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Case No. SC17-653

IN THE SUPREME COURT OF FLORIDA

ARAMIS AYALA, as State Attorney for the Ninth Judicial Circuit,

Petitioner,

v.

RICHARD L. SCOTT, as Governor of the State of Florida,

Respondent.

BRIEF OF *AMICI CURIAE* THE DREAM DEFENDERS, FLORIDA IMMIGRANT COALITION, LET YOUR VOICE BE HEARD, INC., FLORIDA STATE CONFERENCE OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, THE NEW FLORIDA MAJORITY, SEIU FLORIDA STATE COUNCIL, COLOR OF CHANGE, AND ADVANCEMENT PROJECT

IN SUPPORT OF PETITIONER'S EMERGENCY NON-ROUTINE PETITION FOR WRIT OF *QUO WARRANTO*

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STATEMENT OF INTEREST OF *AMICI* CURIAE

The Dream Defenders, Florida Immigrant Coalition ("FLIC"), Let Your Voice Be Heard, Inc., Florida State Conference of the National Association for the Advancement of Colored People ("NAACP"), The New Florida Majority, SEIU Florida State Council ("SEIU Florida"), Color of Change, and Advancement Project (collectively, "*amici*"), by and through counsel of record, submit this brief as *amici curiae* in support of Petitioner, State Attorney for the Ninth Judicial Circuit, Aramis Ayala ("Ayala").

The Dream Defenders is an uprising of communities in struggle, shifting culture through transformational organizing. The Dream Defenders seek an immediate end to the police state and murder of Black people, other people of color, and other oppressed peoples in the United States and a democracy that is fair and protects the right to vote for all.

FLIC is a statewide coalition of more than 65 member organizations and over 100 allies, founded in 1968 and formally incorporated in 2004. It is led by its membership. More than an organization, FLIC has become a hub for a bold, agile, and strategic multi-racial, intergenerational social movement. It works together for the fair treatment of all people, including immigrants.

Let Your Voice Be Heard, Inc., is an Orlando-based organization whose focus is on empowering communities. The organization focuses on economic justice, community policing, and stopping violence and police brutality.

The Florida State Conference of the NAACP works to ensure the political, educational, social, and economic equality of rights of all persons and to eliminate race-based discrimination. Founded in 1909, the NAACP is the nation's oldest and largest civil rights organization. From the ballot box to the classroom, the NAACP continues to fight for social justice for all Americans.

The New Florida Majority is an independent organization working to increase the voting and political power of marginalized and excluded constituencies toward an inclusive, equitable, and just Florida.

SEIU Florida is comprised of five local unions of the Service Employees International Union and represents over 55,000 active and retired healthcare professionals, public employees and property service workers in Florida, including more than 3,200 who reside in Orange or Osceola Counties. SEIU Florida is committed to educating and empowering its members to have a voice not only at work, but in their local communities too. SEIU Florida supports a broad movement for economic, social, and racial justice that encompasses reforming the criminal justice system and protecting voting rights.

Color of Change is the nation's largest online racial justice organization. Color Change helps people respond effectively to injustice in the world. As a national online force driven by over one million members, including 154,398 members in Florida, they move decision-makers in corporations and government to create a more human and less hostile world for Black people in America.

Advancement Project is a national multi-racial civil rights organization with a long history of racial justice work in Florida. Rooted in the great human rights struggles for equality and justice, Advancement Project exists to fulfill the United States' promise of a caring, inclusive, and just democracy. Advancement Project's areas of work include voting rights and criminal justice reform.

Each of the organizations listed as *amici curiae* has invested time and resources to reform Florida's criminal justice system and increase access to the ballot box. Each of the organizations has the expertise, experience, and knowledge to comprehend the impact of Respondent Governor Rick Scott's ("Scott") executive orders, which thwart the will of the people in the Ninth Judicial Circuit and constitute an abuse of the Governor's power and discretion.

SUMMARY OF THE ARGUMENT

The State of Florida has had the dubious distinction of being a leader in mass incarceration. Strict criminal laws, aggressive policing, and prosecutors have created an unforgiving, harsh criminal justice system that feeds on the young, and imprisons adults, including immigrants, for even the most minor offenses. This system keeps many Floridians locked under state control even beyond the prison gates, silencing their participation in the democratic process by denying them the right to vote, as Florida is one of only four states with a lifetime felony disenfranchisement scheme. Florida's criminal justice system is one of the

country's worst – ranked tenth in the country for its state imprisonment rate[1] – but change is slowly transpiring.

In the wake of the killing of Trayvon Martin in Sanford, communities of color across Florida have relentlessly sought to reform the criminal justice system. Legislative reforms driven by community pressure have included: using alternatives to arrests for youth; ending mandatory minimums for criminal cases involving guns; improving mental health access for prisoners; and strengthening protections against civil asset forfeitures. In addition to law reforms, communities have focused on holding prosecutors accountable as an integral part of fixing the system. In Duval and Hillsborough Counties for example, there was a realization that prosecutors needed to be part of the solution to a broken criminal justice system and that the ballot could be a force for change.

It is against this backdrop that the voters of the Ninth Judicial Circuit, particularly Black voters, demanded such reform through their vote in 2016. With the fourth highest prison admissions in the state in 2015-16[2] and significant racial disparities in incarceration rates, the Ninth Judicial Circuit State Attorney's race became a referendum on progressive criminal justice reform. The voters

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[1] *State-By-State Data*, The Sentencing Project, http://www.sentencingproject.org/the-facts/#rankings?dataset-option=SIR (last visited Apr. 12, 2017).

[2] *Inmate Admissions, Counties with Most Admissions in FY 2015-16*, Florida Dep't of Corrections, http://www.dc.state.fl.us/pub/annual/1516/stats/ia_county_admission.html (last visited Apr. 12, 2017).

catapulted an upstart reformer, Aramis Ayala, into the Office of State Attorney by an overwhelming margin, where she began effectuating reform. She became Florida's first Black State Attorney.

Unfortunately, Scott has undermined the mandate of the voters in an unprecedented power grab. In an effort to usurp her power and the prosecutorial discretion afforded to all state attorneys, Scott issued 23 executive orders stripping Ayala of her power to prosecute 23 homicide cases in her circuit and replacing her with a state attorney of Scott's choice, a non-reformer from another judicial circuit.[3] Scott has single-handedly halted reform in Orange and Osceola Counties.

Not only are Scott's executive orders outside of the scope of his constitutional authority, but they have the impermissible effect of thwarting the will of the voters by effectively eliminating Ayala's ability to effectuate the criminal justice reform that voters want. Moreover, this disabling of a local elected official's power to affect change – and undermining of the discretion that is well within her scope of authority – has grave implications for Florida's democracy.

"The right of the people to select their own officers is their sovereign right." *Treiman v. Malmquist*, 342 So. 2d 972, 975 (Fla. 1977). It is the method through

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[3] Thereafter, in another political attack, the Florida House of Representatives released a budget proposal reducing Ayala's budget by $1.3 million and slashing 21 jobs in her office. Amanda Ober, *Florida legislators propose cutting budget of State Attorney Aramis Ayala*, WESH 2 News (Mar. 28, 2017), http://www.wesh.com/article/florida-legislators-propose-cutting-budget-of-state-attorney-aramis-ayala/9196886 (last visited Apr. 11, 2017).

which the sovereign people of Florida affect policy and have a voice in the political life of this state. If Scott's unconstitutional executive orders are allowed to stand, then the voices of the people in the Ninth Judicial Circuit who seek reform, particularly Black and Latino people whose communities are most impacted by the broken criminal justice system, are effectively silenced. The people may abandon efforts to achieve change through electoral process, leading to further disillusionment about our democratic system and further oppression in a criminal justice system that fails to recognize the basic humanity of people of color. The excessiveness of Scott's actions undermines our democracy.

Accordingly, the undersigned urge this Court to grant Ayala's petition for a writ of *quo warranto*, nullify the orders, and return the 23 cases to Ayala's office.

ARGUMENT

I. CRIMINAL JUSTICE REFORM WAS A PRIORITY FOR FLORIDA VOTERS IN THE NINTH JUDICIAL CIRCUIT IN THEIR ELECTION OF STATE ATTORNEY AYALA

It is clear that Ayala was elected to reform criminal prosecution in the Ninth Judicial Circuit. While political analysts did not expect her to prevail, her reformist message was unsurprising given the political climate and Florida's recent embroilments with criminal justice issues. This includes the prosecution of several high profile legal cases that highlighted racial disparities in the state's criminal justice system; clear data on the ongoing and disparate targeting of Black

Floridians for arrest and incarceration; and even the invalidation of the state's death penalty law last year.

The strength of the electoral mandate for Ayala's reform message is reflected by the results of another prosecutor's election that took place just a few hours away in Duval County. There, Florida voters also ousted the incumbent State Attorney, Angela Corey, whom they believed had failed in the administration of her duties—particularly in her prosecution of the cases involving the deaths of Trayvon Martin and Jordan Davis[4]—and because Corey had a startling penchant for pursuing the death penalty at a rate higher than any other county in the nation and aggressively used her discretion to direct file youth charges, treating children as adults.[5]

Amici have all been committed to securing criminal justice reform in Florida. We are well aware that Florida has been hard hit by the failed war on drugs. Since that war escalated in 1980, the state prison population grew from 20,211 to a peak of 104,306 in 2010.[6] The state spends almost $2.7 billion on

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[4] Corey also did not ingratiate herself to Florida voters when she pursued first-degree murder charges against 12-year-old Cristian Fernandez. Jessica Pishko, *Is Angela Corey the Cruelest Prosecutor in America*, The Nation (Aug. 16, 2016), https://www.thenation.com/article/is-angela-corey-the-cruelest-prosecutor-in-america/ (last visited Apr. 12, 2017) ("Pishko Aug. 16 Article").

[5] Jessica Pishko, *Voters Have Ousted Florida Prosecutor Angela Corey*, The Nation (Aug. 31, 2016), https://www.thenation.com/article/voters-have-ousted-notorious-florida-prosecutor-angela-corey/ (last visited Apr. 12, 2017).

[6] *State-By-State Data: Florida*, The Sentencing Project, http://www.sentencingproject.org/the-facts/#detail?state1Option=Florida&state2Option=0 (last visited Apr. 12, 2017).

corrections that controls and/or supervises over 361,000 people and denies the right to vote to 1.6 million citizens.[7] Although significant reform efforts were undertaken prior to 2012, the intensity of our commitment grew in response to Trayvon Martin's death and the failure of the state's justice system to establish accountability for taking the life of a young Black child with impunity. Sadly, the outrage is exacerbated by other high profile incidents that put discriminatory prosecution and policing squarely at the forefront of a problem that Florida voters can now understand as systemic. Among these high profile incidents is the trial and conviction of Marissa Alexander, a Black woman who fired a warning shot—killing no one—to ward off her abusive partner.[8] Alexander was sentenced to 20 years in prison under the same Stand Your Ground law used by George Zimmerman's defense team to justify killing Martin, an unarmed Black child.[9]

Prosecutors[10] and police[11] in the Ninth Judicial Circuit have not been immune from sordid and troubling public scandals that intimate racism and bias

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[7] *Id.*

[8] Pishko Aug. 16 Article, *supra*, n. 4.

[9] *Florida woman sentenced to 20 years in controversial warning shot case*, CNN.com (May 11, 2012), http://www.cnn.com/2012/05/11/justice/florida-stand-ground-sentencing/ (last visited Apr. 11, 2017).

[10] Meg Wagner, *Florida prosecutor suspended for vile Facebook rant blasting Orlando hours after nightclub massacre: 'The entire city should be leveled'*, The New York Daily News (Jun. 18, 2016), http://www.nydailynews.com/news/national/fla-prosecutor-suspended-vile-facebook-orlando-article-1.2678648 (last visited Apr. 12, 2017).

[11] *Investigation: Winter Park police officer made racist remark about Trayvon Martin case,* Click Orlando (Apr. 5, 2013), http://www.clickorlando.com/news/florida/orange-county/investigation-winter-

among criminal justice practitioners. Local grassroots groups have remained active in raising awareness of the importance of criminal justice reform among local voters.[12] Even the state's leading newspapers have affirmed that criminal justice reform is one issue "many voters are united on,"[13] and former Florida legislators,[14] prosecutors and judges[15] who were involved in the "tough on crime" era of the past two decades have publicly expressed the urgent need for reform, if not contrition for their past participation in developing the machinery of mass incarceration.

A. THERE ARE PERSISTENT RACIAL INEQUITIES IN THE PROSECUTION OF CRIMINAL JUSTICE IN FLORIDA THAT VOTERS SOUGHT TO ADDRESS IN THEIR ELECTION OF STATE ATTORNEY AYALA

In conjunction with headline-grabbing news stories, hefty empirical data lead Florida voters to the undeniable need for criminal justice reform consistent with Ayala's campaign platform. For every key metric of involvement in the justice

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park-police-officer-made-racist-remark-about-trayvon-martin-case (last visited Apr. 12, 2017).

[12] Tiffany Walden and Gal Tziperman Lotan, *Protesters briefly stop traffic, chant: 'No justice, no peace. No racist police!, Orlando Sentinel* (Dec. 10, 2014), http://www.orlandosentinel.com/news/breaking-news/os-end-police-brutality-orlando-rally-20141210-story.html (last visited Apr. 11, 2017).

[13] Howard Simon and Dominic M. Calabro, *Lawmakers must back criminal-justice reform*, Orlando Sentinel (May 17, 2016), http://www.orlandosentinel.com/opinion/os-ed-criminal-justice-reform-florida-051816-20160517-story.html (last visited Apr. 11, 2017).

[14] Paula Dockery, *Reform Florida's criminal-justice system*, Miami Herald (Dec. 17, 2015), http://www.miamiherald.com/opinion/op-ed/article50344940.html (last visited Apr. 11, 2017).

[15] Bob Butterworth and Simone Marstiller, *Florida in dire need of criminal justice reform*, Sun Sentinel (Mar. 10, 2016) http://www.sun-sentinel.com/opinion/commentary/fl-viewpoint-reform-20160310-story.html (last visited Apr. 11, 2017).

system, Black Floridians are disproportionately represented.[16] In 2014, Black Floridians were only 15.5 percent of the state's population and yet nearly half (47.7 percent) of those incarcerated.[17] African Americans account for approximately 28 percent of the inmates in Osceola County's Correction Facility[18] while comprising only 10 percent of the local population.[19] In Orange County, the incarceration rate is even more disparate. The County is considered one of the top ten incarcerators in Florida with almost six percent of Florida's inmate population coming from Orange County.[20] The County jail fares no better: 48.3 percent of the inmate

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[16] Statewide, Black Floridians are currently estimated to be less than 17 percent of the state's population, yet between 2012 and 2015, they comprised at least 34 percent of the total number of arrests in the state. U.S. Census, *Quick Facts Florida* (2016), https://www.census.gov/quickfacts/table/PST045216/12 (last visited Apr. 12, 2017). In 2014, Black Floridians were only 15.5 percent of the state's population and yet nearly half (47.7 percent) of those incarcerated. Ashley Nellis, Ph.D., *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, The Sentencing Project, (Jun. 14, 2016), http://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/ (last visited Apr. 12, 2017) ("Nellis Report").

[17] Nellis Report, *supra*, n. 16.

[18] *Incarceration Trends Project, Osceola County, Florida*, Vera Institute of Justice, http://trends.vera.org/rates/osceola-county-fl?incarceration=disparity&similar=jailpopulation (last visited Apr. 12, 2017).

[19] *Id.*

[20] Nellis Report, *supra*, n. 16.

population is Black.[21] By contrast, only 22.3 percent of Orange County's residents are Black.[22]

This overwhelming and persistent evidence of systemic racial bias has been the backbone of the message of reformist candidates like Ayala. As she stated during her campaign: "There are black and brown people who receive disparate treatment the way that the law is set up, period. And because of that, we have to have things in place to do something different."[23]

B. STATE ATTORNEY AYALA CAMPAIGNED ON A PLATFORM OF CRIMINAL JUSTICE REFORM

Ayala was elected to reform criminal prosecution in the Ninth Judicial Circuit. Throughout her campaign, she remained steadfast that she would use the discretion afforded to the State Attorney's office to challenge prosecutorial practices that engender inequity in the criminal justice system, and she was unabashed about the deficiencies of her opponent in that regard.

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[21] *Daily Inmate Population Statistics*, Orange County Jail (Apr. 6, 2017), ftp://ftp.ocfl.net/divisions/corrections/pub/ethnicity_values.pdf (last visited Apr. 12, 2017).

[22] U.S. Census, *Quick Facts: Orange County, Florida* (2016), https://www.census.gov/quickfacts/table/PST045216/12095 (last visited Apr. 12, 2017).

[23] Renata Sago, *Central Florida Race Projected to Deliver Florida's First Black State Attorney, Aramis Ayala*, NPR (Nov. 3, 2016), http://news.wgcu.org/post/central-florida-race-projected-deliver-floridas-first-black-state-attorney-aramis-ayala (last visited Apr. 11, 2017).

Ayala's campaign platform highlighted inequities in the criminal justice system, particularly racial disparities. "I'm not afraid to say that there yes there are civil rights issues. There are police brutality issues. There are race issues," Ayala said at the only debate between her and her opponent Jeff Ashton.[24] Ayala stressed her personal understanding of being of a prosecutor and public defender—and being a Black woman.

Throughout the campaign, Ayala pledged more transparency and a commitment to build stronger relationships between her office and Black communities in Orange and Osceola Counties, noting that most people had no contact with prosecutors until they were in a courtroom as a defendant.[25] She proactively addressed topics on race that candidates would typically avoid. In response to police shootings and protests in Louisiana and Minnesota, Ayala publically expressed condolences to the families of law enforcement officers who lost their lives in Baton Rouge and Dallas.[26] She also shared that she was "shocked and saddened" by the police killings of Alton Sterling and Philando Castile, affirming unequivocally "[t]hese men did not deserve a death sentence," and that

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[24] *Aramis Ayala for State Attorney*, https://www.facebook.com/aramisayalaforsa/videos/vb.1162783197096582/1292190797489154/?type=2&theater (last visited Apr. 11, 2017) ("Ayala Campaign").

[25] Scott Powers, *Aramis Ayala becomes first black state attorney in Florida's history*, Florida Politics (Nov. 8, 2016), http://floridapolitics.com/archives/226799-aramis-ayala-becomes-first-black-state-attorney-floridas-history (last visited Apr. 11, 2017).

[26] Ayala Campaign, *supra*, n. 24.

the Ninth Judicial District needed a State Attorney who would "be proactive in the pursuit of justice and safety for all."[27]

II. STATE ATTORNEY AYALA WAS DEMOCRATICALLY ELECTED TO REPRESENT THE NINTH JUDICIAL CIRCUIT

Although Ayala ran unopposed in November 2016, she endured a contentious primary race against Democratic incumbent Ashton in the months prior. She handily defeated Ashton by 13 percentage points, going on to win the general election nearly unanimously.[28] Her victory was unexpected and was characterized as the "upset-of-the-year" by "a virtually unknown attorney who unseated one of the best-known prosecutors in America."[29] It had historic dimensions, as well; Ayala became the first elected Black prosecutor in Florida history.[30]

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[27] *Id.*

[28] *August 30, 2016 Primary Election Democratic Primary*, Florida Dep't of State, Div. of Elections, https://enight.elections.myflorida.com/Index.asp?ElectionDate=8/30/2016&DATAMODE=Fla. (last visited Apr. 12, 2017); *November 8, 2016 General Election*, Florida Dep't of State, Div. of Elections, https://enight.elections.myflorida.com/Index.asp?ElectionDate=11/8/2016&DATAMODE= (last visited Apr. 12, 2017).

[29] Scott Maxwell, *Aramis Ayala shocks system. Now she must deliver*, Orlando Sentinel (Sept. 2, 2016), http://www.orlandosentinel.com/opinion/os-aramis-ayala-jeff-ashton-scott-maxwell-20160902-column.html (last visited Apr. 11, 2017).

[30] Debbie Elliot, *Florida Governor Pulls Murder Cases From Prosecutor Who Shuns Death Penalty*, NPR (Apr. 3, 2017), http://www.npr.org/sections/thetwo-way/2017/04/03/522372829/florida-governor-pulls-murder-cases-from-prosecutor-who-shuns-death-penalty?utm_source=facebook.com&utm_medium=social&utm_campaign=npr&utm_term=nprnews&utm_content=20170404 (last visited Apr. 12, 2017).

For the Orange and Osceola County voters who elected her, the choice was intentional and convincing.[31] It should have heralded a new path to criminal justice reform consistent with the message Ayala communicated to voters throughout her campaign. Instead, Scott's recent actions stripping her of her prosecutorial authority have revealed an attempt to subjugate the political will of Florida voters to that of his own and those who disagree with both Ayala's message and the voters' own prerogatives for reform.

III. THE GOVERNOR'S EXECUTIVE ORDERS ARE INVALID BECAUSE THEY THWART THE WILL OF THE VOTERS

The undersigned *amici* agree with Ayala that "the fundamental issue here is constitutional." *See* Emergency Non-Routine Petition For Writ of *Quo Warranto* ("Pet.") at 25. Specifically, we agree that Scott's claim to any "constitutionally-granted power to replace Ayala as he sees fit" should fail. *Id.* at 16. *Amici* further concur that under Florida's constitutional design, Ayala "'answers only to the voters.'" *See id.* at 15 (citation omitted). *Amici* agree that the Florida Constitution "does not permit Scott to disregard the voters who elected Ayala." *See id.* at 21.

Scott's purported statutory authority to replace Ayala is similarly limited by voters. Even assuming, *arguendo*, that Scott has some statutory authority to reassign state attorneys, his statutory discretion under Florida Statutes § 27.14 is

[31] Ayala won with 56.9 percent of the vote compared to Ashton's 43.1 percent. Elyssa Cherney, *Ayala upsets Ashton for state attorney*, Orlando Sentinel http://digitaledition.orlandosentinel.com/tribune/article_popover.aspx?guid=4a014c7b-d5d1-49c0-80b9-092c4f53d547 (last visited Apr. 11, 2017).

far from absolute. *See* § 27.14, Fla. Stat. (2016). And importantly, as this Court has noted in dicta, it cannot be used to disregard "the will of the voters." *See Finch v. Fitzpatrick*, 254 So. 2d 203, 205 (Fla. 1971).[32]

Under Florida law, the will of the voters is of paramount importance. *See, e.g., Fla. Hosp. Waterman, Inc. v. Buster*, 984 So. 2d 478, 486 (Fla. 2008) ("the will of the people expressed in their constitution" to be "the most sacrosanct of all expressions of the people"); *Boardman v. Esteva*, 323 So. 2d 259, 269 (Fla. 1975) (holding that "the primary consideration in an election contest is whether the will of the people has been effected"); *League of Women Voters of Fla. v. Detzner*, 179 So. 3d 258, 296 (Fla. 2015) (finding redistricting rules express "will of this state's citizens").

Here, *amici* contend the cumulative impact of Scott's 23 executive orders impedes the "will of the voters." To begin, the will of Ninth Judicial Circuit voters could be no clearer. Voters overwhelmingly chose the reformer, Ayala. By

[32] *Finch* is distinguishable from the case at hand and is not cited for its ultimate holding, but rather as an example of the importance that this Court has given to "the will of the voters" when trying to determine the extent of executive discretion. The question of the scope of the governor's discretion in the instant case is substantively different from that at issue in *Finch*, which addressed the timeframes limiting executive discretion, which is inapplicable here. However, the *Finch* court acknowledgement that "the will of the voters" must not be frustrated should be important in <u>this</u> Court's determination of where the line should be drawn here. Moreover, as *Ayala* argues, and we concur, *Finch* is distinguishable on its facts. *See* Pet. at 25-33. And finally, it bears noting once again that "the fundamental issue in this case is constitutional." *Id.* at 25.

replacing Ayala with a non-reformer from outside the Ninth Judicial Circuit – not once or twice, but *23 times* – Scott has done precisely what this Court has warned against. *See Finch*, 254 So. 2d at 205; *see also Rhodes v. State*, 547 So. 2d 1201, 1206 (Fla. 1989); *McDuffie v. State*, 970 So. 2d 312, 328 (Fla. 2007). This overreach and excessive action by Governor Scott is tantamount to a frustration of the will of the voters. The Governor has substituted his will for those of the people, making the exercise of their right to vote futile. Scott has thus frustrated Ayala's ability to effectuate change and carry out the will of the voters in reforming the criminal justice system. As such, this Court should grant Ayala's requested writ and invalidate the orders.

IV. THE GOVERNOR'S EXECUTIVE ORDERS THREATEN THE WELL-BEING OF FLORIDA'S DEMOCRACY

Scott's orders also threaten the fundamental right to vote, which forms the very core of Florida's democracy. This Court has declared the right to vote to be the sovereign right of the people, derived from the Florida Constitution's Declaration of Rights. "'[A]ll political power is inherent in the people.' [Art. I, § 1, Fla. Const.] The right of the people to select their own officers is their sovereign right, and the rule is against imposing unnecessary and unreasonable [restraints on that right].'" *Wright v. City of Miami Gardens*, 200 So. 3d 765, 775 (Fla. 2016) (quoting *Treiman v. Malmquist*, 342 So. 2d at 975); *see also State ex rel. Landis v. Dyer*, 148 So. 201, 203 (Fla. 1933) ("The right to vote, though not inherent, is a constitutional right in this State."); *City of Miami Beach v. Bd. of Trs. of the City*

Pension Fund for Firefighters, 91 So. 3d 237, 241 (Fla. 3d DCA 2012) ("[T]he right to vote is indeed a fundamental right of the highest order.").

Given that voting in Florida is a fundamental individual right, this Court has long advanced "'a policy to prevent as far as possible the disenfranchisement of electors who have cast their ballots in good faith,'" *Boardman v. Esteva*, 323 So. 2d at 267 (citation omitted). Strict, technical compliance with voting rules are not required; only substantial compliance is required. *See id.* at 266-267. After all, in voting and election cases, the "real parties in interest, not in the legal sense, but in realistic terms, are the voters." *Id.* at 263. And for voters, as this Court in *Boardman* explained:

> The right to vote is the right to participate; it is also the right to speak, but more importantly the right to be heard. We must tread carefully on that right or we risk the unnecessary and unjustified muting of the public voice. By refusing to recognize an otherwise valid exercise of that right of a citizen to vote for the sake of sacred, unyielding adherence to statutory scripture, we would in effect nullify that right.

Id. at 263.

The *amici* here submit that Ninth Judicial Circuit voters are presently suffering a severe form of disenfranchisement at the hands of Scott's executive orders. Their disenfranchisement does not arise from long lines and other technical barriers to the ballot. Rather, their disenfranchisement results from having Ayala's power – and by extension, their power, their sovereignty, their "public voice" – extinguished by Scott.

As emphasized previously, voters across Florida and throughout the country witnessed the failed prosecution of George Zimmerman. The acquittal had a monumental national impact and started a nationwide movement. It was the impetus for the #BlackLivesMatter hashtag, a framework for transformational grassroots organizing and activism in Black communities around the world. That movement continues to dramatically alter the political landscape in this country.

Voters in the Ninth Judicial Circuit responded to this movement and validated Ayala's campaign by electing her almost unanimously and supporting her platform calling for change in the criminal justice system.

Scott's response is not surprising; he is politically opposed to Ayala's platform of reform. But rather than agree to disagree, rather than working to support another candidate more aligned with his views, Scott instead, in an unprecedented power grab, removed Ayala's prosecutorial authority in the circuit where she was duly elected by the voters.

Voters are left to question whether the right to vote is simply a hashtag. Voters' fundamental right to vote is an empty and hollow right indeed,[33] if Scott

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[33] At least one court recently considered this type of purported disenfranchisement, wherein voters allege their right to vote has been rendered meaningless by state laws that strip local elected officials of power. *See Phillips v. Snyder*, No. 2:13-CV-11370, 2014 U.S. Dist. LEXIS 162097, at *24 (E.D. Mich. Nov. 19, 2014), *aff'd*, *Phillips v. Snyder*, 836 F.3d 707, 713 (6th Cir. 2016). The court in *Phillips* stated: "[I]f the right to vote is to mean anything, *certainly it must provide that the elected official wields the powers attendant to their office*." *Id.* (emphasis added). The court, however, dismissed the voters' claim because there is no fundamental right to vote under the federal Constitution. *Id.* ("The Supreme

can change the rules when an election outcome conflicts with his viewpoints. Florida's fundamental right to vote requires that this Court not permit Scott to usurp the power of the voters of Florida.

CONCLUSION

For the reasons set forth above, *amici* urge this Court grant Petitioner's requested writ, nullify Governor Scott's orders and direct State Attorney Ayala's cases back to her discretion.

Respectfully submitted,

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Court has had multiple opportunities to find a fundamental right to vote, and has passed each time.") In striking contrast, this Court has repeatedly recognized a fundamental right to vote under the Florida Constitution. *See, e.g.*, *Wright*, 200 So. 3d at 775 (citation omitted); *Dyer*, 148 So. at 203. In sum, *amici* thus urge this Court to consider the fundamental right to vote in Florida as well as Florida's powerful and long-standing policies of effectuating "the will of the voter" and preventing disenfranchisement. *See Boardman*, 323 So. 2d at 266 (citation omitted).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent on April 13, 2017, by email and U.S. Mail to:

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I HEREBY CERTIFY that this *amici curiae* complies with the font requirements of Rule 9.210(a) of the Florida Rules of Appellate Procedure.

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