No. SC23-1246

IN THE SUPREME COURT OF FLORIDA

MONIQUE WORRELL,

Petitioner,

v.

RON DESANTIS, as Governor of the State of Florida,

Respondent.

BRIEF OF *AMICUS CURIAE* 121 CURRENT AND FORMER PROSECUTORS, ATTORNEYS GENERAL, AND LAW ENFORCEMENT OFFICIALS AND LEADERS, AND FORMER JUDGES, UNITED STATES ATTORNEYS AND FEDERAL OFFICIALS IN SUPPORT OF PETITIONER

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STATEMENT OF IDENTITY AND INTEREST OF *AMICI CURIAE*

Amici curiae are a bipartisan group of 121 current and former prosecutors, Attorneys General, law enforcement officials and leaders, and former judges, United States Attorneys and federal officials who are committed to protecting the integrity of our justice system. A full list of *Amici* is attached as Appendix A.

Amici bring decades of experience from judicial, law enforcement, and criminal justice leadership roles. As judicial, law enforcement, and criminal legal system leaders, *Amici* recognize the critical role of preserving prosecutorial independence, the need to insulate prosecutors from improper outside political pressures that can erode trust in the legitimacy and integrity of the justice system, and the dangers presented when these foundation and principles undermined.

Although *Amici* hail from various parts of the country and have experience in different areas of law enforcement and the criminal legal system, *Amici* share a deep concern about the consequences the Florida Governor's suspension of State Attorney Monique Worrell will have on the public's trust in the legal system and, more broadly, the corrosive effect this suspension will have on democratic institutions

and public safety. The Governor's authority to suspend a duly elected prosecutor should be exercised with great caution and supported by a legally sufficient factual basis—conditions that are far from satisfied in the Order to suspend SA Worrell (Fla. Exec. Order No. 23-160 (Aug. 9, 2023) (hereafter "the Suspension Order" or "the Order")). Instead, the Suspension Order is wholly lacking in any basis to conclude that SA Worrell engaged in "neglect of duty" or "incompetence." Sanctioning the undemocratic suspension of a duly elected prosecutor here creates the potential for future unfettered removal of local leaders based simply on the political and partisan whim of a state leader. Governor DeSantis's Order is not simply lawfully and constitutionally deficient but also, if allowed to stand, endangers and destabilizes the administration of justice in Florida and creates potential adverse ripple effects in other parts of the country. For all these reasons, the issues raised by the pending writs are of grave concern to *Amici*.

SUMMARY OF ARGUMENT

Prosecutorial independence—and the duty to remain above the political fray—is a hallmark of our legal system and the pursuit of justice. Elected prosecutors wield significant power in the criminal

justice system, both in determining how cases are initiated and resolved on a day-to-day basis through a wide range of decisions, and in deciding how to best promote public safety. In carrying out these weighty decisions, elected prosecutors are ethically bound to pursue just results, protect fundamental rights, and serve as ministers of justice in their communities. Voters have the right to choose the elected prosecutor who best reflects their vision of justice, and the elected prosecutor, in turn, is accountable to his or her voters.

Under the Florida Constitution, the Governor's ability to suspend an elected prosecutor is not unfettered. A Governor does not have the authority to undermine the will of the voters by removing a prosecutor simply because he disagrees with her assessment of how to pursue public safety or he otherwise believes that vaguely defined data suggest she is not as effective as other elected prosecutors. Judging the performance and continued service of their elected prosecutors is a decision that rests with the voters, not the Governor. Upholding the Governor's suspension of SA Worrell in this case—without any constitutionally valid basis for doing so—would deprive voters of their duly elected representative, open the door to future unbounded and undemocratic removal of elected officials from office,

and erode public trust in the legal system.

When public trust in the justice system suffers, so does public safety. In order to combat crime, the legal system needs the full cooperation of the community, particularly victims and witnesses. When members of the community cannot rely on democratic norms, and do not think the system is fair, they may not feel compelled to participate in it. This limits the ability of police and prosecutors to seek justice and promote public safety, making everyone less safe.

For all of these reasons, *Amici* urge this Court to grant the pending writs and restore SA Worrell to office.

ARGUMENT

I. The Suspension Order Interferes with Prosecutorial Independence, Which is Well-Settled and Integral to Prosecutors' Role as Ministers of Justice

"The prosecutor is an administrator of justice, a zealous advocate, and an officer of the court." *ABA Criminal Justice Standards for the Prosecution Function* §3-1.2(a) (4th ed. 2017) (*ABA Criminal Justice Standards*). Throughout a prosecutor's performance of his or her duties, "he [or she] must always be faithful to his [or her] client's overriding interest that 'justice shall be done.'" *See United States v. Agurs*, 427 U.S. 97, 110-11 (1976) (citing *Berger v. United States*, 295

U.S. 78, 88 (1935)); *Rolle v. State*, 268 So. 2d 541, 542 (Fla. 3d DCA 1972). Thus, the prosecutor serves the public interest and increases public safety not merely by convicting but "by pursuing appropriate criminal charges of appropriate severity, and by exercising discretion to not pursue criminal charges in appropriate circumstances." *See ABA Criminal Justice Standards* §3.12(b).

The exercise of "sound discretion and independent judgment" is critical to the performance of the prosecutorial function. *See id.* §3.12(a). The Florida Supreme Court has recognized that "[u]nder Florida's constitution, the decision to charge and prosecute is an executive responsibility, and the state attorney has complete discretion in deciding whether and how to prosecute." *State v. Bloom*, 497 So. 2d 2, 3 (Fla. 1986); *see also State v. Cain*, 381 So. 2d 1361, 1367 & n.8 (Fla. 1980) ("[T]he discretion of a prosecutor in deciding whether and how to prosecute is absolute in our system of criminal justice."); *Cleveland v. State*, 417 So. 2d 653, 654 (Fla. 1982) ("The state attorney has complete discretion in making the decision to charge and prosecute."). Prosecutorial independence is thus a well-settled core principle in Florida, as well as in the rest of the nation.

Prosecutorial independence is vital to the integrity of our justice

system. Keeping weighty prosecution decision-making independent and protected from political interference, especially in a legal system that has the ability to take away a person's freedom and liberty, is essential to a well-functioning, healthy democracy.[1] By suspending SA Worrell without any valid legal basis, and replacing her with a prosecutor appointed by him rather than elected by the people, Governor DeSantis upsets the careful balance of roles and responsibilities delegated to local as well as state actors and destabilizes prosecutorial independence that is integral to our system of justice.

II. The Suspension Order Usurps the Right of Florida Citizens to Elect Their State Attorney

Voters have the right to choose their elected representatives—a right that is fundamental to United States and Florida law. *See Reynolds v. Sims*, 377 U.S. 533, 555 (1964) ("The right to vote freely for the candidate of one's choice is of the essence of a democratic society[.]"); *see also* Fla. Const. Art. I §1 ("All political power is

[1] *See Boumediene v. Bush*, 533 U.S. 723, 797 (2008) ("Security subsists, too, in fidelity to freedom's first principles. Chief among these are freedom from arbitrary and unlawful restraint and the personal liberty that is secured by adherence to the separation of powers.").

inherent in the people."). Pursuant to the Florida Constitution, citizens of Florida elect State Attorneys for their respective judicial circuits to execute the duties of this office, including serving as the prosecuting officer of all trial courts in the applicable circuit and performing other duties prescribed by general law. *See* Fla. Const. Art. V §17. As this Court has noted, as "an elected official[,] [the State Attorney] is responsible to the electorate of his [or her] circuit, this being the traditional method in a democracy by which the citizenry may be assured that vast power will not be abused." *Austin v. State ex rel. Christian*, 310 So. 2d 289, 293 (Fla. 1975). Citizens of Florida separately elect a governor to execute the duties of that office, including, among others, transacting necessary business with the officers of government and taking responsibility for the planning and budgeting for the state. *See* Fla. Const. Art. IV §1.

In 2020, the citizens of Orange and Osceola Counties exercised their constitutional right to elect their State Attorney, and they overwhelmingly chose Monique Worrell.[2] During her time in office,

[2] SA Worrell won the elections with nearly two thirds (65.7%) of the votes cast; *see* Election Results, Florida Department of State https://results.elections.myflorida.com/Index.asp?ElectionDate=11/3/2020.

SA Worrell has consistently promoted reforms to realize her commitment to fairness and justice in the criminal legal system and her voters' vision of justice. She has created special victims and mental health units,[3] developed a new diversion program to help reduce recidivism,[4] and implemented policies to hold police officers accountable for misconduct.[5] She also convened an innovative violence prevention summit in her community, aimed at developing collaborative solutions to stop crime from happening before it occurred.[6] She has acted in accordance with her obligation to make

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[3] *See* Louis Bolden, *Orange-Osceola State Attorney Creates Mental Health Unit*, Click Orlando (Nov. 18, 2021), https://www.clickorlando.com/news/local/2021/11/18/orange-osceola-state-attorney-creates-mental-health-unit/; Desiree Stennett, *Worrell Creates Special Victims Unit for Domestic Violence, Sex Crime Cases*, Orlando Sentinel (March 1, 2022), https://www.orlandosentinel.com/2022/03/01/worrell-creates-special-victims-unit-for-domestic-violence-sex-crime-cases/.

[4] Christopher Cann, *DeSantis-appointed State Attorney Cancels Diversion Programs Following Worrell's Ouster*, Orlando Sentinel (Sept. 7, 2023), https://www.orlandosentinel.com/2023/08/10/andrew-bain-monique-worrell-policy-changes/.

[5] *See* Megan Mellado, *Worrell Introduces New Policy Aimed at Keeping Officers Who Aren't Credible From Testifying*, WESH2 (Aug. 4, 2021), https://www.wesh.com/article/worrell-brady-policy/37225941.

[6] Marlei Martinez, *State Attorney Monique Worrell Hosts Summit on Violence Prevention*, WESH2 (May 23, 2023), https://www.wesh.com/article/monique-worrell-violence-prevention/43822780.

her community safer and stronger—just as she promised to do.

If the community that elected Worrell disapproves of the way she is performing her job, there are democratic mechanisms in place that allow the community's voice to be heard: the voters could attempt to legally recall her before her term expires, or they could vote for a different State Attorney in the upcoming 2024 elections.

Instead, on August 9, 2023, Governor DeSantis decided to override the will of the people of Orange and Osceola Counties, by suspending SA Worrell based on unsupported allegations of "incompetence and negligence of her duties." *See* the Suspension Order, at 2. Governor DeSantis failed to identify any conduct or specific practice or policy that could justify SA Worrell's suspension and removal under the Florida Constitution. The Governor then replaced SA Worrell with an unelected lawyer, thereby supplanting local control over the community's vision for promoting public safety.[7]

[7] Moreover, the Florida Constitution provides that citizens "shall be an elector of the county where registered." Fla. Const. Art. VI §2. Governor DeSantis's overreach has, in effect, supplanted the decision-making of those citizens and misappropriated that right from the people of Orange and Osceola Counties by impermissibly allowing Floridians outside the county—who elected Governor

The proper way for the Governor to express a disagreement with SA Worrell's job as a prosecutor is to ask voters to support a new State Attorney in the next election—not by divesting voters of their most important and solemn obligation and right in a democracy: their participation in free and fair elections to choose who represents and serves them.

III. The Suspension Order Exceeds the Suspension Authority Granted to the Governor in the Constitution, Which Must Be Narrowly Construed

Governor DeSantis's Order to suspend SA Worrell exceeds the authority granted in the Florida Constitution. Although the Florida Constitution vests the Governor with "supreme executive power," his powers are not limitless. As this Court noted, even the phrase "'supreme executive power'" is "not so expansive," and the Constitution must be read as a "limitation, rather than a grant of, power" to a governor. *Whiley v. Scott*, 79 So.3d 702, 715 (Fla. 2011);

DeSantis—to dilute Orange and Osceola Counties voters' right to elect their own State Attorney. *See Reynolds*, 377 U.S. at 568 ("An individual's right to vote for state legislators is unconstitutionally impaired when its weight is in a substantial fashion diluted when compared with votes of citizens living in other parts of the State.").

see also Fla. Const. Art. I §1 ("All political power is inherent in the people.").

Governor DeSantis abused the limited grant of power in the executive by suspending an elected official because he disagrees with her—and the voters who elected her. He has declared that he—and not the State Attorney or voters who elected her—decides how justice will be pursued in their community. If allowed to stand, this decision will open the door to a no holds barred future removal of duly elected local officials that threatens the essence of our democratic processes.

A. The Florida Constitution Limits the Grounds for Suspension of an Elected Official, None of Which Were Satisfied by the Suspension Order

Article IV §7 of Florida's Constitution provides that a governor "may" suspend an elected official from office for "malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform official duties, or commission of a felony." The Order here makes no attempt to claim there are sufficient grounds based on malfeasance, misfeasance, drunkenness, commission of a felony, or permanent inability to perform official duties. Instead, the Order dresses up what appears to be, at best,

policy disagreements as vague claims of incompetence and neglect of duty.[8]

A review of how section 7 has been interpreted in the past shows that far more than policy disagreements must be relied upon to fall within the scope of the governor's suspension authority. A governor's power to remove an elected official is "limited" to the reasons specified in §7. *State ex rel. Hardie v. Coleman*, 155 So. 129, 130 (Fla. 1934). And one court has already told this governor that "[r]unning a state attorney's office is the state attorney's job, not the governor's. A governor *cannot* properly suspend a state attorney based on policy differences." *Warren v. DeSantis*, __ F.Supp.3d __, 2023 WL 345802, * 1 (N.D. Fla. 2023) (emphasis added).

Further, the grounds specified in section 7—which should be interpreted in relation to one another[9]—indicate that there is a high

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[8] For a summary of the many flaws and deficiencies in the Order *see* Petition for Writs of Quo Warranto and Mandamus, pp. 5-8, 11-32.

[9] *See Cosio v. State*, 227 So.3d 209, 213 (Fla. 2d DCA 2017) (courts rely on the doctrine of noscitur a sociis, also known as the "associated word canon" to "'avoid ascribing to one word a meaning so broad that it is inconsistent with its accompanying words"' (quoting *Gustafson v. Alloyd Co.*, 513 U.S. 561, 575 (1995)).

bar for suspension and removal. For instance, this Court has defined "malfeasance" and "misfeasance" to address conduct that would be similar to that of an official committing a felony; "malfeasance" is limited to "evil conduct" or an "illegal deed" and "misfeasance" is limited to performing the job in an "illegal manner." *Hardie,* 155 So. at 132. Similarly, this Court defined "incompetence" for §7 purposes as applicable to a "physical, moral, or intellectual quality" that "incapacitates one to perform the duties of his office", and "neglect of duty" as a neglect or failure to perform duties required by virtue of the office, and such neglect of duty is gross when the "neglect is grave and the frequency of it is such as to endanger or threaten the public welfare." *Israel v. DeSantis*, 269 So.3d 491, 496-97 (Fla. 2019). This high bar for conduct to be considered "neglect of duty" or "incompetence" is consistent both with the other grounds enumerated and with the limited grant of suspension authority conveyed to the governor.

In prior cases in which a governor's discretion to suspend an elected official has been applied and upheld, the conduct far

exceeded mere disagreements or vague assertions. *See State ex rel. Hardee v. Allen*, 172 So. 222 (Fla. 1937) (upholding a governor's decision to remove a solicitor of criminal court of record for neglect of duty when the solicitor for two years failed to prosecute gambling offenses, including two such offenses that were committed in the presence of the solicitor himself and members of law enforcement); *Jackson v. DeSantis*, 268 So.3d 662, 663 (Fla. 2019) (upholding a decision to remove a superintendent of schools based on information from a grand jury investigation that drew a direct line between the superintendent's actions and a systemic failure that permitted the abuse of children).

On the other hand, courts have ruled that when reasons for the suspension are too vague, they are insufficient. See *Crowder v. State ex rel. Baker*, 285 So.2d 33, 35 (Fla App. 2D 1973) (reasons cited in the suspension order by the governor were too "vague and indefinite" to support the suspension order); *Warren*, 2023 WL 345802, * 5 (a "minimally competent investigation" would have shown that the governor's allegations for suspension were insufficient). Therefore, it is clear that even if Governor DeSantis or this Court disagrees with

the manner in which SA Worrell—or any elected official—conducts her job, when those disagreements are based on reasoned, policy or other decisions well within her lawful exercise of discretion, they do not and cannot amount to justification for suspension.

B. Democratic Principles Require the Governor's Suspension Authority to be Exercised With Great Caution

Florida's Constitution and the powers given to the executive should not be subject to the political whims of any one politician or any party. As Governor DeSantis himself has said, prosecutor offices and decisions on who and how to prosecute should not be "weaponize[d]" to "impose a political agenda."[10] The Governor may wholly disagree with how SA Worrell runs her office. And he is free to say so. He is also free to endorse anyone who campaigns against her. What he is *not* free to do is impose his political views on the duly elected official who runs the office.

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[10] Maggie Haberman and Jonathan Swan, *DeSantis, Breaking Silence on Trump, Criticize Manhattan Prosecutor*, N.Y. Times (March 20, 2023), https://www.nytimes.com/2023/03/20/us/politics/desantis-trump-indictment.html.

Today's case presents an abuse of power by a Republican governor attacking a Democratic prosecutor. But if this Order is allowed to stand, tomorrow it could be a Democratic governor suspending Republican officials. This Court must not permit a situation where every elected official has to fear being suspended anytime a new governor with a different set of political priorities and values enters office. More importantly, voters should not fear that their votes for local officials would be rendered meaningless by the political whim of whoever happens to be governor.

Whether applying section 7 to this governor, the next governor, or a governor decades from now, the suspension authority must remain limited to suspending officials whose egregious conduct warrants immediate action, without having to wait for an election. The executive power to suspend, though limited, is massive in its implications—single-handedly making the decision an elected official should no longer serve—which is why this Court must ensure it is wielded and upheld in a limited manner. It must be used carefully and no court should condone its use when it relies on vague allegations, policy disagreements, and hyperbole about violent criminals or the need to be "tough on crime."

C. If The Current Suspension Order Is Sufficient to Form a Basis for Removal, There Are No Future Guardrails for Undemocratically Removing Elected Leaders

As noted above, suspension by a governor is permitted only to address misconduct, malfeasance, misfeasance, felonious behavior, incapacity, incompetence, or neglect of office. It *must* be a high bar. But if the governor's determination to suspend a prosecutor whom he disagrees with is permitted to continue, the floodgates will open to allow removal far beyond what the constitution ever contemplated. Any guardrails for the future will be off. Thus, if this Order is not invalidated, future elected leaders in Florida will serve at the whim of the governor – not the will of the people.

Everyone elected to office has to make decisions, based on time and resource restraints, on how best to perform the duties of the office. It goes without saying that not every decision will be correct and voters will not always agree with those decisions. That is why there are elections. But a review of the Order to remove SA Worrell should send shivers down the backs of every elected official in the state. If allowed, it would tell every elected official that how you run

your office should not be based on the vision you share during your campaign, your own decision-making, or even what your voters want. The message would be that all decisions need to be based on what the governor at the time wants. It would allow the governor to, in effect, have full control over how every elected official makes decisions. That is simply inconsistent with every notion of our system of government.

Specifically as to State Attorneys, deciding how to promote public safety, serving as a leader on criminal justice issues, and protecting the constitutional rights of members of their community are the essence of the job. If these actions serve as the basis for the suspension of SA Worrell, then the job stability of any and all State Attorneys—and their ability to implement what voters elected them to carry out—is on precarious ground.

If the actions at issue here are deemed to be a permissible basis for suspension, then in any case where a prosecutor's decision to prosecute differs from the governor's priorities, the prosecutor elected by her community to make these exact discretionary decisions would

need to choose whether to act in accordance with the governor's (and not her own) views or face suspension.

The Order, if left intact, would create the risk that any State Attorney can be suspended whenever a governor disagrees with their—and, necessarily, the voters'—policy priorities. The Order will thus have a chilling effect on the exercise of independent lawful discretion by all state attorneys and also strip communities of their voting rights and prerogative to select prosecutorial leaders who make judgment calls and exercise discretion in a manner they support.

IV. The Suspension Order, If Allowed to Stand, Erodes Public Trust in the Justice System, and Thus Threatens Public Safety

By depriving Florida voters of the ability and right to elect their own State Attorney, the Order erodes trust in the fair and appropriate operation of our justice system. This is deeply troubling; communities will suffer if their electoral decisions are not respected and they cannot have faith in the integrity of the rule of law.

Prosecutors depend upon public trust to realize their mission of upholding justice and promoting public safety for all members of the

community. When individuals have confidence in legal authorities and view the police, the courts, and the law as legitimate, they are more likely to report crimes, cooperate as witnesses, and accept police and judicial system authority.[11] Prosecutors who engage with their communities can see enhanced public confidence in the criminal justice system, which in turn makes the public more likely to report crimes and to cooperate as witnesses.[12] In contrast, when the public does not trust law enforcement and prosecutors, community members may be less willing to report crimes, serve as witnesses, testify in cases, and generally accept police and judicial

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[11] *See* Tom R. Tyler & Jeffrey Fagan, *Legitimacy and Cooperation: Why Do People Help the Police Fight Crime in Their Communities?*, 6 Ohio St. J. Crim. L. 231, 263 (2008) (available at: https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=1388&context=faculty_scholarship) (hereinafter: Tyler & Fagan); Tom R. Tyler & Jonathan Jackson, *Popular Legitimacy and the Exercise of Legal Authority: Motivating Compliance, Cooperation and Engagement*, 20 Psych., Pub. Pol'y & L. 78, 78-79 (2014) (available at: https://law.yale.edu/sites/default/files/area/center/justice/document/ssrnpopularlegitimacy.pdf).

[12] Fair and Just Prosecution, *Building Community Trust: Key Principles and Promising Practices in Community Prosecution and Engagement* (2018), https://fairandjustprosecution.org/wp-content/uploads/2018/03/FJP_Brief_CommunityProsecution.pdf.

system authority.[13] This reluctance hampers the ability of the police and prosecutors to seek justice and promote public safety.

When a community thinks they will have no say in how their democratically elected officials carry out their jobs, and whether these officials are able to remain in office, public trust in the system suffers, and so does public safety. The community cannot rely on democratic norms, will not think the system is fair, and may, as a result, not feel compelled to participate in it. That result is especially likely here, where the Governor is interfering with the well-established role of duly elected prosecutors and eviscerating the voters' right to choose who should represent them and how.

The erosion of trust that the Order has created, and will continue to create, should thus be of great concern to all who value a system where the roles and independence of elected officials—and

[13] *See* Tyler & Fagan, *supra* note 11, at 265; German Lopez, *Police Have to Repair Community Trust to Effectively do Their Job*, Vox (Nov. 14, 2018), https://www.vox.com/identities/2016/8/13/17938262/police-shootings-brutality-black-on-black-crime.

in particular prosecutors—are protected and free from inappropriate, and ultimately undemocratic, political interference.

CONCLUSION

For the foregoing reasons, the Court should find that Governor DeSantis exceeded his authority in suspending Monique Worrell as State Attorney for the Ninth Judicial Circuit and grant the relief requested by her in the pending writs.

Dated: September 18, 2023

Respectfully submitted,

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I hereby certify that on this 18th day of September, 2023, a true and correct copy of the foregoing amicus brief was e-filed though the Florida Courts E-Filing Portal and will be served via the portal upon the following counsel:

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CERTIFICATE OF COMPLIANCE

I hereby certify that this amicus brief complies with the font requirement by utilizing Bookman Old Style 14-point font as outlined in Rule 9.045(b) of the Florida Rules of Appellate Procedure and is within the word count as required by Rule 9.370(b) of the Florida Rules of Appellate Procedure. This amicus brief contains 4184 words.

/s/ James E. Felman
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APPENDIX A
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