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IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR BROWARD COUNTY
CASE NO.

SCOTT ISRAEL,
As the Elected Sheriff of
Broward County, Florida,
Petitioner,

versus

GOVERNOR RON DESANTIS,
Governor, State of Florida,
Respondent.
_____/

PETITION FOR WRIT OF QUO WARRANTO

Petitioner Scott Israel, in his capacity as the elected Sheriff of Broward County, Florida, petitions this Court to issue the Writ of Quo Warranto directed to Governor Ron DeSantis in his capacity as Governor of the State of Florida.

I. BASIS FOR INVOKING JURISDICTION OF THE COURT.

This petition seeks issuance of the writ of quo warranto directing Governor Ron DeSantis to demonstrate the authority and legal basis for the issuance of Executive Order 19-14, dated January 11, 2019,

suspending Sheriff Israel. (App. 1).[1]

This petition invokes the Court's jurisdiction as specified in Article V, Section 5(b) of the Florida Constitution and Rules 9.030(c)(3) and 9.100(a) of the Florida Rules of Appellate Procedure. This Court has original jurisdiction. *State ex rel. Vance v. Wellman*, 222 So. 2d 449 (Fla. 2d DCA 1969). This Petition is properly initiated as an original action in the Circuit Court because Respondent Ron DeSantis is the Governor of the State of Florida, a state officer pursuant to Article IV, Section I, Florida Constitution, whom Petitioner claims has exercised executive powers in a manner inconsistent with the Constitution and substantive Florida law. In accordance with Rule 9.030(c)(3), of the Florida Rules of Appellate Procedure, this Court is empowered to "issue … all writs necessary to the complete exercise of its jurisdiction" and, pursuant to Article V, Section 5(B), this Court has "the power to issue writs of ... quo warranto ... and all writs necessary or proper to the complete exercise of their jurisdiction."

Quo warranto is "the proper method to test the exercise of some

[1] The Appendix to be submitted pursuant to Rule 9.220 of the Florida Rules of Appellate Procedure is identified as App.

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).

The Florida Supreme Court has "held that the power vested in the Governor to suspend an officer … is executive." *Owens v. Bond*, 83 Fla. 495, 91 So. 686 (1922). Generally, "so 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 exceptions to this general rule serve as an important check and balance on abuses of power by the Executive Branch. Chief among these 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).

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."), Governor DeSantis exceeded his constitutional authority in suspending Sheriff Israel for political reasons not within the scope of the constitutional suspension prerogative.[2] 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. At stake in this case is the guarantee of the Florida Constitution that "[a]ll political

[2] Governor DeSantis suspended four public officers since assuming office on January 8, 2019. *See* Executive Order 2019-13 (January 11, 2019); Executive Order 2019-14 (January 11, 2019); Executive Order 2019-19 (January 18, 2019); Executive Order 2019-49 (February 22, 2019), available at https://www.flgov.com/2019-executive-orders/.

power is inherent in the people." Art. I, §1, Florida Constitution.[3]

The Florida Supreme Court recognized the constitutional limitations on the Governor's suspension authority in *State ex rel. Hardie v. Coleman*, 115 Fla. 119, 134, 155 So. 129, 135 (1934):

> 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.

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 trampling of the people's right to decide their local elected officials, but implicates the role of the Legislature as well. A gubernatorial suspension ordinarily results in the exercise of the Florida Senate's concomitant role

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[3] 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)

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 good-serving public official for political reasons, all without even a modicum of judicial review.

The matter of Sheriff Israel's suspension is presently pending before the Florida Senate which convened in regular session on March 5, 2019, and is anticipated to adjourn on May 3, 2019. The Senate President appointed a Special Master to preside over a hearing on the suspension review, currently scheduled to take place during the week of April 8, 2019. At a Case Management Conference on February 19, 2019, the Special Master directed the Governor to submit a Bill of Particulars in accordance with Florida Senate Rule 12.9(4).

The Governor's Bill of Particulars (App. 7), despite numbering 14 pages, identifies not a single constitutional or statutory duty that was neglected by Sheriff Israel or for which he demonstrated incompetence,

the only stated constitutional reasons for his suspension. To the contrary, instead of particularizing the asserted basis for the suspension, the Bill of Particulars represents a general commentary on the Governor's dissatisfaction with policy decisions of the Broward Sheriff's Office and operational actions with which the Governor disagrees. Most disconcerting from the constitutional perspective of the narrow grounds allowed for suspension, the Governor actually falsely accused Sheriff Israel of being "responsible for failing to protect the [lives]" of the innocent victims of the Fort Lauderdale Airport shooting and the parkland massacre, notwithstanding that the criminal shooters in both instances made individual decisions to kill innocent people and both were apprehended and arrested by law enforcement authorities. In the case of the Fort Lauderdale Airport shooting, the murderous criminal was arrested and seized in less than 85 seconds by BSO Deputy Jesus Madrigal, who was named Deputy of the Year in 2018 by the Florida Sheriffs Association for his outstanding conduct in the line of duty.

This Court's jurisdictional authority to determine the constitutional authority of the Governor to exercise his power to suspend an elected public official is precisely in keeping with the role and

jurisdiction of the courts in determining whether the executive authority is being exercised in a constitutionally compliant manner. The Florida judiciary is well-equipped to test the very foundation for a Governor's exercise of the limited constitutional suspension authority. Courts even view the petition for writ of quo warranto as the appropriate mechanism to test the Governor's appointment authority of public officers. *See State ex rel. Bruce v. Kiesling*, 632 So. 2d 601, 602 (Fla. 1994) (exercising original jurisdiction on a petition for quo warranto challenging the Governor's appointment of commissioner to the Florida Public Service Commission), a power that is ancillary to the suspension authority.

As demonstrated in this petition, the Governor's exercise of the constitutional suspension authority for political reasons without a founded basis to invoke the limited grounds for suspension justify this Court's authority to review the unconstitutional suspension of Sheriff Israel.[4]

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[4] As further discussed in the petition, the constitutional suspension authority, derived from Art. IV, Section 7(a) of the Florida Constitution, provides for suspension only "for malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform official duties, or commission of a felony, …"

II. SPECIFIC FACTS UPON WHICH PETITIONER RELIES.

Running as a Democrat against the then-incumbent Republican Sheriff, Scott Israel was elected as the 16th Sheriff of Board County in 2012. Sheriff Israel, re-elected as Sheriff to serve a 4-year-year term in 2016, served as the Broward Sheriff until his suspension by Governor DeSantis on January 11, 2019. Sheriff Israel is a sworn law enforcement officer whose career began as a patrol officer for the Fort Lauderdale Police Department in 1979. As Sheriff, he leads a public safety and law enforcement agency of 5,600 budgeted positions that includes 1,500 law enforcement personnel, 1,300 detention deputies, 700 firefighters, 450 regional communications staff, and 150 child protection investigators, among other employees.

Citing Sheriff Israel for his responses to the Fort Lauderdale airport shooting on January 6, 2017, and the Marjorie Stoneman Douglas High School shooting ("MSD shooting") on February 14, 2018, Governor DeSantis suspended him for "neglect of duty and incompetence for the purposes of Article IV, Section 7, of the Florida Constitution." Previous Governor Rick Scott, who was in office when the two cited incidents occurred and for a significant time thereafter, did not act to suspend

Sheriff Israel.

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. 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. This CALEA national certification is known as the "triple crown" among law enforcement agencies, with the BSO having attained Excelsior Status. The entire BSO has 18 separate accreditations in Broward Sheriff Israel's tenure.

In addition to his statutory responsibility as Broward County's chief law enforcement officer, the Broward Sheriff's Office under Sheriff Israel, entered into or continued existing operational contract

agreements by which municipalities within Broward County contract with the BSO to effect municipal law enforcement. Parkland, Florida is a contracting municipality with the BSO. In every instance of municipal contracting for law enforcement services, the staffing allocation pursuant to the contract is determined by the contracting agency, not BSO.

In the case of the Parkland operating contract, the appointment of commanders (holding the rank of Captain) is made in cooperation and consultation with the contracting entity, the Town of Parkland, with the Town selecting its commander from a list of recommended officers. When BSO entered into the Parkland contract, the BSO was required to absorb the existing Parkland Police Department officers into the BSO organization.

The Fort Lauderdale Airport and Seaport are also contracting entities with BSO whose law enforcement jurisdiction does not separately come within the statutory duties of the Broward Sheriff.

Under Sheriff Israel's guidance, the BSO instituted "active shooter training" for its deputies and the community as early as 2013, even though such training was not required by the Florida Criminal Justice Standards and Training Commission ("CJSTC"). The BSO training

program exercise at Pompano Beach High School in May 2013 was considered a template for police trainers nationwide, evaluating the multi-disciplinary multi-team, coordinated response to a group of gunmen entering the school. This real-life simulation exercise was a part of BSO's twice-a-year full training scenarios.

Prior to the February 14, 2018 MSD shooting, BSO conducted active shooter training for all its deputies in 2015 and 2016, and was continually involved in staggered training for its deputies, monthly training for specialty units, including conducting classes on building tactics, handgun and rifle training, combat lifesaver programs, rescue task force exercises, and tabletop applications for active shooter scenarios that add to active shooter response capabilities.

BSO's training processes and practices were aligned with national best practices, including the implementation of the now much-derided BSO Active Shooter Policy in effect at the time of the Marjorie Stoneman Douglas High School mass shooting. That policy, using "may" as the operative consideration when considering a law enforcement response to an active shooter, stated: if real time intelligence exists, the sole deputy or team of deputies may enter the area and/or structure to preserve life."

This policy was consistent with national standards, had not been criticized previously by the Florida Department of Law Enforcement, and did not materially differ from policies utilized by other Florida law enforcement agencies. The policy is not and has never been considered a limitation on law enforcement entry into an active shooting or hostage situation. Instead, it is a reasonably prudent authorization that adjusted the existing Todd Fatta policy that was put in place before Sheriff Israel's election. The Todd Fatta policy requires all high risk operations to include a SWAT Team analysis and other protocols before entry is authorized.

Also as a part of its active shooter training program, BSO implemented and conducted training for trainers programs for the Broward County School Board consistently through 2018. This project included a joint program with the Broward County Police Chiefs' Association to design and implement a multi-jurisdictional cadre of instructors to teach Broward County Schools personnel about how to respond to an active shooter incident. By 2017, all of Broward County's elementary schools were completed, and half of the middle schools were done by 2018. While this is a Broward County School Board program, the

BSO coordinated its creation, scheduled instructors to participate in the training, and provided the necessary expertise and resources to assure the success of the still-ongoing program.

On January 6, 2017, a shooting occurred at the Fort Lauderdale Airport, resulting in the mass murders of five travelers. The presence of BSO deputies on the scene at the airport resulted in the near-immediate apprehension of the shooter within less than 85 seconds of the first shots being fired. Broward Deputy Jesus Madrigal, assigned to the Delta Checkpoint in Terminal 2, immediately responded to the sound of the gunshots while on duty, and took the shooter into custody. Acting on his training, Deputy Madrigal's prompt response led to being in a position to help the victims obtain medical attention quickly and save more lives. A subsequent investigation of the shooting led to the publication of an official post-event report that confirmed that BSO worked seamlessly with all agencies that responded to the incident. The investigation confirmed that the shooter planned the shooting by retrieving the gun he had sent through his checked baggage (a Walther 9mm pistol he had legally purchased), loaded the weapon in the men's room, and proceeded to randomly shoot people in the baggage claim area. The shooter was

convicted of federal charges and sentenced to five life terms plus 120 years.

The final, as published, version of the Fort Lauderdale-Hollywood Airport Critical incident Report (October 6, 2017), found no negligence, incompetence, or neglect of duty on the part of Sheriff Israel or the BSO. It did, however, criticize Broward County's emergency radio communications systems that is operated and controlled by Broward County. Sheriff Israel and the BSO had for years pressed the County to upgrade and enhance its regional emergency communications system. BSO is a user of the County's regional communications system, and has no control over its operation, implementation, or effectiveness.

The County's emergency radio communications system at the time of the Airport shooting was overwhelmed and unable to handle the communications demand. Even then, the BSO established a Command and Control Center that enabled 17 parking facilities to be cleared. The airport terminals were swept and cleared by the 18 responding SWAT Teams, and more than 15,000 passengers and other personnel were cleared and evacuated to safekeeping.

The fact that the County's fractured communications system

allowed two law enforcement agencies responding to the scene of the MSD shooting to utilize different radio channels without coordinating through the BSO led to significant communications and response problems at the scene. The Broward County Administrator was, at the time of the airport shooting, involved in the complicated and protracted process of working toward the needed system upgrade. That upgrade is still in progress by Broward County.

The February 14, 2018 mass shooting at Marjorie Stoneman Douglas High School in Parkland, Florida is indeed a tragedy. Sheriff Israel, along with all residents of Broward County, shares the grief of the parents and loved ones of the murdered children, teachers, and administrators. Neither Sheriff Israel nor the BSO were responsible for the mass shooting, nor was Sheriff Israel guilty of neglect of duty and incompetence in connection with that tragedy. As the Marjorie Stoneman Douglas High School Public Safety Commission Report (January 2, 2019) ("MSD Report") detailed, the shooting was planned and executed by a former student who was in lawful possession of the deadly weapons he used to exact his revenge on the school for unknown reasons that he can only be attributed to the workings of his diabolically twisted mind. The

MSD found no incompetence or neglect of duty on the part of Sheriff Israel, but offered a constructive critique of what went wrong that day and in the many months preceding the shooter's deadly assault, including the failure of on-site Deputy Scott Peterson to enter the school to locate and confront the shooter.

MSD Commission Chair Sheriff Bob Gualtieri, the elected Sheriff of Pinellas County and a licensed lawyer in good standing with The Florida Bar, has stated publicly that he saw no basis for Sheriff Israel's suspension from office as a result of the Marjorie Stoneman Douglas shooting. In an interview with journalist Tony Pipitone, Chair Gualtieri confirmed that nothing in the MSD Commission report constituted grounds for the removal of Sheriff Israel from office by the Governor. https://www.nbcmiami.com/news/local/MSD-Commission-Chair-Would-Not-Recommend-Removal-of-BSO-Sheriff-From-Office-502532751.html (December 11, 2018).

The MSD shooting, however, was used during the political campaign for Governor as a platform by then-candidate DeSantis to demand the removal of Sheriff Israel. He made a political campaign promise to parents of the murdered students and the National Rifle

Association ("NRA") that he would remove Sheriff Israel from office if then-Governor Scott did not do so. Yet, Governor Scott, fully informed of all the information purportedly considered by Governor DeSantis, chose not to exercise the suspension power in connection with conduct occurring during his term as Governor. Governor DeSantis made good on that campaign pledge when he suspended Sheriff Israel on January 11, 2019, citing neglect of duty and incompetence as the grounds for the suspension. As further evidence of the abjectly political nature of his suspension order, Governor DeSantis addressed his suspension of Sheriff Israel during his inaugural State of the State speech to a joint session of the Florida Legislature on March 5, 2019. In that speech, the Governor warned the Senate to not 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).

III. NATURE OF RELIEF SOUGHT.

Petitioner seeks relief because Respondent exercised executive

powers in a manner inconsistent with Article IV, § 7 of the Florida Constitution and Florida law. Sheriff Israel seeks the issuance of the writ of quo warranto to require Governor DeSantis to demonstrate both his authority and the jurisdictional basis to issue Executive Order 19-14, suspending him from his elected office as Sheriff of Broward County.

The facts recited in Executive Order 19-14 do not identify any constitutional or statutory duty or authority that was neglected or exercised in an incompetent manner. The Executive Order merely objects to Sheriff Israel's operation of the Broward Sheriff's Office in matters of operational discretion, and faults him, without any founded factual basis, for the deaths of innocent mass shooting victims at the hands of criminals intending to commit murder. The facts recited in Executive Order 19-14, and as augmented in the Bill of Particulars, do not identify any action or omission, individually or collectively, for which Sheriff Israel can be suspended under the Governor's limited constitutional authority. Governor DeSantis is without authority to suspend Sheriff Israel.

Given the significant public interest in the Governor's exercise of suspension authority under the Florida Constitution, the right of public officers to public office, the right of local electors to select their officers,

and the imminence of the Senate's consideration of Sheriff Israel's removal from office based upon the allegations in Executive Order 19-14, Petitioner requests expeditious review of this matter. For the same reasons, a proceeding in any other non-judicial forum is inadequate to afford the requested relief.

IV. ARGUMENT.

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 remove 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 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. The Florida Supreme Court so decreed in *Hardie*, 155 So. at 134:

> 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.

The procedural method by which the provisions of Art. IV, Section 7 of the Florida Constitution are exercised by the Governor are 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 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 is required to specify facts, not opinions or conclusions, sufficient to advise both the petitioner and the Florida Senate as to the charges made and the basis of 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. Insufficient Predicate for Suspension.

The Executive Order stands as the entire stated basis for Sheriff Israel's suspension. It offers no objective factual predicate for concluding Sheriff Israel neglected a "duty" of office or incompetently performed an identified duty. To the contrary, the Executive Order identifies no duty that was neglected or incompetently performed by Sheriff Israel. The recounting of allegations of the two mass murders in Broward County, effected by two criminals intent on taking human life, does not identify a

single duty that Sheriff Israel neglected. Sheriff Israel cannot be suspended from office as a political ploy because the Governor deems the suspension of the democratically elected Sheriff to be a convenient fulfillment of a campaign promise and to satisfy the National Rifle Association.

The "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 "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.

Neither the Executive Order nor the Bill of Particulars specify facts, as opposed to policy decisions, grounded on the mandatory duty at issue as the grounds for suspension. There is no distinction offered between any purported conduct attributable to others as opposed to Sheriff Israel, and is thereby inconsistent with the constitutional mandate that the

conduct or omission at issue be that of the public official.[5] 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 exercised.

The Governor's citation to the "neglect of duty" provision of the Constitution is measured against the Supreme Court's interpretation of that provision in *Hardie*, 115 Fla. at 125-26, 155 So. at 132:

> Neglect of duty has reference to the neglect or failure on the part of a public officer to do and perform some duty *126 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 [sic], ignorance, or oversight. When such neglect is grave and the frequency of it is such as to endanger or threaten the public welfare it is gross. *Attorney General v. Jochim*, 99 Mich. 358, 58 N. W. 611, 23 L. R. A. 699, 41 Am. St. Rep. 606.

So, too, is the "incompetency" provision subject to exacting specification, as additionally explained in *Hardie*, 115 Fla. at 126-27, 155 So. at 133:

> Incompetency as a ground for suspension and removal

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[5] 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).

> 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.

Here, the Governor has substituted his preference for what should have happened in Broward County during Sheriff Israel's tenure in place of what Sheriff Israel did in fulfilling his constitutional and statutory obligations. 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 the 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 decision as to the exercise of discretionary authority not otherwise mandated by the Constitution or statutes. The Governor is not permitted by the Florida Constitution to second guess the discretionary decision-making by an elected official in the scope of exercising that official's lawful authority.

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.").

As discussed in the following portion of this petition, the Executive Order identifies no mandatory duty on the part of the Sheriff, and provides no objective facts identifying the failure to execute that duty.

1. Appointment of Deputies.

The Executive Order purports to hold Sheriff Israel responsible for the actions of the BSO deputies as a basis for suspension, citing §30.07, Florida Statutes (2018), that holds the sheriff responsible for the "neglect and default of whom in the execution of their office the sheriff shall be responsible." Apart from the fact that this statute represents a legislative determination of civil liability and not an alteration of the constitutional suspension power, there is no objective basis for suspension by holding Sheriff Israel constitutionally responsible for the abject failure of Deputy

Scott Peterson to act in performance of his law enforcement function.

The vast majority of the law enforcement officers who responded to the Marjorie Stoneman Douglas High School on February 14, 2018, ably discharged their duties and responsibilities in connection with this unannounced mass shooting. The inexplicable failing of an assigned deputy cannot and does not provide grounds for the Sheriff's suspension.[6]

2. Powers, duties and obligations of the Sheriff.

Sheriffs are to "be conservators of the peace in their counties" in pursuance of §30.15, Florida Statutes. No part of the suspension order or particulars identifies any objective facts denoting Sheriff Israel's failure to comply with that statutory duty or his incompetent exercise thereof.

3. Appointment of command staff.

Sheriff Israel's appointment of command staff was reasonably within his allowable authority, and was not in derogation of his responsibilities. The Executive Order offers no facts even suggesting he negligently or incompetently appointed command staff.

4. Training of deputies.

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[6] The employment status of BSO deputies is defined in substantial measure by the Collective Bargaining Agreement.

Although the Executive Order faults Sheriff Israel for training his deputies, the Governor presents no facts showing any deficiency or incompetence in the training process. All BSO training was consistent with and measured up to Florida and national law enforcement training. The Executive Order does not identify a single training requirement that was neglected by Sheriff Israel or incompetently administered. BSO complied with the obligation to make certain that all its deputies were certified and that their law enforcement certifications were valid and current. The requirements to maintain a law enforcement certification are governed by the Florida Criminal Justice Standards and Training Commission (CJSTC). Active shooter, tourniquet/hemostatic bandage and rescue task force training are not required by CJSTC. BSO under Sheriff Israel's command is a certified FDLE Training Center under the CJSTC, and is regularly audited by the FDLE.

While the Governor apparently preferred that Sheriff Israel do more to train deputies, the BSO training curriculum met all national and Florida standards and best practices, complied with FDLE requirements, and provided up-to-date, frequent, thorough, and realistic training to handle high-risk, high stress situations, including mass causality

incidents.

5. Prior law enforcement interactions with MSD shooter.

The executive order states the Broward Sheriff's Office had a total of 21 interactions with the MSD shooter, including two incidents that an internal affairs investigation later found warranted additional follow-up. But there is no demonstrated fact showing the handling of these interactions violated a mandatory duty. The handling of these incidents, some of which involved other law enforcement agencies for which the Governor assessed no fault, was investigated at the direction of the Sheriff. In each case, when violations of policy were found, the violations were sustained and discipline issued. None of the incidents would have prompted a physical arrest, involuntary mental health evaluation, or even further follow-up by law enforcement.

6. Deputy Peterson's dereliction of duty.

Deputy Peterson's decision to not engage the MSD shooter was not done at the direction of Sheriff Israel, and was in fact unknown to Sheriff Israel at the time of the MSD massacre. Deputy Peterson has repeatedly told others that he knew his responsibility was to search for the shooter when he arrived on the scene after 11 of the shootings had already

occurred, but he chose not to do so because he was nearing retirement and did not want to endanger himself. Deputy Peterson's arrival, even if he had moved to confront the shooter, could not have prevented these first 11 tragic and senseless deaths. The active shooter policy did not inform Deputy Peterson of his abjectly scandalous decision to fail to attempt to locate and apprehend the shooter is not any incompetence or neglect of duty for which Sheriff Israel can be held constitutionally responsible.

7. BSO's active shooter policy.

BSO's then-existing active shooter policy has not been determined to be inconsistent with Florida or national law enforcement standards, and no part of the Executive Order even suggests any mandatory duty on the part of Sheriff Israel to even implement such a policy in any form. The policy was never criticized by FDLE or any law enforcement standard organization, and the BSO at all times was certified as being in conformance with all required law enforcement obligations. Even the Governor's citation to the IACP (International Association of Chiefs of Police) model policy on active shooters does not establish any basis for neglect or incompetence. That model policy is silent on the issue whether

a solo deputy is required to immediately enter the scene of an active shooting.

8. Fort Lauderdale Airport shooting incident.

The airport shooting occurred in the Terminal 2 Baggage area. The shooter was taken into custody by the on-duty deputy within 85 seconds of the time the shooting began. No other lives were lost and no other travelers or persons present were in any further danger. The BSO response to the mass shooting was deemed a model of law enforcement action, such that Deputy Madrigal was honored as the Deputy of the Year by the Florida Sheriffs Association in 2018. Other deputies summoned resources to treat the wounded and secure the scene. The airport authority made the decision to continue flight operations and leave the other terminals operational. The FBI was also involved in and responsible for the law enforcement response to the airport shooting. Breaches of security did not occur at the area of the shooting. While passengers panicked upon becoming aware of a shooting, the public reaction was not any result of a failure on the part of Sheriff Israel to perform a mandatory duty. Moreover, the resulting post-event report did not fault Sheriff Israel for neglecting or incompetently exercising a duty.

9. Failures of Broward County's emergency communications systems.

Even as Broward County has been working to upgrade and improve its emergency communications system, the Executive Order does not identify any duty or responsibility on Sheriff Israel's part in the operation of that system. The BSO is just one of the many users of Broward County's system, and has no authority to alter the system or institute its own. Sheriff Israel has been resolute, however, in his dedication to work the County Administrator to bring about the expeditions and effective improvement of the system for the benefit of Broward County. Plainly, there is not basis on which to assert neglect or incompetence in connection with any failings of Broward's communications system.

The interaction between Coral Springs Police Department and the BSO at the time of the MSD massacre was confounded by the deficiencies in the County's communications system. While the Coral Springs Police Department received over 200 911 emergency calls into its system, only 4 were directed to the BSO as a result of the County communications system routing the 911 calls to the Coral Springs Police Department, which local system became overloaded. When that system malfunction

occurred, the calls were not transferred to BSO.

V. CONCLUSION.

Governor DeSantis' authority to suspend Sheriff Israel is in derogation of Article IV, Section 7 of the Florida Constitution. The Governor engineered a political power play that interferes with the right of the public to determine their elected officials, and of Sheriff Israel to execute his duties of office in a manner consistent with the Constitution and laws of Florida. Executive Order 19-14 and the Bill of Particulars do not identify or describe any mandatory duty neglected or incompetently fulfilled by Sheriff Israel. Therefore, Executive Order 19-14 is an invalid exercise of authority. Sheriff Israel is entitled to reinstatement as Broward County Sheriff.

Petitioner further asks this Court to award fees and costs in accordance with §112.44, Florida Statutes, together with all such other and further relief which this Court may deem just and proper.

CERTIFICATE OF SERVICE

I certify that on March 7, 2019, a true copy of the foregoing has been filed via the Court's electronic filing system, which shall serve a copy via email to the following counsel of record, constituting compliance with the

service requirements of Fla. R. Jud. Admin. 2.516(b)(1) and Fla. R. App. P. 9.420:

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