IN THE SUPREME COURT OF FLORIDA

CASE NO. SC2023-1246

MONIQUE WORRELL,

Petitioner,
v.

RON DESANTIS, as Governor of the State of Florida,

Respondent.

BRIEF OF *AMICI CURIAE* CURRENT AND FORMER ELECTED OFFICIALS IN SUPPORT OF PETITIONER

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STATEMENT OF INTEREST

Amici are a collection of current and former elected officials in Florida.[1] Many of us hold positions subject to the governor's suspension authority under Article IV of the Florida Constitution or have held such positions in the past. We believe that it is essential that the governor's suspension power be used sparingly and only in cases involving substantial misconduct by an official. Left unchecked, a governor's abuse of this power interferes with state officials' performance of duties. For those not aligned as a matter of politics or policy with the governor, the fear of suspension would make them hesitant to take certain positions, even if they are in the best interest of their constituents. Local government officials cannot adequately or appropriately represent the interests of their constituents if they are chilled by the possibility of suspension by the governor.

We file this brief in strong support of State Attorney Monique Worrell's petition for a writ of quo warranto and for mandamus, and

[1] No counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund its preparation or submission. No person other than *amici* or *amici*'s counsel made a monetary contribution to the preparation or submission of this brief. A list of all *amici* is available at Appendix A.

we endorse her arguments in full. As outlined in the petition, Governor DeSantis has failed to meet the requirements of Article IV of the Florida Constitution and has abused his suspension authority. While this Court has a limited role to play in reviewing the suspension order, it is an important one. Policy disputes and political differences over how discretionary functions should be exercised are not an appropriate basis for suspension. The suspension of Ms. Worrell also harms our communities and impacts local democracy by taking voice away from the constituents served in the Ninth Judicial District. State law does not allow the Governor to dictate a uniform system of law enforcement, and the people's will—the very notion that stands at the beginning of the Florida Constitution—remains paramount. *See* Art. I, § 1, Fla. Const. ("All political power is inherent in the people.").

SUMMARY OF ARGUMENT

Amici join Petitioner Monique Worrell in her arguments in full. In support of her request for a writ of quo warranto and mandamus, *amici* add the following arguments:

First, the Florida Supreme Court has a crucial role to play in ensuring that the Governor does not abuse his suspension authority. Given the frequency and pace with which Governor DeSantis has

relied on Article IV to suspend elected officials, this Court must ensure that the terms of the Executive Order in fact meet the constitutional requirements. This should not be a cursory review.

Second, the Executive Order at issue fails to provide Ms. Worrell any notice of specifically what conduct she engaged in that allegedly constitutes neglect of duty or incompetence. The Order cites incarceration rates and juvenile case processing times, but such data reflects a host of factors over which Ms. Worrell has no control and therefore cannot be cited as any evidence of neglect of duty or incompetence. Because the suspension appears to be prompted by the Governor's political disagreements with Ms. Worrell rather than by any actual neglect of duty or incompetence by Ms. Worrell, the Order fails to meet the Article IV, Section 7(a) standard.

Third, Florida has not established a uniform system of law enforcement, where one approach to prosecution is required. The Florida Constitution provides for separately elected state attorneys in each judicial circuit, and there is only modest supervision of the state attorneys by the attorney general and the governor. In other states with centralized authority, the mandate is much clearer. Moreover, the necessary use of prosecutorial discretion will lead to differences in approach and outcomes.

Given the broader democracy implications of suspending a duly elected official, and because the reasons offered are not cognizable under the Governor's authority, the requested writ and mandamus should be granted.

ARGUMENT

I. This Court Has a Crucial Role in Stopping Abuse of Power

Amici recognize the limited role of this Court in reviewing suspension orders. *Israel v. DeSantis*, 269 So. 3d 491, 495 (Fla. 2019) (judiciary's role is limited). But it is not toothless. Quo warranto is used "to determine whether a state officer or agency has improperly exercised a power or right derived from the State." *League of Women Voters of Fla. v. Scott*, 232 So.3d 264, 265 (Fla. 2017) (internal quotation omitted). "A mere arbitrary or blank order of suspension without supporting allegations of fact, even though it named one or more of the constitutional grounds of suspension, would not meet the requirements of the Constitution." *Hardie v. Coleman*, 115 Fla. 119, 128 (1934).

The suspension divests the people of their elected choice. The Florida Constitution recognizes that "[a]ll political power is inherent in the people." Art. I § 1, Fla. Const. Accordingly, "[t]he right of the

people to select their own officers is their sovereign right." *Wright v. City of Miami Gardens*, 200 So. 3d 765, 775 (Fla. 2016). This Court "has long considered free and fair elections vital to ensuring that such political power is not usurped from the people." *Id.* at 774; *see also Treiman v. Malmquist*, 342 So. 2d 972, 975 (Fla. 1977) ("The right of the people to select their own officers is their sovereign right."). Since 1944, Florida voters have designated state attorneys to be one of the officers whom local communities have the right to select directly.[2] In multiple revisions to the Judiciary Article since, including the 1956 revision to the Judiciary Article and the 1968 major revisions to the state constitution as a whole, the people of Florida have preserved their right to elect the State Attorneys who will prosecute crimes in their communities. *See* Art. V, § 17, Fla. Const. ("In each judicial circuit a state attorney shall be elected for a term of four years."). In addition, over the same time, the governor's power to suspend local officials has narrowed. *In re Advisory Opinion to Governor-Sch. Bd. Member-Suspension Auth.*, 626 So. 2d 684, 688

[2] *See* 1943 HJR 322 (proposing local election of State Attorneys in Art. V § 47 to the 1885 Constitution); Rep. of the Sec'y of State of the State of Fla. 537, https://ufdc.ufl.edu/UF00053732/00002/zoom/417 (1944) (election results showing voter adoption of the amendment).

(Fla. 1993) ("[T]he 1968 revision to the Florida Constitution intended to limit the broader suspension power provided in the 1885 Constitution."). Moreover, a governor may not suspend based on the governor's belief that the official had not "exercised proper . . . discretion and wisdom." *In re Advisory Opinion*, 213 So.2d 716, 720 (Fla. 1968) (regarding governor's authority to suspend judge of criminal court).

Nevertheless, Governor DeSantis has used his suspension authority regularly. Since 2019, he has suspended at least 23 local officials, including two state attorneys.[3] Most officials have resigned rather than incur legal fees and other burdens associated with the reinstatement proceedings before the Senate. Compared to his predecessors, Governor DeSantis has used this authority more frequently when criminal charges are not involved.[4] Though the

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[3] *See, e.g.*, Tristan Wood, *Democracy on hold: Gov. Ron DeSantis' six most noteworthy suspensions of Florida elected officials*, City & State Florida (Aug. 9, 2023), https://www.cityandstatefl.com/policy/2023/08/democracy-hold-gov-ron-desantis-five-most-noteworthy-suspensions-florida-elected-officials/387889/.

[4] *See, e.g.*, Josh Sidorowicz, *Yes, elected officials who haven't been criminally charged have been suspended before, but it's rare*, WTSP Tampa Bay 10 (Aug. 5, 2022), https://www.wtsp.com/article/news/verify/verify-andrew-warren-suspension-florida-history/67-ee028db3-73cc-4963-a44b-f0cebb65b4ba; Aaron Sharockman, *Florida Gov. Crist says he has suspended 37 public officials*, PolitiFact (Jan. 29, 2010), https://www.politifact.com/factchecks/

power was intended to be used sparingly, the repeated invocation and the effective removal caused by suspension augers toward a more searching review.

II. The Executive Order Provides No Basis for Suspension Other Than Disagreement with Worrell

Amici include a number of elected officials who are or have served in positions subject to the Governor's suspension authority. It is crucial for officials in these positions to understand what the basis for suspension (and removal) might be. Governor DeSantis' executive order provides no discernible understanding of the basis for suspension other than his disagreement with Ms. Worrell and his disapproval of the job she is doing. That is not permissible.

First, the order relies on *ipsi dixit* to purportedly state the basis of suspension. In page after page, Governor DeSantis points to statistical information, including, and especially, reports on incarceration rates and juvenile justice prosecutions, to demonstrate State Attorney Worrell's supposed neglect of duty or incompetency. Sprinkled throughout the Order are suggestions that Ms. Worrell "generally prevented or discouraged" assistant state attorneys from

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2010/jan/29/charlie-crist/florida-gov-crist-says-he-has-suspended-37-public-/.

taking certain actions. Never, however, does the Governor actually explain what policy, presumption, or action by Ms. Worrell has given rise to the complained-of outcomes.

Second, the executive order fails to account for the broader context in which State Attorney Worrell has operated as a prosecutor. The Order points to various data—including incarceration rates, case processing times, and referral numbers from local sheriffs—purporting to offer the basis for her incompetence or neglect of duty. However, none of this data exists in a vacuum and no outcomes are solely reliant on decisions by Ms. Worrell or staff in her office. Various actors play a role in the administration of justice including the courts, police, and community participation (as witnesses, among other things). Additionally, the Ninth Judicial Circuit has had similar challenges regarding processing and conviction rates historically. The Ninth has had lower-than-average conviction and clearance rates for much of the time that statistics have been kept.

Third, cherry-picked data about incarceration rates offers no indication that other similarly situated offices have behaved differently. For example, Exhibit A to the Order provides a circuit-by-circuit list of rates of incarceration by 1,000,000 residents for 54 offense types. At various points in the Order, the Governor refers to

this chart to support assertions about low conviction and prison admission rates from prosecutions by Ms. Worrell. However, the rates in the Ninth Circuit are comparable to six other circuits, most of which are also in large, urban, and diverse areas of the state.

Based on our analysis of the data in Exhibit A, seven judicial circuits rank at or below the state median for incarceration rates in at least *42 of the 54 offense types*. (The Ninth Circuit is at or below the median in 49 offense types.) In other words, for nearly 80% of all offense types listed, these same seven judicial circuits have incarceration rates at or below the statewide median. These circuits include six of the top seven by population and seven of the top ten.[5] If anything, all that Exhibit A indicates is that jurisdictions with higher populations on the main rank lower. Thus, population density, along with many other social and economic factors unrelated to Ms. Worrell's performance as a state attorney, likely contribute to the incarceration rate trends reflected in Exhibit A. They have no relevance to any alleged neglect of duty or incompetence by Ms. Worrell and simply show that other prosecutors similarly situated to

[5] The only circuit from the top seven most populous counties not appearing in Figure 3 below is the Thirteenth Circuit (Hillsborough County), where Andrew Warren was the state attorney until Governor DeSantis removed him last year.

Ms. Worrell face comparable challenges, to the extent incarceration rates per are any indication of one's effectiveness as a state attorney.

Figure 1 – Ranking of Incarceration by Offense Categories

Judicial Circuit	Rank in Population and Total — Population[6]	Offense Categories At or Below the State Median
Sixth	4th — 1.554 million	42
Ninth	3rd — 1.899 million	49
Eleventh	1st — 2.755 million	45
Fifteenth	6th — 1.512 million	46

[6] Florida Office of the State Courts Administrator, *Florida's Trial Courts Statistical Reference Guide - Fiscal Year 2021-22*, https://www.flcourts.gov/content/download/858892/file/2021-22-srg-chapter-1-introduction-20230127.pdf.

Seventeenth	2nd — 1.966 million	46
Eighteenth	10th — 1.106 million	49
Twentieth	7th — 1.432 million	45

Overall, the Executive Order's reliance on comparative incarceration rate data raises concerns for elected officials across the state. While officials understand that illegal conduct or gross incompetence can give rise to suspension, Governor DeSantis' reliance on data that reveals nothing about prosecutorial policies, and *at best* reflects individual decisions about just outcomes on a case-by-case basis, indicates he believes he can remove officials for simply doing their jobs. Under the Governor's theory of the case, and as set forth in the Executive Order, there is virtually no limit to his suspension authority: Governor DeSantis can frame any particular choice as neglect of duty or incompetence and suspend the official indefinitely. That cannot be permitted under Florida law.

III. Florida Does Not Have a Uniform Statewide Prosecution System and Use of Discretion Inevitably Creates Variation in Outcomes

Beyond the failure to meet the textual requirements of Article IV, Section 7(a) of the Florida Constitution, Governor DeSantis'

Executive Order suffers from two clear legal flaws: it seeks to impose a uniform system of prosecution designed to maximize prison time in Florida and to overrides the obligation of prosecutors to exercise discretion. Neither should be permitted by this Court.

Florida does not have a centralized system of prosecution. As mentioned previously, the Florida Constitution protects the ability of each judicial circuit to elect its own state attorney. Although the governor has authority to reassign a state attorney to another circuit, that reassignment must be temporary or judicially approved. § 27.14, Fla. Stat. "The purpose of the time limitation in the statute is to prevent the Chief Executive from frustrating the will of the voters of a judicial circuit by replacing any elected state attorney with one chosen by the Governor from another circuit." *Finch v. Fitzpatrick*, 254 So. 2d 203, 205 (Fla. 1971). Neither may the governor make such a reassignment arbitrarily. *See Ayala v. Scott*, 224 So. 3d 755, 758 (Fla. 2017) (permitting reassignment of capital cases on a finding that the State Attorney had refused to *ever* seek capital punishment).

Even the attorney general has limited oversight over state attorneys. She may only provide a "general superintendence and direction over the several state attorneys," § 16.08, Fla. Stat., can offer an opinion on a matter of law when requested, *id.*, and may

"prescribe the time and manner in which regular quarterly reports" are given by state attorneys, § 16.09, Fla. Stat. And a statewide prosecutor, sitting in the attorney general's office, has limited jurisdiction to pursue violations that occurred "in two or more judicial circuits as part of a related transaction, or when any such offense is affecting or has affected two or more judicial circuits," Art. IV, § 4(b), Fla. Const., as well as in limited white collar cases. Thus, the attorney general's ability to take over or direct particular prosecution is highly limited. As a matter of constitutional structure, Florida has established a decentralized system for prosecutors.[7]

By contrast, other states have created systems with clear statewide uniformity or the ability of the state attorney general to divest the authority of the local prosecutor in particular or group of cases. In New Jersey, the attorney general directs all law enforcement and has the power to oversee and set policy across the state. *See, e.g.*, N.J.S.A. § 52:17B-2. In Rhode Island, the attorney general handles all felony prosecutions. Other schemes allow statewide

[7] This structure accords with virtually most other states which vest local prosecutors with wide discretion to make charging decisions and set other policies for their offices, reflecting the values and perspective of their communities. *See, e.g.*, *State ex rel. Gardner v. Boyer*, 561 S.W. 389, 398–99 (Mo. 2018) (rejecting a trial-court order disqualifying the local prosecutor's office from a criminal matter).

prosecutors to intervene or take control of cases. For example, in Massachusetts, district attorneys generally handle all criminal matters, "but the attorney general, when present, shall have the control of such cases." Mass. Gen. Laws ch. 12, § 27. Pennsylvania permits the attorney general to have concurrent jurisdiction relating to gun charges in certain jurisdictions. 18 Pa. Code § 6105(d.1).

By attempting to impose uniformity among the state attorneys through use of the suspension power, Governor DeSantis also threatens to interfere with the important role of prosecutorial discretion and undermine ethical obligations of prosecutors to make judgments based on facts and circumstances. State law provides state attorneys with wide latitude. *State v. Bloom*, 497 So. 2d 2, 3 (Fla. 1986) ("Under Florida's constitution, the decision to charge and prosecute is an executive responsibility, and the state attorney has complete discretion in deciding whether and how to prosecute."); *see also Cleveland v. State*, 417 So. 2d 653, 654 (Fla. 1982) (affirming the State Attorney's "complete discretion in making the decision to charge and prosecute" in any particular case); *State v. Werner*, 402 So. 2d 386, 387 (Fla. 1981) ("State attorneys are 'the prosecuting officer[s] of all trial courts' under our constitution, and as such must

have broad discretion in performing their duties.") (quoting Art. V, § 17, Fla. Const.).

Ethical obligations require prosecutors to refrain from maximalist charging decisions when unsupported by probable cause. *See* Fla. Rule Regulation the Florida Bar 4-3.8(a). The ABA Criminal Justice Standard for the Prosecution Function similarly provides that the "prosecutor's office should exercise sound discretion and independent judgment in the performance of the prosecution function." Standard 3-1.2 (a) (2017). The prosecutor "serves the public interest and should act with integrity and balanced judgment to increase public safety both by pursuing appropriate criminal charges of appropriate severity, and by exercising discretion to not pursue criminal charges in appropriate circumstances." *Id.* 3-1.2(b). Unfettered power to suspend and remove state attorneys cannot be squared with the wide latitude afforded to state attorneys by state law as well as the ethical obligations of prosecutors to appropriately exercise their discretion. Here, the Governor failed to allege any facts that would show Ms. Worrell engaged in neglect of duty or incompetence, and the Court should invalidate the suspension order.

CONCLUSION

For all of the foregoing reasons, the petition for a writ of quo warranto and mandamus should be granted and State Attorney Worrell should be reinstated immediately.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify, under Florida Rule of Appellate Procedure 9.045(e), that this Brief of *Amici Curiae* complies with the applicable font and word-count requirements. It was prepared in Bookman Style 14-point font, and it contains 3,020 words.

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Dated: September 18, 2023

CERTIFICATE OF SERVICE

I, Matthew A. Goldberger, HEREBY CERTIFY that a true and correct copy of the foregoing was filed Electronically with the court via the Florida E-Filing Portal, which provides notice to all parties.

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