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IN THE SUPREME COURT OF THE STATE OF FLORIDA

MONIQUE WORRELL,

Petitioner,

v.

Case No. SC23-1246

RON DESANTIS, as Governor of the State of Florida,

Respondent.

REPLY TO RESPONSE TO PETITION FOR WRITS OF QUO WARRANTO AND MANDAMUS

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INTRODUCTION

Governor DeSantis wrongly regards his suspension power as giving him free rein to suspend any elected official in the executive branch with whom he is not politically aligned so long as he characterizes the official as "neglectful" or "incompetent." *See* Resp. at 49-50. Governor DeSantis has already removed over 20 state officials, markedly more than his predecessors, and touts his suspension power and his commitment to remove "Soros-funded" prosecutors in his presidential campaign.[1] In the September 27, 2023 Republican Presidential Debate, for example, Governor DeSantis boasted that he "removed" two "progressive prosecutors" and declared, "[a]s President, I will use the Justice Department to bring

[1] https://www.tampabay.com/news/florida-politics/2023/08/09/state-attorney-is-latest-example-desantis-use-power-suspend-elected-officials/#:~:text=Since%202019%2C%20DeSantis%20has%20suspended,officials%2C%20according%20to%20his%20office.&text=TALLAHASSEE%20%E2%80%94%20In%20his%20more%20than,any%20of%20his%20recent%20predecessors.

civil rights cases against all of those Left-wing Soros funded prosecutors; we're not going to let them get away with it anymore."[2]

According to Governor DeSantis, this Court should not be concerned that his use of the suspension power to target elected state officials for his own political ends thwarts the will of the voters. Resp. at 49. Florida voters, the Governor claims, not only know of his suspension power but also expect him to use it. *Id.* Leaving aside this dubious premise, the majority of voters in the Ninth Judicial Circuit did not vote for Governor DeSantis, but instead voted for his Democratic opponent.[3] And, they overwhelmingly voted for Ms. Worrell, who ran her office consistent with the platform on which she campaigned.[4] Governor DeSantis' notion that his position atop the executive branch allows him to nullify local elections of executive branch officials through his suspension power is anything but democratic. When Florida voters elect their state attorney, they often

[2] https://www.dailywire.com/news/desantis-on-his-plans-for-u-s-doj-were-going-after-all-of-those-left-wing-soros-funded-prosecutors.

[3] https://www.politico.com/2022-election/results/florida/statewide-offices/.

[4] https://ballotpedia.org/Monique_Worrell.

choose between competing views of how best to use limited law enforcement resources to keep their community safe. By labeling a view contrary to his own as "neglectful" and "incompetent," to justify suspending a local official, Governor DeSantis effectively nullifies the votes cast for that official. That certainly is what happened here. With the suspension of Ms. Worrell, the citizens of the Ninth Judicial Circuit are left with a State Attorney they did not elect, who was instead hand-picked by the Governor (for whom the majority in that circuit did not vote), and who is running the office in a manner contrary to the platform for which they elected Ms. Worrell.

Remarkably, though acknowledging, as he must, that prosecutors "are indeed generally imbued with discretion in deciding how best to enforce the law," the Governor asserts that his role in the executive branch empowers him not only to override prosecutorial discretion but also to suspend prosecutors for the exercise of that discretion. *Id.* at 45, 48.

It is telling that the Governor's lead argument, which is contrary to well established precedent, is that this Court is powerless to review his suspension order. Resp. at 14-23. His fallback argument – that the Court's review is so limited as to be meaningless – amounts to

the same. *Id.* at 23-37. By asserting that the suspension order is legally or functionally unreviewable, Governor DeSantis seeks to establish a precedent that allows him to suspend local state officials at will. According to the Governor, the Court should not be concerned because the suspended official has a right to a Senate trial. *Id.* at 54. In practice this right is too often illusory. Few state officials have the resources to challenge the Governor in a Senate trial or confidence that the suspension will receive objective, non-partisan review. As a result, suspensions can all too often become de facto removals. It remains imperative that this Court continue to exercise its role in facially reviewing suspensions to ensure they adhere to the Constitutional limits placed on the Governor's power. Here, the suspension does not survive facial review, and the Court should resist the Governor's efforts to eliminate or water down that review to avoid creating a precedent that will license abuse of the suspension power for decades to come.

I. SUSPENSION ORDERS ARE SUBJECT TO JUDICIAL REVIEW, AS THIS COURT HAS CONSISTENTLY HELD

In contending that the Petition presents a non-justiciable political question, Governor DeSantis strenuously argues what no

one disputes – the Florida Senate has responsibility for removal or reinstatement proceedings. Resp. at 18-22. But this Petition does not ask the Court to review any aspect of the Senate proceedings. The question presented by the Petition is whether the Governor's exercise of his suspension power violated the Constitution. This question is plainly justiciable, which is why this Court has consistently exercised jurisdiction over petitions challenging the Governor's suspension power.

As the Response acknowledges (at 16), a question is 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) (cleaned up). The Governor asserts that "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." *Id.* at 18.

The Governor first notes that the Article IV, § 7(a) is silent on any role for the courts in suspension matters. *Id.* But the political question doctrine requires a "demonstrable constitutional

commitment" of the issue to a political branch, not to the judicial branch. Judicial review is the general rule; non-justiciability is the narrow exception. Silence on the availability of judicial review does not mean there is none, a principle enshrined in the U.S. legal system since *Marbury v. Madison*.

Next the Governor likens the suspension and removal provisions to the U.S. Constitution's impeachment clause, which gives the U.S. Senate "sole Power" to try all Impeachments," and to Article III, § 2 of the Florida Constitution, which provides that "[e]ach house shall be the sole judge of the qualifications . . . of its members." *See* Resp. at 17. In *Nixon v. United States*, 506 U.S. 224 (1993), the Supreme Court held that the question whether a Senate procedural rule for impeachment trials violated the impeachment clause was non-justiciable because the Senate had the "sole power" to try impeachments. In *McPherson v. Flynn,* 397 So. 2d 665, 668 (Fla. 1981), this Court held that it lacked power to judge a legislator's qualification for office because the "constitution grants the sole power to judge these qualifications to the legislature in unequivocal terms."

The Response's effort to draw an analogy to those cases is flawed. *See* Resp. at 18. First, the Governor conflates the suspension

and removal clauses. Article IV, § 7(a) governs the Governor's suspension power and provides that the "governor may suspend." Article IV, § 7(b) governs removal and reinstatement and provides that the "senate may . . . remove from office or reinstate the suspended official." This case involves § 7(a), not § 7(b). Second, neither § 7(a) nor § 7(b) includes the "sole power" or "sole judge" language or any other textually demonstrative, unequivocal commitment of power to the political branches such as found in *Nixon* and *McPherson*. Moreover, Petitioner is not asking the Court to decide any questions relating to the Senate removal or reinstatement proceedings, making this case readily distinguishable from *Nixon*. And § 7(a) does not make the Governor the sole arbiter of the qualification of state officials to continue in office, making *McPherson* readily distinguishable.

The Governor also relies on cases where this Court declined to decide political questions because there were no judicially manageable standards. *See* Resp. at 15, 16, 21 (citing *Coal. For Adequacy & Fairness in Sch. Funding, Inc. v. Chiles*, 680 So. 2d 400, 407-08 (Fla. 1996); *Citizens for Strong Schs., Inc. v. Fla. State Bd. of Educ.*, 262 So. 3d 127, 137 (Fla. 2019)). According to the Governor,

this case could require "analysis of resources available to an official and how those resources could and should have been used," which "is the kind of analysis courts are not especially good at." Resp. at 20-21. "As a result," judicial review of a suspension order "'likely treads too far into an inherently political realm.'" *Id.* at 21 (quoting *Warren*, 365 So. 3d at 1145 (Francis, J., concurring). This Court has defined the scope of judicial review under § 7(a); it does not involve analysis that courts "are not especially good at." *See* Pet. at 9-10. Courts routinely determine whether complaints, indictments, and orders are facially valid and are well equipped, and empowered, to determine the constitutionality of executive action. *Nixon*, 506 U.S. at 237-38 ("courts possess power to review . . . executive action that transgresses identifiable textual limits").

Contrary to the Governor's suggestion, Resp. at 15, the Court has never "implied" that the Governor's exercise of his suspension authority is a non-justiciable political question. Far from it. The Court has twice recently reaffirmed that a writ of quo warranto is "the proper vehicle to challenge whether the Governor properly exercised the suspension power." *Warren v. DeSantis*, 365 So. 3d 1137, 1142 (Fla. 2023); *Israel v. DeSantis*, 269 So. 3d 491, 494 (Fla. 2019). And

the Court has long held that it may review whether a suspension order's allegations reasonably relate to an enumerated constitutional ground. *State ex rel. Hardie v. Coleman*, 155 So. 129, 133 (Fla. 1934) ("the jurisdictional facts, in other words, the matters and things on which the executive grounds his cause of removal, may be inquired into by the courts"); *State ex rel. Hardee v. Allen*, 172 So. 222, 224 (Fla. 1937) (same) *Israel*, 269 So. 3d at 495 (the judiciary's role is to determine "whether the executive order, on its face, sets forth allegations of fact relating to one of the constitutionally enumerated grounds of suspension"); *Jackson v. DeSantis*, 268 So. 3d 662, 663 (Fla. 2019) (noting court's role in reviewing the sufficiency of the executive order of suspension); *Warren*, 365 So. 3d at 1139 (same). The Court should decline to depart from nearly a century of precedent recognizing its role in review of suspension orders.

II. CONTRARY TO THE GOVERNOR'S ASSERTIONS, THE EXECUTIVE ORDER DOES NOT ADEQUATELY STATE THE GROUNDS FOR MS. WORRELL'S SUSPENSION

A. The Governor Still Cannot Identify Any Conduct or Actions of Ms. Worrell That Would Constitute Neglect of Duty or Incompetence

The Governor concedes that the suspension order must allege *facts* that if true are sufficient to state the grounds of suspension.

Resp. at 24. Despite the repeated incantation in the suspension order and Response that Ms. Worrell has adopted "practices and policies" that generally "prevent or discourage" the "use of incarcerative sanctions," *id.* at 12-13, the Governor still cannot identify those practices and policies, other than to allege in the vaguest possible way that Ms. Worrell "prevented or discouraged" line prosecutors in her office from seeking such sanctions. *See id.* at 8, 9, 11, 13, 34, 44; *see also* App., Exh. 1 ("EO") at 3, 4, 5, 6, 7, 9, 13. Neither the Response nor the suspension order ever identifies how Ms. Worrell supposedly "prevented or discouraged" attorneys in her office from doing anything, let alone how this "discouragement" rises to the level of neglect of duty or incompetence.

A few examples should suffice to show the Governor has not alleged any conduct or actions of Ms. Worrell that would constitute neglect of duty or incompetence. The Governor first claims that Ms. Worrell "disregard[ed] . . . statutory limitations on withholding of adjudication." Resp. at 27. The suspension order, however, alleges that "Worrell's *subordinates have permitted or required assistant state attorneys* in the Ninth Circuit to . . . seek additional withholds, even when in violation of Florida law." EO at 12. Thus, the suspension

order does not allege that *Ms. Worrell* has engaged in this conduct. Even assuming the alleged conduct of assistant state attorneys under the supervision of Ms. Worrell's "subordinates" could be attributed to her, the "statutory limitations" apply to the *court*, not to the state attorney's office. *See* Fla. Stat. § 775.08435(1) ("the court may not withhold adjudication of guilt upon the defendant . . . "). The statute squarely contemplates that the state attorney may request in writing that adjudication of guilt be withheld in second- and third-degree felony cases, *id.* §§ 775.08435(1)(b)(1), (d)(1), but precludes *the court* from granting such a request in certain situations. *Id.* § §775.08435(1)(b), (d). The state attorney does not violate the law by making a request. In any event, the suspension order does not allege that Ms. Worrell directed those in her office to request withholding adjudications of guilt in situations where the court was statutorily prohibited from granting such a request. Accordingly, without a factual or legal basis, the allegations regarding withholdings of adjudications of guilt cannot reasonably relate to neglect or incompetence.

Next, the Response points to allegations regarding "Ms. Worrell's evasion of required minimum-mandatory sentences and

enhancements for firearms, drug trafficking, and recidivists." Resp. at 27. But the suspension order alleges only that "Worrell has authorized or allowed practices or policies whereby her assistant state attorneys are generally prevented or discouraged from obtaining meritorious minimum mandatory sentences for gun crimes" or for drug trafficking offenses. EO at 3, 5; *see also id.* at 9 (same allegation as to sentencing enhancements). The suspension order provides not a single example of any line prosecutor in Ms. Worrell's office failing to obtain "minimum-mandatory sentences even when those prosecutors could establish the requisite facts," failing to seek sentence enhancements for repeat offenders (*see id.*), or any of the other conduct in which they are alleged to have engaged. Certainly, the order never alleges that Ms. Worrell's supervision of her line attorneys was so derelict as to constitute neglect of duty or incompetence.

The Response leans heavily on self-reporting from the Osceola Sheriff's office regarding their referrals to Ms. Worrell's office. *Id.* at 1, 9, 13. The Governor's reliance on these referral numbers is troublesome on several fronts. *First*, the suspension order is notably silent on prosecutions of referrals in Orange County, which is over

three times larger by population than Osceola County.[5] If the Governor intends to rely on referral data, he should provide information for the entire circuit, not cherry pick the county representing 25% of the circuit's population. Second, Ms. Worrell is on record correcting the Osceola Sheriff's numbers, and yet the Governor persists in relying on the erroneous claims. The suspension order claims that "[o]f the 64 drug trafficking cases referred in 2022, none have resulted in minimum mandatory sentences," EO at 6, but Ms. Worrell has stated that 13 resulted in minimum mandatory sentences.[6] Third, it is unlikely that an arrest for drug trafficking would be fully resolved in the same calendar year, so no conclusions can be drawn in early 2023 about the resolution of 2022 referrals. As of March 2023, 36 (roughly half) of the 2022 Osceola County drug trafficking referrals were pending, and another 5 were being prosecuted by other agencies.[7] Fourth, the Response wrongly claims that the referrals met the factual predicates for minimum

[5] https://worldpopulationreview.com/states/florida/counties.

[6] https://www.clickorlando.com/news/local/2023/03/27/orange-osceola-state-attorney-to-provide-update-on-drug-trafficking-cases/.

[7] *Id.*

mandatories. Resp. at 9. The suspension order does not make that claim. EO at 6. Moreover, as Ms. Worrell reported, of the 2022 Osceola County drug-trafficking referrals, 12 were downgraded due to testing results, 12 were dropped due to evidentiary issues, and two were dropped due to the absence of controlled substances.[8]

The Governor will argue that disputes over the evidence are for the Senate to resolve. Resp. at 25-26, 37, 52-53. But Petitioner notes these errors not for the Court to weigh the evidence but rather to ask this Court to recognize that a county sheriff's unsubstantiated reporting of referrals for a particular category of crime over a narrow period – without more - cannot reasonably relate to Ms. Worrell's performance. Here, the referral numbers do not indicate whether (i) the evidence and test results supported the charges; (ii) the arrest or other law enforcement conduct satisfied constitutional requirements; (iii) another agency prosecuted the charge; (iv) a plea bargain was appropriate; (v) the status of the case; (vi) the jury's determination; or (vii) the sentence imposed by the judge. Thus, even if true, these isolated referral numbers cannot reasonably be relied on to establish

[8] *Id.*

neglect of duty or incompetence by Ms. Worrell. Moreover, contrary to the Governor's claim that Ms. Worrell's supposed "practices and policies" of discouraging line attorneys from seeking minimum mandatories has "undermined the safety and security of the community," Resp. at 7-8, the violent crime rate in Osceola County was substantially lower in 2022 than in the previous ten years. *See* Pet. at 26

Even less relevant is the prison admission data repeatedly cited in the suspension order. EO, Exh. A. This data, even if true, says nothing about whether Ms. Worrell's office has sought minimum mandatories or sentencing enhancements and has no reasonable relation to the allegation that Ms. Worrell has engaged in neglect of duty or incompetence, as it reflects a host of factors outside her control. *See* Pet. at 19-26. Despite the order's extensive reliance on the prison admission data, the Response notably no longer affirmatively relies on it. *See* Resp. at 24-37. Now the Governor argues this data is superfluous and not needed to support the legitimacy of the suspension. *Id.* at 53-54 ("this additional detail was not required" and was provided as "a matter of grace"). Though acknowledging Ms. Worrell's argument that a "'host of factors beyond

[her] control may have influenced case outcomes, rending prison-admission data inapt," *id.* at 52 (quoting Pet. 19-20, 27), the Governor never responds to the argument. *See id.* at 54-57.

As the Petition notes, this suspension order stands in stark contrast to those at issue in *Israel*, 269 So. 3d 491, and *Jackson v. DeSantis*, 268 So. 3d 662 (Fla. 2019). Pet. at 12-15. The Response wrongly asserts that both those cases "approved a level of detail similar to or less than that here." Resp. at 41. As noted in the Petition, the *Israel* and *Jackson* suspensions relied on reports of investigations of the official's alleged misconduct, including, in *Israel*, findings of the Marjory Stoneman Douglas Public Safety Commission Report and, in *Jackson*, findings of the Okaloosa County Grand Jury Reports. Pet. at 12-13. These investigations focused on the suspended official's role in specific instances of harm to public safety, including a mass shooting at a school and chronic teacher abuse of special education students. *Id.* There is nothing even approaching that factual support here. Here, the Response points to the Osceola Sheriff's flawed referral numbers, previously addressed, and bald assertions that Ms. Worrell has "practices" of "discouraging" her line attorneys from seeking incarcerative sanctions. This Court has never

found such vague allegations sufficient to justify suspending an elected state official, and it should not do so here.

The Response also asserts that the order provides "far more detail than the suspension order held sufficient" in *State ex rel. Hardee v. Allen*, 172 So. 222 (Fla 1937). Resp. at 40. In describing what the *Allen* order "merely alleged," the Response omits key allegations, including that Hardee, having carried out two raids on the Panama Café, where he personally witnessed gambling, declined to prosecute for lack of a search warrant, which the law did not require. 172 So. at 222-23. These are concrete allegations of specific instances of the state official's *own* conduct, which are entirely absent here. As for another case that is squarely against the Governor, *Crowder v. State ex rel. Baker*, 285 So. 2d 33 (Fla. 4th DCA 1973), the Response simply dismisses it as wrongly decided and cites the dissent. Resp. at 40-41.

B. The Governor Has Not Sufficiently Alleged That Ms. Worrell's Office Has Violated the Law or Adopted Blanket Non-Prosecution Policies

In her Petition, Ms. Worrell addressed the suspension order's suggestion that she had violated Florida law. Pet. at 40-44. In his Response, the Governor generally is careful to avoid accusing Ms.

Worrell of violating any laws, instead characterizing her unidentified practices and policies as "thwart[ing]" or "def[ying]" the "will of the Florida Legislature," Resp. at 1, 29, or "refus[ing] to enforce legislative policies," *id.* at 4. The legislature's will and policy are embodied in statutes, and state attorneys cannot be required to guess at legislative intent or policy objectives. Their job is to enforce the laws as they were enacted.

Unable to allege any factual basis for the insinuation that Ms. Worrell has violated any Florida statutes, the Governor now primarily argues that his suspension power does not require him to show Ms. Worrell violated any state law. Resp. at 44. But, at the same time, he asserts that "the allegations in the suspension order include the charge that Ms. Worrell has ignored express legislative directives," while failing to cite the order or any statute. *Id.* at 45. To be clear, the order does not identify any statute that Ms. Worrell violated.[9]

In her Petition, Ms. Worrell also argued that the suspension order does not allege facts showing an abuse or abdication of

[9] The Response wrongly implies that Ms. Worrell's office has violated a supposed statutory requirement that each depiction of child pornography constitute a separate offense, Resp. at 51 (citing EO at 11), ignoring the Petition's response to this allegation. Pet. at 43-44.

prosecutorial discretion through the adoption of blanket non-prosecution policies, making this case distinguishable from the suspension orders involving state attorneys Ayala and Warren. Pet. at 38-40. Similar to his response about whether there has been a violation of a statute, the Governor vacillates between asserting without citation that Ms. Worrell has adopted blanket policies and arguing that she can be removed for abuse of discretion in the absence of such policies. Resp. at 44-45. To be clear, the suspension order does not identify any blanket non-prosecution policies.

The Governor claims that *Austin v. State ex rel. Christian*, 310 So. 2d 289, 292 (1975), supports his view that he can suspend state attorneys when he disagrees with their lawful exercise of prosecutorial discretion. Resp. at 46; *see also id.* at 5-6. That case, however, dealt with the Governor's assignment power, not his suspension power. As noted in the Petition, the suspension and assignment powers are not comparable because assignments are temporary and expire after 12 months if an extension is not approved by the Court. Pet. at 34.

At the end of the day, this Court is left with the Governor's disagreement with how Ms. Worrell runs her office and exercises her

discretion. Ignoring that state prosecutors have a legal and ethical obligation to seek justice within the bounds of the law, not merely to maximize incarceration and sentences, Pet. at 35-38, the Governor makes vague claims about the performance of Ms. Worrell's office, where those claims, even if true, would not demonstrate neglect of duty or incompetence. At the same time, the Governor attempts to dramatically lower the bar for what suffices to state the grounds for suspension, he also attempts to vastly expand notions of what constitutes grounds for suspension. For state prosecutors, the Governor believes that so long as he alleges that the state official has policies and practices that result in below average incarceration rates or sentences or above average case processing times, on cherry-picked categories of cases, he can remove the prosecutor for neglect of duty or incompetence even if that prosecutor is lawfully exercising his or her prosecutorial discretion. According to the Response, "it would have been well within Governor DeSantis' constitutional authority to conclude" that "Ms. Worrell had exercised case-by-case discretion in an inappropriate manner," Resp. at 50, and suspend her on that basis. That position should give this Court great pause. Such an expansion of the Governor's suspension power would lead

to substantial abuse of the suspension power and have a chilling effect on state attorneys and other elected officials throughout the state.

CONCLUSION

For the foregoing reasons, Ms. Worrell respectfully requests that this Court grant her Petition.

November 7, 2023

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 7, 2023, a true and correct copy of the foregoing Reply to Response to Petition for Writs of Quo Warranto and Mandamus was served via the Court's e-filing portal to counsel for all parties of record, including:

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CERTIFICATE OF COMPLIANCE

I hereby certify that this Reply complies with the font requirements of Rule 9.045 (b) of the Florida Rules of Appellate

Procedure and the word length requirements of Rule 9.100(g) of the Florida Rules of Appellate Procedure.

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