.*, 531 So. 2d 113, 118 (Fla. 1988).

DCA 2017) (affirming denial of requested mandamus for the petitioner’s failure to strictly comply with Rule 1.630).

**II. Petitioner is Not Entitled to Relief Because Petitioner Failed to Submit a Sufficiently Specific Request for Public Records.**

Section 119.07(1)(a), Florida Statutes, provides that “[e]very person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.” A public record is defined by statute as “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance in connection with the transaction of official business by any agency.” § 119.011(12), Fla. Stat. The Florida Supreme Court has further defined a public record as “material prepared in connection with official business which is intended to perpetuate, communicate, or formalize knowledge of some type.” *Shevin v. Byron, Harless, Schaffer, Reid & Assocs., Inc.*, 379 So. 2d 633, 640 (Fla. 1980). To establish a cause of action under the Public Records Act, a party must “prove that they made a specific request for public records, the [agency] received it, the requested public records exist, and the [agency] improperly refused to produce them in a timely manner.” *O’Boyle v. Town of Gulf Stream*, 257 So. 3d 1036, 1040 (Fla. 4th DCA 2018) (quoting *Grapski v. City of Alachua*, 31 So. 3d 193, 196 (Fla. 1st DCA 2010)).

Petitioner has not established that it submitted a sufficiently specific request for public records. Petitioner’s initial request of October 5, 2022, requested “any and all materials . . . in whatever form” showing communications between the Governor and persons in his office and the “six or seven pretty big legal conservative heavyweights.” Petitioner’s initial request is vague and not specific in scope or subject matter, as it does not delineate when these communications

occurred, or identify the topic of the communications requested, or specify the identities of the “legal conservative heavyweights.”

However, subsequent correspondence between Petitioner and the OOG made clear that Petitioner’s request was not about obtaining a specific public record. Instead, Petitioner’s request was an attempt to determine who the Governor conferred with regarding his Supreme Court appointments. Indeed, the Petitioner informed the OOG that he or she would “withdraw the request entirely if the governor’s office identifies the conservative legal heavyweights who interviewed the nominees and the vacancies for which the governor consulted them.” Pet. ¶ 14 (emphasis added). Moreover, the Petition asserts that Respondents have not disclosed “the ‘legal conservative heavyweights’ who helped the governor decide the makeup of the Supreme Court of Florida.” Pet. ¶ 18. It is clear the Petitioner seeks information—the identification of the legal heavyweights—which is not a public record, but is instead information known only to the Governor and his advisors. The mere identity of the legal heavyweights meets neither the statutory definition of a public record nor the definition set forth by the Florida Supreme Court in *Shevin*. In the absence of a sufficiently specific request for a public record, Petitioner is not entitled to the relief requested in the Petition.

**III. Petitioner Is Not Entitled to a Writ of Mandamus Because Petitioner Has Not Established a Clear Legal Right and Seeks to Compel a Discretionary Duty.**

Petitioner’s request for a writ of mandamus is also denied because Petitioner has not established a clear legal right and improperly seeks to compel a discretionary duty. To be entitled to a writ of mandamus, 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.” *Zuckerman Spaeder*, 221 So. 3d at 1263 (citations omitted). “The duty of the respondent in a mandamus action must be ministerial in nature, and not

discretionary.” *Id.* A duty is considered ministerial when “there is no room for the exercise of discretion, and the performance being required is directed by law.” *Id.*

Petitioner has not met the requirements for a writ of mandamus. Petitioner’s request is vague and does not seek a public record. A public records custodian has an obligation to furnish records *only after* the “person requesting them identifies the portions of the record with sufficient specificity to permit the custodian to identify the record.” *Woodard*, 885 So. 2d at 446. Because Petitioner’s request fails to identify any public record with the requisite specificity, there is no clear legal right for Petitioner to inspect or copy records. *Id.*; *see also O’Boyle*, 257 So. 3d at 1040.

Additionally, Petitioner does not seek to compel a purely ministerial duty. Petitioner’s vague and ill-defined request requires the EOG to evaluate what potentially responsive materials exist and determine whether those materials are public record or exempt or privileged. This is a discretionary act. While an agency has a general duty to provide access to public records, the agency’s records custodian has a concomitant duty to review and redact any exempted portions of public records. *See* § 119.07(1)(c), (d), Fla. Stat.; *see also Zuckerman Spaeder*, 221 So. 3d at 1263. Accordingly, Petitioner’s right to public records is not absolute, the EOG’s duty is not ministerial, and Petitioner’s right is not indisputable. *See Zuckerman Spaeder*, 221 So. 3d at 1263 (holding the requester’s right to the records was not absolute because AHCA’s “duty to protect exempted information through redaction precedes its duty to provide the documents” to the requester); *see also Lee Cty. v. State Farm Mut. Ins. Co.*, 634 So. 2d 250, 251 (Fla. 2d DCA 1994) (“Mandamus was inappropriately issued . . . because the act involved requires discretion. The [governmental entity] is statutorily required to protect the confidentiality of the records.”). Petitioner’s request for a writ of mandamus is therefore denied.



**IV. The Identities of the “Legal Conservative Heavyweights” Are Protected by the Executive Privilege.**

Even if Petitioner requested public records with sufficient specificity and properly stated a claim for mandamus, the Petition must still be denied because the information sought, the identities of the “legal heavyweight conservatives,” which are necessary to satisfy Petitioner’s request, is protected by the executive privilege.

From the beginnings of our nation, “executive officials have claimed a variety of privileges to resist disclosure of information the confidentiality of which they felt was crucial to fulfillment of the unique role and responsibilities of the executive branch of our governments.” *In re Sealed Case*, 121 F.3d 729, 736 (D.C. Cir. 1997). Applicable to the instant case are forms of the executive privilege referred to as: (1) the deliberative process privilege; and (2) the communications privilege.

The deliberative process privilege originated in the eighteenth and nineteenth centuries within the concept of the English “crown privilege.” *See* Russel L. Weaver & James T.R. Jones, *The Deliberative Process Privilege*, 54 Mo. L. Rev. 279, 283 (1989). This common law privilege allows a chief executive to “withhold documents and other materials that would reveal ‘advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated.’” *In re Sealed Case*, 121 F.3d at 737 (citing cases). To qualify for the deliberative process privilege, the material must be pre-decisional and deliberative. *Id.* The purpose of the deliberative process privilege is to “prevent injury to the quality of agency decisions by allowing government officials freedom to debate alternative approaches in private.” *Id.* (citing *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 151 (1975)).

The communications privilege allows a chief executive to withhold materials that reflect executive decision making and deliberations and that the chief executive believes should remain

confidential. *In re Sealed Case*, 121 F.3d at 744; *see also Trump v. Thompson*, 20 F.4th 10, 25 (D.C. Cir. 2021). The privilege applies not only to materials viewed by the chief executive, but also to records solicited or received by the chief executive or his or her immediate advisers who have “broad and significant responsibility” for advising the chief executive. *Trump*, 20 F.4th at 25-26. The privilege is rooted in the separation of powers doctrine and “derives from the supremacy of the Executive Branch within its assigned area of constitutional responsibilities.” *United States v. Nixon*, 418 U.S. 683, 708 (1974); *see also Trump*, 20 F.4th at 26. As the Supreme Court explained:

The expectation of a President to the confidentiality of his conversations and correspondence, like the claim of confidentiality in judicial deliberations, for example, has all the values to which we accord deference for the privacy of all citizens and, added to those values, is the necessity for protection of the public interest in candid, objective, and even blunt or harsh opinions in Presidential decisionmaking. A President and those who assist him must be free to explore alternatives in the process of shaping policies and making decisions and to do so in a way many would be unwilling to express except privately. These are the considerations justifying a presumptive privilege for Presidential communications. The privilege is fundamental to the operation of Government and inextricably rooted in the separation of powers under the Constitution.

*Nixon*, 418 U.S. at 708. While the privilege is held by the executive, it is not for the benefit of the chief executive as an individual, but “for the benefit of the public.” *Trump*, 20 F.4th at 26 (citing *Nixon v. Adm’r of Gen. Servs.*, 433 U.S. 425, 449 (1977)).

Florida courts have likewise recognized that all three branches of government, including the executive, have unique privileges that stem from the separation of powers. For example, the Florida Supreme Court has recognized both a legislative privilege and a judicial privilege. *See, e.g., League of Women Voters of Fla.*, 132 So. 3d at 145 (recognizing a legislative privilege based on “inherent principles of comity that exist between the coequal branches of government”); *Times Pub. Co. v. Ake*, 660 So. 2d 255, 257 (Fla. 1995) (holding clerks of the court, when acting under

their article V powers, are not subject to oversight and control of the legislature under Florida’s public records laws); *State v. Lewis*, 656 So. 2d 1248, 1250 (Fla. 1994) (stating a judge may not be examined as to his or her thought process in making a decision).

More recently, the First District Court of Appeal in *Florida House of Representatives v. Expedia, Inc.*, 85 So. 3d 517, 523 (Fla. 1st DCA 2012), suggested that the same separation of powers privileges afforded to the legislature also exist for the Governor. While addressing a legislative privilege, the court likened the application of the legislative privilege to that held by the executive branch. *Id.* (“Additionally, as with their counterparts in the judiciary and the legislature, public officials in the executive branch are entitled to a testimonial privilege.”). The court held that “the privileges and immunities protecting all public officials, including members of the legislature, arise from the common law,” and continue to exist by virtue of section 2.01, Florida Statutes, which provides that the “common law and statute laws of England which are of a general and not local nature . . . are declared to be of force in this state.” *Id.* at 523. The court also held that the legislative privilege existed by “virtue of the separation of powers provision in the Florida Constitution,” explaining that

The power vested in the legislature under the Florida Constitution would be severely compromised if legislators were required to appear in court to explain why they voted a particular way or to describe their process of gathering information on a bill. Our state government could not maintain the proper “separation” required by Article II, section 3 if the judicial branch could compel an inquiry into these aspects of the legislative process.

*Id.* at 524.

Like *Expedia*, other Florida decisions have recognized certain protections against the disclosure of confidential information related to an executive official’s discretionary and

constitutional duties, albeit through different terminology.<sup>2</sup> *See, e.g., State, Dep’t of Health & Rehab. Servs. v. Brooke*, 573 So. 2d 363 (Fla. 1st DCA 1991); *see also Chavez v. State*, 132 So. 3d 826, 830-31 (Fla. 2014) (finding the legislature, through enactment of a statute, could not exclude certain clemency materials from confidentiality as the Governor’s clemency powers are derived from the Constitution); *Parole Comm’n v. Lockett*, 620 So. 2d 153, 158 (Fla. 1993) (finding the separation of powers prohibited the court from requiring the Parole Commission from producing investigative files compiled on behalf of the Governor related to his clemency powers); *Girardeau v. State*, 403 So. 2d 513, 517 n.6 (Fla. 1st DCA 1981) (“We are not, however, insensitive to the need for freedom of communication, which often means confidentiality and freedom from compelled disclosure. . . . This has been translated, as to Presidential communications, by the Nixon court . . .”). For example, in *Brooke*, the court held that it was an abuse of the trial court’s discretion to require the Secretary of the Department of Health and Rehabilitative Services to appear and provide information that was within the realm of the Secretary’s discretionary authority as it related to the Department’s programs and budgetary decisions. *Brooke*, 573 So. 2d at 370-71. Like the other cases addressed herein, the holding in *Brooke* was based on the separation of powers doctrine:

as in any other case involving the discretionary integrity of the respective branches of government, we will not only zealously protect the independence of the judicial branch but will, with equal vigor, guard the constitutional prerogatives of the other branches under the doctrine of the separation of powers.

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<sup>2</sup> The Florida Supreme Court has also touched upon the executive privilege when analyzing privileges that are embedded in the Florida Constitution’s separation of powers clause. *See Florida League of Women Voters*, 132 So. 3d at 145 (citing to the United States Supreme Court case of *Nixon*, which outlines the executive privilege, and commenting that “respect between the three branches is inherent in our democratic system” and that the “the privilege can be said to derive from the supremacy of each branch within its own assigned areas of constitutional duties”).

*Id.* at 371 (emphasis added). Accordingly, Florida decisions have historically recognized certain protections afforded to each governmental branch, including the executive, rooted in common law and the separation of powers doctrine. This executive privilege is likewise recognized here.

The fact that the above-cited Florida cases recognize an executive privilege that prevents the Governor from testifying or responding or discovery is of no matter. This Court finds that the executive privilege is also appropriately applied as an exemption to the instant public records request. The Florida Constitution itself recognizes that some records are made “confidential by this Constitution,” and the separation of powers principle that underlies the privilege is firmly grounded within constitutional text. *See* Art. I, § 24, Fla. Const.; *see also Expedia*, 85 So. 3d at 519 (noting the legislative privilege is “implicit” in the Florida Constitution’s separation of power provision). Simply put, the absence of a subpoena is even more reason for this Court to find that the Governor should not be compelled to answer questions about the identities of advisors in the appointment process.

Consideration of article I, section 24 of the Florida Constitution does not lead to a different result. That provision provides that “[e]very person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution.” Art. I, § 24, Fla. Const. While addressing a legislative privilege, the Florida Supreme Court held that the “strong public policy, as codified in our state constitution, favoring transparency and public access” was not conclusive, and that the doctrine of separation of powers weighed in favor of recognizing the privilege. *League of Women Voters of Fla.*, 132 So. 3d at 144. Here, the separation of powers

doctrine likewise favors enforcement of the executive privilege.<sup>3</sup> *See Brooke*, 573 So. 2d at 371 (identifying the importance of guarding the “constitutional prerogatives” of the branches of government under the separation of powers).

This Court also finds that the purpose underlying the executive privilege counsels its recognition here. To effectively discharge his constitutional duty, the Governor must be permitted to have access to candid advice in order to explore policy alternatives and reach appropriate decisions. *See Nixon*, 418 U.S. at 708; *see also Freedom Found. v. Gregoire*, 178 Wash. 2d 686, 698 (Sup. Ct. Wash. 2013). The interest in maintaining the confidentiality of the executive is vital to the public, as it fosters informed and sound gubernatorial deliberations and decision making. *See Guy v. Judicial Nominating Comm’n*, 659 A.2d 777, 783 (Sup. Ct. Del. 1995). Much like the legislative privilege discussed in *Expedia*, the power vested in the executive branch, and particularly in the chief executive, would be severely compromised if it were required to disclose confidential information concerning its decision making and deliberations as it relates to its constitutionally mandated duties. *Expedia*, 85 So. 3d at 524. Indeed, the Governor’s right here is no different than the President’s ability to protect documents and other materials which he believes should remain confidential and that reflect his deliberations and decision making. *In re Sealed Case*, 121 F.3d at 744; *see also Trump*, 20 F.4th at 25.

In this case, Petitioner seeks information related to the Governor’s constitutional duty to fill judicial vacancies, and, in particular, the identity of the conservative legal heavyweights consulted by the Governor with respect to such appointments. The Florida Constitution assigns the

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<sup>3</sup> Constitutional context aside, the privilege likewise arises from English common law which continues to exist today. *See* § 2.01, Fla. Stat. (“The common and statute laws of England which are of a general and not local nature . . . are declared to be of force in this state. . . .”); *see also Expedia*, 85 So. 3d at 523.

power to appoint persons to fill judicial vacancies only to the Governor. Article V, section 11(a) of the Constitution specifically states:

Whenever a vacancy occurs in a judicial office to which election for retention applies, the governor shall fill the vacancy by appointing for a term ending on the first Tuesday after the first Monday in January of the year following the next general election occurring at least one year after the date of appointment, one of not fewer than three persons nor more than six persons nominated by the appropriate judicial nominating commission.

Time and time again, the Florida Supreme Court has noted that the Governor’s power of appointment is a uniquely executive responsibility and an important discretionary function. *See, e.g., In re Advisory Opinion*, 276 So. 2d 25, 30-31 (Fla. 1973) (addressing the governor’s discretion to select appointees while placing a check on the governor’s authority by recognizing the power to promulgate rules of the judicial nominating commission remains with the members of the commission); *In re Advisory Opinion*, 551 So. 2d 1205, 1209 (Fla. 1989) (providing requested advice to the Governor on the appointment process, but expressly noting the Court’s limitations and that the Court was not “venturing to advise [him] as to [his] course of action”); *Pleus v. Crist*, 14 So. 3d 941, 945 (Fla. 2009) (“We recognize that, in fulfilling this constitutional duty, the Governor has discretion in his selection of a nominee from the list.”).

This Court finds that both the executive communications and deliberative process privileges apply to bar the request for mandamus here because the information sought is only available from the Governor and his staff and obtaining it would necessarily require him to divulge “deliberations compromising part of the process by which governmental decisions and policies are formulated.” *See In re Sealed*, 121 F.3d at 737 (citations omitted). Such information likewise encompasses gubernatorial decision making and deliberations the Governor believes should remain confidential. *Id.* at 744. Accordingly, the information requested cannot be obtained without

probing into the Governor’s consultations and improperly piercing both the deliberative process and communication prongs of the executive privilege.

Were this Court to grant the Petition and require Respondents to turn over the requested information, it would undoubtedly impact the judicial appointment process. First, it would be contrary to the public interest. The privilege is not for the executive, but for the benefit of the public to protect the “effectiveness of the overall governmental system at stake.” *See Killington, Ltd. v. Lash*, 572 A.2d 1368, 1374 (Vt. 1990); *see also Trump*, 20 F.4th at 76. Second, it would create a chilling effect, limiting the Governor’s ability to seek advice from others. *See Guy*, 659 A.2d at 784-85 (recognizing that the Governor’s responsibility for appointing judges of high integrity and excellent legal abilities would be “compromised if the source and substance of the advice and information provided to the governor by the [judicial nominating] commission were not protected”); *see also Freedom Found.*, 178 Wash. 2d at 698 (finding the refusal to recognize the privilege “would subvert the integrity of the governor’s decision making process, damaging the functionality of the executive branch and transgressing the boundaries set by our separation of powers doctrine”). Accordingly, this Court finds that the executive privilege bars any efforts by Petitioner to compel the disclosure of the requested information and serves as a basis for denying the Petition.

**V. Petitioner Is Not Entitled to Fees, and the Governor is Dismissed.**

Petitioner’s Motion seeks attorney’s fees and costs under section 119.12, Florida Statutes. Pet. ¶ 30. Section 119.12(1), Florida Statutes, permits an award of attorney’s fees against an agency only if:

- (a) The agency unlawfully refused to permit a public record to be inspected or copied; and



(b) The complainant provided written notice identifying the public record request to the agency's custodian of public records at least 5 business days before filing the civil action, except as provided under subsection (2).

A refusal is unlawful under the statute when “a court determines that the reason proffered as a basis to deny a public records request is improper.” *B&L Serv., Inc. v. Broward Cty.*, 300 So. 3d 1205, 1208 (Fla. 4th DCA 2020) (citation omitted). A refusal may also be unlawful if the agency “unjustifiably fails to respond to a public request by delaying until after the enforcement action has been commenced.” *Office of State Attorney for Thirteenth Judicial Circuit v. Gonzalez*, 953 So. 2d 759, 764 (Fla. 2d DCA 2007). However, delay alone does not create liability under section 119.12. *Id.* at 765. Instead, an award of fees under section 119.12 is proper only if the delay is unjustified. *Consumer Rights, LLC v. Union Cty., Fla.*, 159 So. 3d 882, 885 (Fla. 1st DCA 2015). Stated otherwise, “reasonable delay is allowed,” including the “reasonable custodial delay necessary to retrieve a record and review and excise exempt material.” *Siegmeister v. Johnson*, 240 So. 3d 70, 73 (Fla. 1st DCA 2018) (quotation omitted).

Any minimal delay by Respondents here is well justified by the circumstances. The OOG promptly recognized receipt of Petitioner's request and informed Petitioner that the OOG was processing a “high volume of requests.” At the time of filing the Response, Petitioner's request was one of hundreds open public records in the queue, many of which preceded Petitioner's request.<sup>4</sup> Additionally, it was established that many of these open public records requests have multiple subparts and can take months to satisfy. Nevertheless, the OOG began its investigation

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<sup>4</sup> The Petitioner is not entitled to leap frog over those requesters that precede him or her simply because he or she has the ability and means to file suit. Petitioner's rights to public records are not greater or less than any other citizen. Stated differently, the fact that Petitioner filed suit does not warrant a complete toppling of the OOG's intended processing of its many pending requests. *See Promenade D'Iberville, LLC v. Sundry*, 145 So. 3d 980, 983 (Fla. 1st DCA 2014) (“Florida law doesn't allow public records custodians to play favorites . . .”).

shortly after Petitioner revised his or her request to seek the identities of the conservative legal heavyweights. After the initiation of the investigation, and after Petitioner filed suit, the records custodian became aware of Respondents’ desire to assert the executive privilege. Accordingly, this Court finds that there was no unlawful refusal by Respondents and denies Petitioner’s request for fees and costs.

Moreover, because the Governor is not an “agency” Petitioner’s request for fees and costs as against the Governor is denied. Section 119.12, Florida Statutes, provides for an award of fees and costs “against the responsible agency.” § 119.12(1), Fla. Stat. (emphasis added). As a constitutional officer, the Governor is not an “agency” under Chapter 119. *See Justice Coal. v. The First District Court of Appeal Judicial Nominating Comm’n*, 823 So. 2d 185, 188 (Fla. 1st DCA 2002) (“Constitutional officers do not generally fall under the chapter 119 definition of ‘agency.’”). Likewise, because the Governor is not an “agency,” this public records case, which seeks to enforce Petitioner’s rights under Chapter 119, is not appropriately brought against the Governor and is therefore dismissed as to Governor. *See Lock v. Hawkes*, 595 So. 32, 36-37 (Fla. 1992) (holding that Chapter 119’s definition of agency was inapplicable to the legislature and reinstating the trial court’s decision which dismissed the case on grounds it was without subject matter jurisdiction under the separation of powers doctrine).

#### **VI. Petitioner Is Not Entitled to Immediate Declaratory Relief.**

Lastly, this Court denies Petitioner’s request in the Motion that this Court “declare that Respondents violated the Public Records Act.” *See* Pet. p. 12. Declaratory relief may not be granted in the context of an alternative writ of mandamus brought under Rule 1.630. With respect to Petitioner’s claim for declaratory relief, Respondents are entitled to answer the allegations, raise

affirmative defenses, and otherwise respond to the request separate and apart from the alternative writ issued in this Court’s Order to Show Cause.

Nevertheless, Petitioner has failed to meet his or her burden to show that they are entitled to declaratory relief. *See Rhea v. Dist. Bd. of Trs. of Santa Fe Coll.*, 109 So. 851, 859 (Fla. 1st DCA 2013). Section 86.011, Florida Statutes, permits this Court to “declare rights, status, and other equitable or legal relations.” Petitioner has not established a “right” to any specific public record. Instead, Petitioner seeks information—the identity of the conservative legal heavyweights—which is not a public record. *See* § 119.011(12), Fla. Stat.; *see also Shevin*, 379 So. 2d at 640. This Court cannot declare that Respondents violated the Public Records Act in the absence of an appropriate public records request. *See Woodard*, 885 So. 2d at 445-46. Nor can this Court declare that Respondents violated the Public Records Act when there has been no improper refusal to produce any public records and the information requested is shielded by the executive privilege. *See O’Boyle*, 257 So. 3d at 1040 (requiring a sufficiently specific request of public records). Accordingly, Petitioner is not entitled to declaratory relief.

Based on the foregoing, it is therefore **ORDERED** and **ADJUDGED**:

1. The Petition for Writ of Mandamus is hereby **DENIED**;
2. The Complaint to Enforce the Public Records Act is hereby **DISMISSED WITHOUT PREJUDICE**;
3. Petitioner’s request for a Declaration that Respondents violated the Public Records Act is hereby **DENIED**; and
4. Petitioner’s request for attorney’s fees and costs is hereby **DENIED**.

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ANGELA C. DEMPSEY  
Circuit Court Judge

Copies to: Counsel of Record

**CERTIFICATE OF CLERK**

STATE OF FLORIDA


COUNTY OF LEON

I, Gwen Marshall, Clerk of the Circuit Court for the County of Leon, State of Florida,

do hereby certify that the foregoing pages of the inclusive contain the record of the judgment in the case of **J. DOE V. GOVERNOR RON DESANTIS, IN HIS OFFICIAL CAPACITY AS CUSTODIAN OF PUBLIC RECORDS, AND THE EXECUTIVE OFFICE OF THE GOVERNOR** and is a true and correct recital of all such papers and proceedings in said cause as appears in the records and files in my office that have been directed to be included in said record pursuant to the Florida Rules of Appellate Procedure.

In Witness Whereof, I have hereunto set my hand and affixed the Seal of said Court this 21<sup>st</sup> day of February, 2023.

GWEN MARSHALL  
CLERK & COMPTROLLER  
LEON COUNTY, FLORIDA

BY:   
Kristin M. Rycko, Deputy Clerk