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SC23-1246

In the Supreme Court of Florida

MONIQUE WORRELL,
Petitioner,

v.

RON DESANTIS, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE STATE OF FLORIDA,
Respondent.

ON PETITION FOR WRITS OF QUO WARRANTO AND MANDAMUS

RESPONSE TO PETITION FOR WRITS OF QUO WARRANTO AND MANDAMUS

RYAN NEWMAN (FBN1031451)
General Counsel
Executive Office of the Governor
400 S Monroe Street
Tallahassee, Florida 32399-6536

GEORGE T. LEVESQUE (FBN555541)
JEFF AARON (FBN123473)
GrayRobinson, P.A.
301 S Bronough Street, Suite 600
Tallahassee, Florida 32302
(850) 577-9090
george.levesque@gray-robinson.com

ASHLEY MOODY
Attorney General

HENRY C. WHITAKER (FBN1031175)
Solicitor General
JEFFREY PAUL DESOUSA (FBN110951)
DANIEL WILLIAM BELL (FBN1008587)
Chief Deputy Solicitors General
DAVID M. COSTELLO (FBN1004952)
Deputy Solicitor General
ROBERT SCOTT SCHENCK (FBN1044532)
Assistant Solicitor General
Office of the Attorney General
The Capitol, PL-01
Tallahassee, Florida 32399
(850) 414-3300
henry.whitaker@myfloridalegal.com

Counsel for Governor Ron DeSantis

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INTRODUCTION & SUMMARY OF ARGUMENT

Petitioner Monique Worrell was elected to the office of state attorney by the people of Osceola and Orange counties to enforce the law and protect public safety. She did not fulfill that public trust. Instead, Ms. Worrell adopted practices and policies that seriously impeded the pursuit of justice and thwarted the will of the Legislature. Governor Ron DeSantis therefore carried out his constitutional responsibility—entrusted to him by all the people of Florida—to suspend her for neglect of duty and incompetence.

Take Ms. Worrell's handling of cases involving felons who illegally possessed a firearm, some of the easiest charges in our justice system to prove. Of the 130 such matters referred to Ms. Worrell's former office in 2021 and 2022 by the Osceola County Sheriff's Office, just five resulted in the imposition of the minimum-mandatory sentence required by the Legislature under Section 775.087. App. 6. That marked a pattern during Ms. Worrell's tenure. Her prosecutors inexplicably failed, for instance, to secure minimum-mandatory sentences for gun offenders who committed robbery and carjacking. App. 5–6. The same went for drug-trafficking defendants; of the nearly 100 referrals by the sheriff in the same two-year span, all but three drug

traffickers have thus far evaded a minimum-mandatory sentence under Section 893.135. App. 7. Ms. Worrell thus had her office cast aside a critical tool established by the Legislature for protecting the public from firearm and drug-trafficking offenders.

Ms. Worrell was also content to let violent juvenile offenders roam free. She dismissed 62% of violent juvenile felonies in a year, compared to the 41% statewide average. App. 30. And her office unlawfully sought withholdings of adjudication under circumstances that the Legislature expressly forbade.

Ms. Worrell's suspension triggers the Senate's responsibility to conduct removal proceedings at which Ms. Worrell would either be removed permanently from office or reinstated. But Ms. Worrell asks this Court to short-circuit that process. In her view, the Court should issue a writ of quo warranto because (1) the allegations in the suspension order are too "vague" to allow her to present a defense; (2) those allegations, as a matter of law, do not constitute neglect of duty and incompetence; and (3) the evidence cited in the suspension order is inadequate to support the allegations. Each theory fails to justify the writ.

At the outset, however, the petition should be denied because it presents a political question. Article IV, Section 7 authorizes the Governor to suspend an official for enumerated grounds and grants the Senate alone the power to remove. The Senate thus is invested with the sole discretion to decide whether the Governor's suspension order adequately stated grounds for suspension, just as the Constitution entrusts to that body the sole power to try impeachments. *See* Art. III, § 17, Fla. Const. This Court should now make clear what it has often implied: the validity of a suspension and removal is a non-justiciable political question.

Ms. Worrell's request for quo warranto also fails on the merits. If judicial review here is appropriate at all, it should be highly deferential to the Governor's order, asking only whether the allegations in a suspension order "bear some reasonable relation" to the grounds for suspension—a standard that this suspension order clears with ease.

As for Ms. Worrell's assertion of vagueness, the petition itself demonstrates that Ms. Worrell understands the nature of the charges against her. And the specificity in the suspension order would more

than suffice even in a criminal prosecution, let alone a civil suspension proceeding. At any rate, the Senate's rules allow Ms. Worrell to obtain a bill of particulars, through which she may acquire greater specificity.

Next, Ms. Worrell is incorrect that her outright refusal to enforce legislative policies is not neglect of duty or incompetence. Nothing in the Florida Constitution compels the Governor—Florida's chief executive officer—to stand by while a prosecutor for a major metropolitan area flouts legislative policy in ways that undermine the safety of that area's residents and the rule of law.

This Court has long rejected that premise. In *State ex rel. Hardee v. Allen*, this Court upheld a suspension order predicated on a state attorney's decision not to prosecute some unspecified number of gambling cases. 172 So. 222, 224 (Fla. 1937). That result was compelled, the Court reasoned, even though the state attorney had prosecuted at least seven gambling offenses—proof that his office had no blanket policy against such charges. *Id.* It was within the Governor's constitutional authority to conclude that the gambling cases the state attorney declined to bring should have been brought. *Id.* In so ruling,

the Court held that the "weight or sufficiency of anything of an evidentiary nature in the order of suspension" was a question "for the Senate with which we are without power to interfere." *Id.*

That latter point refutes Ms. Worrell's remaining quo warranto argument: that this Court should examine the statistical and other evidence cited in the suspension order and find it lacking. The job of weighing the evidence belongs to the Senate.

Finally, mandamus is unavailable here. This Court has repeatedly held that quo warranto is the sole avenue for resolving disputes about title to public office. Attempts to circumvent the quo warranto standard by other means are improper.

The petition should therefore be dismissed or denied.

STATEMENT OF THE CASE AND FACTS

A. The Governor's suspension authority

As Florida's chief executive officer, the Governor has broad authority to manage the State's executive branch. *See, e.g.*, Art. IV, § 1, Fla. Const. That authority includes, among other things, "tak[ing] care that the laws be faithfully executed." *Id.* § 1(a). A state attorney is "not merely a prosecuting officer in the circuit in which he is elected." *Austin v. State ex rel. Christian*, 310 So. 2d 289, 292 (Fla.

1975). "[H]e is also an officer of the State in the general matter of enforcement of the criminal law" and exercises his responsibilities as part of the State's executive branch, subject to the Governor's authority to execute the laws. *Id.*

The Governor's supervisory power would be incomplete without the authority to suspend state and county officials who falter in their duties. As a result, the Governor—"[b]y executive order stating the grounds and filed with the custodian of state records"—"may suspend from office any state officer not subject to impeachment, any officer of the militia not in the active service of the United States, or any county officer." Art. IV, § 7(a), Fla. Const. The permissible bases for suspension are "malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform official duties, or commission of a felony." *Id.*

Once the Governor has suspended an official, the matter goes before the Senate, which "may, in proceedings prescribed by law, remove from office or reinstate the suspended official." *Id.* § 7(b). The Governor "may" reinstate the official at any time before removal by the Senate. *Id.* § 7(a).

"[T]he text of article IV, section 7 does not attribute any role to the courts in suspension matters." *Warren v. DeSantis*, 365 So. 3d 1137, 1139 (Fla. 2023). But when asked to review suspension orders, this Court has repeatedly upheld them by asking only "whether the executive order, on its face, sets forth allegations of fact relating to one of the constitutionally enumerated grounds of suspension." *Id.* In that inquiry, the Court determines whether the suspension order alleges facts that "bear some reasonable relation" to the charge levied against the officer. *Id.* If so, the correctness of the Governor's action is a question solely for the Senate. *See id.*

B. Ms. Worrell's poor performance, practices, and policies result in her suspension.

On August 9, 2023, after it became clear that Ms. Worrell's office had adopted practices and policies resulting in undercharging, excessively slow case times, and the evasion of certain sentence enhancements required by the Legislature, the Governor suspended Ms. Worrell as the State Attorney for the Ninth Judicial Circuit. *See* App. 2–16 (Exec. Order 23-160). The Governor concluded that Ms. Worrell both neglected her duties and was incompetent in establishing policies and practices that contravened the will of the Legislature

and undermined the safety and security of the community.

Improper withholding of adjudications. The Governor found that under Ms. Worrell's watch, her subordinates permitted or required line attorneys in the office to seek withholdings of adjudication where the relevant statutes forbade the procedure. App. 13. Florida law allows prosecutors to seek a "withholding of adjudication" only in certain circumstances, § 775.08435, Fla. Stat., offering an alternative to conviction and incarceration. § 948.01(2), Fla. Stat.; Fla. R. Crim. P. 3.670. But Florida law prohibits withholdings of adjudication in enumerated situations, such as for a second-degree felony if the defendant has any prior withholding for a felony. App 13 (citing § 775.08435(1)(b), Fla. Stat.).

Firearms and drug-trafficking minimum mandatories. Next, Ms. Worrell "prevented or discouraged" her line attorneys from "obtaining meritorious" minimum-mandatory sentences for both firearm and drug-trafficking offenses. App. 4–7.

Florida law calls for certain minimum mandatories for the use or possession of firearms during the commission of a violent felony, ranging from 10 years' to life imprisonment. App. 5 (citing

§ 775.087(2), (3), Fla. Stat.). As for drug crimes, the Legislature has mandated that minimum sentences be imposed based on the quantity of drugs possessed, without requiring that prosecutors prove any intent to distribute or sell. App. 6–7 (citing § 893.135, Fla. Stat.).

The Governor found that, in contravention of the Legislature's express policies, Ms. Worrell "prevented or discouraged" her line prosecutors from obtaining minimum-mandatory sentences even when those prosecutors could establish the requisite facts. *Id.* As evidence, he cited data on cases referred to Ms. Worrell's former office by the Osceola County Sheriff's Office that met the factual predicates for these minimum mandatories. Only one of the 58 non-homicide robbery-with-a-firearm cases referred to Ms. Worrell's former office in 2021 and 2022, and none of the 64 referrals for drug-trafficking offenses in 2022, resulted in the proper minimum-mandatory sentences. App. 5, 7.

Sentence enhancements for repeat offenders. In the same vein, Ms. Worrell also "prevented or discouraged" her line attorneys from seeking sentence enhancements for certain repeat offenders, called

prison releasee reoffenders (PRRs) and habitual violent felony offenders (HVFOs). App. 10.

By statute, individuals who meet the criteria for PRR or HVFO status are subject to stringent minimum-mandatory sentences. *Id.* For instance, PRRs who commit a third-degree felony face a minimum mandatory of five years. § 775.082(9)(a)3.d., Fla. Stat. And while a PRR designation is in the discretion of a state attorney, the Legislature also requires that PRRs be punished "to the fullest extent of the law" except where "the state attorney determines that extenuating circumstances exist which preclude the just prosecution of the offender." § 775.082(9)(d)1., Fla. Stat.

By declining to enforce sanctions that the Legislature deliberately created to punish recidivists, Ms. Worrell "thwarted" that goal, the Governor concluded. App. 11.

Foregoing charges in child pornography cases. Ms. Worrell also systematically "limit[ed]" the number of charges for child pornography offenses. App. 12. Florida law criminalizes knowingly possessing, controlling, and viewing child pornography. *See* § 827.071(5)(a), Fla. Stat. In recognition of the unique harm that every depiction of child

pornography re-inflicts on the victims of horrendous sexual abuse, the Legislature has dictated that possession, control, or viewing of "each" image, video, or depiction "is a separate offense." App. 12 (citing § 827.071(5)(a), Fla. Stat.). Yet Ms. Worrell's line prosecutors were prevented or discouraged from charging separate child pornography counts for each image even when the facts supported multiple counts. *Id.*

Juvenile justice. Ms. Worrell also permitted serious juvenile offenders to avoid consequences for their actions. App. 7–8. Her office ranked last in charging juveniles as adults in felony cases, but was first in declining to prosecute juvenile felony cases. *Id.* (citing data from the Florida Department of Juvenile Justice (DJJ)). During one fiscal year, Ms. Worrell's office dropped 62% of its violent juvenile felony cases, compared to the 41% statewide average. App. 30.

Relatedly, Ms. Worrell was last in case-processing times for juvenile cases. App. 8–9, 39. Her office took an average of 212 days to process juvenile cases, whereas the average for all circuits was 106 days. App. 9. Just before Ms. Worrell took office, the case processing time in the Ninth Judicial Circuit was 116 days. *Id.* As a result, the

Governor found that justice was often delayed, hampering DJJ's ability to correct juvenile behavior before it worsened. App. 8–9.

The adverse consequences of those practices and policies. The sum total of the preceding practices was the "systemic poor performance" of Ms. Worrell's former office. App. 14. As the Governor found, her "abuse[s] of prosecutorial discretion reflect[ed] a systemic failure to enforce incarcerative penalties called for by Florida law." *Id.* The Ninth Judicial Circuit ranked below-average in prison admission for all but three of the 54 categories of criminal offenses. *Id.* From January 2021 to March 2023, for instance, her office sent no individuals to prison for DUI without injury, whereas every other circuit had prison admissions for this offense. App. 18. And the total prison admission rate for her office was "the lowest by far in the State and is less than half of the statewide average." App. 14. Even when she obtained convictions, Ms. Worrell evaded the Legislature's direction that "[u]se of incarcerative sanctions is prioritized toward offenders convicted of serious offenses and certain offenders who have long prior records," App. 13 (quoting § 921.002(1)(i), Fla. Stat.), such as

by "prevent[ing] or discourag[ing]" the use of incarceration "when otherwise appropriate for violent offenders, drug traffickers, serious juvenile offenders, and pedophiles." App. 14.

These practices created another problem: Ms. Worrell was unable to retain "experienced prosecutors," leading to a "critical loss" of personnel responsible for ensuring that the criminal law is adequately enforced in the Ninth Judicial Circuit. *Id.* This hemorrhaging of institutional knowledge in Ms. Worrell's office endangered "public safety and welfare." *Id.*

C. Procedural history

On August 9, 2023, the Governor suspended Ms. Worrell and appointed Andrew Bain as state attorney. Because Mr. Bain is now serving as state attorney, Ms. Worrell has been freed from the requirement that a state attorney "shall devote full time to the duties of the office; and shall not engage in the private practice of law." Art. V, § 17, Fla. Const. If Ms. Worrell is reinstated to her post, she will receive backpay. § 111.05, Fla. Stat.

On September 6, Ms. Worrell filed this petition seeking extraordinary writs of quo warranto and mandamus.[1] Under its rules, the Senate has stayed removal proceedings pending the outcome of this litigation.[2] Fla. Sen. R. 12.9(2).

ARGUMENT

I. The Court lacks jurisdiction to resolve the non-justiciable political questions Ms. Worrell raises.

This case should be dismissed for lack of jurisdiction because the petition presents non-justiciable political questions.

This Court has long recognized that, "under the constitutional process for suspension and removal, the 'Senate is nothing less than a court provided to examine into and determine whether or not the

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[1] A criminal defendant has also sued the Governor and State Attorney Bain in circuit court, arguing that Ms. Worrell's suspension was unlawful and that, as a result, he could not be prosecuted by Mr. Bain for drug-trafficking charges that carry a three-year minimum mandatory sentence. *Dorisca v. DeSantis*, No 2023-CA-014478 (Fla. 9th Cir. Ct.); *see* § 893.135(1)(k), Fla. Stat. The circuit judge in that case stayed those proceedings pending the outcome here. Order Granting Defendants' Motion to Stay, *id.* (Sept. 21, 2023), Filing No. 182315017.

[2] *See* Letter from Tracy C. Cantella, Secretary of the Senate, to Jack Fernandez, Counsel for Monique Worrell, Florida Senate (Sept. 7, 2023), https://www.flsenate.gov/usercontent/session/executivesuspensions/Worrell_Monique/09072023NoticeofAbeyance.pdf.

Governor exercises the power of suspension in keeping with the constitutional mandate.'" *Israel v. DeSantis*, 269 So. 3d 491, 495 (Fla. 2019) (quoting *State ex rel. Hardie v. Coleman*, 155 So. 129, 134 (Fla. 1934)). In other words, the Florida Constitution commits the traditional role of "a court" in "suspension and removal" decisions to other, specific arbiters—the political branches. *Id.* The Court should now make explicit what it has long implied: Suspension and removal decisions (and the questions underlying them) are non-justiciable political questions that courts have no business addressing.

"The nonjusticiability of a political question is primarily a function of the separation of powers," *Baker v. Carr*, 369 U.S. 186, 210 (1962), which is "especially relevant" to Florida's Constitution, "where separation of powers is textually compelled." *Warren v. DeSantis*, 365 So. 3d 1137, 1144 (Fla. 2023) (Francis, J., concurring) (citing Art. II, § 3, Fla. Const.); *see also Coal. for Adequacy & Fairness in Sch. Funding, Inc. v. Chiles*, 680 So. 2d 400, 407–08 (Fla. 1996). "[T]his Court has no power to resolve" political questions, *Penn v. Fla. Def. Fin. & Accounting Serv. Ctr. Auth.*, 623 So. 2d 459, 461 (Fla. 1993); *see also*

Johnson v. State, 660 So. 2d 637, 646 (Fla. 1995), because they "revolve around policy choices and value determinations constitutionally committed for resolution to the halls of [the legislature] or the confines of the Executive Branch." *Japan Whaling Ass'n v. Am. Cetacean Soc'y*, 478 U.S. 221, 230 (1986).

A question is "political" and therefore non-justiciable if there is "a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it." *Zivotofsky ex rel. Zivotofsky v. Clinton*, 566 U.S. 189, 195 (2012) (quoting *Nixon v. United States*, 506 U.S. 224, 228 (1993)); *see also Citizens for Strong Schs., Inc. v. Fla. State Bd. of Educ.*, 262 So. 3d 127, 137 (Fla. 2019). These factors typically feed into one another. That is, the "lack of manageable standards to channel any judicial inquiry" often flows from a textual commitment to other branches that "reflects the institutional limitations of the judiciary." *El-Shifa Pharm. Indus. Co. v. United States*, 607 F.3d 836, 843–44 (D.C. Cir. 2010) (en banc) (citing *Nixon*, 506 U.S. at 228–29).

As a prototypical example of "a textually demonstrable constitutional commitment of [an] issue" to political decisionmakers, *Zivotofsky*, 566 U.S. at 195, this Court has said that matters of impeachment are political questions vested with the House and Senate. *See State v. Gleason*, 12 Fla. 190, 238 (1868) (noting that if impeachment "is a power legitimately within [the Legislature's] constitutional authority, then [this Court] cannot exercise it"); *cf. Nixon*, 506 U.S. at 229 (noting that the U.S. Senate's "sole Power to try all Impeachments" presents a political question (citation omitted)). Because the Florida Constitution expressly assigns a traditional judicial power to a different arbiter (the Senate), Florida courts have no power to address issues that underlie the exercise of that power (for example, the sufficiency of facts to meet a legal standard). Art. III, § 17, Fla. Const.; *see Nixon*, 506 U.S. at 229; *cf. also Roudebush v. Hartke*, 405 U.S. 15, 18–19 & nn.6–7 (1972).

This Court has reached the same conclusion with respect to the qualifications of legislators to hold office. *See McPherson v. Flynn*, 397 So. 2d 665, 667–68 (Fla. 1981) (citing Art. III, § 2, Fla. Const.); *see also Roudebush*, 405 U.S. at 19 & nn.6–7 (stating that the Senate's

determination that a member is qualified to be seated, including whether they were elected under the Seventeenth Amendment, is a political question) (citing Art. I, § 5, U.S. Const.)). Again, the Constitution assigns the "power to judge these qualifications" not to the judiciary but "to the legislature in unequivocal terms." *McPherson*, 397 So. 2d at 668. Thus, "the doctrine of separation of powers requires that the judiciary refrain from deciding" whether those qualifications are met. *Id.* at 667.

No less than those provisions, the Suspension and Removal Clauses of the Florida Constitution are "a textually demonstrable constitutional commitment of" the power to adjudge a suspension to the political branches. *Zivotofsky*, 566 U.S. at 195. Indeed, "the text of article IV, section 7 does not attribute any role to the courts in suspension matters." *Warren*, 365 So. 3d at 1139. That text instead empowers the Governor to initiate this political process by "suspend[ing] from office" certain "state officer[s] . . . for malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform official duties, or commission of a felony."

Art. IV, § 7(a), Fla. Const. That power—like the House's power to impeach—"carries with it the exclusive power to hear and decide" whether the evidence before the Governor supports suspension. *State ex rel. Lamar v. Johnson*, 11 So. 845, 850 (Fla. 1892). The Governor must also decide whether the pertinent legal standard (incompetence, for example) is satisfied, and that decision should be equally free of judicial scrutiny. "[W]hether the failure to prosecute was justifiable or constituted a neglect of duty is a question for the Senate and the Senate alone to determine." *State ex rel. Hardee v. Allen*, 172 So. 222, 232 (Fla. 1937) (separate op. of Buford, J.). In short, the power to suspend "has been given to the [G]overnor," and "the courts . . . cannot exercise it, any more than they can the power of trying an officer under impeachment." *Johnson*, 11 So. at 851.

Once an official is suspended, "[t]he senate may, in proceedings prescribed by law, remove from office or reinstate the suspended official." Art. IV, § 7(b), Fla. Const. That text grants the Senate "the exclusive role of determining whether to remove or reinstate that suspended official," *Israel*, 269 So. 3d at 495, including "reviewing the charges and the evidence to support them." *Coleman*, 155 So. at 130.

The Florida Constitution therefore renders the Senate "nothing less than a court" for the purpose of the ensuing trial—just as in an impeachment trial. *Israel*, 269 So. 3d at 495 (quoting *Coleman*, 155 So. at 134). Like the impeachment clauses of the U.S. and Florida Constitutions, the Suspension and Removal Clauses of the Florida Constitution not only identify specific non-judicial decisionmakers, but also assign to them certain functions: weighing evidence, prosecuting and hearing a trial, and deciding whether legal standards are satisfied.

An additional layer of review would impermissibly add to the finely wrought constitutional structure that "made the senate," not the courts, "the sole check upon any erroneous action on [the Governor's] part." *Johnson*, 11 So. at 852.

Consistent with the textual commitment of these issues to the political branches, Article IV, Section 7 allows suspension and removal for "neglect of duty" and "incompetence"—subjective standards that in many cases will require, among other things, analysis of the resources available to an official and how those resources could and should have been used. *See Israel*, 269 So. 3d at 496. That is the

kind of analysis courts are not especially good at, but that the Governor and Legislature routinely undertake—such as in the appropriations process. *See Coal. for Adequacy & Fairness in Sch. Funding*, 680 So. 2d at 407–08; *cf. also Schneider v. Kissinger*, 412 F.3d 190, 197 (D.C. Cir. 2005). As a result, determining even whether a "suspension order's allegations are reasonably related to an enumerated ground likely treads too far into an inherently political realm." *Warren*, 365 So. 3d at 1145 (Francis, J., concurring).

History confirms what the text makes clear. In 1885, the same Constitutional Convention that added the Suspension and Removal Clauses to the Florida Constitution rejected a proposal whereby grand jury indictments would trigger suspension and "circuit court[s]" would decide whether county officials engaged in "incompetency, willful neglect of duty, malfeasance, misfeasance, drunkenness, gambling, and any violation of the criminal laws of the state." *Johnson*, 11 So. at 849. The Convention's choice reflects "the intention . . . to lodge in the chief executive, and in him alone, the exclusive power to investigate and decide," and in the Senate the exclusive power to determine whether the suspension should stand. *Id.* at 849–

50. Had the people wanted a removal to "take place only upon the ascertainment by a court," the Florida Constitution would say so. *Id.* at 849.

Ms. Worrell will no doubt take the view that judicial review is "necessary . . . to place a check on" the Governor's power. *Nixon*, 506 U.S. at 235; Pet. 23; *see also* Br. of 121 Current and Former Officials at 6–8; Br. of Current and Former Elected Officials at 4–7. But "[t]he lack of power in the courts is not because the Governor [and Legislature are] above the law"; it is because "the Constitution itself has set up its own special court to try the matter, namely, the state Senate." *Coleman*, 155 So. at 136 (Davis, C.J., concurring). And the U.S. Supreme Court has rejected that argument as to the Senate's impeachment power because the Impeachment Clause fits within the Constitution's overall system of "checks and balances." *Nixon*, 506 U.S. at 234–36. Impeachment is itself a part—indeed, a critical part—of the separation of powers. The courts were not free to provide an additional, extraconstitutional check in *Nixon*, and the same is true here. *See id.*[3]

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[3] As Justice Francis recently explained, precedent is no barrier to holding the validity of a suspension to be a political question. *See*

This Court should address the question left open in *Warren v. DeSantis* and hold that suspensions involve political questions better suited to the political actors to which the Constitution assigns an adjudicatory role.

II. The Court should deny quo warranto.

If the Court reaches the merits, it should deny the petition. The Governor suspended Ms. Worrell because, in numerous ways, her poor performance and practices reduced the deterrent effect of the criminal law in the Ninth Judicial Circuit, demonstrating her neglect

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Warren v. DeSantis, 365 So. 3d 1137, 1144 (Fla. 2023) (Francis, J., concurring) (stating that "the Court has never fully addressed" the political question issue). Though this Court has entertained judicial challenges to suspensions under a deferential standard, *see, e.g.*, *Israel*, 269 So. 3d at 496, those decisions denied relief and did not decide the political question issue.

The only precedent arguably to the contrary is the four-paragraph opinion in *State ex rel. Bridges v. Henry*, 53 So. 742 (Fla. 1910), which some decisions of this Court have characterized in dicta as establishing that "the jurisdictional facts" behind a suspension "may be inquired into by the courts." *Coleman*, 155 So. at 133; *see also Allen*, 172 So. at 225 (Whitfield, C.J., concurring); *but cf. id.* at 234 (separate op. of Buford, J.) (urging that *Bridges* "be overruled"). But the cryptic opinion in *Bridges* did not address any of the reasons why this matter is a political question. "Questions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents." *Fla. Highway Patrol v. Jackson*, 288 So. 3d 1179, 1183 (Fla. 2020) (citation omitted).

of duty and incompetence. *See* App. 2–16. The suspension order easily surmounts the deferential standard applicable in quo warranto cases. Ms. Worrell's counterarguments lack merit.

A. The facts alleged in the suspension order bear a reasonable relation to the charges of neglect of duty and incompetence.

1. As the Suspension Clause's express delegation of authority to the Governor and the Senate shows, the judiciary has at most a "limited role in reviewing the exercise of the suspension power." *Israel*, 269 So. 3d at 495 (quoting *Jackson v. DeSantis*, 268 So. 3d 662, 663 (Fla. 2019)); *see also id.* (explaining that "the Constitution commits to the governor" the power of suspension). That principle traces to the Court's 1892 decision in *Johnson*, in which it held that the Governor can suspend an official without a prior judicial determination that suspension was justified. *See* 11 So. at 848–51. As this Court has put it in recent years, "[w]here an executive order of suspension 'names one or more of the grounds embraced in the Constitution and clothes or supports it with alleged facts sufficient to constitute the grounds or cause of suspension, it is sufficient.'" *Israel*, 269 So. 3d at 495 (quoting *Coleman*, 155 So. at 133). "Similarly, the Senate's judgment of removal or reinstatement 'is final, and will not

be reviewed by the courts,' as under the constitutional process for suspension and removal, the 'Senate is nothing less than a court provided to examine into and determine whether or not the Governor exercises the power of suspension in keeping with the constitutional mandate.'" *Id.* (quoting *Coleman*, 155 So. at 134).

As a consequence, the quo warranto standard in suspension cases is "a low threshold": "if, on the whole, [the suspension order] contains allegations that bear some reasonable relation to the charge made against the officer, it will be adjudged as sufficient." *Id.* at 496 (quoting *Coleman*, 155 So. at 133); *Warren*, 365 So. 3d at 1139. The inquiry is "facial" in nature and focuses on "the factual allegations in an executive order of suspension." *Israel*, 269 So. 3d at 496. To pass muster, those factual allegations need not be as "specific as the allegations of an indictment or information in a criminal prosecution." *Allen*, 172 So. at 224.

Along those lines, the Court has been steadfast that it will not "determin[e] the sufficiency of the evidence supporting those facts." *Israel*, 269 So. 3d at 495. Any questions about the "character, sufficiency, weight, and all things pertaining to the evidence" are "for the

Senate." *Allen*, 172 So. at 224. In fact, a suspension order need not list any evidence at all. *See id.* (describing as "gratuitous" a discussion in a suspension order of the evidentiary basis for the charges). Thus, while "arbitrary or blank order[s] of suspension without supporting allegations of fact" are invalid, *Coleman*, 155 So. at 133, evidentiary support for the allegations of fact that constitute the constitutionally enumerated grounds of "malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform official duties, or commission of a felony" can await the Senate proceedings. Art. IV, § 7(a), Fla. Const.

2. Here, the facts alleged in the suspension order "bear some reasonable relation" to the charges of neglect of duty and incompetence.

By way of background, neglect of duty refers to "the neglect or failure on the part of a public officer to do and perform some duty or duties laid on him as such by virtue of his office or which is required of him by law" or by "social custom." *Israel*, 269 So. 3d at 496 (quoting *Coleman*, 155 So. at 132). "It is not material whether the neglect be willful, through malice, ignorance, or oversight." *Id.* (same). One

way, but hardly the only, that neglect can occur is when a state attorney adopts "blanket" policies narrowing the exercise of her prosecutorial discretion, resulting in a "functional[] veto" of a legislative enactment. *Ayala*, 224 So. 3d at 758. A prosecutor can also exhibit neglect by "knowingly permit[ting]" crime and "prefer[ring] no charges." *Allen*, 172 So. at 883.

"Incompetence," meanwhile, refers to "any physical, moral, or intellectual quality, the lack of which incapacitates one to perform the duties of his office," and "may arise from gross ignorance of official duties or gross carelessness in the discharge of them." *Israel*, 269 So. 3d at 496 (quoting *Coleman*, 155 So. at 133).

The Governor alleged facts that collectively showed that Ms. Worrell's practices and policies "resulted in the systemic poor performance" of her office in numerous objective metrics, as well as the "critical loss of experienced prosecutors." App. 13–14. Those facts included Ms. Worrell's disregard of statutory limitations on withholding of adjudication, evasion of required minimum-mandatory sentences and enhancements for firearms, drug trafficking, and recidivists, and refusal to prosecute juvenile offenders. Her suspension was justified

by both those practices and policies and their adverse consequences.

Improper withholding of adjudications. To begin with, the Governor found that Ms. Worrell's office sought withholdings of adjudication where that procedure was statutorily prohibited. App. 13.

Withholding of adjudication is a process by which trial judges can "withhold" adjudication and place the defendant on probation, rather than adjudicate the defendant guilty and impose prison time. § 948.01(2), Fla. Stat. Withholdings are appropriate where the defendant "is not likely again to engage in a criminal course of conduct and that the ends of justice and the welfare of society do not require that the defendant presently suffer the penalty imposed by law." *Id.* Consistent with that intent, Florida law constrains a prosecutor's power to seek withholding of adjudication for serious offenses or recidivists. It provides that "no adjudication of guilt shall be withheld for a third degree felony offense if the defendant has two or more prior withholdings of adjudication for a felony," § 775.08435(1)(d), Fla. Stat., and that "no adjudication of guilt shall be withheld for a second degree felony offense if the defendant has a prior withholding of ad-

judication for a felony," *id.* § 775.08435(1)(b). These restrictions reflect the Legislature's judgment that repeat offenders who squander prior attempts at leniency should serve prison time.

Under Ms. Worrell's watch, however, her office has "disregard[ed] the foregoing statutory limitations on withholding adjudication and [sought] additional withholds, even when in violation of Florida law." App. 13. As the Governor concluded, members of the executive branch are not free to simply ignore the law. To do so is "tantamount to a functional veto" of the Legislature's pronouncements, *Ayala*, 224 So. 3d at 758 (cleaned up), a ground for finding neglect of duty. Those factual allegations bear "some reasonable relation" to the charges of neglect of duty and incompetence. *Israel*, 269 So. 3d at 496.

Firearms and drug-trafficking minimum mandatories. Next, the Governor found that Ms. Worrell's practices and policies with respect to minimum-mandatory sentences "defies the expressed will of the Florida Legislature" in certain firearm and drug-trafficking cases. App. 3–6.

As for gun crimes, the Legislature has a policy of "zero tolerance

of criminals" who use firearms "in furtherance of [a] crime, used in order to commit [a] crime, or used in preparation to commit [a] crime." § 27.366, Fla. Stat. Those offenders are subject to the minimum-mandatory sentences laid out in the so-called "10/20/Life" statute, Section 775.087, which includes a mandatory three years if a convicted felon possesses a firearm, 10 years for violent offenses if the gun is possessed, 20 years if it is discharged during the commission of the crime, and 25 years if discharge results in great bodily harm or death. *Id.* § 775.087(2)(a)1., 2., 3. The 10/20/Life law reiterates that "[i]t is the intent of the Legislature" that these offenders "be punished to the fullest extent of the law, and the minimum terms of imprisonment imposed pursuant to this subsection shall be imposed for each qualifying felony count for which the person is convicted." *Id.* § 775.087(2)(d), (3)(d). In other words, the Legislature eliminated state attorneys' discretion about what penalties to seek for such offenders.

The lone exception to these minimum mandatories is when "the offenders' possession of the firearm is incidental to the commission

of a crime." *Id.* § 27.366. In that event, state attorneys "should appropriately exercise their discretion" to decide whether to pursue the minimum mandatory, and, if they elect not to, "must explain the sentencing deviation in writing and place such explanation in the case file." *Id.* Otherwise, the legislature has abolished discretion for prosecutors over criminals who use firearms in furtherance or in preparation of violent felonies. *See id.*

Regarding drug-trafficking cases, the Legislature has provided that the knowing possession of certain amounts of narcotics constitutes a "trafficking" offense, resulting in various minimum-mandatory sentences depending on the substance and quantity possessed. *See generally id.* § 893.135. A person caught with between 28 and 200 grams of cocaine, for instance, is subject to a three-year minimum sentence. *Id.* § 893.135(1)(b)1.a.

Despite these clear legislative enactments, Ms. Worrell has "prevented or discouraged" her state attorneys from seeking these sentences. App. 4–6. Though the allegations of a suspension order must be assumed true even without supporting evidence, *Allen*, 172 So. at 224, the data the Governor cited corroborates the allegation. Of 58

non-homicide robbery-with-a-firearm crimes referred to her office in 2021 and 2022, only one resulted in a minimum mandatory called for by statute; and of 14 non-homicide home-invasion-robbery-with-a-firearm crimes referred to her office, none resulted in minimum mandatories. App. 5–6. And Ms. Worrell secured just five minimum-mandatory sentences out of 130 referrals for the crime of possession of a firearm by a felon. App. 6. She fared little better when it came to drug-trafficking: of the roughly 100 referrals to her office in 2021 and 2022 by the Osceola County Sheriff, she obtained a mere three mandatory sentences. App. 7. By comparison, she admitted to prison just 39 drug traffickers per million residents, well shy of the statewide average rate of 114. App. 18. These facts, too, bear a reasonable relation to neglect of duty and incompetence.

Sentence enhancements for repeat offenders. Relatedly, the Governor found Ms. Worrell had a practice or policy of avoiding minimum mandatories for certain repeat offenders. App. 10–12.

Prison releasee reoffenders (PRRs) and habitual violent felony offenders (HVFOs) are statutory classifications that subject recidivists to more stringent minimum mandatories and higher statutory

maximums. *Id.*; *see also* § 775.084(1)(b), Fla. Stat. (setting out criteria for HVFO status); § 775.082(9)(a)1., (9)(a)2., Fla. Stat. (setting out criteria for PRR status). For both, the Legislature has dictated that offenders be "punished to the fullest extent of the law and as provided in this subsection, unless the state attorney determines that extenuating circumstances exist which preclude the just prosecution of the offender." § 775.082(9)(d), Fla. Stat.; *see also id.* § 775.084(4)(b), (3)(a)6. The Legislature has even mandated that state attorneys adopt specific policies on career offenders, such as HVFOs and PRRs, based on several guidelines, including that "[a]ll reasonable prosecutorial efforts shall be made to persuade the court to impose the most severe sanction authorized upon a person convicted after prosecution as a career criminal." *Id.* § 775.0843(2)(d).

As to both HVFOs and PRRs, the Governor found that Ms. Worrell systematically evaded these legislative directives by avoiding those classifications. App. 10–12. Ms. Worrell's choice contravenes the policy of the Legislature to achieve uniformity in sentencing and seek punishment to the "fullest extent" possible. *See Ayala*, 224 So. 3d at 758–59 (failure to seek certain types of penalties sufficient to

support transfer of state attorney); *Allen*, 172 So. at 224.

Foregoing charges in child pornography cases. The Governor also found that Ms. Worrell "arbitrarily limit[ed]" the number of charges that her line prosecutors could seek with respect to child pornography. App. 12. The Legislature has made clear that the possession, control, or intentional viewing of "each" depiction of child pornography is a separate offense, § 827.071(5)(a), Fla. Stat., reflecting that each such depiction stigmatizes the child victim. By limiting charges for multiple images of child pornography, Ms. Worrell functionally vetoed Section 827.071(5)(a). *Ayala*, 224 So. 3d at 758. Indeed, she "prefer[red] no charges" for multiple violations of the child pornography statute, a "neglect of duty" under this Court's case law. *Allen*, 172 So. at 224.

Juvenile justice. Turning to juvenile cases, the Governor found that Ms. Worrell "used a variety of techniques to allow serious juvenile offenders to evade incarceration," including by (1) "encourag[ing]" prosecutors to not charge or drop charges after filing, (2) "prevent[ing] or discourag[ing]" prosecutors in her office from charging serious offenders as adults, and (3) allowing undue delay in

prosecuting juvenile cases. App. 8–9. That threatened public safety and impaired intervention for juvenile offenders to correct their behavior and "prevent their further involvement with the juvenile justice system." *Id.*

Ms. Worrell's neglect of her duties in the prosecution of juvenile offenders is borne out by statistical evidence. App. 8–10. Her office either declined to charge or dismissed 42% of all juvenile felony cases, by far the most of any state attorney and roughly twice the statewide average. App. 25. The next closest state attorneys were not in the same ballpark: 33% in both the Eleventh and Sixteenth Judicial Circuits. *Id.* Ms. Worrell likewise lapped the field when it came to *violent* juvenile felonies, no-actioning or dismissing 62% of cases, compared to just 41% statewide. App. 30.

Ms. Worrell also unreasonably delayed the processing of juvenile cases. The 212 days on average that it took the Ninth Judicial Circuit to resolve all juvenile cases were considerably longer than in other circuits. App. 39. The situation was even worse for first-time offenders (225 days), roughly three times the statewide average (78 days). App. 40. Before Ms. Worrell started as state attorney, the Ninth

Judicial Circuit took an average of 116 days to complete juvenile cases. App. 9. That deficiency is not trivial. As the Department of Juvenile Justice has explained, "[d]elays in case processing may negatively impact public safety by preventing access to necessary treatments and services to address the juveniles' behavior." App. 8. "Such delays permit the underlying problems to continue or even to spin out of control." App. 9.

Adverse consequences of those practices and policies. The results of these failures were twofold. First, as measured by the "various metrics described above," Ms. Worrell's office exhibited "systemic poor performance" in pursuing "incarcerative sanctions . . . otherwise appropriate for violent offenders, drug traffickers, serious juvenile offenders, and pedophiles." App. 14. That contravened the legislative judgment that the "primary purpose of sentencing is to punish the offender," and that though "[r]ehabilitation is a desired goal of the criminal justice system[,] [it] is subordinate to the goal of punishment." App. 13 (quoting § 921.002(1)(b), Fla. Stat.) (first alteration in original).

Second, the Governor found that Ms. Worrell's conduct "resulted in a critical loss of experienced prosecutors." App. 14. As the head of the State Attorney's Office for the Ninth Judicial Circuit, she had a managerial obligation to ensure that her office was properly staffed and running efficiently. *Cf. Rutan v. Republican Party of Ill.*, 497 U.S. 62, 69 (1990) (noting that the government "has a significant interest in ensuring that it has effective and efficient employees"). Her poor performance, even apart from her practices and policies, justified her suspension.

All in all, the Governor alleged facts easily bearing a "reasonable relation to the charge[s]" of neglect of duty and incompetence. *Israel*, 269 So. 3d at 497. That forecloses a writ of quo warranto.

B. Ms. Worrell's counterarguments run contrary to precedent and are unpersuasive.

Ms. Worrell offers three arguments in favor of quo warranto. First, she claims that the suspension order is too "vague" to provide her with notice of the allegations. Second, Ms. Worrell says that those allegations, as a matter of law, do not constitute neglect of duty or incompetence. And third, she challenges the Governor's evidentiary support as insufficient to prove the charges. None of those theories

holds water.

1. The suspension order supplies Ms. Worrell with notice of the bases for her suspension.

Ms. Worrell leads by arguing (Pet. 12–18, 30–31) that the suspension order is not specific enough for her "to mount an effective defense." That is so, she maintains, because the suspension order "never identifies any written policy" or "cite[s] any statements" of Ms. Worrell or her office. Pet. 15 (emphases omitted). That claim both misapprehends the requisite specificity in a suspension order and overlooks the significant detail this order contains.

Article IV, Section 7(a) provides that the Governor may suspend an official "[b]y executive order stating the grounds," and the Legislature has clarified that a suspension order must "specify facts sufficient to advise both the officer and the Senate as to the charges made or the basis of the suspension," § 112.41(1), Fla. Stat. But the allegations in a suspension order need not be as "specific as the allegations of an indictment or information," *Allen*, 172 So. at 224, which only require that such information or indictment is not "so vague, indistinct and indefinite as to mislead the accused and embarrass him in the preparation of his defense." *Mobley v. State*, 409 So. 2d

1031, 1034 (Fla. 1982) (quoting Fla. R. Crim. P. 3.140(o)). By contrast, "[a] mere arbitrary or blank order of suspension without supporting allegations of fact" is invalid. *Israel*, 269 So. 3d at 495 (alteration in original).

This suspension order more than meets that test. As discussed above, the allegations in the suspension order "bear some reasonable relation" to neglect of duty and incompetence. *See supra* 26–37. Ms. Worrell's "practices or policies," as the suspension order explained, "include non-filing or dropping meritorious charges or declining to allege otherwise provable facts to avoid triggering applicable lengthy sentences, minimum mandatory sentences, or other sentencing enhancements, especially for offenders under the age of 25, except in the most extreme cases." App. 4. Those allegations, along with the further detail provided in the order, put Ms. Worrell on notice of the charges against her so that she can prepare her defense. App. 2–14. Indeed, she has already marshalled such defenses in her quo warranto petition. At the very least, the suspension order would meet the test for specificity of a criminal information, a more stringent standard than the test applicable here. *See Price v. State*, 995 So. 2d 401,

403, 406 (Fla. 2008) (holding that defendant was not misled by a charging document that simply restated the elements of sexual battery on a minor and noted that the offense occurred "on or about May 07, 2001, in the County of VOLUSIA and State of Florida"). And it provides far more detail than the suspension order held sufficient in *Allen*, which merely alleged that a prosecutor filed "no [gambling] informations" in one year and only "seven informations" in another year, at the same time that illegal gambling "reached its peak" in Hillsborough County. 172 So. at 223.

If Ms. Worrell nevertheless wishes to acquire greater detail about the nature of the charges, she can turn to the "machinery of the Senate." *Crowder v. State*, 285 So. 2d 33, 36 (Fla. 4th DCA 1973) (Mager, J., dissenting). The Senate's rules provide for a "prehearing conference" at which the parties advise each other about the witnesses and evidence to be offered and "what each expects to prove by such testimony and evidence." Fla. Sen. R. 12.9(3). And "[w]hen it is advisable," the Senate "may request that the Governor file a bill of particulars containing a statement of further facts and circumstances supporting the suspension order." Fla. Sen. R. 12.9(4). Ms.

Worrell can ask the Senate for that relief.

In arguing for a more searching pleading standard, Ms. Worrell resorts to a plainly incorrect lower court decision. Pet. 16–17 (citing *Crowder*, 285 So. 2d 33). In *Crowder*, a sheriff was suspended for performing "official duties" while "intoxicated from voluntary consumption of alcoholic beverages" and because, on a specified date, he "permitted the introduction of an alcoholic beverage" into a county jail and then "permitted and encouraged" a prisoner and assistant jailer to consume these alcoholic beverages. 285 So. 2d at 35. With no analysis and over a vigorous dissent, the Fourth District affirmed a circuit court judgment deeming these allegations insufficient to "fairly apprise the accused officer of the alleged acts against which he must defend himself." *Compare id.*, *with id.* at 36 (Mager, J., dissenting). It is unclear what greater specificity the Fourth District contemplated or why, and that decision is not worth following.

Ms. Worrell's invocation of *Israel* and *Jackson* (Pet. 12–14) is likewise inapt. Neither explicitly addressed the requisite level of specificity in a suspension order and, in any event, approved a level of detail similar to or less than that here. *Israel*, 269 So. 3d at 494

(sheriff was suspended for his failure to "provide frequent training" for his officers, "provide guaranteed access to emergency services," and control crime scenes); *Jackson*, 268 So. 3d at 663 (school board superintendent suspended for failure to adequately protect the "safety and well-being of the students" through training and "supervision of school district personnel").

And Ms. Worrell's oblique reliance (Pet. 17) on *State ex rel. Hawkins v. McCall*, 29 So. 2d 739 (Fla. 1947), does not move the needle either. There, the court was not applying the constitutional suspension standard, but rather a statutory suspension-and-removal scheme for local government officials. A Jacksonville police officer had been suspended from his post and brought to trial before the City Commission. *Id.* at 740–41. At trial, his attorney asked the Commission to provide "particulars" about the nature of the charges against him so he could prepare his defense, since the suspension order had vaguely alleged that he had "fail[ed] to enforce the law" and

had not performed his "duty," without specifying the "laws" or "duties" in issue. *Id.*[4] The Commission refused and, after hearing evidence from the city police chief, removed the officer from his post. *Id.* at 741. This Court concluded that the procedures that led to the officer's removal as well as the sufficiency of the evidence supporting his removal were inadequate to comply with the statutory scheme. *Id.* at 742–43. That decision has nothing to do with the level of detail required of a constitutional suspension order by the Governor before the matter has been tried in the Senate.

Even if greater detail were necessary, Ms. Worrell's suspension order spans 15 pages and names not only the constitutionally enumerated grounds for suspension (neglect of duty and incompetence), but also supporting facts (Ms. Worrell's practices and policies and their adverse consequences) and some of the evidence the Governor

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[4] The removal order in *McCall* alleged that "[o]n or about October 12, 1945," the terminated officer both "accepted a sum of money for the failure to enforce the law" and "for the non-performance of his duty," 29 So. 2d at 741, without specifying what "duty" the officer had failed to perform. Those details still would have sufficed under the criminal information standard and, by implication, the suspension standard today. *See Mobley*, 409 So. 2d at 1034. But here, the Governor has also specified the "duties" Ms. Worrell has neglected. *See* App. 3–14.

used to draw those conclusions (prison admission and case referral statistics). *See* App. 2–16. Those practices or policies include, among others, "generally prevent[ing] or discourag[ing]" line prosecutors "from obtaining meritorious minimum mandatory sentences for gun crimes" and "drug trafficking offenses," App. 4, 6, along with "disregard[ing] . . . statutory limitations on withholding adjudication." App. 13. That is more than sufficient.

2. Prosecutorial discretion does not shield a state attorney from suspension for neglect of duty or incompetence.

Next, Ms. Worrell contends that the allegations in the suspension order do not "reasonably relate" to the constitutional suspension standard because the Governor "fails to allege any conduct of Ms. Worrell that violates Florida law." Pet. 32. Instead, Ms. Worrell argues, her conduct was an unreviewable "exercise of prosecutorial discretion." Pet. 32–44. As she sees it, she could be suspended only if she "*abdicated*" her discretion by adopting a "blanket policy," Pet. 38, or if she violated some statute. Pet. 32.

Florida law has never imposed these limitations on the Governor's suspension authority. Ms. Worrell does not have "discretion" to

abuse her power to bring criminal charges by chronic underenforcement of Florida law. And in all events, the allegations in the suspension order include the charge that Ms. Worrell has ignored express legislative directives and adopted "blanket" policies, which include not only policies that involve a total refusal to charge under a given law, but also those that are "tantamount to a functional veto of state law." *Ayala*, 224 So. 3d at 758 (cleaned up).

A. State attorneys, like other members of the executive branch, are indeed generally imbued with discretion in deciding how best to enforce the law. But the Florida Constitution delegates to the Governor the "supreme executive power" and corresponding duty to "take care that the laws be faithfully executed." Art. IV, § 1(a), Fla. Const. He therefore exercises oversight and supervision over "all functions of the executive branch," *See Advisory Op. to the Gov. re: Implementation of Amend. 4*, 288 So. 3d 1070, 1074 (Fla. 2020); Art. IV, § 6, Fla. Const.; *see also* § 20.02(3), Fla. Stat., including the "power to prosecute." *Ayala*, 224 So. 3d at 759 n.2 (prosecution is "an executive function and not a judicial function" (quoting *Fulk v. State*, 417 So.

2d 1121, 1126 (Fla. 5th DCA 1982) (Cowart, J., concurring specially))). And as this Court has long held, State Attorneys—consistent with their title—are *state* executive officers under gubernatorial oversight. *See Austin v. State ex rel. Christian*, 310 So. 2d 289, 292 (Fla. 1975).

Ms. Worrell's call for the Court to recognize the absolute independence of state attorneys in charging decisions ignores this Court's precedent. Pet. 33–34 (quoting *Ayala*, 224 So. 3d at 761 (Pariente, J., dissenting)). In *Austin*, for example, the Court held that the Governor's obligation to "take care that the laws be faithfully executed" empowered him to assign a state attorney to perform the duties of another even without statutory authorization. 310 So. 2d at 292. And in *Allen*, this Court upheld a governor's suspension order predicated on a state attorney's decision not to prosecute some unspecified number of gambling cases, an alleged neglect of duty. 172 So. at 224. The Court reached that result even though the state attorney had prosecuted at least seven gambling offenses within a two-year span, *id.*, proof that the prosecutor had no blanket policy against pursuing gambling charges. In other words, it was the governor's prerogative

to decide that the state attorney's exercise of discretion in one or more gambling cases was neglectful.

That makes sense. To take one example, a state attorney who exercises case-by-case discretion yet bungles the management of her office by hiring unskilled attorneys or not effectively supervising them is subject to suspension for incompetence without more. *Allen* rebuts Ms. Worrell's theory that she can be suspended only if she "violates Florida law" or totally "abdicate[s]" her duty to exercise discretion by adopting "blanket policies." Pet. 32, 38.

That comports with the common understanding of neglect of duty, which has never required total "abdicat[ion]" of duty, Pet. 38, but also includes an "[o]mission of proper attention" to one's duties. *Neglect*, *Webster's New International Dictionary* 1637 (2d ed. 1957). Nor is a state attorney's duty neglected only when one "violates Florida law." Pet. 32. One's duties include not only legal obligations, but also those imposed by "social custom." *Israel*, 269 So. 3d at 496. The proper level of attention to duties is a question for the Governor as chief executive, and the Senate in exercising its removal authority.

And while a state attorney's blanket refusal to exercise discretion is certainly *sufficient* to state a case for neglect of duty, Pet. 39–40 (citing *Ayala*, 224 So. 3d at 758; *Warren*, 365 So. 3d at 1139–40), Ms. Worrell cites no case holding that such a refusal is *necessary* for the conclusion that the state attorney is derelict.

Ms. Worrell's emphasis on prosecutorial charging discretion likewise finds no support in the case law. The cases she cites (Pet. 35–36) do not hold that prosecutorial discretion insulates a state attorney from oversight by a higher-ranking executive branch official; they hold merely that the *judiciary* cannot intrude on the state attorney's executive determinations. *See, e.g.*, *State v. Werner*, 402 So. 2d 386, 387 (Fla. 1981) ("refus[ing] to intrude on the prosecutorial function" by interfering with the executive branch's discretion to seek sentence reductions for cooperating defendants); *Wade v. State*, 41 So. 3d 857, 875 (Fla. 2010); *State v. Tuttle*, 177 So. 3d 1246, 1249 (Fla. 2015). Those cases, put another way, turn on separation-of-powers concerns that are not implicated when the State's chief executive supervises the work of lower executive branch officials. *See Ayala*, 224 So. 3d at 759 n.2 (finding that a governor's order transferring one

state attorney's capital cases to another state attorney did not "violate the separation of powers doctrine" because "the power to prosecute . . . is a purely executive function").[5]

Far from infringing the "will of the voters" who elected Ms. Worrell, Pet. 32–35, this conception of executive discretion meets with voters' expectation that state attorneys are subject to the Suspension Clause. *See Johnson*, 11 So. at 853 (observing that suspension fits within "the elective system" because when "the suspension or removal takes place, the expressed will of the people has been enforced by the suspension and removal"). The power of suspension is part and parcel of our system of checks and balances, and Floridians elected the Governor to exercise that check so that a neglectful or

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[5] Amici similarly rely on this Court's advisory opinion from 1968, involving the suspension of a judge, to argue that the Governor may never suspend local officials based on a disagreement with that official's exercise of "discretion and wisdom." Amicus Br. of Current and Former Elected Officials at 6 (*In re Advisory Opinion*, 213 So. 2d 716, 718, 720 (Fla. 1968)). But that opinion was based on the separation of powers between the executive and judicial branches of government, *see* Art. II, § 3, Fla. Const., whereas Ms. Worrell's charging decisions are "a purely executive function." *Ayala*, 224 So. 3d at 759 n.2.

incompetent state attorney does not serve a full four-year term.[6] *Coleman*, 155 So. at 136 (Davis, C.J., concurring).

In short, it would have been well within Governor DeSantis's constitutional authority to conclude either that Ms. Worrell had exercised case-by-case discretion in an inappropriate manner or that she was simply incapable of "faithfully execut[ing] Florida's criminal law" within the Ninth Judicial Circuit. App. 14.

B. Either way, the suspension order *does* allege that Ms. Worrell violated the law and adopted blanket policies. It asserts that "Ms.

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[6] Ms. Worrell declares that the "'power to remove is not analogous to the power to control.'" Pet. 34 (quoting *Whiley v. Scott*, 79 So. 3d 702, 715 (Fla. 2011)). That premise is dubious, *see Whiley*, 79 So. 3d at 717 (Canady, C.J., dissenting); *Appointment and Removal of Federal Reserve Bank Members of the Federal Open Market Committee*, 43 Op. O.L.C. __, at *13, 2019 WL 11594453 (Oct. 23, 2019), ("Just as the power to remove is incident to the power to appoint, the power to supervise and direct is incident to the power to remove."), but that premise is irrelevant anyway. Unlike in *Whiley*, where the Governor had attempted to exercise control over the decisions of his subordinates by telling them how to conduct rulemakings, 79 So. 3d at 708–09, the question here is how the Governor can exercise his constitutionally assigned "removal"—more precisely his suspension—power. And *Whiley,* in any case, involved the Governor's assertion of control over what this Court repeatedly characterized as a "legislative function." *Id.* at 715. Prosecution, however, is hardly legislative.

Worrell's subordinates have permitted or required assistant state attorneys . . . to disregard . . . statutory limitations on withholding adjudication" for certain second- and third-degree felony offenders. App. 13. It asserts that Ms. Worrell had a "practice or policy of arbitrarily limiting the number of counts for" possession of child pornography, despite the Legislature's directive that each depiction of child pornography constitutes a separate offense. App. 12. And it asserts that, though the Legislature has mandated severe minimum penalties for those possessing a firearm during the commission of felony, with limited exceptions, Ms. Worrell had "practices or policies of evading minimum mandatory sentences for gun crimes." App. 6. And on and on. *See supra* 26–37.[7]

[7] Ms. Worrell's strategy in addressing many of these allegations is simply to mischaracterize them. *See, e.g.*, Pet. 44 (responding to the allegation that Ms. Worrell evaded limitations on withholding adjudication for second-degree felonies by arguing that the suspension order failed to allege that "Ms. Worrell has ever sought the withholding of adjudication of guilt in capital, life, or first degree felony cases"); Pet. 43–44 (responding to the allegation that Ms. Worrell preferred no charges for multiple depictions of child pornography by arguing that "the statute does not foreclose the prosecutor from exercising discretion on the number of separate offenses"); Pet. 41 (responding to the allegation that Ms. Worrell intentionally avoided minimum-mandatory sentences on firearm and drug-trafficking offenses by arguing that the statutes "do not address or limit the prosecutor's

Whether any particular practice or policy cited in the order was "tantamount to a 'functional[] veto' of state law," *Ayala*, 224 So. 3d at 758, or a "prefer[ence] [for] no charges" of a certain type, *Allen*, 172 So. at 224, the allegations in the suspension order reasonably relate to the charges of neglect of duty and incompetence.

3. Ms. Worrell's challenge to the evidentiary bases for the charges is foreclosed by precedent.

In a last bid for quo warranto, Ms. Worrell challenges the evidentiary bases for neglect of duty and incompetence listed in the suspension order. Pet. 19–31. She invites the Court to scrutinize, line by line, the statistical support offered by the Governor for the allegations contained in the suspension order, and to examine her own analysis of other data in the exhibits attached to the order. Thus, she argues that a "host of factors beyond [her] control" may have influenced case outcomes, rendering prison-admission data inapt, Pet. 19–20, 27; that the Governor failed to include evidence of practices or policies regarding repeat offenders, Pet. 30; and that the data shows that she successfully prosecuted plenty of defendants. Pet. 24–26. Precedent

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discretion to enter into plea bargains").

renders these contentions irrelevant.

A. As shown above, the *allegations* in the suspension order—that various practices and policies of Ms. Worrell's former office contravened legislative intent and resulted in the office's serious underperformance in combating crime—reasonably relate to the charges of neglect of duty and incompetence. *Supra* 26–37. The Governor offered statistical data to corroborate both the existence of those practices and policies and their adverse consequences for the residents of the Ninth Judicial Circuit. But this additional detail was not required, and the Court has disclaimed any role for the judiciary in weighing the evidence in support of a suspension order's allegations. *See Israel*, 269 So. 3d at 495; *Johnson*, 11 So. at 850, 852.

"[W]here the executive order of suspension contains factual allegations relating to an enumerated ground for suspension, the Constitution prohibits the courts from examining or determining the sufficiency of the evidence supporting those facts." *Israel*, 269 So. 3d at 495. "[A]nything of an evidentiary nature in the order of suspension," the Court has stressed, is a "matter[] for the Senate with which [the Court is] without power to interfere." *Allen*, 172 So. at 224. So the

additional information that the Governor provided to support his factual allegations was at most "gratuitous"—a matter of grace affording greater insight into the Governor's thinking at this early stage, but which was not necessary to uphold the suspension. *Id.*

None of that leaves Ms. Worrell without recourse. She will be free to dispute the Governor's evidence, Pet. 19–24, 27–31, and to present her own, Pet. 24–26, before the Senate.

B. But even if the Court enters the rough and tumble of evaluating the sufficiency of the evidence in the suspension order, that data supports the Governor's depiction of Ms. Worrell's conduct.

Start with her overall prison admissions. That Ms. Worrell sent roughly 627 criminals per million residents in the Ninth Judicial Circuit[8] to prison does not, as she asserts, "disprove[]" the Governor's claim "that there has been a failure to enforce incarcerative penalties." Pet. 24–25. A "failure to enforce" the law can occur where a state attorney shows insufficient attention to their duties, not just

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[8] The data in the suspension order represents the rate of persons admitted to prison facilities per million residents within the judicial circuit. *See* App. 18. The Ninth Judicial Circuit has a population of 1.8 million. *See Our Court*, Ninth Judicial Circuit, https://ninthcircuit.org/about.

through total abdication. *See supra* 44–47. On that front, her office's prison admissions—well and away the lowest per capita—speak for themselves, totaling just above *one-third* of the statewide average of 1,628 admissions per million residents. App. 18. That includes worse-than-average admissions for nearly every type of homicide offense, as well as assault or battery on a law enforcement officer offenses. *Id.* (noting that Ms. Worrell's office fell below the statewide average in 51 of 54 categories of crimes). While collectively the state attorneys admitted 26 offenders per million residents for assault or battery on a law enforcement officer—hopefully deterring attacks on police—the Ninth Judicial Circuit produced a pittance of 3.8 offenders for every million residents—the only single-digit figure for this crime. *Id.*

Ms. Worrell diverts the Court's attention to just five categories of violent offenses for which her prison admissions were "akin to the statewide average," implying that it was necessary to compromise the enforcement of "non-violent crimes" in order to train her resources on violent ones. Pet. 25. She says nothing of her treatment of *other* classes of violent felonies, like aggravated battery (39 admissions

compared to the statewide average of 58.5), robbery with a weapon (26.9 to 44.5), burglary of a dwelling (29.7 to 80.8), or the aforementioned offenses against police. App. 18. Ms. Worrell's defense, it would appear, is that she was so preoccupied obtaining middling prison admissions for "capital murder" (Pet. 25) that she could not prosecute robberies and home invasions.

And other state attorneys have managed to walk and chew gum at the same time, prosecuting both violent and non-violent offenses. *See id.* Though the Eighth Judicial Circuit, for instance, has admitted proportionally fewer carjackers to prison than Ms. Worrell—seven offenders compared to nine offenders, per million residents—the Eighth Judicial Circuit quintupled the general rate of prison admission from Ms. Worrell's former office. *Id.* (3,131 admissions in contrast to Ms. Worrell's 627 admissions, per million residents). And it did so while also sending 367 offenders per million residents to prison for drug possession, as opposed to Ms. Worrell's mere nine admissions. *Id.*

Nor should the Court accept her characterization of her juvenile case processing times as "comparable" to other circuits. Pet. 28. She

points to one category in which a single other office performed worse than hers, with two others in the neighborhood: juvenile felony cases. *Id.* But accounting for all juvenile cases, the Ninth Judicial Circuit was clearly the slowest in processing cases—taking an average of 212 days, double the statewide average of 106 days. App. 39. And Ms. Worrell ignores a critical category of juvenile offenders: first-time offenders. For these juveniles, DJJ has the greatest chance to "identify and address the youth's" negative behavior, making speedy disposition critical. *See* App. 9. Yet held against the 78 days on average it took for prosecutors across the State to process first-time offenders, the Ninth Judicial Circuit's prosecutors hobbled at an average pace of 225 days. App. 40. These delays occurred while the number of juvenile cases in Ms. Worrell's office decreased. App. 41. Five years ago, the Ninth Judicial Circuit handled 2,438 cases at a speed of 115 days per case, but under Ms. Worrell's tenure, it could barely keep up with 711 cases, taking 212 days per case. *Id.*[9]

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[9] These delays cannot be explained by the COVID-19 pandemic. Pet. 29. True, every circuit experienced an increase in case processing times during the pandemic, reflected in the data for the 2020–21 fiscal year. App. 41. But not only have those circuits still managed to keep their case processing times lower on average than Ms. Worrell's former office, nearly every other circuit managed to

The Court should deny the request for quo warranto.

III. The Court should deny mandamus.

Ms. Worrell asks in the alternative for the same relief through a writ of mandamus. Pet. 10. On her telling, the Governor has a "clear and indisputable legal duty to allege facts that would constitute one of the enumerated grounds for suspension." Pet. 10–11. And because the Governor failed to do so, he must reinstate her. *Id.* This Court should deny that request as well.

This Court has repeatedly emphasized that quo warranto is the "exclusive method of determining the right to hold and exercise a public office." *McSween v. State Live Stock Sanitary Bd. of Fla.*, 122 So. 239, 244 (Fla. 1929). Because quo warranto proceedings are the "only proper remedy in cases in which they are available," *id.*, a party may not circumvent the standard applicable to quo warranto by re-characterizing the claim as one seeking mandamus. *See Winter v. Mack*, 194 So. 225, 228 (Fla. 1940) ("This Court held that quo warranto and not mandamus was the proper remedy to settle the title to

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lower processing times in the 2021–22 fiscal year, relative to 2020–21. *Id.* As for Ms. Worrell's office, case processing times grew—from 203 days to 212 days per case. *Id.*

said office[.]"); *City of Sanford v. State*, 75 So. 619, 620 (Fla. 1917) (similar); Fla. Jur. 2d Quo Warranto § 11. Any other writ is thus precluded. *See McSween*, 122 So. at 244; *see also Pleus v. Crist*, 14 So. 3d 941, 945 (Fla. 2009) (mandamus is precluded where another adequate remedy exists).

What is more, to be entitled to mandamus, Ms. Worrell must show that the Governor has "an indisputable legal duty to perform the requested action"—here, reinstatement. *Huffman v. State*, 813 So. 2d 10, 11 (Fla. 2000). Yet the only "legal duty" she identifies is a duty to state "specific facts" supporting suspension. The Governor has stated facts that meet the suspension standard. *Supra* 26–37. And the Suspension Clause creates no duty to reinstate: it says that the Governor "*may*," not shall, "reinstate[]" the suspended official. Art. IV, § 7(a), Fla. Const.; *compare Edwards v. State*, 987 So. 2d 1209 (Fla. 2008) (Table) ("mandamus 'is [not] proper to mandate the doing (or undoing) of a discretionary act'"), *with Pleus*, 14 So. 3d at 945 (finding mandamus appropriate in the context of another provision that contained the word "shall").

CONCLUSION

This Court should dismiss or deny the petition.

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Respectfully submitted,

ASHLEY MOODY
Attorney General

/s/ *Henry C. Whitaker*
HENRY C. WHITAKER (FBN1031175)
Solicitor General
JEFFREY PAUL DESOUSA (FBN110951)
DANIEL WILLIAM BELL (FBN1008587)
Chief Deputy Solicitor General
DAVID M. COSTELLO (FBN1004952)
Deputy Solicitor General
ROBERT SCOTT SCHENCK
(FBN1044532)
Assistant Solicitor General
Office of the Attorney General
The Capitol, PL-01
Tallahassee, Florida 32399
(850) 414-3300
henry.whitaker@myfloridalegal.com

Counsel for Governor Ron DeSantis

RYAN NEWMAN (FBN1031451)
General Counsel
Executive Office of the Governor
400 S Monroe Street
Tallahassee, Florida 32399-6536

GEORGE T. LEVESQUE (FBN555541)
JEFF AARON (FBN123473)
GrayRobinson, P.A.
301 S Bronough Street, Suite 600
Tallahassee, Florida 32302
(850) 577-9090
george.levesque@gray-robinson.com

CERTIFICATE OF COMPLIANCE

I certify that this brief was prepared in 14-point Bookman font, in compliance with Florida Rule of Appellate Procedure 9.210(a)(2) and contains 11,706 words.

/s/ Henry C. Whitaker
Solicitor General

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was furnished via the e-Filing Portal to counsel for all parties of record on this **twenty-fourth** day of October 2023, including:

Laura G. Ferguson
Mark J. Rochon
Miller & Chevalier Chartered
900 16th Street NW
Black Lives Matter Plaza
Washington, DC 20006
lferguson@milchev.com
mrochon@milchev.com
202-626-5800

Jack E. Fernandez, Jr.
Sara Alpert Lawson
Zuckerman Spaeder LLP
101 E. Kennedy Blvd., Suite 1200
Tampa, FL 33602-5838
jfernandez@zuckerman.com
slawson@zuckerman.com
813-221-1010
Devon Galloway
Zuckerman Spaeder LLP
485 Madison Avenue
10th Floor
New York, NY 10022-5871
dgalloway@zuckerman.com
212-704-9600

Counsel for Petitioner

Matthew A. Goldberger
Matthew A. Goldberger, P.A.
1555 Palm Beach Lakes Blvd.
Suite 1400
West Palm Beach, FL 33401

Jonathan B. Miller
Public Rights Project
490 43rd Street, Unit 115
Oakland, CA 94609

Counsel for Amici Curiae Current
And Former Elected Officials

James E. Felman, FBN 0775568
Katherine Earle Yanes, FBN 0159727
Kristin A. Norse, FBN 965634
Stuart C. Markman, FBN 322571
Kynes, Markman & Felman, P.A.
P.O. Box 3396
Tampa, FL 33601-3396
(813) 229-1118
jfelman@kmf-law.com
kyanes@kmf-law.com
knorse@kmf-law.com
smarkman@kmf-law.com

Counsel for Amici Curiae 121 Current
And Former Prosecutors, Attorneys
General, and Law Enforcement
Officials and Leaders, and Former
Judges, United States Attorneys
And Federal Officials

/s/ Henry C. Whitaker
Solicitor General