SC17-653

In the Supreme Court of Florida

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

v.

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

ON EMERGENCY NON-ROUTINE PETITION FOR WRIT OF QUO WARRANTO

JOINT RESPONSE OF GOVERNOR RICK SCOTT AND ATTORNEY GENERAL PAM BONDI OPPOSING EMERGENCY PETITION FOR EXTRAORDINARY WRIT

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INTRODUCTION & SUMMARY OF ARGUMENT

Six times this year, one of Florida's newly elected state attorneys asked the State's chief administrative and executive officer to reassign cases from her office to a different state attorney. The requesting prosecutor did not voice any doubts about the legality of such transfers, nor did she say or imply that her status as "the prosecuting officer" of her circuit means that she—and she alone—has the power to try cases arising in her jurisdiction. In keeping with the plain language of a century-old law that has been invoked thousands of times and repeatedly approved by this Court, four of the prosecutor's six requests have already been granted.

As it happens, the requesting state attorney was Aramis Ayala; she made her requests to Governor Rick Scott; and, in four of those six requests, Ayala specifically asked for the case to be handed over to Brad King, her neighboring state attorney in the Fifth Judicial Circuit.

Today, however, State Attorney Ayala asks this Court to rule that the statute expressly authorizing executive reassignments—including the six reassignments she herself requested—is unconstitutional, either on its face or as applied to certain transfers to which she objects. As she now sees it, "[t]he Florida Constitution requires that Ayala prosecute all of the cases at issue here," because one clause of a 1972 amendment to the Constitution says that a state attorney "shall be the prose-

cuting officer of all trial courts in that circuit." Ayala's claim that the executive reassignment in Markeith Loyd's capital murder case is unconstitutional is particularly difficult to reconcile with her March 28 request that Governor Scott reassign to State Attorney Brad King pending charges of aggravated assault with a firearm against Markeith Loyd (separate from the pending capital murder case). If Ayala's duty to serve as "the prosecuting officer" of her circuit "requires" her to try *one* of Loyd's cases, why does it not also require her to try the *other*?

Ayala does not and cannot argue that the text of the Constitution carves out an exception when she herself approves of an inter-circuit transfer. Instead, she asks this Court to ignore a supposedly "clear" and "unambiguous" constitutional mandate and conclude that she need not discharge the otherwise solemn duty that the law, in her view, says she "shall" perform, so long as she "voluntarily cedes power."

That assertion of unilateral authority is in line with Ayala's approach to the highly contentious policy dispute that prompted this litigation. Last year, Ayala ran for State Attorney of the Ninth Judicial Circuit. During the campaign, she did not tell voters that she had any doubts about the death penalty, and she had previously said that she had no qualms with imposing capital punishment on the most egregious offenders. After her election, however, she announced that, based on her own assessment of the State's policy, she would "not be seeking [the] death penalty in the cases handled in my office." Asked by a reporter whether voters had a right to know

about her concededly controversial policy position "prior to" her recent election, Ayala answered: "I mean, they – all voters know now."

In response to Ayala's unilateral decision not to invoke the State's current death penalty law in any case, regardless of individual circumstances, Governor Scott reassigned 23 capital cases in her office (including the Markeith Loyd case) to the state attorney for a neighboring judicial circuit. Ayala claims that those transfers are illegal, because "Florida's Constitution gives *only* the elected state attorney authority to decide how best to prosecute these cases." As she sees it, she not only enjoys "absolute" power to decide whether and how to prosecute a particular case; that power is also *preclusive*—that is, it displaces distinct but overlapping authorities that have long been vested in other governmental officials, including the State's chief executive.

These arguments are simply wrong. In assessing Ayala's novel claims, five considerations warrant particular attention.

First, all three branches of the government—executive, legislative, and judicial—have consistently and protractedly acquiesced in the assignment power Ayala now asks this Court to strike down. The original statute authorizing such transfers dates back to 1905; the Legislature has repeatedly reenacted and expanded the Governor's authority since then; governors of both parties have frequently invoked that authority to promote the ends of justice; and this Court has uniformly upheld such

assignments. Indeed, this Court has ruled that the Governor's reassignment power is "essential to the orderly conduct of the government and the execution of the laws of this State." The statute allowing such transfers, this Court has held, "is clearly within the power of the Legislature to enact." And that statute is not just allowable; it "should be broadly and liberally construed so as to complement and implement the duty of the Governor under the Constitution of the State of Florida to 'take care that the laws be faithfully executed.'"

Ayala argues that such caselaw may be set aside because state attorneys are now elected. But this Court affirmed each and every one of the above-mentioned principles after the advent of elected state attorneys. Ayala also argues that such caselaw was effectively displaced by a constitutional amendment adopted in 1972. In a seminal 1975 decision, however, this Court stood by its prior precedent, after expressly citing the amended text on which Ayala relies. Since that amendment, moreover, governors have issued more than 5,000 reassignment orders. Notwithstanding that extensive practice, Petitioner and her *amici* do not cite a single case—before or after the amendment—holding that any governor lacked statutory or constitutional authority to order such an assignment.

Second, the Governor's orders have the purpose and effect of ensuring rather than impeding the exercise of prosecutorial discretion. Whether illegal or not, Ayala's categorical policy declaration ("I will not be seeking [the] death penalty in

the cases handled in my office") does not involve a traditional exercise in prosecutorial discretion. Instead, it announces an across-the-board determination *not* to exercise discretion—that is, a commitment not to undertake a case-specific analysis to determine whether any particular set of facts and circumstances calls for application of a legislatively-authorized punishment. Her decision ultimately reflects her personal beliefs rather than the law of this State, appropriately applied on a case-by-case basis.

The Governor's orders, on the other hand, do not rule in *or* rule out any particular penalty in any of the cases at issue here. Brad King, the career prosecutor to whom those cases have been reassigned—and the very same prosecutor to whom Ayala asked, earlier this year, that four of her own cases be reassigned—is conducting a case-specific review of each matter. State Attorney King retains full discretion not to seek the death penalty in each case and has already determined (based on a preliminary review) that the death penalty may not be appropriate in some of the 23 assigned cases.

Third, this case is not about Ayala's policy views on the death penalty, which were first announced on March 16, 2017. The novel and extraordinary constitutional authority Ayala asserts, if accepted, will not just apply to prosecutors who decline to enforce the State's death penalty laws. It will also apply to prosecutors who disagree with other kinds of criminal laws and penalties—including, for example, hate-

crimes enhancements, laws that ban the open carrying of firearms, and campaign-finance regulations. Nor can Ayala's theory of "absolute" and preclusive discretion be confined to prosecutors who adopt across-the-board policies of *never* enforcing certain statutes. Some locally elected prosecutors may commit to *always* pursuing certain charges (like particular drug possession charges) or severe sentencing enhancements (such as mandatory minimum sentences) whenever possible and regardless of circumstances. If, as Ayala asserts, she is "imbued with 'absolute' discretion 'in deciding whether and how to prosecute,'" the same will be true of them. In those cases, as here, the chief executive's venerable and modest reassignment authority—an authority regulated by statute and subject to judicial review—can serve as a useful check on the exercise of prosecutorial power.

Fourth, the legality of the Governor's orders does not turn on whether Ayala has violated the law by announcing that she will not be seeking the death penalty in any of her office's cases. Under Florida law, the Governor may order an assignment if, for "any . . . good and sufficient reason," he "determines that the ends of justice would be best served" by effectuating such a transfer. Accordingly, Ayala's asserted discretion to do what she did does not nullify or diminish the Governor's discretion to do what he did.

Finally, and putting all other considerations aside, Ayala has not met her burden of showing that she is entitled to the emergency relief she now seeks. Much is

at stake here, and this Court should proceed cautiously. After all, Ayala asks this Court to rule that a duly-enacted state statute is unconstitutional; that this Court's precedents expressly and repeatedly affirming the validity of that law should be set aside; that the longstanding historical practices and understandings of all three branches of state government should be discarded; that a state attorney may categorically refuse to enforce any and all state laws with which she disagrees, and that the various instrumentalities of the State are all powerless to do anything about it; and, perhaps most significantly of all, that locally elected prosecutors—many of whom may not have policy views with which Ayala and her *amici* agree—enjoy sole, absolute, and constitutionally preclusive discretion to make certain policy-related decisions that touch on criminal prosecutions within their jurisdictions.

Because Ayala's claims fail as a matter of law, this Court should not accept them at any time. At a minimum, however, Ayala cannot properly ask this Court to render an authoritative judgment immediately and conclusively accepting such sweeping and far-reaching departures from existing law where, as here, that judgment would necessarily depend upon the acceptance of the emergency petition's conclusory and heavily disputed factual allegations.

FACTUAL BACKGROUND & PROCEDURAL HISTORY

A. Ayala's Election as State Attorney

On March 1, 2016, Ayala announced her candidacy for the position of State Attorney of the Ninth Judicial Circuit. During the campaign, Ayala stated that one of her "top priorities" if elected "would be to strike the delicate balance between autonomy and consistency." Supp. App. A (Archived Campaign Website). While recognizing the importance of discretion, Ayala sought to guard "against the possibility of different people who committed the same crime experiencing different treatment under the law." *Id.* When "a single attorney" gets to decide whether a case is suitable for prosecution, she explained, "[t]here is no system or standard in place which aims at consistency." *Id.* "While autonomy is essential for prosecutors," she concluded, "consistency is also necessary for proper administration of justice." *Id.*

During the campaign, Florida's death penalty was a prominent subject in the news.[1] Prior to her election, however, Ayala did not tell the voters that she opposed the death penalty, did not voice any public doubts concerning the continuing justification for the death penalty, and did not give any indication that, if elected, she might consider declining to seek the death penalty in all cases to be handled by her office.

The general election was held on November 8, 2016. Pet. 3. Having already

[1] A search of LexisNexis's News Database, limited to the eight-month period spanning Ayala's campaign, yields 1,472 articles in which the term "Florida" appears in the same sentence as the term "death penalty" or "capital punishment."

defeated the incumbent in the Democratic Party primary, Ayala was facing only a write-in candidate, and she won 99.7% of the vote. *Id.*

B. The Loyd Murders

On December 13, 2016, Markeith Loyd fatally shot Sade Dixon at her home and in the presence of her family. Supp. App. B at 2 (Loyd Arrest Affidavit). Dixon, who had been Loyd's girlfriend, was pregnant. *Id.* at 3. Loyd also shot Dixon's brother, Ronald Steward, who survived. *Id.* at 2. Loyd fled. *Id.* After his arrest, more than a month later, Loyd would admit to the shootings after he and Dixon "began to tussle." *Id.* at 6–7.

On the morning of January 9, 2017, Lieutenant Debra Clayton was in the check-out line at Wal-Mart, wearing her uniform. *Id.* at 2. When she stepped outside, a customer alerted her that Loyd was also at the Wal-Mart. *Id.* at 3.

Lieutenant Clayton called for backup and pursued Loyd, who fled. *Id*. Loyd repeatedly shot at Lieutenant Clayton, striking and shattering her hip, causing her to fall, face first, to the ground. *Id.* Lying on her back, Lieutenant Clayton shot at Loyd, trying to save her life. *Id*. at 5. Loyd advanced on her, continuing to fire his .40-caliber weapon at Lieutenant Clayton's head while she was fighting for her life. *Id.* Despite wearing a ballistic vest, Lieutenant Clayton would sustain four gunshot wounds. *Id.* at 5–6. Fellow officers attempted to revive her as she lay bleeding heavily on the ground, their efforts impeded as her throat "continually filled with blood."

Id. at 3. Loyd would later blame Lieutenant Clayton for her own murder, opining that she might not have died had she "'waited for backup.'" *Id.* at 7.

After killing Lieutenant Clayton, Loyd again fled, firing two more shots at another officer, and evading law enforcement for more than a week until his arrest on January 17, 2017. *Id.* at 4, 6. The State alleges that Loyd's conduct satisfied eight different aggravating factors defined in section 921.141(6), Florida Statutes, that would warrant the death penalty.[2] Supp. App. C (State's Notice of Intent).

C. Ayala Asks Governor Scott to Reassign Six of Her Cases to Another State Attorney.

Since taking office in January of this year, Ayala has filed requests for the Governor to reassign at least six of her cases to the state attorney for a different judicial circuit. For four of those cases—including one against Markeith Loyd, separate from his murder case, involving charges of aggravated assault with a firearm—she has specifically requested the appointment of Fifth Judicial Circuit State Attorney Brad King. Supp. App. H ¶9 (Smith Decl.). Governor Scott has issued executive orders approving four of these requested reassignments, including two that asked for the appointment of Brad King. *Id.*; *see also id.* at ¶¶9.a, 9.b, 9.c, 9.d (discussing Executive Orders 17-14, 17-15, 17-20, 17-125).

[2] Under Florida law, "[w]hen one or more of the aggravating circumstances is found, death is presumed to be the proper sentence unless it or they are overridden by one or more of the mitigating circumstances . . . ." *State v. Dixon*, 283 So. 2d 1, 9 (Fla. 1973).

On January 5, Ayala asked Governor Scott to "appoint another State Attorney for the prosecution of" two defendants being tried in the Ninth Judicial Circuit—David C. Buchan and David Lopez Rios. *Id.* at ¶¶9.a, 9.b (citing Attachments B & D—Ayala letters dated Jan. 5, 2017—PDF pgs. 64, 76).[3] Ayala "was counsel of record for both defendants" prior to her election as State Attorney, and the requested reassignments would avoid any "appearance of impropriety." *Id.* at PDF pgs. 65, 77.

On January 20, Ayala requested that Governor Scott "appoint the State Attorney's Office for the 5th Judicial Circuit"—that is, Brad King, the same State Attorney to whom Governor Scott reassigned the 23 cases at issue here—"to continue the prosecution" in *State v. Daniel Savoy Thomas*. *Id.* at ¶9.c (citing Attachment F—Ayala letter dated Jan. 20, 2017—PDF pg. 90). The defendant in that case is related to an employee of the state attorney's office. *Id.* Ayala's letter did not state that she was personally disqualified or subject to an actual conflict of interest; instead, she noted that an unspecified "conflict still exists for this office to prosecute Mr. Thomas," and that the requested reassignment was appropriate "[b]ecause of the appearance of impropriety" that might exist if she were to continue presiding over the case. *Id.* at PDF pg. 91.

Additionally, on March 28, Ayala requested a reassignment of pending

[3] Citations to the Smith Declaration Attachments will include the PDF pagination of the Supplemental Appendix to this Response.

charges against Markeith Loyd (separate from the capital murder case) and Elton Purdy—both to Brad King. *Id.* at ¶¶9.d., 9.e. (citing Attachment H—State Attorney's Office email dated Mar. 28, 2017—PDF pg. 102). With regard to the Loyd matter, Ayala did not state that she was personally disqualified or subject to an actual conflict of interest. *Id.* at PDF pg. 103. Rather, the foundation for her request was the fact that other charges pending against Loyd had been previously reassigned to the Fifth Judicial Circuit. *Id.*

Finally, on April 13—two days *after* Ayala filed her Petition in this Court—Ayala requested a sixth reassignment. *Id.* at ¶9.f. (citing Attachment J—Ayala letter dated Apr. 13, 2017—PDF pg. 108). And for the fourth time, she requested that the Governor appoint Brad King. *Id.* at ¶9.f. In particular, Ayala sought a reassignment regarding a defendant's petition for expungement, citing an unspecified "conflict" that prevented her office from representing the State in that case. *Id.* at PDF pg. 109. As of the date of this filing, the Governor has issued four executive orders granting the requested reassignments, including two that asked for the appointment of King. *Id.* at ¶9.

Ayala's letters and email requesting that the six cases be reassigned did not express any doubts concerning the Governor's statutory or constitutional authority to order the requested reassignments. Nor did she assert the novel claim she now argues before this Court—that the Governor's authority to reassign discrete cases to

another state attorney would effectively strip Ayala, in whole or in part, of her status as "the prosecuting officer" of trial courts in the Ninth Judicial Circuit. *See id.* at Attachments B, D, F, H, J—PDF pgs. 65, 77, 91, 103, 109 (Ayala letters & State Attorney's Office email).

The orders Ayala requested were far from unusual. Approximately 5,570 executive reassignment orders have been issued since January 1, 1973. *Id.* at ¶5. In 2016, the most recent complete calendar year, 213 executive reassignment orders were issued; from January 1 through April 10, 2017, 88 orders were issued. *Id.* at ¶7. Importantly, executive reassignment orders are not always issued at the request of the resident state attorney; a quick survey of available records revealed examples in which a governor issued an executive reassignment order on his own authority after determining the best interests of justice would be served. *Id.* at ¶10.

For example, in Executive Order 02-85, Governor Bush assigned a non-local state attorney to handle a "criminal investigation regarding alleged improprieties and illegalities connected with the citizen's initiative petition to repeal" a county ordinance because it was reported to the Governor that the complainant "supported, endorsed, and financially contributed to" the local state attorney's re-election campaign. *Id.* at ¶10.d. (citing Attachment S—EO 02-85—PDF pgs. 199-202).

Executive reassignment orders have at times been issued not just without the local prosecutor's request, but specifically because of questionable applications of

prosecutorial discretion. For example, Governor Chiles ordered a reassignment where a non-local state attorney "could more effectively investigate and if necessary, prosecute" the death of Kay Cornell Sybers. *Id.* at ¶10.a (citing Attachment K—EO 93-19—PDF pgs. 112–15). The reasons for that conclusion are apparent from Governor Chiles's later amendment to that order, in which he amended the reassignment to include the investigation of the local state attorney, based on allegations of a conspiracy to cover up the Sybers death (presumably by, *inter alia*, failing to bring criminal charges). *Id.* (citing Attachment L—EO 93-125—PDF pgs. 116–18). And when the same local state attorney advised Governor Chiles "that he declines to investigate or present to the Grand Jury, any matters pertaining to alleged selective DUI arrests," the Governor ordered another reassignment, effective as to "allegations that the criminal laws of the State of Florida are being selectively enforced within [the subject judicial circuit], and any other matters which indicate any law enforcement agency, including the Office of the State Attorney, is failing to perform Constitutional duties in a legally appropriate manner." *Id.* at ¶10.b. (citing Attachment N—EO 95-440—PDF pgs. 134–37). This reassignment later was amended twice to include other investigations, including another investigation into the Sybers death. *Id.* (citing Attachment O—EOs 96-35 & 96-47—PDF pgs. 138–42). After William Sybers was convicted of first-degree murder in the killing and "several matters arose during the criminal trial . . . that are in need of further investigation," Governor Bush

issued an order assigning any such matters—as well as any post-conviction proceedings—to the non-local state attorney who prosecuted the case. *Id.* at ¶10.c. (citing Attachment Q—EO 01-157—PDF pgs. 178–81). In each of these instances, the local prosecutor's failure to investigate and prosecute cases appears to have prompted the reassignment.

This Court also plays a role in the executive reassignment process. By statute, "[a]ny exchange or assignment of any state attorney to a particular circuit shall expire 12 months after the date of issuance, unless an extension is approved by order of the Supreme Court upon application of the Governor showing good and sufficient cause to extend such exchange or assignment." § 27.14(1), Fla. Stat. This Court approved the extension of an executive reassignment approximately 268 times between January 1, 2011, and April 10, 2017. Supp. App. H ¶8 (citing Attachment A—list of extensions—PDF pgs. 44–63). As the statutory text makes clear, such approvals could not have been granted unless the Governor showed "good and sufficient cause" for extending the assignments; and, in at least three matters during previous gubernatorial administrations, this Court repeatedly approved extensions of "executive reassignments made without request of the local state attorney," *id.* ¶10, including reassignments apparently prompted by a prosecutor's failure to investigate and prosecute specific cases or categories of cases, *id.* ¶¶10.a., 10.b., 10.c. (citing EOs 93-19 (reassignment of the Sybers death investigation and prosecution; extended six

times), 95-440 (reassignment where state attorney was selectively enforcing criminal laws; extended seven times), and 01-157 (reassignment of matters arising from the Sybers trial; extended two times)).

D. Ayala's Statement on the Death Penalty

On March 16, 2017, three days after the Governor signed revisions to Florida's capital sentencing statute passed by an overwhelming majority of the Legislature, *see* Ch. 2017-1, Laws of Fla., Ayala held a press conference in which she addressed "how my office will handle death penalty cases going forward." Pet. App. D at D-2. After giving "this issue extensive and painstaking thought and consideration," Ayala came to the following conclusion: "What has become abundantly clear through this process is that while I currently have discretion to pursue death sentences, I have determined that doing so is not in the best interest of this community or the best interest of justice. After careful review and consideration of the new statute under my administration I will not be seeking [the] death penalty in the cases handled in my office." *Id.* at D-3.

Ayala particularly identified the considerations underlying her "decision not to seek [the] death penalty," *id.* at D-4, none of which related to the specific facts and circumstances of the Loyd murder or any other pending capital case. In a subsequent press conference, Ayala confirmed that, as to pending death penalty cases, she

planned to withdraw all of her office's previous notices announcing the State's intention to seek the death penalty. *Id.* at D-17.

One reporter noted that, back in the fall of 2015, Ayala was "specifically asked your position on the death penalty," and she told the questioner that she "had no qualm of pursuing the death penalty." *Id.* at D-12. Asked what had changed since then, Ayala answered:

> I can tell you what has changed, is I'm no longer an assistant state attorney. I'm the state attorney. And it requires another level of accountability. *I am required to consider policy, not an individual case*. It is my responsibility to make a determination of whether or not this is justice for this community, *not individual cases.*
>
> There may be cases, even active ones, that I think death penalty may be appropriate because of the egregiousness of the offense. *I have to also consider the other things that I just listed previously in my statement*.

Id. at D-12–D-13 (emphases added).

Another reporter asked: "Is there anything that can make you change your mind?" *Id.* at D-14. Ayala responded:

> If there was a possibility that we could speed up the process, not drag victims through this process where it's grueling, if we could eliminate the cost that citizens have to go through, if we could do those things, I would absolutely feel that it would be properly administered, and if I believed or I had any credible evidence that it caused more harm on this community or the wonderful law enforcement officers who serve us, I would absolutely change my mind.

Id.; *see also id.* at D-20–D-21. In short, Ayala acknowledged that some offenders "may deserve the death penalty, but a case that may deserve it because we feel that

way *must be supported by a statute that is – can be justly administered and enforced*. *That's the issue*." *Id.* at D-19 (emphases added).

Highlighting concerns regarding the consistency of state law enforcement and the uniformity of state law, one reporter asked if there was any other jurisdiction in the State of Florida where jurors would not have the option to decide the fate of someone like Loyd. Ayala answered, "I'm not sure." *Id*. at D-17. Asked whether the people had a right to know that she had concerns about the death penalty "prior to" the election, Ayala answered: "I mean, they – all voters know now." *Id.* at D-23.

E. Governor Scott Reassigns 23 Capital Cases to the State Attorney for the Fifth Judicial Circuit.

On March 16, 2017, Governor Scott signed an executive order assigning the Loyd murder case to Brad King, the State Attorney for the Fifth Judicial Circuit. Pet. App. F (EO 17-66 at 3, 4 (amended in EO 17-75)). The first clause of that order noted that, earlier that same day, Ayala "publicly announced that she will not seek the death penalty in the upcoming criminal prosecution of Markeith Loyd for two counts of First-Degree Murder, for the killings of Sade Dixon, his pregnant ex-girl-friend, and of Lt. Debra Clayton of the Orlando Police Department *regardless of circumstances of those capital felonies and without regard for the presence of applicable statutory aggravators*." *Id.* at 1 (emphasis added). Tracking the language of section 27.14(1), Florida Statutes, the Governor found that "the ends of justice will best be served and there is good and sufficient reason to order the assignment of

another state attorney to discharge the duties" of Ayala "with respect to the investigation and prosecution of Markeith Loyd." Governor Scott subsequently issued additional executive orders in which he assigned King to preside over 22 other capital cases then pending in the Ninth Judicial Circuit. Supp. App. D ¶5 (King Decl.).

King has been a Florida prosecutor since 1981, has served as the State Attorney for the Fifth Judicial Circuit since 1988, and has overseen and personally tried numerous capital cases. *Id.* at ¶¶1, 2. In determining whether to seek the death penalty in a particular case, he "consider[s] the legislatively defined aggravating circumstances enumerated by section 921.141, Florida Statutes, as well as any mitigating circumstances in the case. Based on the evidence in each case, and in consultation with other attorneys in [his] office, [he] then determine[s] whether it is appropriate to seek the death penalty." *Id.* at ¶3.

King describes the reassignments at issue in this case as follows: "Prior to my assignment, I was not asked by the Governor or any of his staff to seek the death penalty in any particular case, nor would I ever commit to seek (or not to seek) the death penalty without reviewing the facts of a particular case and forming an opinion based on my independent judgment whether the facts of the case supported imposing the death penalty." *Id.* at ¶6. In fact, of the 23 capital cases in question, King has already "identified certain cases that, upon preliminary review, may not warrant the imposition of a death sentence." *Id.* at ¶7.

Since accepting the 23 capital cases Governor Scott reassigned to him, King has been "working collaboratively with assistant state attorneys and other staff who have built these cases in order to ensure they are prepared for trial." *Id.* at ¶9. "To date, the State Attorney for the Ninth Judicial Circuit and her staff have cooperated with [King's] assignment." *Id.* at ¶9. In *Florida v. Rosario*, for example, jury selection proceeded as scheduled on Monday, April 17, 2017. *Id.* at ¶11. Consistent with his general practice in his own circuit, King has allowed the "experienced attorneys who developed that case" to remain "responsible for its prosecution." *Id.* In King's view, it is "both common and prudent for a state attorney to rely significantly on experienced assistant state attorneys to prepare and try cases, including homicide cases." *Id.* Given the high level of cooperation and support he has received from Ayala's staff, King does not believe that his assignment is interfering with, or jeopardizing the outcomes of, those cases, and Ayala has never expressed any such view to him. *Id.* at ¶8. In King's experience, "[t]he assistant state attorneys and other staff of the Ninth Judicial Circuit are highly skilled, dedicated, and professional public servants," and King is "confident that [they] will continue to work together to pursue appropriate outcomes in each case" to which he is assigned. *Id.* at ¶11.

F. Ayala's Legal Challenges to the Executive Reassignment Orders

On March 20, 2017, Ayala first challenged the Governor's authority to issue the executive reassignment order by filing a Motion to Stay Proceedings in the Loyd

case, in which she asserted the "Governor does not possess any authority to remove [her]." *See* Motion to Stay Proceedings at ¶12, *State v. Loyd*, Case No. 2016-CF-015738 (Mar. 20, 2017). Ayala requested that the court set a schedule for briefing the issues so that she and the Governor could "be fully heard." *Id.* at ¶16. In a supplemental filing, Ayala notified the trial court that she "intend[ed] to seek a writ of *quo warranto* affirming her authority," and pending that separate proceeding, the trial court should recognize her as the appropriate representative of the State in the proceedings, or alternatively, stay Loyd's case until the matter was resolved. Supplement to State's Motion to Stay Proceedings at 1, 12, *State v. Loyd*, Case No. 2016-CF-015738 (Mar. 28, 2017). In support of her request, Ayala asserted that proceeding with Brad King as the assigned State Attorney would risk irreparable harm to the State, the victims' families, and the accused if Ayala was ultimately deemed to be the proper representative of the State. *Id.* at 11. Chief Judge Lauten denied Ayala's motion at a hearing on Mach 28, 2017. *See* Status Hearing Minutes, *State v. Loyd*, Case No. 2016-CF-015738 (Mar. 28, 2017).

On April 11, 2017, Ayala filed an "Emergency Non-Routine Petition for Writ of *Quo Warranto*" in this Court (No. SC17-653); an "Emergency Non-Routine Petition to Invoke the Court's All Writs Jurisdiction to Recognize Ayala as Prosecuting Officer Pending Review of the Petition for Writ of *Quo Warranto*" (No. SC17-656); and a civil suit in the U.S. District Court for the Middle District of Florida (M. D.

Fla. Case No. 17-cv-649). Ayala moved to stay the federal proceedings pending the disposition of her state-law claims. That same day, this Court requested Governor Scott and Attorney General Bondi to respond to Ayala's quo warranto petition. This joint filing responds to that request.

ARGUMENT

I. PETITIONER'S CLAIMS FAIL AS A MATTER OF LAW.

The emergency petition argues that Governor Scott lacked authority to order the challenged reassignments. This argument is simply wrong, as Florida law expressly allows the State's chief administrative and executive officer to make such reassignments if he determines, for "any . . . good and sufficient reason," that "the ends of justice would be best served" by such order; the orders here fall comfortably within the ambit of that broad authority; the statutory enactment empowering the Governor to transfer cases across circuits is reasonably calculated to effectuate his expressly enumerated constitutional authorities; the historical practices of all three branches of government—including this Court's precedents—strongly support the validity of the challenged orders; and Petitioner cannot show that section 27.14, Florida Statutes, is unconstitutional, either facially or as applied.

A. History of the Pertinent Constitutional and Statutory Provisions.

The emergency petition claims that Ayala's constitutional status as "the prosecuting officer" of the Ninth Judicial Circuit means that she—and only she—can preside over any criminal case pending in her circuit, except as expressly provided

elsewhere in the Constitution. The following part provides an overview of how the pertinent constitutional and statutory provisions evolved over time.

The position of State Attorney was first recognized as a constitutional office in 1868, when state attorneys were subject to appointment by the Governor "by and with the advice and consent of the Senate." Art. VI, § 19, Fla. Const. (1868).

The Governor's appointment of state attorneys remained unchanged until voters amended the constitution in 1944 to provide for the election of state attorneys "by the qualified electors of their respective judicial circuits," to commence with the 1948 general election. Fla. HJR 322 (1943) (proposed art. V, § 47, Fla. Const., adopted Nov. 7, 1944). The circuit-wide election of state attorneys was retained in the 1968 revision of Florida's Constitution. *See* Art. V, § 6(6), Fla. Const. (1968).

Another feature retained in the 1968 constitutional revision was the ability of counties to elect county solicitors to serve as prosecuting officers in county court. *See* Art. V, § 8, Fla. Const. (1968) ("There shall be elected by the qualified electors of said county at the time when the said [county] judge is elected a prosecuting attorney for said county, who shall hold office for four years."). This resulted in two spheres of prosecutorial jurisdiction, potentially overlapping or conflicting in a given case. Before 1968, some counties had successfully sought amendment of Florida's constitution to abolish the office of county solicitor in a particular county in order to consolidate all local prosecutorial power in the office of the state attorney. *See* Art.

V, §§ 9A, 9B, Fla. Const. (1968) (abolishing county solicitors in Duval and Dade counties); *but see id.* § 9C (establishing county solicitor for Hillsborough County to prosecute "all noncapital felony cases and other lesser offenses").

Against this backdrop, the Florida Legislature held a special session in December 1971 and proposed an amendment significantly overhauling Article V of Florida's Constitution. *See* Manning J. Dauer, *Proposed Amendments to the Florida Constitution, March 14, 1972 Florida Election*, at 1 (1972) (analyzing Senate Joint Resolution No. 52D). The amendment, which sought to bring uniformity throughout the state's judicial branch, *id.* at 1–2, was approved by voters in March of 1972, and became effective January 1, 1973.

Regarding prosecuting officers, no longer could a county split the power to prosecute between the offices of state attorney and county solicitor. The amendment established that each circuit's state attorney would be "the prosecuting officer of all trial courts in that circuit," Fla. SJR 52D, § 17 (1971) (proposed Art. V, § 17), and expressly abolished the office of county solicitor throughout the state, *id.* at § 20(d)(10) (The offices of county solicitor and prosecuting attorney shall stand abolished . . . ."); *see also* William A. Buzzett and Deborah K. Kearney, Commentary to Art. V, § 17, 26 Fla. Stat. Ann. (West Supp. 2017) ("Except for the prosecution of municipal ordinances, which may be prosecuted by municipal prosecutors,

this section consolidated all prosecutorial power in the office of state attorney. Before the adoption of this section, prosecutorial power was spread among many offices, including the office of county solicitor.").[4] In the case of municipal ordinance violations, however, the Legislature retained the ability to authorize prosecution by municipal prosecutors. *Id.* at § 17.[5]

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[4] This intent to consolidate prosecutorial power is reaffirmed in the Fiscal Note that accompanied the proposed amendment. The Note explained that "[s]tate attorneys will take over the prosecution of all crimes from county solicitors. . . . Again, this is tax relief to the counties who are currently paying their solicitor for prosecution of felonies." Fiscal Note on Revision of Article V To Be Submitted to Voters on March 14 (obtained from Fla. Dep't of State, Fla. State Archives, Tallahassee, Fla.) (included at Supp. App. E).

[5] The available audio recordings of the committee meetings and floor debates addressing the 1972 Article V revision indicate that the Governor's authority to reassign state attorneys was raised for discussion at one point. This occurred at the November 30, 1971 meeting of the House Judiciary Committee, discussing proposed House Joint Resolution 11D (which would ultimately be enacted as Senate Joint Resolution 52D). On the recording, an unidentified member of the committee asks whether the proposed requirement that state attorneys must reside in the territorial jurisdiction of the circuit would prohibit future transfers or reassignments of state attorneys by the Governor. Fla. H.R. Comm. on Judiciary, recording of proceedings at 53:25 (Nov. 30, 1971) (available at Fla. Dep't of State, Fla. State Archives, Tallahassee, Fla.) [audio file s414_b159_113071_t1_a.wav, and continued on audio file s414_b159_113071_t1_b.wav]. The discussion that follows is partly unintelligible due to recording quality. However, at one point a member can be heard responding (at 54:35) that "It wasn't intended to- to- to do that," possibly indicating that proposed section 17 was not meant to restrict the Governor's assignment authority over state attorneys. It is unclear whether the committee arrived at any conclusion on the question raised. Regardless, the specific issue of the Governor's reassignment authority does not appear to have been raised during the hours of floor discussion and debate in the House (which spanned several days). Considered in context, and based on a preliminary review of available materials, it appears that there was no consideration given by the entire chamber to what likely would have been a significant

Article V, section 17 was next amended in 1986, to contemplate the creation of the office of Statewide Prosecutor, which would have concurrent jurisdiction with state attorneys to prosecute multicircuit violations of criminal laws. Fla. HJR 386 (1985) (adopted Nov. 4, 1986). To account for the new prosecutorial position established in Article IV, the Article V state attorney provision was amended: "In each judicial circuit a state attorney shall be elected for a term of four years. *Except as otherwise provided in this constitution*, he shall be the prosecuting officer of all trial courts in that circuit and shall perform other duties prescribed by general law." Art. V, § 17 (as amended in 1986) (emphasis added). Since then, the pertinent language of Section 17 has remained essentially unchanged.

In conjunction with the development of Florida's constitutional provision governing state attorneys, the Legislature has long recognized the authority of the Governor over state attorney assignments. In 1905, the Legislature by statute recognized the Governor's authority to exchange or reassign state attorneys in the event of disqualification of a state attorney, "or if for any reason the Governor [] thinks that the ends of justice would be best subserved." Ch. 5399, Laws of Fla., § 2 (1905).

Except for renumbering, the statute remained essentially unchanged until

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issue if the Joint Resolution had been intended to have the effect claimed by Petitioner.

1969, when the Legislature amended it to require this Court's approval for exchanges or assignments longer than sixty days, and inserted the phrase "good and sufficient."[6]

The next significant amendment to section 27.14 came in 1974, just two years after the 1972 overhaul of Article V:

> (1) If any state attorney shall be disqualified to represent the state in any investigation, case, or matter pending in the courts of his or her circuit or if, for any other good and sufficient reason, the Governor of the state determines ~~thinks~~ that the ends of justice would be best served ~~by an exchange of state attorney~~, the Governor may, by executive order filed with the Department of State, either order ~~require~~ an exchange of circuits or of courts between such state attorney and any other state attorney of the state or order an assignment of ~~may assign~~ any state attorney of the state to discharge the duties of the state attorney with respect to one or more specified investigations, cases, or matters, which investigations, cases, or matters shall be specified in general in the executive order of the Governor. ~~in any circuit of the state.~~ Any exchange or assignment of any state attorney hereunder to a particular circuit for a

[6] 27.14 Assigning state attorneys to other circuits.
If any state attorney shall be disqualified to represent the state in any case pending in the circuit courts of his circuit, or if for any other good and sufficient reason the governor of the state thinks that the ends of justice would be best ~~sub~~served by an exchange of state attorneys, the governor may require an exchange of circuits or of courts ~~in any of the counties of this State~~ between such state attorney and any other state attorney of the state, or may assign any state attorney of the state to the discharge of the duties of state attorney in any circuit of the state ~~at any regular or special term of the circuit court~~. Any exchange or assignment of any state attorney hereunder to a particular circuit for a period in excess of sixty days in any one calendar year must be approved by order of the supreme court upon application of the governor showing good and sufficient cause to extend such exchange or assignment.

Compare § 27.14, *Fla. Stat.* (1969) *with* Ch. 69-1736, Laws of Fla., § 1 (Ex. Sess.).

> period in excess of 60 days in any one calendar year must be approved by order of the supreme court upon application of the governor showing good and sufficient cause to extend such exchange or assignment.
>
> (2) Whenever a state attorney is exchanged or assigned, he may designate any one or more of his assistant state attorneys and his state attorney investigators to accompany and assist him in the performance of duties under the executive order.

Ch. 74-627, Laws of Fla., § 1, at 3.

Notably, the 1974 amendment to section 27.14 occurred during a special session called for the purpose of responding to two recent First District Court of Appeal decisions concerning the Governor's assignment of state attorneys. Fla. S. Jour. 1 (Spec. Sess. Nov. 19, 1974) (included at Supp. App. F). Moreover, the legislative journals contain statements of intent from several legislators indicating they voted in favor of the legislation so that "the Governor shall have sufficient authority to assign or exchange state attorneys for single, or multiple purposes." *Id.* at 4 (statement of intent from nine senators); Fla. H.R. Jour. 6 (Spec. Sess. Nov. 19, 1974) (statement of intent from Rep. Redman) (included at Supp. App. G).

The very next year, section 27.14 was amended again (to extend the sixty-day period to six months). Ch. 75-193, Laws of Fla., § 1, at 383. Since then, the statute has been amended five additional times.[7]

[7] *See* Ch. 83-111, Laws of Fla., § 1 (amending language addressing assistant state attorneys and state attorney investigators); Ch. 85-179, Laws of Fla., § 2 (inserting subsection addressing the statewide prosecutor); Ch. 87-224, Laws of Fla., § 3 (nonsubstantive amendment through reviser's bill); Ch. 95-147, Laws of Fla.,

B. The Governor Had Authority to Order the Challenged Assignments.

The current version of section 27.14(1) in pertinent part provides:

> If any state attorney is disqualified to represent the state in any investigation, case, or matter pending in the courts of his or her circuit or *if, for any other good and sufficient reason, the Governor determines that the ends of justice would be best served, the Governor may, by executive order* filed with the Department of State, either order an exchange of circuits or of courts between such state attorney and any other state attorney or *order an assignment of any state attorney to discharge the duties of the state attorney with respect to one or more specified investigations, cases, or matters*, specified in general in the executive order of the Governor. Any exchange or assignment of any state attorney to a particular circuit shall expire 12 months after the date of issuance, unless an extension is approved by order of the Supreme Court upon application of the Governor showing good and sufficient cause to extend such exchange or assignment.

§ 27.14(1), Fla. Stat. (emphases added).

As this Court has explained, the Governor's reassignment power "should be broadly and liberally construed so as to complement and implement the duty of the Governor under the Constitution of the State of Florida to 'take care that the laws be faithfully executed.'" *Austin v. State ex rel. Christian*, 310 So. 2d 289, 293 (Fla. 1975) (quoting Art. IV, § 1(a), Fla. Const.). Accordingly, the "Chief Executive has a broad discretion in determining 'good and sufficient reason' for assigning a state attorney to another circuit, and is not required to delineate in particularity his reason

§ 123 (reviser's bill changing gender specific language); Ch. 96-256, Laws of Fla., § 1 (extending 6 month period to twelve months).

for the assignment." *Finch v. Fitzpatrick*, 254 So. 2d 203, 205 (Fla. 1971).

It has been long settled that the Governor's assignment authority extends beyond cases of disqualification to those cases in which the Governor determines that the "interests of justice" call for such an assignment. *Johns v. State*, 197 So. 791, 796 (Fla. 1940). As this Court has said before, "many situations" could satisfy the latter criterion. *Austin*, 310 So. 2d at 292. And while some of those relate purely to avoiding conflict and helping with work load, the interests of justice could also call for assignment when the Governor has reason to question whether the local state attorney is the best person to "prosecute a particular offense." *See id.* (suggesting that an outside state attorney might be "better qualified from his experience"). "These and many other circumstances" could support a Governor's "good faith" determination that the "interests of justice" call for assigning a different state attorney. *Id.* at 292–93. Thus, this Court's precedent suggests significant deference to the Governor's determination. Indeed, the Court has suggested that the Governor would only act outside his authority if he exercised it "arbitrarily and without any reason whatsoever." *Johns*, 197 So. at 796; *cf. Dunn v. Ickes*, 115 F.2d 36, 37 (D.C. Cir. 1940) (contrasting "good and sufficient reason" with "act[ing] arbitrarily and capriciously").

Applying those principles here, the challenged reassignments comfortably fall within the scope of the Governor's "broad discretion." *See Finch*, 254 So. 2d at 205.

Tracking the language of the statute, the Governor issued executive orders assigning King to the cases in question, and those orders were predicated on express findings that such assignments would serve "the interests of justice." Thus, the sole remaining statutory question is whether the Governor reasonably could have determined that there was "any . . . good and sufficient reason" to direct such transfers.

Good sense and this Court's precedent both dictate an affirmative answer to that question. As the Governor explained in his initial order, Ayala "publicly announced that she will not seek the death penalty" in all currently pending cases "*regardless of circumstances of those capital felonies and without regard for the presence of applicable statutory aggravators*." Pet. App. F (EO 17-66 at 1) (emphasis added). In light of that blanket refusal to apply the State's existing death penalty statute, the Governor could reasonably have found "good and sufficient reason" that his cross-circuit assignments best served the "ends of justice." At least six considerations support that conclusion.

First, Petitioner's proclaimed policy of *never* seeking to apply the current death penalty statute during her term in office does not embody a traditional exercise in prosecutorial discretion; instead, it is a promise *not* to exercise discretion—i.e., a commitment never to undertake a case-specific analysis to determine whether any particular set of facts and circumstances calls for application of a legislatively-authorized punishment. *See Johnson v. Pataki*, 691 N.E.2d 1002, 1006 (N.Y. 1997)

("Whether or not District Attorneys must exercise their death penalty discretion on a case-by-case basis, clearly the Legislature did not allow one or all 62 District Attorneys to functionally veto the statute by adopting a 'blanket policy,' thereby in effect refusing to exercise discretion.").

The Petition to this Court now asserts that Ayala "made it clear that she was not categorically refusing to apply the death penalty 'regardless of the circumstances.'" Pet. 31. The relevant practical question, however, is whether the Governor reasonably could have believed that Ayala was not open to applying the State's existing death penalty statute to the 23 currently pending capital cases at issue here. Ayala's subsequent press statements, considered in context, do not retract the broad and unqualified policy decision she announced in her prepared remarks—i.e., that "I will not be seeking [the] death penalty in the cases handled in my office." Pet. App. D-3.

For example, the Petition selectively quotes a part of Ayala's press conference in which she says that "[t]here may be cases, even active ones, that I think [the] death penalty may be appropriate because of the egregiousness of the offense." Pet. 10 (quoting Pet. App. D-13). In the very next sentence, however, Ayala clarified that she "also" had to "consider the other things that I just listed previously in my statement," Pet. App. D-13—a reference to the five policy considerations, *id.* at D-4–D-7, that led her to conclude that she would "not be seeking [the] death penalty in the

cases handled in my office," *id.* at D-3. Similarly, Petitioner's stated willingness to "revisit this issue" under a *different* "death penalty *system*," *id.* at D-20–D-21 (emphasis added), cannot fairly be construed to withdraw her earlier policy announcement. As she herself clarified, "the issue" is not whether particularly egregious offenders might be thought to deserve the death penalty, but whether the imposition of capital punishment is "supported by a statute that is – can be justly administered and enforced." *Id.* at D-19. As made abundantly clear in her prepared remarks, Petitioner had concluded that Florida's existing capital sentencing laws should not be applied to any of her office's current cases. *Id.* at D-3–D-7.[8]

Second, Petitioner's assertion of unilateral authority to categorically rule out the death penalty based on her own view of sound public policy at least implicates—and might well be thought to impinge upon—the Legislature's power to make laws of statewide applicability. After all, the practical effect of the self-declared "policy" decision is to effectively nullify state law providing for the death penalty in the Ninth

[8] The Governor was not alone in supposing that Ayala meant what she said. *See, e.g.*, Stephanie Allen & Rene Stutzman, *State Attorney Aramis Ayala won't seek the death penalty during her watch*, Orlando Sentinel (Mar. 16 2017); Gal Tziperman Lotan & Gray Rohrer, *Dueling rallies for and against Ayala – Her decision is decried in Orlando, lauded in Tallahassee*, Orlando Sentinel (March 31, 2017) ("Two groups gathered Thursday to express their opinions about Orange-Osceloa State Attorney Aramis Ayala's decision not to seek the death penalty for anyone while she is in office. . . . Ayala, who took office in January, announced this month that her office will not be seeking the death penalty for anyone . . . .") (emphases added).

Judicial Circuit. Notably, the Legislature reaffirmed its judgment that the death penalty should be available in appropriate cases shortly before Ayala announced her decision, with all but three legislators voting to revise capital sentencing procedures to comply with this Court's rulings earlier this year. *See* Ch. 2017-1, Laws of Fla. In addition, Ayala's blanket policy against seeking the death penalty diminishes victims' rights to be informed, present, and heard at all crucial stages of criminal proceedings. Art. I, § 16(b), Fla. Const.; *see also, e.g.*, § 960.001(1)(k), Fla. Stat. (requiring state attorney to inform victim of the victim's right—and assist the victim—to submit an oral or written impact statement to the court), *id.* § 921.141(8) (directing presentation of victim impact evidence by state attorney during penalty phase of capital felony trial); *id.* § 921.143(1) (requiring sentencing court to permit victim to make a sworn oral statement on the record and submit a sworn written statement). By affording victims the opportunity to be heard prior to sentencing, the Legislature must have intended a *meaningful* opportunity—i.e., one that has the potential to impact the sentence a defendant will receive. But if the state attorney chooses to pursue only one penalty, then the victim's constitutional right to be informed, present, and heard loses this potential.

Third, the challenged orders, properly understood, ensure rather than preclude the independent exercise of traditional prosecutorial discretion. *See Johnson*, 691

N.E.2d at 1007. The orders do not direct State Attorney King to come to any particular charging decision, and he is free to decide not to seek the death penalty in any of the reassigned cases. King "was not asked by the Governor or any of his staff to seek the death penalty in any particular case, nor would [he] ever commit to seek (or not to seek) the death penalty without reviewing the facts of a particular case and forming an opinion based on [his] own independent judgment whether the facts of the case supported imposing the death penalty." Supp. App. D ¶6. Indeed, King has already "identified certain cases that, upon preliminary review, may not warrant the imposition of a death sentence." *Id.* at ¶7.

Fourth, the Governor's discretion to assign cases to a different state attorney is not limited to circumstances in which the resident state attorney has violated the law. *See* § 27.14(1), Fla. Stat.; *Johns*, 197 So. at 796. Petitioner and her *amici* argue that she has the *power* not to enforce the State's death penalty because the law does not require a state attorney to pursue capital punishment in murder cases, even when the statutory criteria are satisfied. That may well be true, but Florida law vests other governmental officials with distinct but overlapping authorities. Of particular relevance here, the Governor has the power to assign a different state attorney when he concludes "the interests of justice would be best served," and he is also charged with the related constitutional duty to "take care that the laws be faithfully executed." In

addition, the Legislature has the exclusive authority to define the penalties for particular crimes. As the State's "supreme executive" officer, Art. IV, §1(a), Fla. Const., the Governor could reasonably have concluded that Ayala's blanket policy declaration, even if not illegal, was apt to have an adverse impact on the evenhanded, impartial, and uniform administration of criminal justice.

Fifth, considerations of democratic legitimacy do not support Petitioner's position. Like Ayala, the Governor is chosen by and accountable to the electorate. So too are members of the Legislature, which just this year overwhelmingly reaffirmed its support for the various state statutes that Ayala now seeks to evade or undo. In addition, "a state attorney in this State is not merely a prosecuting officer in the Circuit in which he is appointed; he is also an officer of the State in the general matter of the enforcement of the criminal law." *Hall v. State*, 187 So. 392, 398 (Fla. 1939). Thus, a state attorney's "official duty" is to "represent the state's interests," and "a failure of the state's interests" occurs when "the regular state attorney is unwilling to or refuses to act." *Taylor v. State*, 38 So. 380, 383 (Fla. 1905). Consistent with those duties, Ayala's position as state attorney required her to take an oath to uphold the Constitution and laws of the State, not just to serve her constituents.

Finally, the executive reassignments here can readily be harmonized with Petitioner's view, emphasized on her website during her campaign, that "consistency" in law-enforcement is "necessary for proper administration of justice." Supp.

App. A. In asserting unilateral authority to effectively repeal the State's death penalty laws within the Ninth Circuit, Ayala all but ensured that similarly situated defendants inside and outside the Ninth Circuit would be subject to different standards: for those tried and convicted within Ayala's jurisdiction, the death sentence would be off the table, at least for the foreseeable future, regardless of case-specific circumstances; for those in the rest of the State, the decision whether to seek the death penalty would be based on case-specific application of traditional sentencing factors, including statutory criteria prescribed by the Legislature. Consistent with Ayala's views *before* her election, these reassignments could reasonably have been implemented to guard "against the possibility of different people who committed the same crime experiencing different treatment under the law." *Id.*

The Petition repeatedly asserts that the Governor ordered the assignments in question "just to score political points." Pet. 13; *see, e.g.*, *id.* at 1–2 (framing the question presented as whether the Governor could make the challenged reassignments "for political reasons"). These claims are made with no support or explanation. This Court should not consider, and still less should it countenance, such conclusory and unsubstantiated allegations of bad faith. *See Finch*, 254 So. 2d at 205 (noting "general recitation as to his reasons for assigning a state attorney to another circuit" suffices to invoke assignment authority); *Kirk v. Baker*, 229 So. 2d 250, 252 (Fla. 1969) ("[I]t will generally be presumed that the action of the Chief Executive

is in accordance with his official duty."). That is particularly so where, as here, the Governor clearly had sufficient justification for concluding that his constitutional executive action would tend to further the interests of justice. *See* § 27.14(1), Fla. Stat. (vesting power to "determine[]" whether "interests of justice would be best served" in the Governor); *see also Johnson*, 691 N.E.2d at 1008 (holding reassignment valid where it "proceeded from the executive judgment that a 'blanket policy' [not to seek the death penalty]—never unequivocally disavowed—existed that precluded the exercise of discretion by the District Attorney," notwithstanding subsequent attempt by district attorney to claim no blanket policy existed).

Affirming the Governor's authority to carry out the assignments here is also consistent with practices in other jurisdictions. Like Florida, many other states provide for reassignment of cases by the state government, either by the governor or the attorney general. Wayne R. LaFave *et al*., 4 Crim. Proc. § 13.3(e) (4th ed. 2012). And the Governor's actions here are not without precedent. As Petitioner concedes, New York's highest court affirmed a decision of that state's governor to assign a different prosecutor under similar circumstances.

In *Johnson v. Pataki*, the New York Court of Appeals rejected a challenge to then-Governor Pataki's decision to have the Attorney General prosecute a murder case after concluding that the Bronx County District Attorney had adopted a "'blanket policy' against imposition of the death penalty." 691 N.E.2d at 1003. As here,

the crime that spurred the governor's action involved the murder of a police officer. *Id.* Although the district attorney had previously stated publicly that "it was his 'present intention not to utilize the death penalty provisions of the statute,'" he would neither confirm nor deny that he had adopted any blanket policy when the governor asked. *Johnson v. Pataki*, 655 N.Y.S.2d 463, 464–65 (N.Y. App. Div. 1997). Like Petitioner, the district attorney contended that "the District Attorney, a constitutional officer accountable to the local electorate, is insulated from nonconsensual superseder by a 'zone of independence' based on a delegation to him of exclusive authority to prosecute crimes in Bronx County." *Johnson*, 691 N.E.2d at 1006.

Citing the 150-year legislative policy of allowing the governor to direct the attorney general to act in place of local district attorneys, the court rejected that argument. *Id.* The governor could reasonably conclude, it reasoned, that allowing a district attorney to "functionally veto the statute by adopting a 'blanket policy'" constituted a "threat to faithful execution of the death penalty law" sufficient to support the governor's order, *id.* at 1007, just as Governor Scott has determined here. Moreover, substituting the attorney general for the district attorney did not "substitute the Governor's policy choice" for the district attorney's, as it merely vested the decision with the attorney general, who would "prosecut[e] the entire matter, including the exercise of discretion regarding the sentence." *Id.* Likewise, State Attorney King

will be responsible for the assigned cases, including whether to seek the death penalty. And there, as here, the prosecutor sought, *after* reassignment, to avoid reassignment by suggesting that he had not instituted a "blanket policy," notwithstanding his previous public pronouncement. *Id.* at 1008; *see also id.* at 1011–12 (Smith, J., dissenting) (quoting post-reassignment remarks of district attorney).

While failing to engage with any of this Court's precedent on the breadth of the Governor's authority, Petitioner cites no case from any jurisdiction supporting her statutory argument. *See* Pet. 29–32. The absence of any adverse authority for her to rely upon is striking, not just in light of the 5,570 transfer orders issued in Florida since 1973, but also in light of the presence of a similar assignment right in other jurisdictions. The circumstances here amply justify the Governor's assignments.

C. Section 27.14, Florida Statutes, Is Not Unconstitutional on Its Face or As Applied.

A law duly enacted by the State Legislature "comes to the Court clothed with the presumption of correctness and all reasonable doubts about the statute's validity must be resolved in favor of constitutionality." *City of Fort Lauderdale v. Dhar*, 185 So. 3d 1232, 1234 (Fla. 2016).

The Petition appears to advance two constitutional claims: First, Petitioner suggests that section 27.14 is facially invalid because the Constitution gives a state attorney "absolute" discretion to decide whether and how to prosecute the reassigned cases. *See* Pet. 15. Second, the Petition argues that the statute is unconstitutional as

applied because Article V, section 17 does not allow the challenged reassignments in these circumstances (i.e., where Ayala is purportedly ready, willing, and able to handle a reassigned case and does not consent to the reassignment). *See id.* at 25–29. Both arguments fail.

Article V, section 17 provides:

> In each judicial circuit a state attorney shall be elected for a term of four years. Except as otherwise provided in this constitution, the state attorney shall be the prosecuting officer of all trial courts in that circuit and shall perform other duties prescribed by general law; provided, however, when authorized by general law, the violations of all municipal ordinances may be prosecuted by municipal prosecutors. A state attorney shall be an elector of the state and reside in the territorial jurisdiction of the circuit; shall be and have been a member of the bar of Florida for the preceding five years; shall devote full time to the duties of the office; and shall not engage in the private practice of law. State attorneys shall appoint such assistant state attorneys as may be authorized by law.

Petitioner claims that the "clear" and "unambiguous" language of this provision prohibits the Legislature from authorizing cross-circuit reassignments. Pet. 16. As explained below, none of the traditional tools of interpretation supports this novel theory.

Text. On its face, the language of section 17 does not bar the challenged reassignments. The Petition makes much of the clause providing that a state attorney "shall be the prosecuting officer" of her circuit. But it is one thing to say that a state attorney serves as "the prosecuting officer of all trial *courts* in that circuit"—including circuit courts and county courts—and another thing to say that a state attorney

must personally exercise plenary control over any and all criminal *cases* tried in that circuit, no matter what the circumstances.

Notably, section 17 expressly authorizes the Legislature to give state attorneys duties on top of their local prosecutorial responsibilities. *See* Art. V, § 17, Fla. Const. ("[T]he state attorney shall be the prosecuting officer of all trial courts in that circuit *and shall perform other duties prescribed by general law* . . . .") (emphasis added). So far from precluding assignments across circuits, that text would appear to authorize laws allowing one state attorney to be assigned to cases pending in another circuit. *Cf. Johns*, 197 So. at 791 (interpreting 1885 constitutional requirement that there must be a state attorney in each judicial circuit, and concluding that such requirement did not demand that the duties prescribed by law for such officer be confined to the judicial circuit in which he was appointed).

Petitioner's interpretation of section 17 cannot be reconciled with the day-to-day practice of her office. For example, the Petition does not ask this Court to hold that Ayala lost her status as "the prosecuting officer of all trial courts in [the Ninth Judicial] circuit" when the Governor reassigned four of her cases—at her own request—to state attorneys elected in other circuits. The reasons supporting those reassignments, like their consensual or nonconsensual nature, may be germane to the *statutory* question whether the Governor had "good and sufficient reason" for making them. As a matter of constitutional law, however, there is no textual basis for

distinguishing between the reassignments Ayala requested and those to which she now objects.

Structure. Petitioner's interpretation of section 17 also makes no sense of related constitutional provisions. The Petition construes a solitary sentence fragment from the Florida Constitution concerning Ayala's *status* as "the prosecuting officer" of her circuit to mean that she enjoys sole, absolute, and preclusive *power* over virtually all prosecutorial decisions implicating crimes in her community. Under Florida's organic and statutory law, however a local state attorney is but one of several executive officers involved in the local enforcement of state law. The language on which the Petition relies was adopted against the backdrop of that preexisting constitutional and statutory law.

For example, the Governor is the State's "chief administrative officer," is vested with "[t]he supreme executive power," and is constitutionally obliged to "take care that the laws be faithfully executed." Art. IV, § 1(a), Fla. Const. Because the duties of state attorneys involve the quintessentially executive function of law-enforcement, the conduct of state attorneys has significant implications for whether the laws will "be faithfully executed." Hence, it would make little sense if the Governor did not possess various administrative and supervisory authority over state attorneys.

Similarly, 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." Art. IV, § 7(a), Fla. Const. Given the Governor's greater—and far more disruptive and intrusive—power to suspend a state attorney, it would be odd for the Constitution to bar the Legislature from giving the Governor the power to take the less disruptive and intrusive step of reassigning particular cases.

The theory advanced in the emergency petition likewise fails to come to terms with longstanding constitutional and statutory authorities of other executive officials. Notably, the Attorney General is the chief legal officer of the State, Art. IV, § 4(b), Fla. Const., and—since 1877—has exercised "a general superintendence and direction over the several state attorneys of the several circuits as to the manner of discharging their respective duties . . . ." § 16.08, Fla. Stat. The Attorney General also appoints the statewide prosecutor, who exercises concurrent jurisdiction with state attorneys in the prosecution of certain crimes occurring in multiple circuits. Art. IV, § 4(b), Fla. Const.

Legislative intent and history. Petitioner's constitutional claims fail to come to terms with several important aspects of the relevant legislative history. Two points in particular warrant special mention.

First, the constitutional amendment on which Petitioner bases her argument

was intended to consolidate local prosecutorial power in the *office* of the state attorney, not to do away with the governor's longstanding authority to reassign cases between two *different* state attorneys. *See supra* at 24–25. Section 17 was proposed by the Legislature in 1971 and approved by voters in 1972. As commentary on the amendment explains:

> This section created the office of state attorney for each judicial circuit. It provided the length of term of office, the territorial jurisdiction of the office, and the eligibility for office. Except for the prosecution of municipal ordinances, which may be prosecuted by municipal prosecutors, *this section consolidated all prosecutorial power in the office of state attorney*. *Before the adoption of this section, prosecutorial power was spread among many offices, including the office of county solicitor*.

William A. Buzzett and Deborah K. Kearney, Commentary to Art. V, § 17, 26 Fla. Stat. Ann. (West Supp. 2017) (emphasis added).

Notably, the emergency petition does not and cannot point to any evidence that proponents of the constitutional amendment sought to bar assignments from one state attorney to another. The Legislature's silence on this point speaks volumes. After all, it was by then well-established that such gubernatorial assignment power was not just *desirable* as a matter of policy, but "clearly *essential* to the orderly conduct of government and the execution of the laws of this State," *Kirk v. Baker*, 224 So. 2d 311, 317 (Fla. 1969) (emphasis added). If the Legislature had intended its proposed amendment to invalidate its own law—and particularly a law that was "clearly essential" to the orderly conduct of government—it is hard to believe that

such an intention would not have been made clear.

Second, post-enactment history confirms that the Legislature did not understand the 1972 constitutional amendment to invalidate its law authorizing gubernatorial assignments of state attorneys. In 1974—just two years after the amendment was adopted by the voters, and just three years after the Legislature had itself drafted that amendment—the Legislature approved an amendment to section 27.14 so that "the Governor shall have sufficient authority to assign or exchange state attorneys for single, or multiple purposes." Supp. App. F at 4 (statement of intent from nine senators); Supp. App. G at 6 (statement of intent from Rep. Redman).

Since 1974, the Legislature has amended the statute on six different occasions. *See supra* at 28. Three of those amendments expanded the scope of the governor's reassignment authority: one amendment extended the initial 60-day assignment period to six months, Ch. 75-193, Laws of Fla., § 1; a second amendment changed the law to provide that "[w]henever a state attorney is exchanged or assigned, he or she may designate one or more of his or her assistant state attorneys and state attorney investigators to perform duties" assigned under the executive order, Ch. 83-111, Laws of Fla., § 1; and a third extended the six-month assignment period to twelve months, Ch. 96-256, Laws of Fla., § 1. Those enactments cannot be reconciled with Ayala's attempt to dismiss section 27.14 as an old law that is now understood to be defunct, but that no one has ever bothered to remove from Florida's statute books.

See Pet. 11 ("For authority to remove Ayala, Scott relied on the 1905 law—still nominally on the books—permitting governors to move state attorneys.").

Precedent. This Court's cases strongly support the validity of the challenged reassignments. Beginning shortly after its enactment in *Stone v. State*, 71 So. 634, 635–36 (Fla. 1916), and continuing after the amendment to article V, section 17, in *Austin v. State ex rel. Christian*, 310 So. 2d 289, 292–93 (Fla. 1975), this Court has repeatedly affirmed the constitutionality of the Governor's assignment authority.

"The statutes authorizing assignments of state attorneys" are not just random and freestanding grants of power untethered to the Governor's role in Florida's constitutional scheme; rather, those laws "complement and *implement the duty of the Governor under the Constitution of the State of Florida to 'take care that the laws be faithfully executed*.'" *Id.* at 293 (quoting Art. IV § 1(a), Fla. Const.) (emphasis added). "The exercise of this power and the performance of this duty are clearly essential to the orderly conduct of government and the execution of the laws of this State." *Finch*, 254 So. 2d at 204; *see also Kirk v. Baker*, 224 So. 2d at 317 (same).

This Court has already rejected Petitioner's argument that cases may not constitutionally be reassigned from one state attorney to another when the state attorney of the circuit in question is ready, willing, and able to handle that case. *See Austin*, 310 So. 2d at 294 ("[W]e hold that under the provisions of Fla. Stat. § 27.14 and § 27.15 (1973), F.S.A., the Governor did have the authority to assign a state attorney

from one circuit to another circuit for the purpose of conducting an investigation, participating in grand jury proceedings and conducting a trial *even though the resident State Attorney was available*." (emphasis added)); *Johns*, 197 So. at 795–96 (rejecting defendant's contention that "the information is unconstitutional and void because it was not filed by the prosecuting attorney of the court wherein the information was filed," even though the Court accepted as "true" defendant's allegations that "the resident State Attorney" was "present, able and willing to act, and not disqualified").

Similarly, this Court has already explained why there is nothing anomalous or improper about having one state attorney preside over a case to be tried in another judicial circuit:

> A state attorney in Florida is not merely a prosecuting officer in the circuit in which he is elected, he is also an officer of the State in the general matter of enforcement of the criminal law. It is the State and not the county, that pays his salary and official expense.

Austin, 310 So. 2d at 292; *accord Johns*, 197 So. at 796. In other words, a "*State* Attorney" is an attorney for the *State*. *See Austin*, 310 So. 2d at 292. State attorneys exercise the sovereign power of their State, not the sovereign power of their local jurisdictions; and the circuits they serve are creations of the State. *See id.*; *see also Steinhorst v. State*, 412 So. 2d 332, 336 (Fla. 1982) ("[T]he people of the state, acting through the state attorney, have the inherent sovereign prerogative to present evidence of the defendant's criminal conduct. It is the duty of the state attorney to carry

out this prerogative of the people."); *Johns*, 197 So. at 796–97; *Hall*, 187 So. at 398; *Taylor*, 38 So. at 383.

And while the Petition claims that the legislatively initiated amendment providing that the state attorney "shall be the prosecuting officer of all trial courts in that circuit" eliminated this authority, *Austin v. State ex rel. Christian*, 310 So. 2d 289, 292 (Fla. 1975), decided by this Court just two years later, points in precisely the opposite direction. Notably, both the First District and this Court specifically considered the constitutional change. The First District brushed aside the notion that the constitutional amendment eliminated the assignment authority, explaining that "except for the designation of State Attorneys as prosecuting officers, the Legislature continues to have the power to provide by statute for the exchange or assignment of State Attorneys which the Supreme Court of Florida recognized in Stone v. State." *State ex rel. Christian v. Austin*, 302 So. 2d 811, 819 (Fla. 1st DCA 1974), *quashed on other grounds* 310 So. 2d 289 (Fla. 1975). The court nonetheless determined that the assignment at issue was invalid not because the Constitution prohibited it, but because assigning a state attorney to handle some, but not all, duties of another state attorney was contrary to the recently revised statute. *Id.* at 820.

On certiorari review, this Court quashed the First District's decision in a resounding endorsement of gubernatorial authority. After likewise acknowledging that the Constitution "requires that a state attorney . . . shall be the prosecuting officer of

all trial courts in that circuit," the Court held that "if for any good and sufficient reason the Governor thinks that the ends of justice would best be served, he may assign any state attorney of the State to the discharge of the duties of state attorney in any investigations in any circuit of the State." *Austin*, 310 So. 2d at 292. And instead of construing section 27.14 narrowly, as one would expect if the statute's constitutionality were doubtful, *see, e.g., State ex rel. Shevin v. Metz Constr. Co.*, 285 So. 2d 598, 600 (Fla. 1973) (statutes "should be construed to avoid . . . grave doubts upon the statute's validity"), this Court directed that "[t]he statutes authorizing assignments of state attorneys should be broadly and liberally construed so as to complement and implement the duty of the Governor under the Constitution of the State of Florida to 'take care that the laws be faithfully executed.'" *Austin*, 310 So. 2d at 293. Assuming *arguendo* that *Austin* is not dispositive, the fact that neither the First District nor this Court perceived any constitutional threat to the Governor's longstanding assignment authority strongly suggests there is no basis for the emergency petition's novel arguments.

Historical practice. "[E]stablished constructions of constitutional provisions are 'presumptively correct unless manifestly erroneous.'" *Fla. Soc'y of Ophthalmology v. Fla. Optometric Ass'n*, 489 So. 2d 1118, 1120–21 (Fla. 1986) (quoting *State v. Kaufman*, 430 So. 2d 904, 907 (Fla. 1983)). Longstanding historical practice strongly supports the validity of the challenged reassignments.

According to the Petition, the constitutionality of section 27.14 has been in serious doubt at least since 1973. Since then, however, Florida Governors have made approximately 5,570 assignments of state attorneys pursuant to section 27.14. Supp. App. H ¶5. Similarly, this Court has routinely approved post-1972 applications for reassignment extensions under section 27.14(1), granting 268 such requests from January 1, 2011, to April 10, 2017. *Id.* at ¶8.

Section 27.14(1) is not Unconstitutional as Applied to These Assignments.

Petitioner's narrower constitutional claim—i.e., that section 27.14 is unconstitutional as applied because in this case she did not agree to the transfer and is willing and able to try the cases in question—fails for many of the same reasons. Perhaps most importantly, however, the Petition's as-applied constitutional claim also fails because it has no basis in the text of the pertinent constitutional and statutory provisions; indeed, the proposed reading would require those provisions to be entirely rewritten in the guise of interpretation.

The sole textual basis for the constitutional claim is the clause of Article V, section 17, providing that "the state attorney shall be the prosecuting officer of all trial courts in that circuit . . . ." If, as Ayala has implicitly conceded by making requests for the Governor to reassign six of her cases pursuant to section 27.14, she may remain "the prosecuting officer" of the Ninth Judicial Circuit for purposes of

Article V, section 17 notwithstanding a reassignment prompted by her disqualification from or voluntary relinquishment of a case, it follows that she could also remain "the prosecuting officer" of that circuit when the Governor reassigns her for some other "good and sufficient reason" implicating "the ends of justice." *See* § 27.14(1), Fla. Stat.

In other words, the Petition claims, on the one hand, that the text of the relevant constitutional provision is clear and unambiguous (Pet. 16); but also asks this Court to judicially rewrite that provision to allow certain extra-textual exceptions (Pet. 26), while denying the law-making branch of the government the power to recognize other—and at least equally plausible—exceptions. At any rate, a decision accepting Petitioner's narrower constitutional claim would require the Court to effectively rewrite the text of Article V, Section 17, to say that the "state attorney, *except in cases of disqualification [and other exceptions]*, shall be the prosecuting officer of all trial courts in that circuit . . . ."

There is no inconsistency between Attorney General Bondi's position in this case and her observation in an earlier case that "*the State* 'has the exclusive discretion to decide whether to seek the death penalty in a given case.'" Pet. 2–3 n.1 (emphasis added). Ayala *represents* the State in *some* cases; but that does not mean that she *is* the State in *all* cases. Under Florida law, a state attorney is but one of many

executive officers—including the State's chief executive officer—entrusted with discharging the law-enforcement functions of State government.

D. Separation of Powers Principles Support the Validity of Section 27.14, Florida Statutes.

Contrary to Petitioner's argument, giving the Governor a modest check on another executive officer's prosecutorial power does not offend separation-of-powers principles. This Court has not only concluded that the Legislature may provide the Governor an assignment authority that "complement[s] and implement[s]" the Governor's duty to take care that the laws are faithfully executed; it has directed that this statutory grant of authority be "broadly and liberally construed." *Austin*, 310 So. 2d at 293.

In light of this Court's previously-articulated understanding of the Governor's assignment authority, Ayala's reliance on *Whiley v. Scott*, 79 So. 3d 702 (Fla. 2011), is misplaced. That case held that the Governor could not alter the terms on which the Legislature had delegated its rulemaking authority to executive branch agencies under the Administrative Procedure Act. *Id.* at 705. Key to this Court's decision was that the Governor's action "encroach[ed] upon the legislative delegations of rulemaking authority," "an authority that cannot be delegated by any entity other than the Legislature." *Id.* at 711, 715. It is one thing to say that the Governor cannot disregard the Legislature's limitations on authority that is its exclusive prerogative to grant. It is another to say that separation of powers requires this Court to invalidate

an act pursuant to legislative authority that this Court has recognized as "clearly essential to the orderly conduct of government and the execution of the laws of this State," *Kirk*, 224 So. 2d at 317. Under analogous separation-of-powers principles enunciated by the U.S. Supreme Court, the Governor's executive authority acting under section 27.14 "is at its maximum, for it includes all that he possesses in his own right plus all that [the legislative branch] can delegate." *See Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635 (1952) (Jackson, J., concurring).

The fact that some prosecutorial functions not at issue here could be deemed "quasi-judicial" in character does not suggest an as-yet-unrecognized separation-of-powers problem. None of the cases cited in the Petition involved assignments of state attorneys, and as Petitioner concedes, Pet. 22, the decision whether and how to enforce a duly-enacted state law is not a quasi-judicial function at all; it is a quintessentially executive function. *See Valdes v. State*, 728 So. 2d 736, 738–39 (Fla. 1999). A decision to transfer the performance of this executive function from one state attorney to another in particular circumstances does not even implicate, much less violate, judicial authority.

Although Petitioner and her *amici* invoke the American Bar Association Standards of Criminal Justice Relating to Prosecution Function as somehow supporting her position, Pet. 24; Amicus Br. of Nat'l Assoc. of Crim. Defense Lawyers, at 14, 17; Amicus Br. of Former Judges et al., at 4, it bears noting that those standards

actually recommend a process for the supercession and substitution of prosecutors that authorizes a governor to act exactly as Governor Scott has acted here: "The governor or other elected official should be empowered by law to substitute special counsel in the place of the local prosecutor in a particular case, or category of cases, upon making a public finding that this is required for the protection of the public interest," ABA Standard 3–2.10(b), as Florida and many other states do, *supra* at 38. This contemplates that, regardless of the "quasi-judicial" aspects of a state attorney's duties, such officers are still subject to the supervision of a state's chief executive.

In addition, accepting Petitioner's separation-of-powers argument would doom even the state attorney-initiated assignments she concedes to be constitutional. Just as "no branch may encroach upon the powers of another," "no branch may delegate to another branch its constitutionally assigned power." *See Chiles v. Children A, B, C, D, E, & F*, 589 So. 2d 260, 264 (Fla. 1991) (invalidating unlawful delegation of legislative authority). If separation of powers prohibits the Governor from asserting a right to displace a resident state attorney, the state attorney can hardly delegate that right to him.

II. PRUDENTIAL AND DISCRETIONARY CONSIDERATIONS PROVIDE AN INDEPENDENT BASIS FOR DENYING THE EMERGENCY PETITION FOR THE ISSUANCE OF AN EXTRAORDINARY WRIT.

As detailed above, Petitioner's claims fail as a matter of law, and her emer-

gency petition for extraordinary relief may readily be rejected on that basis. As explained below, however, this Court may also deny the Petition for discretionary and prudential reasons.

Extraordinary writ petitions, including petitions for quo warranto, may be denied "based on a number of reasons other than the actual merits of the claim." *Topps v. State*, 865 So. 2d 1253, 1257 (Fla. 2004). Several such reasons are present here.

First, Petitioner has not met her burden of showing that she is entitled to immediate relief from the State's highest judicial tribunal. "As a general rule, unless there is a compelling reason for invoking the original jurisdiction of a higher court, a quo warranto proceeding should be commenced in circuit court." *Whiley*, 79 So. 3d at 707. An exception to that rule obtains "'where the functions of government would be adversely affected absent an immediate determination by this Court.'" *Id.* (quoting *Chiles v. Phelps*, 714 So. 2d 453, 457 (Fla. 1998)). But that is not the case here.

Petitioner has not shown that any functions of government would be adversely affected if the cases at issue are not immediately reassigned to her by this Court. As State Attorney King recites in his sworn declaration, state attorneys do not typically try cases themselves; instead, they entrust primary responsibility for the day-to-day work of the office to career assistant state attorneys. Supp. App. D ¶11. Consistent with that general practice, King has been collaborating with and relying on highly

professional and experienced career attorneys, who have long been assigned to the cases in question. *Id.* at ¶9. The attorneys and staff in the Ninth Judicial Circuit have been fully cooperating with King to do what is best for each case. *Id.* at ¶¶8, 9, 11; *see also* All Writs Pet. 4.

Petitioner has never alleged that she planned to personally try any of the contested cases; and, having taken office just a few months ago, she does not profess to be much more familiar with the reassigned matters—"many" of which have been "investigated and prosecuted . . . for years"—than King himself. *See* All Writs Pet. 4. Accordingly, the predominant practical impact of the reassignments is likely to be that, in some cases, King may file a notice of intention to seek the death penalty that Ayala would not have filed. (To the extent that Ayala now claims she is considering whether to seek the death penalty on a case-by-case basis, she is not in a good position to assert that the challenged reassignments will invariably result in different charging decisions.) As Petitioner herself explains, however, she is free to withdraw such filings "at any time" if she prevails on her claims. *Id.* at 5 n.1. Indeed, Ayala is apparently willing to "preventively file" notices of intent to seek the death penalty *herself* in the reassigned cases, "[t]o the extent there is concern" that the 45-day deadline for filing such notices might otherwise expire. *Id.* Hence, the mere possibility that *King* might file the very same notices in *some* of those cases does not justify this Court's immediate intervention.

In short, the Petition has not shown that the status quo is unsustainable; competent and unrefuted evidence indicates that it is not; and, unless Ayala herself acts to prevent cooperation in the future, there is no reason to believe that King's assignments will result in any adverse effect on the functioning of government. The emergency petition's vague and conclusory assertions of disruption do not supply sufficient justification for obtaining emergency and admittedly extraordinary relief directly from this Court.

Second, although the Petition's claims fail as a matter of law, the purported facts on which she seeks to establish her claim are strongly disputed and therefore inappropriate for resolution by this Court. *See Harvard v. Singletary*, 733 So. 2d 1020, 1022 (Fla. 1999) (noting "this Court is ill-equipped to handle" fact-finding). Four examples follow:

- Ayala and her *amici* appear to contend that the governor's assignment authority is old and rarely used. *See, e.g.*, NACDL Amicus Br. 7 (asserting the authority is a "rare remedy" and citing a purported "lack of use"). In the limited time allotted to file this response to Ayala's emergency petition, the Governor's office has identified some of the pertinent historical facts showing that the Governor has used this authority more than 5,000 times since 1973. *See generally, e.g.*, Supp. App. H.

- Ayala now appears to assert that she has not ruled out the possibility of seeking the death penalty. Based on her March 16 statement that she "will not be seeking [the] death penalty in the cases handled in [her] office," the Governor understands Ayala to have categorically taken the death penalty off the table as to all of the reassigned cases.

- Ayala bases her claim in part on conclusory and unsubstantiated allegations of bad faith. *E.g.*, Pet. 1–2 ("*Because the Governor's reassignment of cases for political reasons* is illegal, unfair, and disruptive . . . this Court should immediately reverse or stay all of the Governor's orders, establish an expedited briefing schedule, and decide this petition on an emergency basis.") (emphasis added); *id.* at 13 (asserting that Governor Scott ordered the contested reassignments "just to score political points"). Governor Scott emphatically disputes these allegations and has certified that "the ends of justice will best be served" by, and that "there is good and sufficient reason" to order, those assignments. *E.g.*, Pet. App. F (EO 17-66, at 1).

- Ayala (in unsworn, conclusory representations advanced by counsel in pleadings) asserts that the challenged reassignments are interfering with pending prosecutions. Pet. 1–2. King (in a sworn declaration) attests that that is not the case. Supp. App. D ¶¶8–11.

Those and other disputes concerning Ayala's factual assertions render it inappropriate for this Court to grant the extraordinary relief requested in the emergency petition. *See, e.g.*, *Harvard*, 733 So. 2d at 1021 (explaining that "in the future, [this Court] will likewise decline jurisdiction and transfer or dismiss writ petitions which, like the present one, raise substantial issues of fact or present individualized issues that do not require immediate resolution by this Court").

Finally, the Governor and the Attorney General are mindful that this is an important case, as evidenced by the substantial and thoughtful contributions of many *amici* on both sides. Standing alone, however, the importance of a case does not license a litigant to demand immediate relief from the State's highest judicial tribunal. Indeed, important questions should be afforded more, not less, process. And much is at stake here. The Petition asks this Court to rule that a duly-enacted state

statute is unconstitutional; that this Court's precedents expressly and repeatedly affirming the validity of that law should be set aside; that the longstanding historical practices and understandings of all three branches of the state government should be discarded; that a state attorney may categorically refuse to enforce any and all state laws with which she disagrees, and that the various instrumentalities of the State are all powerless to do anything about it; and, perhaps most significantly, that locally elected prosecutors—many of whom may not have policy views with which Petitioner and her *amici* agree—enjoy sole, absolute, and constitutionally preclusive discretion to make certain policy-related decisions that touch on criminal prosecutions within their jurisdictions.

If accepted, those claims will have vast, long-lasting, and likely unforeseeable implications for the administration of criminal justice in this State. Even if the Petition's claims did not fail as a matter of law, this Court should decline the invitation to render an authoritative judgment on these weighty issues on the basis of conclusory and disputed factual allegations.

CONCLUSION

This emergency petition for a writ of quo warranto should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished by electronic service through the Florida Courts E-Filing Portal on this 26th day of April, 2017, to the following:

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this response was prepared in Times New Roman, 14-point font, in compliance with Rule 9.100(*l*) of the Florida Rules of Appellate Procedure.

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