SUPREME COURT OF FLORIDA
CASE NO. SC19-552

SCOTT J. ISRAEL,
As the Elected Sheriff of Broward County, Florida,
Appellant,

v.

RON DESANTIS,
Governor, State of Florida,
Appellee.

ON CERTIFICATION BY THE FOURTH DISTRICT COURT OF APPEAL OF A QUESTION OF GREAT PUBLIC IMPORTANCE FROM THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR BROWARD COUNTY.
HON. DAVID A. HAIMES, CIRCUIT JUDGE

INITIAL BRIEF OF APPELLANT SCOTT J. ISRAEL

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STATEMENT OF THE CASE AND FACTS

A. INTRODUCTION

This appeal by Sheriff Scott Israel challenges the limited power of the Governor to suspend elected public officials as authorized in the Florida Constitution. Because the Governor's exercise of the executive suspension is inconsistent with the jurisdictional limits imposed by the Florida Constitution, a Writ of Quo Warranto should issue.

B. PROCEDURAL HISTORY

On January 11, 2019, in his capacity as Governor of the State of Florida, Ron DeSantis ("Governor DeSantis") issued Executive Order 19-14 suspending Sheriff Scott Israel ("Sheriff Israel") from his position as the constitutionally elected Sheriff of Broward County, Florida for neglect of duty and incompetence pursuant to Article IV, Section 7 of the Florida Constitution (R105).

Following his suspension, on January 29, 2019, Sheriff Israel invoked his constitutional right to request a formal review on the merits before the Florida Senate (R106). The Senate appointed a Special Master to preside over a hearing on the suspension. The hearing was scheduled during the week of April 8, 2019 (R106).[1]

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[1] The Florida Senate abated its review pending the outcome of this case pursuant to Senate Rule 12.9(2).

On March 7, 2019, following the Governor's inaugural State of the State speech to a joint session of the Florida Legislature on March 5, 2019,[2] Sheriff Israel filed his Petition for Writ of Quo Warranto in the Circuit Court asserting that Governor DeSantis exceeded his constitutional authority when suspending him (R1-36). The Quo Warranto petition invoked the authority of the courts to test whether Governor DeSantis improperly exercised the suspension power.

On March 14, 2019, Governor DeSantis filed a motion to dismiss the petition (R79-84), arguing that Article IV, Sections 7(a)-(b) of the Florida Constitution vests in the Governor authority to suspend an official and in the Florida Senate the exclusive authority to judge the Governor's decision. Governor DeSantis asserted that as long as his suspension is within the jurisdictional limits prescribed by the Florida Constitution, the suspension may not be reviewed by the courts.

On March 25, 2019, Sheriff Israel filed his response in opposition to the motion to dismiss (R85-100), recognizing that judicial review of the executive order of suspension is limited to a determination of the legal sufficiency of the

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[2] Governor DeSantis directly addressed his suspension of Sheriff Israel during his State of the State speech by warning the Senate not to interfere with the suspension: "Why any senator would want to thumb his nose at the Parkland families and to eject Sheriff Tony, who is doing a great job and has made history as the first African-American sheriff in Broward history, is beyond me." https://www.news4jax.com/news/politics/sheriff-commment-by-desantis-causes-stir (March 5, 2019) (R19, 74-77).

jurisdictional facts to test whether the Governor exceeded the suspension power. Sheriff Israel asserted that Executive Order 19-14 failed to ground the suspension on an allowable constitutional basis, instead merely reciting the reasons of neglect of duty and incompetence without identifying a clear and unambiguous constitutional or statutory duty that Sheriff abandoned, neglected, or ignored.

The Circuit Court held its hearing on April 1, 2019, during which the parties presented their arguments (R105).[3] The Circuit Court's Final Order of Dismissal and Order Granting Motion to Dismiss (R105-112) issued on April 4, 2019. The lower court concluded as follows (R112):

> The Court's role is not to assess the merits of the allegations set forth in Executive Order 19-14. Rather, the Court's limited role is to determine whether such allegations meet the minimum jurisdictional threshold. This is consistent with the Florida Constitution and general principles of separation of powers, which grant the Governor the authority to suspend an official, and grant the Florida Senate the exclusive authority to review the suspension and decide whether to remove or reinstate the official.
>
> After reviewing Executive Order 19-14, the Court holds that the Executive Order names specific grounds (neglect of duty and incompetence) that are set forth in the Florida Constitution as grounds for suspension, and further alleges facts that support and bear a reasonable relation to the stated grounds. Therefore, the Court holds that Executive Order 19-14 meets the jurisdictional threshold and that Sheriff Israel's Petition must be dismissed.

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[3] The transcript of the April 1, 2019 hearing is being prepared on an expedited basis and will be made a part of the supplemental record when filed.

The Sheriff's appeal to the Fourth District Court of Appeal (R113) was certified to this Court as a matter involving a question of great public importance requiring immediate resolution by the Florida Supreme Court.

C. ALLEGATIONS IN THE QUO WARRANTO PETITION

The Quo Warranto Petition challenged the authority of Executive Order No. 19-14 that suspended Sheriff Israel for "neglect of duty and incompetence" (R43) but did not identify a single constitutional or statutory duty that had been neglected or incompetently performed by Sheriff Israel. Instead, as asserted in the petition, the actual reason for the suspension was a brazen, partisan political usurpation of the electoral decision of the Broward County voters to choose Scott Israel as their Sheriff. The Petition challenged the constitutional validity of the suspension based on "categorical failures attributed directly to [Sheriff] Israel, which led to the tragic loss of life at the Fort Lauderdale-Hollywood International Airport shooting on January 6, 2017, and the Marjory Stoneman Douglas High School Shooting on February 14, 2018" (R86-87).

Both cited incidents, as the Petition noted, occurred well before Governor DeSantis had even been elected to office, and did not lead to any suspension by the then-Governor. The Petition further noted that neither incident provided the constitutional basis for the executive suspension because neither involves the dereliction, neglect, or incompetence of any duty the Sheriff was obligated to follow

by Florida law. Both events, during which multiple law enforcement agencies acted to protect lives and the public safety, arose from intentional actions by murderous criminals who armed themselves for war and took innocent lives. The perpetrators of each mass attack were taken into custody by law enforcement officials and have been or are being prosecuted. The Governor's accusation that the murders were "attributed directly" to Sheriff Israel was nothing more than political pandering intended to fulfill a campaign promise to the National Rifle Association and various Marjory Stoneman Douglas parents (R24). The Governor's conclusion that Sheriff Israel's suspension was appropriate was not derived from any official duty neglected or incompetently executed by Sheriff Israel.

SUMMARY OF THE ARGUMENT

The constitutional power of the Governor to suspend an elected constitutional officer is a limited one, not allowing a governor to arbitrarily exercise that power for reasons inconsistent with constitutional limitations. The threshold jurisdictional authority of the Governor's suspension power is properly reviewed by the courts. As explained by this Court in *State ex rel. Hardie v. Coleman*, 155 So. 129, 1343 (1934), because the suspension power impacts "the lawful rights of individuals, 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. Hardie v. Coleman*, 155 So. 129, 1343 (1934).

Sheriff Israel's petition for a writ of quo warranto challenged the jurisdictional facts upon which his suspension was based. The only asserted reasons for the suspension – neglect of duty and incompetence – were not shown by the suspension order to derive from any mandatory duty on the part of the Sheriff that he neglected or incompetently executed. Instead, the suspension order held the Sheriff responsible for discretionary decisions that were neither part of any mandatory duty nor alleged to have been neglected. Instead, the Executive Order of suspension represents an arbitrary exercise by the Governor to substitute his judgment for actions occurring in Broward County well before the Governor was even elected to office. The Constitution does not empower a Governor to oust an elected official for reasons, political or otherwise, that are not and cannot be ascribed to neglecting the mandatory duties of office, or incompetently fulfilling those duties.

This appeal represents a narrow jurisdictional challenge to the Governor's overreach in a manner that strikes to the very core of our democratic system of governance. Whether Sheriff Israel should be the Sheriff of Broward County is not for the Governor to decide absent a clear and precise demonstration of a neglect of the mandatory and prescribed duties of office or other demonstrated incompetence in the Sheriff's physical, moral, or intellectual capacity to perform the duties of office. Because Executive Order 19-14 failed to meet the threshold requirements of the Florida Constitution, the Petition for Writ of Quo Warranto was legally sufficient

and should not have been dismissed by the lower tribunal. This Court's exercise of its judicial authority to review and constrain executive overreach is essential to our constitutional system of governance in which "[a]ll political power is inherent in the people." Art. I, §1, Florida Constitution.

ARGUMENT

I. THE GOVERNOR'S EXECUTIVE ORDER OF SUSPENSION EXCEEDED THE CONSITUTIONAL AUTHORITY TO SUSPEND AN ELECTED OFFICIAL.

This case tests the limitations of the gubernatorial suspension power contained in Article IV, Section 7 of the Florida Constitution. Prior precedent has constrained the suspension power from being exercised in an arbitrary manner by requiring the strict application of the constitutional authority. At stake in this case is the guarantee of the Florida Constitution that "[a]ll political power is inherent in the people." Art. I, §1, Florida Constitution.[4] Because the Governor's suspension in this instance interferes with the right of the public to choose their constitutional elected officials, the writ of quo warranto is the necessary judicial means by which this Court can determine that the Governor's extraordinary and unprecedented political use of the

[4] The U.S. Court of Appeals for the Sixth Circuit observed that "[t]he right to vote is a 'precious' and 'fundamental' right, and "'[o]ther rights, even the most basic, are illusory if the right to vote is undermined.'" *Obama for America v. Hustead*, 697 F.3d 423, 428 (6th Cir. 2012)

executive suspension is inconsistent with the limits imposed by the Florida Constitution.

A. The Governor's Authority to Suspend an Elected Official from Office Under Article IV, Section 7 of the Florida Constitution Is Expressly Limited to the Grounds Identified in the Constitution.

The Governor's authority to suspend a state officer from office is derived from Article IV, Section 7(a) of the Florida Constitution, which provides:

> By executive order stating the grounds and filed with the custodian of state records, the governor may suspend from office any state officer not subject to impeachment ... for malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform official duties, or commission of a felony, and may fill the office by appointment for the period of suspension. The suspended officer may at any time before removal be reinstated by the governor.

The Florida Senate then has the constitutional duty to remove or reinstate the suspended public official pursuant to Article IV, Section 7(b):

> The senate, may, in proceedings prescribed by law, remove from office or reinstate the suspended official and for such purpose the senate may be convened in special session by its president or by a majority of its membership.

"The power of suspension, being solely in the Governor, must be limited to the grounds stated in the Constitution." *State ex rel. Hardie v. Coleman*, 155 So. 129, 134 (Fla. 1934). This power is subject to judicial constraint when and if the executive acts in a manner exceeding constitutional limitations. This Court so decreed in *Hardie*, 155 So. at 134 (emphasis added):

> The power of the Governor to suspend and of the Governor and the Senate to remove is not an arbitrary one. *Both are guarded by constitutional limitations which should be strictly followed*. It has been charged that this is an unusual power to vest in the Governor and the Senate, and so it is, but the people have lodged it there. The position of Governor and Senator is one vested with great dignity and responsibility and we are not to presume that these places will be filled by the people with men who do not measure up to the responsibility imposed in them. At any rate the duty imposed should be exercised with great care and caution because, when done, the result is final as no other power is authorized to interfere.

Recognizing the longstanding precedent of *State ex rel. Bridges v. Henry*, 60 Fla. 246, 53 So. 742 (1911), the Court explained that "the jurisdictional facts, in other words, the matters and things on which the executive grounds his decision, may be inquired into by the courts." *State ex rel. Hardie v. Coleman*, 115 Fla. at 127, 155 So. at 133.

The procedural method by which the provisions of Art. IV, Section 7 of the Florida Constitution are exercised by the Governor is codified in §112.41(1), Florida Statutes (2018), providing:

> The order of the Governor, in suspending any officer pursuant to the provisions of §7, Art. IV of the State Constitution, shall specify facts sufficient to advise both the officer and the Senate as to the charges made or the basis of the suspension.

Thus, as directed by the Florida Constitution, the Governor may only suspend an elected official for acts or omissions that objectively – not subjectively or politically – demonstrate the official committed malfeasance, misfeasance, neglect

of duty, drunkenness, incompetence or demonstrated permanent inability to perform official duties, or commission of a felony. The Governor's suspension order must specify facts, not opinions or conclusions, sufficient to advise both the suspended officer and the Florida Senate as to the charges made and the basis for the suspension. §112.41(1), Fla. Stat. (2018). Executive Order 19-14 does not satisfy either controlling provision, where compliance with both is mandatory. *See Ostendorf v. Turner*, 426 So. 2d 539, 544 (Fla. 1982) (quoting *Sparkman v. State*, 58 So. 2d 431, 432 (Fla. 1952) ("[e]xpress or implied provisions of the Constitution cannot be altered, contracted or enlarged by legislative enactments.")).

B. Quo Warranto Authorizes This Court to Test the Threshold Jurisdictional Authority Exercised by the Governor.

Quo warranto is "the proper method to test the exercise of some right or privilege, the peculiar powers of which are derived from the State." *Martinez v. Martinez*, 545 So. 2d 1338, 1339 n.3 (Fla. 1989); *Fla. House of Reps. v. Crist*, 999 So. 2d 601, 607 (Fla. 2008). Quo warranto is an extraordinary writ whose purpose is 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) (emphasis in original).

This Court validated the authority of the judiciary to review the threshold constitutional limits of the suspension authority while recognizing that "the power

vested in the Governor to suspend an officer … is executive." *Owens v. Bond*, 83 Fla. 495, 91 So. 686 (1922). "[S]o long as the Governor acts within his jurisdiction as charted by organic law, his action may not be reviewed by the courts." *State ex rel. Holland v. Ledwith*, 14 Fla. 220 (1872); *State ex rel. Lamar, Attorney General v. Johnson*, 30 Fla. 433, 11 So. 845 (1892); *State ex rel. Lamar, Attorney General v. Johnson*, 30 Fla. 499, 11 So. 855 (1892); *People ex rel. Johnson v. Coffey*, 237 Mich. 591, 213 N.W. 460 (Mich. 1927); *In re Guden*, 171 N.Y. 529, 64 N.E. 451 (Ct. App. N.Y. 1902).

The judicial exception to the general rule of executive power is at issue in this case, and serves as an indispensable check and balance on potential abuses of power by the Executive Branch, as is occurring here. Precisely applicable is the "exception that such exercise of power being that affecting the lawful rights of individuals, 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. Hardie v. Coleman*, 155 So. 129, 1343 (1934). Thus, while the suspension of public officers is an executive branch function, *State ex rel. Kelly v. Sullivan*, 52 So. 2d 422, 425 (Fla. 1951) ("The Governor alone has the power to suspend a public officer."), it is for this Court to determine whether Governor DeSantis exceeded his constitutional authority in suspending Sheriff Israel for political reasons not within

the scope of the constitutional suspension prerogative.[5] Absent compliance with the strict limits of the suspension authority, the Governor's suspension of an elected official is an affront to the Florida Constitution and the fundamental right of voters to choose their elected officials.

Pertinent to the foundational jurisdictional issue present here is this Court's approval of a writ of quo warranto in *State ex rel. Bridges v. Henry*, 60 Fla. 246, 53 So. 742 (1911), because it "seeks to present the jurisdictional fact of whether the conduct of relator upon which he was removed from office was a legal cause for removal under the Constitution of this state." *Id*., 60 Fla. at 246-247, 53 So. at 742. The contention in *Bridges* involved the same gubernatorial suspension power that was exercised when the public official "was arrested, at the instance of the Governor, and presented before a special committee of the state Senate …" *Id*. 60 Fla. at 248, 53 So. at 743. The quo warranto challenge to the governor's authority was deemed appropriately within the jurisdiction of the court, a situation not altogether different from this case that raises the total omission of any stated duty that was neglected or

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[5] Of Governor DeSantis' eight suspensions since taking office, five involved suspensions for criminal charges, *see* Executive Orders 2019-21 (January 28, 2019), 2019-48 (February 22, 2019), 2019-49 (February 22, 2019), 2019-81 (March 19, 2019), and 2019-83 (March 10, 2019), while three involved allegations of neglect of duty or incompetence, *see* Executive Orders 2019-13 (January 11, 2019), 2019-14 (January 11, 2019), 2019-19 (January 18, 2019). Available at https://www.flgov.com/2019-executive-orders/.

incompetently exercised by Sheriff Israel.

The impact of the executive overreach in this case strikes at the very heart of the *Hardie* Court's concern, and is not confined to the arbitrary trampling of the people's right to choose their local elected officials, but also implicates the role of the Legislature. A constitutionally exercised suspension ordinarily results in the exercise of the Florida Senate's concomitant role in determining whether the suspension should be permanent by providing a hearing to determine whether the public officer should be removed from office. *See* Art. IV, §7(b), Fla. Const. That process, however, is a political one, not bound by any considerations of fairness or due process, resulting in the ability of the Governor, in tandem with a Legislature of the same political majority, to truncate the term of a well-serving public official for political reasons, all without even a modicum of judicial review.

C. The Executive Order Is a Constitutionally Insufficient Predicate for Suspension.

The Executive Order stands as the entire stated basis for Sheriff Israel's suspension. Yet it offers no legal basis for the suspension other than asserting neglect of duty and incompetence, without an objective factual predicate for concluding Sheriff Israel neglected a "duty" of office or incompetently performed an identified duty. Absent from the Executive Order is a specified required duty that was neglected or incompetently performed by Sheriff Israel. The recounting of

allegations of the two mass murders in Broward County – both of which were the sordid crimes of two lone gunmen intent on taking human life, and which the Broward Sheriff's Office promptly apprehended and arrested the perpetrators –does not identify a single duty that Sheriff Israel neglected or performed incompetently. The horrors of those two days, none of which resulted from any action or inaction on the part of Sheriff Israel as recounted in the text of the Executive Order, could not have been avoided by any means, and serve merely as a political ploy enabling the Governor to second-guess an elected Sheriff because the Governor deems the suspension of the democratically elected Sheriff to be the convenient fulfillment of a campaign promise and to satisfy the National Rifle Association. That is not and has never been an allowable constitutional basis for a suspension.

Despite the lengthy history of gubernatorial suspensions of public officials, the Governor's suspension of Sheriff Israel represents an unprecedented attempt to remove an elected constitutional officer for purely partisan political purposes. Nowhere in the record of proceedings in the lower tribunal has the Governor identified a single prior precedent or even one prior executive suspension that is not based on the specification of a clear and unambiguous constitutional or statutory duty that was abandoned, neglected, or ignored by a public officer. That is not surprising, since the stated reason for the Governor's suspension represents a clear and dangerous departure from the historical recognition by governors that

suspension and removal of elected officials from office cannot be the result of whim, caprice, or personal, arbitrary decisions. Until now, governors have understood the delicate power of the suspension authority, and utilized it sparingly only when a clear basis exists. Executive Order 19-14 is a constitutional overreach.

The legal or constitutional "sufficiency of an executive order of suspension ... [is] ultimately a judicial question, because it affect[s] the rights of individuals." *State ex rel. v. Hardie v. Coleman*, 115 Fla. at 128, 155 So. at 133. Courts are "authorized to inquire into the jurisdictional facts on which the Governor's order of suspension was predicated." *Id*. Only if an Executive Order "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." *Id*., 115 Fla. at 128, 55 So. 133. Although an Executive Order need not "be as definite and specific as the allegations of an information or an indictment in a criminal prosecution," 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." *Id*.

The fundamental precept of due process underlying this requirement is that the individual whose rights are being affected or deprived must "be charged therewith clearly and in such manner and with such reasonable certainty as to be given reasonable opportunity to defend against the attempted proof of such charges."

State ex rel. Hawkins v. McCall, 29 So. 2d 739, 741 (Fla. 1947). "Simple justice requires that there be at least enough specificity as to fairly apprise the accused officer of the alleged acts against which he must defend himself." *Crowder v. State ex rel. Baker*, 285 So. 2d 33, 35 (Fla. 4th DCA 1973). "[T]he allegations of fact must be sufficiently specific and clear to apprise the accused officer to the extent that he may have a fair opportunity to meet and disprove or to explain the act complained of." *Hawkins v. McCall*, 29 So. 2d at 742.

Whereas the Executive Order does not identify facts, as opposed to policy decisions, that are grounded on any mandatory duty of the Sheriff as the grounds for suspension, the suspension fails to adhere to the constitutional prerequisites for suspending a public official. The Executive Order asserts no distinction between any purported actions or inactions attributable to others as opposed to Sheriff Israel, and is thereby inconsistent with the constitutional mandate that the conduct or omission at issue must be that of the public official.[6] Simply put, the Governor's suspension specifications find Sheriff Israel at fault for the actions of others, but does not ascribe any constitutional or statutory duty to him that was neglected or incompetently

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[6] The Governor's reference to §30.07, Florida Statutes (2018) ("Deputy Sheriffs"), in the Bill of Particulars cannot expand the constitutional directive that the conduct complained of be that of the public officer. *See Ostendorf v. Turner*, 426 So. 2d 539, 544 (Fla. 1982) (Legislature has no authority to expand constitutional provision).

exercised.

D. Suspension for Neglect of Duty Is Not Allowed.

A suspension for "neglect of duty" is a constitutionally narrow basis that requires a jurisdictional demonstration that Sheriff Israel *neglected a duty for which he was bound by law to perform*. Notwithstanding the Governor's unacceptable opinion – not a fact – that Sheriff Israel was directly responsible for the Airport and Marjory Stoneman Douglas murders, Executive Order No. 19-14 identifies no constitutional, statutory, or common duty that was neglected by the Sheriff. Neglect of duty is not an arbitrary standard to be exercised because the Governor does not approve of any particular outcome or action taken, enabling the Governor to oust a constitutionally elected officer for his own reasons, political or otherwise. Instead, *"[n]eglect of duty has reference 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." State ex rel. Hardie v. Coleman*, 115 So. at 126, 155 So. at 132 (emphasis added).

By challenging the jurisdictional authority of the Governor to use the suspension power through an Executive Order that is devoid of jurisdictional facts giving rise to a claim of the neglect of a statutory duty required of a sheriff, Sheriff Israel asks this Court to construe the constitutional provision in the strict manner required by precedent. Plainly, an elected, constitutional officer cannot be suspended

for imagined or contrived policy disagreements with the Governor. Instead, the measure of whether a suspension is constitutionally authorized must be tested against the duties assigned to the office holder.

An accusation that a public official has engaged in a neglect of duty requires, as a preparatory measure, an identification of a mandatory duty the official is obligated to perform. *Sanchez v. Lopez*, 219 So. 3d 156, 159 (Fla. 2017) ("In the case of neglect of duty [for recall] …, *the inquiry begins with the establishment of a legal duty of the mayor and a violation of that legal duty by the mayor*. Since the City Charter does not require that the mayor attend commission meetings, then it stands to reason that there cannot be a violation of such duty because the duty does not exist.") (emphasis added).

As set out in the Florida Constitution in Article VIII, Section 1(d), "County Officers" include "a sheriff" who "shall be elected by the electors of each county, for terms of four years …" The "Powers, duties, and obligations" of the sheriff are set out in §30.15, Florida Statutes (2018). "Sheriffs, in their respective counties, in person or by deputy, shall:"

> (a) Execute all process of the Supreme Court, circuit courts, county courts, and boards of county commissioners of this state, to be executed in their counties.
>
> (b) Execute such other writs, processes, warrants, and other papers directed to them, as may come to their hands to be executed in their counties.
>
> (c) Attend all sessions of the circuit court and county court held

in their counties.

(d) Execute all orders of the boards of county commissioners of their counties, for which services they shall receive such compensation, out of the county treasury, as said boards may deem proper.

(e) Be conservators of the peace in their counties.

(f) Suppress tumults, riots, and unlawful assemblies in their counties with force and strong hand when necessary.

(g) Apprehend, without warrant, any person disturbing the peace, and carry that person before the proper judicial officer, that further proceedings may be had against him or her according to law.

(h) Have authority to raise the power of the county and command any person to assist them, when necessary, in the execution of the duties of their office; and, whoever, not being physically incompetent, refuses or neglects to render such assistance, shall be punished by imprisonment in jail not exceeding 1 year, or by fine not exceeding $500.

(i) Be, ex officio, timber agents for their counties.

(j) Perform such other duties as may be imposed upon them by law.

(k) Establish, if the sheriff so chooses, a Coach Aaron Feis Guardian Program to aid in the prevention or abatement of active assailant incidents on school premises.…

At all times during Sheriff Israel's tenure as Broward Sheriff, the Broward Sheriff's Office was accredited as a law enforcement agency in accordance with the Commission for Florida Law Enforcement Accreditation ("CFA"), the premier state law enforcement accreditation program in the United States (R11). At the time of the MSD shooting, the Broward Sheriff's Office also received certification by the Commission on Accreditation for Law Enforcement Agencies ("CALEA), representing the "gold standard" in public safety, for its law enforcement, communications, and detention policies (R11). This CALEA national certification

is known as the “triple crown” among law enforcement agencies, with the BSO having attained Excelsior Status (R11). The entire BSO had 18 separate accreditations in Broward Sheriff Israel’s tenure (R11).

The lower tribunal, applying an overly broad reading of the “neglect of duty” ground, concluded that the Governor’s citation to neglect of duty followed by “thirty-five separate paragraphs of allegations” represented a constitutionally sufficient suspension order. According to the lower tribunal (R109-110),

> The Executive Order specifically addresses two active shooter incidents which led to the tragic loss of life at the Fort Lauderdale-Hollywood International Airport on January 6, 2017, and at Marjorie Stoneman Douglas High School on February 14, 2018. The Executive Order alleges these incidents evidence Sheriff Israel's neglect of duty and incompetence regarding his statutory duty under Florida Statute §30. 15 as the conservator of the peace for Broward County and further regarding his responsibility for developing, implementing, and training his deputies on policy related to active shooters.
>
> The Executive Order specifically alleges that "Sheriff Israel is responsible for inserting into the Broward County Sheriffs Officer Active Policy that a deputy ' may' enter the area or structure to engage an active shooter and preserve life;" and that such policy is "inconsistent with current and standard law enforcement practices." The Executive Order also contains various factual allegations regarding failures in the setting up of command centers, as well as failures regarding training and leadership. The Executive Order alleges that the investigations of the active shooter incidents “revealed that Sheriff Israel's neglect of duty and incompetence lead to ‘most of the law enforcement personnel who responded [lacking] clear instructions, objectives, and roles;’” and that Sheriff Israel “has not provided the proper training of his deputies.” Executive Order 19- 14 concludes that “due to his demonstrated neglect of duty and incompetence, Sheriff Israel can no longer demonstrate the qualifications necessary to meet

his duties in office."

None of these allegations, however, substitute for facts identifying any "neglect of duty" as the suspension order does not contain any source or description of the supposed "duty" neglected, other than to substitute the Governor's own opinion as to how a sheriff should carry out his or her job as an elected official. Despite containing five pages of allegations, the Executive Order is no more revealing from the position of constitutional compliance than was the directly applicable observation in *State ex rel. Hardie v. Coleman, id*. (emphasis added):

> but we are of the view that if the order 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. *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.* When we said in *State v. Joughin*, [138 So. 392, 395 (Fla. 1931)], that the courts were authorized to inquire into the jurisdictional facts on which the Governor's order of suspension was predicated, *we meant to imply that the sufficiency of an executive order of suspension was ultimately a judicial question, because it affected the rights of individuals.*

Without any identifiable violation of a duty obligating Sheriff Israel, and an identification of the avoidance of that duty or the gross discharge thereof, no jurisdictional grounds exist for the exercise of a constitutional suspension of an elected official based on neglect of duty. Our Florida Constitution places ultimate political authority in the people. Art. I, §1, Fla. Const. The same public has the power

and authority to elect their sheriff, a constitutional officer. Art. VIII, §1(d), Fla. Const. The removal of that constitutional officer can only be done in a manner strictly consistent with the Florida Constitution. The suspension process does not envision or enable a governor to create duties, responsibilities, or obligations for which an elected sheriff is then obligated to follow, upon pain of suspension for violating the governor's will. Nor is the constitutional suspension power a "Monday morning quarterback" second-guessing of an elected sheriff's discretionary exercise of the duties and responsibilities of office, because the governor is not the supervisor of elected constitutional county officers.

The exercise of an official's discretionary authority is not a matter proper for a determination of neglect of duty, as explained in *In re Advisory Opinion to the Governor*, 213 So. 2d 716, 720 (Fla. 1968), in which this Court decreed that the suspension power does not extend "to review the judicial discretion and wisdom of a Criminal Court of Record Judge while he is engaged in the judicial process." The same limitation pertains to an elected sheriff's decisions as to the exercise of discretionary authority not otherwise mandated by the Constitution or statutes.

The Governor's displeasure with the manner and means by which an elected sheriff, or any elected constitutional officer, chose to exercise the powers and duties of office at a time when the Governor was not even in office does not empower him to remove the official. Such decisions are for the people at the ballot box.

E. Suspension for Incompetence Does Not Comply with Constitutional Limitations.

The Governor's disregard of the constitutional limitations on the suspension authority is readily evident in the suspension of Sheriff Israel for "incompetence." This Court previously construed the "incompetence" provision of the Florida Constitution by severely narrowing its allowable jurisdictional scope to matters that prevent an office holder from being able to discharge official duties. Incompetency cannot arise, as a jurisdictional matter, because the Governor concludes that an elected official should have made better or different official decisions. As this Court explained in *State ex rel. Hardie v. Coleman*, 115 Fla. at 126-127, 155 So. at 133:

> Incompetency as a ground for suspension and removal has reference to any physical, moral, or intellectual quality, the lack of which incapacitates one to perform the duties of his office. Incompetency may arise from gross ignorance of official duties or gross carelessness in the discharge of them. It may also arise from lack of judgment and discretion or from a serious physical or mental defect not present at the time of election, though we do not imply that all physical and mental defects so arising would give ground for suspension.

No part of Executive Order No. 19-14 even purports to identify any basis to utilize "incompetence" as a reason for Sheriff Israel's suspension, other than the mere boilerplate citation to that constitutional ground without any "alleged facts sufficient to constitute the grounds or cause of suspension …" *State ex rel. Hardie v. Coleman*, 115 Fla. at 128, 155 So. at 133. This absence is a fundamental and actionable defect in the suspension order that presents a basic lack of jurisdictional

authority on the part of the Governor. *State ex rel. Hardie v. Coleman* is directly on point here, *id*. (emphasis added):

> but we are of the view that if the order 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. *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.* When we said in *State v. Joughin, supra,* that the courts were authorized to inquire into the jurisdictional facts on which the Governor's order of suspension was predicated, *we meant to imply that the sufficiency of an executive order of suspension was ultimately a judicial question, because it affected the rights of individuals.*

The accusation of "incompetence" is little more than a ploy to alter the constitutional definition of "incompetency" in the absence of a constitutional amendment. The Executive Order does not identify any fact at all denoting any "physical, moral, or intellectual quality, the lack of which incapacitates one to *perform the duties of office*." *Id*. (emphasis added). The many pages of allegations point to no jurisdictional facts implicating "incompetence" as a basis for a constitutional suspension. The arbitrary and unprincipled conclusion in the suspension order that the Governor would have made different and better decisions than those of Sheriff Israel exercising his judgment as the elected Broward Sheriff is not a basis for a removal from office for incompetence. To hold otherwise not only subverts the Constitution's limitations and this Court's precedential definition of incompetence, but it also has the effect of authorizing the Governor to exercise

supervisory authority over elected constitutional officers. Such supervision local elected officials is not and has never been a gubernatorial power.

Applying the required rule of "strict construction" to this limited constitutional power, *State ex rel. Hardie v. Coleman*, 115 Fla. at 134, 155 So. at 135, the Governor exceeded his jurisdictional authority to suspend Sheriff Israel for "incompetence." As such, the quo warranto petition should be deemed sufficient and this case should be remanded to the lower tribunal for further proceedings to issue the writ of quo warranto.

CONCLUSION

When a governor's suspension order fails to identify with specificity an itemized, articulated duty of office for which the constitutional officer is responsible, the suspension is outside the jurisdictional authority of the governor, for which the judiciary has the power and authority to monitor and hold the governor to the limits defined by the Florida Constitution. This is just such a case, in which the Governor, for reasons outside his constitutional authority, has imposed his will on the people of Broward County to decide who should be the Sheriff of Broward County. Quo warranto should be exercised in this instance.

CERTIFICATE OF COMPLIANCE

Undersigned counsel certifies that the type used in this brief is 14-point proportionately spaced Times New Roman.

Respectfully submitted,

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