CASE NO.: SC19-552

Supreme Court of Florida

SCOTT J. ISRAEL

Appellant,

v.

HON. RON DESANTIS,
in his official capacity as Governor of Florida,

Appellee.

On Appeal from the Seventeenth Circuit
in and for Broward County, Florida
L.T. Case No.: 4D19-970; CACE-19-005019
Hon. David A. Haimes

GOVERNOR DESANTIS' ANSWER BRIEF ON THE MERITS

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STATEMENT OF THE CASE

Governor DeSantis submits the following brief statement of the case and facts relevant to the present dispute. Fla. R. App. P. 9.210(c).

Appellant was suspended from office for his failures as the Sheriff of Broward County, Florida. Under his leadership as Sheriff, mass shootings resulted in the tragic deaths of seventeen innocent students and faculty on February 14, 2018, at Marjory Stoneman Douglas High School, five deaths on January 6, 2017, at the Fort Lauderdale-Hollywood International Airport and dozens of injuries that resulted from a botched response from the Sheriff's Office. At no point since these events has Appellant acknowledged that his deputies could not remember the last time they attended active shooter training or what type of training they received. And Appellant has failed to acknowledge his failures or role in these events. He believes he bears no responsibility. Yet, the Broward County Sheriff is statutorily charged with being the conservator of the peace for all residents and visitors of Broward County.

On January 2, 2019, the Marjory Stoneman Douglas Public Safety Commission Report revealed grave concerns and serious failures on the part of Appellant that were directly attributed to the loss of life. Similarly, an internal investigation report concluded that Appellant's serious failures in leadership and

decision-making contributed to significant injuries and confusion at the Fort Lauderdale Airport shooting.

On January 11, 2019, after reviewing all relevant material, Governor DeSantis, acting within his constitutional authority, issued Executive Order 19-14 suspending Appellant from his office as Sheriff of Broward County, Florida. As the basis for suspension, Governor DeSantis cited Appellant's neglect of duty and incompetence evidenced by the cumulative facts surrounding the two mass casualty events. Executive Order 19-14 provides sufficient facts upon which the Governor identified offenses justifying suspension.

As Appellant acknowledged, it was his request to invoke the right for Florida Senate review. IB at 1. Appellant waited fifty-six days from the date of Executive Order 19-14 to file the Petition for Writ of Quo Warranto, after both Governor DeSantis and Appellant were active participants in the Florida Senate's removal process. Prior to the initiation of the Petition for Writ of Quo Warranto, Governor DeSantis had provided Appellant with a Bill of Particulars, at Appellant's request, with more specific factual allegations to support Executive Order 19-14.[1] Governor DeSantis also provided a witness and exhibit list,

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[1] The Bill of Particulars can be found on the Florida Senate website at: http://www.flsenate.gov/Session/ExecutiveSuspensions.

disclosing the type of evidentiary material that would be utilized in proving the charges against Appellant. Appellant waited until the days before he needed to provide answers to the Bill of Particulars, affirmative defenses and his witness and exhibit list to file a Petition for Writ of Quo Warranto, abating the Florida Senate removal process.[2] Had Appellant not filed the Petition, the Florida Senate was set to hold a final hearing during the week of April 8, 2019. The Florida Senate is set to adjourn its regular session on Friday, May 3, 2019.

STANDARD OF REVIEW

Review of a circuit court's decision on a petition for writ of quo warranto is for abuse of discretion. *See Detzner v. Anstead*, 256 So. 3d 820, 822 (Fla. 2018) (citing *Topps v. State*, 865 So. 2d 1253, 1257 (Fla. 2004) ("Since the nature of an extraordinary writ is not of absolute right, the granting of such writ lies within the discretion of the court.")). Legal issues concerning the interpretation of the Florida Constitution are reviewed de novo. *Zingale v. Powell*, 885 So. 2d 277, 282 (Fla. 2004).

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[2] By operation of Florida Senate Rule 12.9(2), the proceedings before the Senate were abated upon the initiation of the Petition pending final determination and exhaustion of all appellate remedies.

SUMMARY OF THE ARGUMENT

This case presents a question of whether the Circuit Court abused its discretion when denying Appellant's Petition for Writ of Quo Warranto challenging Governor DeSantis' suspension of Appellant under Article IV, section 7 of the Florida Constitution. Both the Florida Constitution and this Court's precedent provide a clear answer: the Circuit Court did not abuse its discretion in finding that Governor DeSantis acted within his constitutional authority. The Florida Constitution provides a clear, unambiguous framework for the suspension and removal process. The Florida Constitution gives the Governor the authority to suspend and the Florida Senate the authority to remove or reinstate a suspended officer. Art. IV, § 7, Fla. Const. The people of the state of Florida have entrusted the Governor with the authority to suspend public officials from office if they commit certain enumerated offenses. This constitutional framework has been upheld by well-established precedent from this Court.

Because the Florida Constitution textually commits suspension and removal to the executive and legislative branches, this Court held in *State ex rel. Hardie v. Coleman*, 155 So. 129 (Fla. 1943), that courts may conduct only a narrow judicial review of an executive order of suspension into the jurisdiction facts asserted by the Governor. The narrow judicial review is a facial review limited to the four corners of the executive order to determine if the order includes the grounds for

suspension and some factual allegations that reasonably bear relation to the grounds. Beyond this limited facial review, the Court has expressly held that there is no jurisdiction to examine an executive order of suspension. Executive Order 19-14 unequivocally meets the requirements of Article IV, section 7(a) and the *Coleman* jurisdiction test. "[I]f, on the whole, [the executive order of suspension] contains allegations that bear some reasonable relation to the charges made against the officer, *it will be adjudged as sufficient*." *Coleman*, 155 So. at 133 (*emphasis added*).

Appellant does not challenge that he served in an office that was within the Governor's authority to suspend: Sheriff of Broward County, Florida. Nor does Appellant suggest that the grounds for suspension—neglect of duty and incompetence—are beyond the scope of those explicitly listed in Article IV, section 7(a). Rather, Appellant argues that Executive Order 19-14 does not contain sufficient factual allegations or citations to a specific constitutional or statutory duty. IB. at 6.[3] The pith of Appellant's contention is that he was suspended for political reasons and not on constitutional grounds. Faced with these arguments, the Seventeenth Circuit Court found that Executive Order 19-14 alleges numerous

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[3] References to Appellant's Initial Brief will be cited as "IB. at __." References to the Record will be cited as "R. at __."

factual allegations related to both "neglect of duty" and "incompetence." The court held that "the allegations set forth in Executive Order 19-14 are sufficient to support the specified grounds of neglect of duty and incompetence, and therefore, meet the jurisdiction requirements for suspension." R. at 111.

Appellant misconstrues the textual requirements and limitations on the Governor's constitutional suspension authority. Appellant asks this Court to read requirements into Article IV, section 7(a) of the Florida Constitution that do not exist. Further, Appellant wrongly contends this Court should substitute its judgment on whether Appellant's inactions and failures rise to the level of neglect of duty or incompetence. Appellant's arguments are incompatible with the Florida Constitution and this Court's precedent on executive suspensions.

The Circuit Court correctly applied the plain language of Article IV, section 7(a) and this Court's well-established precedent. Because Executive Order 19-14 lists the grounds for suspension and alleges sufficient factual allegations that bear a reasonable relation to those grounds, this Court should affirm the Circuit Court's Order dismissing the Petition for Writ of Quo Warranto.

ARGUMENT

I. EXECUTIVE ORDER 19-14 MEETS THE JURISDICTIONAL THRESHOLD REQUIRED BY THE FLORIDA CONSTITUTION

Fifty-one years ago, Florida voters approved and adopted a nearly complete revision of the Florida Constitution, including an explicit adoption of the current

executive suspension framework. *See generally* Art. IV, § 7, Fla. Const.; Tabulation of Official Votes Cast in the General Election, November 5, 1968, Florida Dep't of State. Article IV, section 7(a) of the Florida Constitution provides *exclusive* authority to suspend certain public officials, including elected officials,[4] to the Governor. And the authority to review the Governor's suspension is committed to the Florida Senate. Art. IV, § 7 (b), Fla. Const. The Florida Constitution and this Court's precedent create a jurisdictional threshold that must be satisfied. Executive Order 19-14 meets the jurisdictional threshold and, therefore, must be adjudged as sufficient, allowing the Florida Senate to continue its important role in the removal process.

Article IV, section 7(a) of the Florida Constitution, in relevant part, states:

> By executive order stating the grounds … the governor may suspend from office … any county officer, for … neglect of duty … [or] incompetence.

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[4] To the extent Appellant claims Executive Order 19-14 is unconstitutional because Appellant was elected, that argument fails. This challenge was not raised or preserved at the Circuit Court. Therefore, this Court should not entertain any invitation to address that issue. Regarding the merits of this contention, Governor DeSantis submits that Appellant's suggestion is specious and should be given no consideration. Article IV, section 7(a) of the Florida Constitution addresses which public officers are within the executive suspension authority, and the only public officers that are excluded are those that are subject to impeachment. The office of sheriff is not subject to impeachment, and therefore, it is explicitly included in the Governor's suspension authority.

By the plain text of the Florida Constitution, the Governor has the exclusive authority to suspend county officers for explicitly enumerated grounds. Art. IV, § 7(a), Fla. Const. The authority to review and adjudicate the merits of an executive suspension is textually committed to the Florida Senate. Art. IV, § 7(b), Fla. Const. Accordingly, "[t]he Senate is nothing less than a court provided to examine into and determine whether or not the Governor exercises the power of suspension in keeping with the constitutional mandate." *State ex rel. Hardie v. Coleman*, 155 So. 129, 134 (Fla. 1943). The powers conferred upon the Governor and the Florida Senate to suspend and remove public officers implies the authority to judge the jurisdiction, merits and sufficiency of those grounds are committed to these two branches. *See, e.g.*, *Coleman*, at 134; *State ex rel. Hatton v. Joughin*, 145 So. 174 (Fla. 1933) (en banc) ("*Joughin II*"). This Court's precedent is well-established that so long as the Governor acts within his jurisdictional limits prescribed in Article IV, section 7(a), the merits of his action may not be reviewed by the courts.

In 1872, this Court acknowledged the clearly defined separation of powers explicit in the Florida Constitution for executive suspensions. *State ex rel. Holland v. Ledwith*, 14 Fla. 220, 224 (1872) ("The power of removal here granted to the Governor and Senate is without limitation, is absolute, and is beyond the control of the [judiciary.]"). That principle has been consistently affirmed by this Court for

over a century. *See, e.g.*, *Coleman*, 155 So. at 134-35; *State ex rel. Hatton v. Joughin*, 138 So. 392, 394 (Fla. 1931) ("*Joughin I*"); *State ex rel. Bridges v. Henry*, 53 So. 742 (Fla. 1910); *State ex rel. Lamar v. Johnson*, 11 So. 845, 852 (Fla. 1892) (holding any error of judgment in executive suspension is beyond jurisdiction of the court because the legislative branch has been given that express power).

In recognizing the judiciary's limited role in executive suspensions, this Court crafted a very narrow exception allowing for inquiry into *only* the existence of the jurisdictional facts asserted by the Governor. *See Joughin I*, 138 at 394-95 (citing *Johnson*, 11 So. 854; *Henry*, 53 So. 742). This is a purely facial review of the four corners of the executive order. As the Court in *Coleman* explained, the test of jurisdictional sufficiency for an executive order of suspension is simple:

> if the order names one or more 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. at 133 (*emphasis added*). The Court added that the alleged facts must bear some reasonable relation to the grounds of suspension, but need not be as "definite and specific as the allegations of an information or an indictment in a criminal prosecution." *Id.* Further, because of the unique vesting of the suspension power in the executive branch, it is presumed that the Governor, in issuing an executive suspension, will exercise his discretion and duty with great care and caution. *See generally, Coleman*, 155 So. at 135; William M. Barr & Frederick B. Karl,

Executive Suspension and Removal of Public Officers under the 1968 Florida Constitution, 23 U. Fla. L. Rev. 635, 636 n. 7 (1971). Of equal import, *Coleman* held that courts are without authority to inquire into the merits of the allegations or the discretionary decision of the Governor. *Coleman*, 155 So. at 134 ("We have no authority to determine the sufficiency of the evidence to support the grounds of such suspension, that being solely a function of the Senate.").

Here, a facial review of Executive Order 19-14 confirms the jurisdictional sufficiency. Governor DeSantis issued Executive Order 19-14 on January 11, 2019. R. at 39-44. There is no allegation that Appellant's office—Sheriff of Broward County, Florida—falls outside of the scope of officers listed in Article IV, section 7(a). It is also undisputed that the grounds for suspension—neglect of duty and incompetence—are explicitly enumerated in Article IV, section 7(a). Executive Order 19-14 articulates numerous factual allegations that bear reasonable relation to the grounds of neglect of duty and incompetence. Any argument that the executive order does not clearly and voluminously outline factual allegations is without merit. Even a cursory review confirms sufficient factual allegations have been listed in the executive order. In relevant part, the order states:

> **WHEREAS**, to meet the Sheriff's duty to be the conservator of the peace, it is necessary for the Sheriff to provide adequate, up-to-date, frequent, thorough and realistic training to handle high-risk, high-stress situations, including mass casualty incidents; and

> **WHEREAS**, Sheriff Israel's deputies interviewed by the Marjory Stoneman Douglas Public Safety Commission could not remember the last time they attended active shooter training or what type of training they received; and
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> **WHEREAS**, the investigation also revealed that Sheriff Israel's neglect of duty and incompetence led to "most of the law enforcement personnel who responded [lacking] clear instructions, objectives and roles."; and
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> ***
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> **WHEREAS**, Sheriff Israel has demonstrated during multiple incidents that he has not provided for the proper training of his deputies; and
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> **WHEREAS**, two separate reports into the recent mass casualty shooting in Broward County specifically found that Sheriff Israel has not and does not provide frequent trainings for his deputies resulting in the deaths of twenty-two individuals and a response that is inadequate for the future safety of Broward County residents;
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> **WHEREAS**, two separate reports into the recent mass shooting in Broward County specifically found that Sheriff Israel has not implemented proper protocols to provided guaranteed access to emergency services, nor proper protocols to have timely, unified command centers setup to control a crime scene, leading to confusion, lack of recognized chain-of-command, and ultimately a failure to contain a dangerous situation;

R. 41-43. Undoubtedly, these factual allegations in Executive Order 19-14 bear reasonable relation to the grounds of suspension.

Nevertheless, Appellant argues that the allegations in Executive Order 19-14 are subjective opinions or conclusions, not facts, and thus fail to meet the requirements of Article IV, section 7(a), the *Coleman* test and Section 112.41(1), Florida Statutes. IB. at 10. The allegations in Executive Order 19-14, however, are not opinions, they are facts. To suggest otherwise is a denial of reality, and further a lack of respect for the victims and families of both tragic events. Many of the factual allegations of neglect of duty and incompetence were taken directly from separate reports from two mass casualty events: an internal investigation conducted by the Broward County Sheriff's Office into the Fort Lauderdale-Hollywood International Airport shooting and the Marjory Stoneman Douglas Public Safety Commission Report.

Assuming *arguendo* that Appellant is correct in his assertion that the allegations are discretionary judgments of Governor DeSantis, the proper place to test the merits of the allegations is the Florida Senate, not the courts. *See Coleman*, 155 So. at 134-36 (courts are not authorized to examine and determine the sufficiency of the evidence to support the charges). Appellant's request that this Court weigh the substantiation of the factual allegations to the enumerated offenses has already been categorically denied in *Coleman*. As Chief Justice Davis opined in his concurrence,

> [i]f [the executive order] is sound on its face as an executive order, the courts are powerless to set it aside

> because it may have been made pursuant to an abuse of executive power, or because it may have been wrongfully and without sufficiently good causes in fact to warrant it. … The lack of power in the courts to set aside the Governor's action in a suspension case is due entirely to the fact that the Constitution itself has set up its own special court to try the matter, namely, the state Senate.

Coleman, at 136 (Davis, C.J., concurring).

Appellant's reliance on Section 112.41(1), Florida Statutes, is similarly unavailing. Section 112.41(1) does not expand upon what is required under Article IV, section 7(a), nor can it be read in conflict with the constitutional requirements. Section 112.41(1) states only that the executive order of suspension "shall specify facts sufficient to advise both the [suspended officer] and the Senate as to the charges made or the basis of the suspension." This language is compatible with Article IV, section 7(a) and the *Coleman* test, both of which stand for the proposition that an executive order of suspension should provide sufficient notice to the suspended officer of the grounds of suspension and the antecedent facts. Executive Order 19-14 meets that requirement.

Grasping at straws, Appellant invokes *State ex rel. Hawkins v. McCall*, 29 So. 2d 739 (Fla. 1947). In *Hawkins*, the Court was presented with a challenge to the Jacksonville City Commission's removal of a police officer under a writ of mandamus. *Hawkins*, 20 So. 2d at 741. The Court found the allegations were not sufficient to give the police officer proper notice of the unlawful acts of which he

stood accused. *Id.* at 742. The Could held that not *all* the evidence to support and approve the allegations of fact must be provided, but the allegations must be "sufficiently specific and clear" to apprise the suspended office of what he would have to defend against or explain. *Id. Hawkins* did not address a Governor's duty under Article IV, section 7(a). And even if this Court were to apply the *Hawkins* test, it must find Executive Order 19-14 passes muster. Executive Order 19-14 sets forth the grounds with sufficient particularity to provide the necessary notice to Appellant. Therefore, Appellant's argument as to the sufficiency of the factual allegations must fail.

On its face, Executive Order 19-14, suspending Appellant from office, meets the requirements of Article IV, section 7(a) and the jurisdictional threshold test outlined in *Coleman*. Appellant's argument that factual allegations are not sufficient, or are not true, or that he has explanations or rebuttals to them is not within the jurisdiction of the courts. That *exclusive* authority to judge the merits of the factual allegations is textually committed to the Florida Senate. Art. IV, § 7(b), Fla. Const. Executive Order 19-14 is not arbitrary, nor was it done in haste and without sufficient factual allegations. A sufficient case has been stated. The removal proceeding must advance in the Florida Senate.

II. THE CIRCUIT COURT'S ORDER CORRECTLY APPLIED THE FLORIDA CONSTITUTION AND PRECEDENT IN DENYING THE PETITION FOR WRIT OF QUO WARRANTO

This appeal comes to the Court on the Seventeenth Circuit Court's Order denying Appellant's Petition for Writ of Quo Warranto and Granting Governor DeSantis' Motion to Dismiss. R. at 105-112. The Circuit Court correctly applied the *Coleman* test for jurisdictional sufficiency, as outlined *supra*. And the Circuit Court correctly held that Article IV, section 7(a) of the Florida Constitution does not require a citation to a statutory duty. Therefore, on a review for abuse of discretion, this Court should affirm the Circuit Court's Final Order.

A. The Seventeenth Circuit correctly applied *Coleman* in concluding that Executive Order 19-14 met the jurisdictional threshold.

In evaluating Executive Order 19-14 under the *Coleman* test for jurisdictional sufficiency, the Seventeenth Circuit Court correctly denied Appellant's Petition for Writ of Quo Warranto. As discussed *supra*, the *Coleman* test provides for a facial review of the jurisdictional sufficiency of an executive order of suspension. This review is limited to the four corners of the executive order. It is not a review of the merits of the factual allegations. Nor is the review an invitation for the courts to hear explanations or excuses from a suspended official. The proper, and indeed the only, forum for that review is the Florida Senate. *See* Art. IV, § 7(b), Fla. Const.; § 112.47, Fla. Stat.; Florida Senate Rule 12.9.

As explained in the statement of the case section of this brief, on January 11, 2019, Governor DeSantis issued Executive Order 19-14, suspending Appellant from his office as Sheriff of Broward County, Florida for neglect of duty and incompetence. On March 7, 2019, Appellant filed a Petition for Writ of Quo Warranto in the Seventeenth Circuit Court, in and for Broward County, Florida. Appellant argued that Governor DeSantis exceeded his constitutional authority in suspending Appellant for political reasons. R. at 8. Appellant further claimed Governor DeSantis should not be able to suspend a public official who has been duly elected. R. at 98. On March 14, 2019, Governor DeSantis filed a Motion to Dismiss the Petition on the grounds the Executive Order 19-14 met the jurisdictional threshold of Article IV, section 7(a) and the *Coleman* test. R. at 79-84. On April 1, 2019, Seventeenth Circuit Court Judge David A. Haimes held a hearing on the Motion to Dismiss. Of import, at the lower court, Appellant acknowledged in multiple filings that a court's review of an executive order of suspension is limited to the sufficiency of the jurisdictional facts. *See* R. at 3, 24, 89. Both parties agreed no evidentiary hearing was necessary because the review was limited to the allegations contained within Executive Order 19-14. On April 4, 2019, Judge Haimes issued his Final Order of Dismissal and Order Granting Motion to Dismiss. R. at 105-112.

In the Final Order, Judge Haimes applied the *Coleman* test to Executive Order 19-14, on the narrow question before the Court,

> whether Executive Order 19-14 suspending Sheriff Israel meets the jurisdictional threshold, to wit: whether the order names one or more grounds set forth in the Constitution and is supported with alleged facts sufficient to constitute the grounds named for the suspension.

R. at 108. Judge Haimes found "numerous factual allegations related to both neglect of duty and incompetence" specifically related to the tragic loss of lives during two active shooter incidents in Broward County—Fort Lauderdale-Hollywood International Airport shooting on January 6, 2017, and Marjory Stoneman Douglas High School shooting on February 14, 2018. R. at 109-110. Ultimately, Judge Haimes found, "the allegations set forth in Executive Order 19-14 are sufficient to support the specified grounds of neglect of duty and incompetence, and therefore, meet the jurisdictional requirements for suspension." R. at 111.

Appellant has failed to identify any factual finding that was an abuse of discretion in the Circuit Court's Order. Appellant has not provided the Circuit Court, nor this Court with a prior precedent that was not followed in denying the Petition for Writ of Quo Warranto. Rather, as explained *supra*, Appellant invited the Circuit Court, just as he improperly invites this Court, to step outside the clearly defined parameters in reviewing an executive order of suspension

articulated in *Coleman*. In *Topps v. State*, this Court found that the issuance of an extraordinary writ is not an absolute right and the granting of a writ "lies within the discretion of the court." *Topps*, 865 So. 2d at 1257 (Fla. 2004). The Circuit Court was correct in its factual findings and application of the Florida Constitution and prior precedent to its limited facial review and, therefore, did not abuse its discretion by denying the Petition.

B. The Seventeenth Circuit correctly held the Florida Constitution does not require citation to a specific statutory duty.

The Circuit Court correctly declined to read a requirement of a statutory duty in Article IV, section 7(a). Nothing in Article IV, section 7(a) or Section 112.41(1), Florida Statutes, requires the Governor to cite to a statutory duty of the suspended official for an executive order of suspension. Nor should this Court read that requirement into Article IV, section 7(a).

Appellant argues that Executive Order 19-14 is insufficiently clear because it does not cite to a statutory duty of Appellant's office. Appellant takes exception with the Circuit Court's "overly broad reading" of the neglect of duty and incompetence grounds. IB. at 20. The Circuit Court was presented the opportunity to read "neglect of duty" as "neglect of a statutory duty imposed by law." The Circuit Court correctly rejected Appellant's invitation:

> Sheriff Israel asserts that neglect of duty must pertain to a statutory duty and that the allegations in the executive order fail to establish the neglect of an identifiable

> statutory duty. However, Article IV, section 7(a) of the Florida Constitution states "neglect of duty" and not "neglect of a statutory duty," and the Court declines to read additional words into the Constitution.

R. at 109. For guidance, the Circuit Court went to the definition of "neglect of duty" and "incompetence" provided by this Court in *Coleman*:

> Neglect 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*. It is not material whether the neglect be willful, through malice, ignorance, or oversight. When such neglect is grave and the frequency of it is such as to endanger or threaten the public welfare.
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> In *Coleman*, the Supreme Court also discussed incompetence and stated that "[i]ncompetence may arise from gross ignorance of official duties or gross carelessness in the discharge of them."

R. at 109. Instead, the Circuit Court found that Executive Order 19-14 alleged Appellant was responsible for dictating the discretionary active shooter policy, setting up command centers and failures of training and leadership. R. at 110. These allegations supported the grounds for neglect of duty and incompetence. R. at 110.

The Circuit Court's analysis is sound. In *Coleman*, this Court explained duty in the context of executive suspensions to be: (1) some duty laid upon an officer by virtue of the office or (2) duties required of a public office by law. *Coleman*, 155

So. at 132. Had this Court read duty to be *only* those imposed by law, it would not have also explicitly included duties that are incumbent by virtue of the office one holds.

Yet, Appellant still invites this Court to reverse the Circuit Court and add words and requirements to Article IV, section 7(a) that are not there. Appellant argues that a strict reading of the Constitution and prior precedent require inclusion of a statutory duty in an executive order of suspension. IB. at 17-18. For reasons explained above, a strict reading of Article IV, section 7(a) and *Coleman* do not support Appellant's assertion.

Appellant's reliance on *Sanchez v. Lopez*, 219 So. 3d 156 (Fla. 3rd DCA 2017),[5] is unavailing. In *Sanchez*, a political action committee ("PAC") attempted to recall the mayor of the City of Sweetwater through a recall petition, pursuant to Section 100.361, Florida Statutes. *Sanchez*, 219 So. 3d at 157. The PAC claimed the mayor failed to attend numerous commission meetings and failed to perform his duties under the City Charter. *Id.* The trial court found the recall petition was legally insufficient. The Third District Court of Appeal affirmed. In support, the Third District found that the City Charter did not make the mayor's attendance at

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[5] Appellant mistakenly cites *Sanchez v. Lopez* as Florida Supreme Court precedent, *see* I.B. at i.v., 18, however, *Sanchez* is a Third District Court of Appeal opinion.

commission meetings mandatory, and therefore, there was no mandatory "duty" to attend commission meetings and no violation of such a duty. *Id*., at 159. Appellant's reliance fails because the grounds on which the PAC based their recall stemmed from a duty that did not even exist under the City Charter. Moreover, the Third District's opinion did not address "neglect of duty" in the context of a gubernatorial suspension under Article IV, section 7(a). *Cf. Johnson*, 11 So. at 862 (court found no authority to consider Governor's judgment on executive suspension over collection of taxes even though no law established when a tax collector must have office hours); *See Henry*, 53 So. at 743 (Shackleford, J., dissenting) (the Courts are equally bound to the causes enumerated in the Constitution for removal and cannot add to its requirements).

If Appellant's argument is to be taken seriously—that Executive Order 19-14 fails because there is no citation to a statutory duty—he asks this Court to conclude that sheriffs throughout Florida have no legal duty to: setup command centers, hire competent deputies, train their deputies with sufficient regularity, dictate policies governing the office, etc. But common-sense dictates there is a legal duty to complete the tasks and functions of their constitutional position as sheriffs.

This Court's definition in *Coleman* uses the plain, commonly understood meaning of duty. *See also,* Merriam-Webster Legal Dictionary,

https://www.merriam-webster.com/dictionary/duty#legalDictionary (last visited Apr. 14, 2019) ("tasks, service, or functions that arise from one's position."); Garners Dictionary of Legal Usage 624 (3rd ed. 2011) (duty is that which one is required to do or refrain from doing); The American Heritage Dictionary of the English Language 573 (3rd ed. 1992), (duty is an act or course of action that is required of one by position, social custom, or law). Article IV, section 7(a) has no textual requirement that an executive order of suspension cite to a statutory duty, nor was the Circuit Court "overly broad" in its reading of the requirements. Governor DeSantis submits that the recruiting, hiring and firing, promoting and training of staff and deputy sheriffs are *the* duties incumbent in the office of sheriff. Governor DeSantis also submits that developing and implementing a policy regarding engaging an active shooter to preserve life is a duty incumbent in the office of sheriff.

Furthermore, the executive order cites two statutory duties of sheriffs. The third and fourth whereas clauses in Executive Order 19-14 explicitly identify statutory duties:

> **WHEREAS**, pursuant to Florida Statute § 30.15, it is the duty of elected sheriffs to be the conservators of the peace in their respective counties; and
>
> **WHEREAS**, pursuant to Florida Statute § 30.07, "sheriffs may appoint deputies to act under them who shall have the same power as the sheriff appointing them,

> and for the neglect and default of whom in the execution of their office the sheriff shall be responsible";

R. at. 39. Section 30.15, Florida Statutes, is titled, "Powers, duties, and obligations" of Sheriffs. Section 30.15(1)(e), Florida Statutes creates a duty in sheriffs, in person or by deputy, to "be conservators of the peace in their counties." Courts have interpreted this duty to mean sheriffs are charged with "the duty to protect people and property" and "protect against crime without waiting for it to occur.") *See State v. A.R.R.*, 113 So. 3d 942, 944-45 (Fla. 4th DCA 2013) (citing *Ortiz v. State*, 24 So. 3d 596, 607 (Fla. 5th DCA 2009) (Torpy, J., concurring); *United States v. Markland*, 635 F. 2d 174, 176 (2d Cir. 1980)). It would be unimaginable that Appellant believes protecting lives, hiring and firing decisions, policy directives and training protocols fall outside the duty to be the conservator of peace in the county. Nor did Appellant argue below, or in his Initial Brief, that Section 30.15 means something different or is not applicable. Appellant chooses to ignore this statutory duty exists and was cited in Executive Order 19-14.

Section 30.07, Florida Statutes, similarly creates a statutory duty on Appellant to appoint deputies, and he bears responsibility for their neglect of duty. Appellant argues the failures of Broward County Sheriff's Office outlined in Executive Order 19-14 are not failures of himself, but rather of his deputies—a position Appellant has consistently taken since February 14, 2018. *See Full Transcript of Broward County Sheriff Scott Israel's interview on 'State of the*

Union', https://www.cnn.com/2018/02/25/politics/sheriff-israel-sotu-full-transcript, (last visited April 15, 2019) ("I can only take responsibility for what I knew about. I exercised my due diligence."). However, since sheriff deputies derive their power from the sheriff, and act as the sheriff, it is axiomatic that a sheriff be held accountable for the training, policies and failures of their deputies. Therefore, even if some of the acts or omissions cited in Executive Order 19-14 are attributable to deputy sheriffs, Appellant is responsible for the neglect of duty that led to those acts or omissions. To the extent Appellant argues Section 30.07 is only used in a context for civil or criminal matters on a transfer of liability, there is no support in the statutory text for that position. The record is devoid of any precedent for this position. Moreover, in the context of executive suspension, that argument is for the Florida Senate to decide. *See Johnson*, 11 So. at 862 (considerations exclusively addressed by the Governor in forming the basis of a suspension are for the Senate to consider, not the courts).

Appellant alternatively argues that even if there is citation to duties of the office, his discretionary decisions are not proper grounds for an executive suspension. Appellant relies on a 1968 Advisory Opinion to Governor Kirk in support. This Court in *In re Advisory Opinion to the Governor,* 213 So. 2d 716 (Fla. 1968) ("*1968 Advisory Opinion*"), addressed whether a Governor could suspend a criminal court judge for incompetency if the Governor believed the

judge did not exercise proper judicial discretion and wisdom. The Court initially advised that suspension for incompetency due to aggrieved litigants was not appropriate since the proper method for reviewing purely judicial acts was appellate courts. *Id.* at 720. However, the Court also advised that if physical or mental incompetency was established by a court of competent jurisdiction, the Governor could use that as a basis for suspension. *Id. 1968 Advisory Opinion* struck at the core of separation of powers concerns, acknowledging that the definition of incompetency articulated in *Coleman* was as-applied to a sheriff, not a member of the judicial branch. *Id.* at 718. Yet, the Court still confirmed that if incompetency was judicially determined, the Governor could suspend a member of the judicial branch for incompetency.[6] *Id.* at 720. It is clear that the facts of *1968 Advisory Opinion* are not applicable to this matter.

Appellant's argument that discretionary decision-making is not for consideration in executive suspensions fails for three reasons. First, this argument fails because all public officials accept their position subject to suspension by the Governor. *See Joughin I*, 138 So. at 395 ("[e]very other officer appointed or

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[6] *1968 Advisory Opinion* is no longer persuasive authority, as Justices and Judges are now subject to impeachment under Article III, section 17 of the Florida Constitution. Therefore, they are explicitly excluded from the Governor's suspension authority under Article IV, section 7.

elected in this state who is not subject to impeachment, accepts their appointment or election subject to suspension by the Governor for the causes enumerated in [the constitution]."); *Ledwith*, 14 Fla. at 223-224 (when public officer accepts their office it is with the qualification that they can be at any time removed by the Governor and Senate). Second, Article IV, section 7(a) provides for this exact situation. Governors who find the decisions of public officers are not in the best interest of the citizens of the state can suspend the public officer for neglect of duty or incompetence. And there is a very important check on that power—40 duly elected Senators. A forum provided for in the Constitution provides due process by allowing the suspended public official to plead their case, provide explanations for their decisions and argue against the judgment and discretion of the Governor. *See* Art. IV, § 7(b), Fla. Const.; §§ 112.40, 112.43, 112.47, Fla. Stat. And third, contrary to Appellant's assertion, the Governor may oversee elected constitutional county officers to the extent the people of the State of Florida granted the Governor the power to suspend in adopting Article IV, section 7 in November 1968. *See generally*, *State ex rel. Gibbs v. Rogers*, 193 So. 435, 438 (Fla. 1940) ("The authority of officer not liable to impeachment conferred upon the Governor [by the Constitution] enables him to perform his constitutional duty to 'take care that the laws be faithfully executed.'"); William M. Barr & Frederick B. Karl, *Executive Suspension and Removal of Public Officers under the 1968 Florida*

Constitution, 23 U. Fla. L. Rev. at 671 (1971) ("The people of Florida have expressly declared in their Constitution that it is *not* their will or desire to condone malfeasance, misfeasance, neglect of duty, drunkenness, and other specified evils in their public offices. Moreover, the people have conferred upon their Governor the clear authority and duty to eliminate such evils when they occur.").

Finally, Appellant argues that without any specific duties cited, the executive order fails to identify any grounds for incompetence. Appellant would have this Court limit the scope of the definition of incompetence to "physical, moral, or intellectual quality, the lack of which incapacitates one to perform the duties of office." IB at 24. Yet, Appellant fails to acknowledge that this Court held in *Coleman* that "[i]ncompetency may arise from gross ignorance of official duties or gross carelessness in the discharge of them. It may also arise from lack of judgment." *Coleman*, 155 So. at 133. Executive Order 19-14 is replete with factual allegations that Appellant committed gross ignorance of his duties or gross carelessness in the discharge of the duties. The fact that Appellant argues no duties were cited in Executive Order 19-14 is evidence enough that Appellant does not understand the full scope of the responsibilities and duties of his office.

The Circuit Court was correct in rejecting Appellant's argument that (1) Article IV, section 7(a) requires citation to a statutory duty and (2) that Executive Order 19-14 improperly cites duties that Governor DeSantis, in his executive

discretion, believed were neglected or grossly ignored or carelessly discharged. The Circuit Court's Order denying the Petition for Writ of Quo Warranto should be affirmed. Executive Order 19-14 must be properly placed back before the Florida Senate for review, as all appellate remedies have been exhausted.

CONCLUSION

This Court in *Coleman* articulated a very narrow standard of review for a challenge to an executive order of suspension, requiring courts to ensure only that they order contains the grounds of suspension and factual allegations that bear a reasonable relation to the asserted grounds. The Circuit Court, in applying the requirements of Article IV, section 7(a) and the *Coleman* test, correctly denied Appellant's Petition for Writ of Quo Warranto. Governor DeSantis' Executive Order 19-14 meets the jurisdictional requirements because it lists specific grounds of suspension enumerated in Article IV, section 7(a), and it supports the grounds with factual allegations that bear reasonable relation to the asserted grounds. This Court should affirm the Circuit Court's Order and direct the Florida Senate to continue its review for removal of Appellant.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of April, 2019, a true copy of the foregoing has been served by electronic service through the Florida Court E-Filing Portal to the following counsel of record:

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this computer-generated Answer Brief is prepared in Times New Roman 14-point font and complies the with the typeface requirements of Fla. R. App. P. 9.100(*l*).

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