SUPREME COURT OF FLORIDA

MARY BETH JACKSON, as
Superintendent of Schools
for Okaloosa County, Florida,

Petitioner,

v. Case No. SC19-_____

GOVERNOR RON DESANTIS,

Respondent.

EMERGENCY PETITION FOR WRIT OF QUO WARRANTO

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INTRODUCTION

For more than 100 years, this Court has consistently held the Governor's suspension authority is constitutionally limited to actions occurring in the current term of office and cannot be extended to acts committed in prior terms. Petitioner seeks the issuance of a writ of quo warranto directing Governor Ron DeSantis to demonstrate both his authority and the jurisdictional basis to issue Executive Order 19-13 (January 11, 2019), which suspended Mary Beth Jackson, the elected Superintendent of Schools for Okaloosa County, Florida. The facts set forth in Executive Order 19-13 relate allegations against Superintendent Jackson occurring prior to and during the 2015-2016 school year, prior to Superintendent Jackson's re-election for the current term running through 2020. As first expressly held in *In Re Advisory Opinion to the Governor*, 60 So. 337 (Fla. 1912), Governor DeSantis is without authority to suspend Superintendent Jackson for actions preceding the current term of office. Although section 112.42, Florida Statutes purports to expand the authority of the Governor to suspend public officers for acts committed prior to the current term of office, the Legislature may not enact laws to expand, limit, or alter the Governor's constitutionally derived authority, unless constitutionally permitted.

This Court should, therefore, direct the Governor of the State of Florida, to show cause why Executive Order Number 19-13 (January 11, 2019) (App. 5-9),

should not be invalidated, and why Mary Beth Jackson should not be reinstated as the Superintendent of Schools of Okaloosa County, Florida.

BASIS FOR INVOKING JURISDICTION

Quo warranto is an extraordinary writ whose purpose is to determine whether "a state officer or agency has improperly *exercised* a power or right derived from the State." *League of Women Voters of Fla. v. Scott,* 232 So. 3d 264, 265 (Fla. 2017) (emphasis in original). This Court "may" issue a writ of quo warranto state officers and agencies which renders this Court's exercise of jurisdiction discretionary. Art. V, § 3(b)(8), Fla. Const. The Governor is indisputably a state officer. Petitioner is a citizen, taxpayer, and an elected constitutional officer of the State of Florida, and has standing to seek quo warranto relief. *See Whiley v. Scott*, 79 So. 3d 702, 706 and n. 4 (Fla. 2011); *Pleus v. Crist*, 14 So. 3d 941, 945 (Fla. 2009); and *Chiles v. Phelps*, 714 So. 2d 453, 456 (Fla. 1998).

The exercise of original, discretionary jurisdiction by this Court is most appropriate where the functions of government would be adversely affected without an immediate determination, and the petition does not present substantial issues of fact. *Compare Whiley v. Scott*, 79 So. 3d 702, 707-08 (Fla. 2011); and *State v. Fernandez*, 143 So. 638, 641 (Fla. 1932) (refusing to grant the issuance of the writ where fact-finding would have been required).

This Petition presents a question of great and pressing importance to the functions of government, impacting multiple branches and levels of state and local government. The suspension of public officers is quintessentially an executive branch function. *State ex rel. Kelly v. Sullivan*, 52 So. 2d 422, 425 (Fla. 1951) ("The Governor alone has the power to suspend a public officer.") Since taking office, Governor Desantis has suspended four public officers from office.[1] The disruption to local governments will be substantial if the Governor's authority is not exercised in a constitutionally compliant manner.

Nor is the impact of this issue localized to the Governor and select local governments with suspended officers. When the Governor suspends a public officer, the Senate has a concomitant role to play in permanent removal for the remainder of the term by providing a hearing and a determination as to whether the public officer should be removed from office. *See* Art. IV, § 7(b), Fla. Const. Only the Governor may suspend a public officer, and only the Senate may remove a public officer. The matter is presently pending before the Florida Senate which is scheduled to convene in regular session on March 5, 2019, and is anticipated to adjourn on May 3, 2019.

[1] See Executive Order 2019-13 (January 11, 2019); Executive Order 2019-14 (January 11, 2019); Executive Order 2019-19 (January 18, 2019); and executive Order 2019-49 (February 22, 2019), available at https://www.flgov.com/2019-executive-orders/.

This Court has previously considered a petition for writ of quo warranto involving the Governor's appointment authority of public officers. *See State ex rel. Bruce v. Kiesling*, 632 So. 2d 601, 602 (Fla. 1994) (exercising original jurisdiction on a petition for quo warranto involving a challenge to the Governor's appointment of commissioner to the Florida Public Service Commission). The Governor's suspension from office of a duly-elected constitutional officer is not materially different for the purpose of exercising original jurisdiction than where his appointment power is concerned.

This Petition presents no substantial issues of fact, so the exercise of this Court's original discretionary jurisdiction is appropriate. Petitioner requests this Court to determine whether the Governor possesses the authority to suspend public officers for acts or omissions committed in their prior terms of office, and relies exclusively on the text of Executive Order 2019-13 and records attached to the order. The question presented is a question of constitutional interpretation, which is a pure question of law. *Delva v. Cont'l Group, Inc.*, 137 So. 3d 371, 374 (Fla. 2014). Because emergency action is necessary to avoid irreparable injury and continuing uncertainty as to Superintendent Jackson's status, because the matter is presently pending before the Senate, and because this Petition presents no substantial issues of fact, compelling reasons support the exercise of original jurisdiction by this Court.

STATEMENT OF FACTS

Mary Beth Jackson won her primary election and was re-elected in the General Election on November 8, 2016, by the voters of Okaloosa County to serve as Superintendent of Schools for Okaloosa County, Florida, for a second four-year term commencing November 22, 2016. *See* App. 20-21; § 100.041(3)(a), Fla. Stat. ("The term of office of a school board member and of a superintendent of schools shall begin on the second Tuesday following the general election in which such member or superintendent is elected.").

Petitioner dutifully served for more than two years until January 11, 2019, when Governor Ron DeSantis issued Executive Order 19-13, suspending Superintendent Jackson for allegedly "fail[ing] her responsibilities and duties to the parents and students of the Okaloosa County School District due to her failure to provide adequate, necessary and frequent training, a lack of supervision of school district personnel, and a fail[ing] to implement adequate safe-guards, policies, and reporting requirements to protect the safety and well-being of the students" and "contravene[ing] her oath of office . . . to 'faithfully perform the duties' of Superintendent." *See* App. 8. The Executive Order suggests these failings constitute a "clear neglect of duty and incompetence"[2] on the part of Superintendent Jackson "for the purposes of Article IV, section 7, of the Florida

[2] Lest there be any doubt, Superintendent Jackson disputes these allegations.

Constitution." *See* App. 8. The predicate for the suspension of Superintendent Jackson was a letter from the Commissioner of Education, Richard Corcoran, dated January 9, 2019, which itself is predicated on the contents of two Okaloosa County Grand Jury Reports dated February 20, 2018 and June 13, 2018.[3] *See* App. 6-7. The Grand Jury reports was based on allegations of conduct which preceded Superintendent Jackson's current term. *See* App. 13. ("The facts giving rise to our review began in the 2015-2016 school year.") Specifically, the two Grand Jury reports made allegatgions of abuse against Marlynn Stillions, which abuse occurred during the 2015-2016 school year. *Id.* Additional allegations included personnel responsible for reviewing complaints for Okaloosa County School District confirmed the allegations but failed to take any disciplinary action against Ms. Stillions; failed to report Ms. Stillions to the Department of Children and Families, as required by law; failed to report the conduct to the Office of Professional Practices of the Department of Education; and failed to report the allegations to the parents of the child involved in the investigation. *Id.* The Grand Jury reports further alleged that Superintendent Jackson failed to implement proper procedures for record management and mandatory reporting of abuse to the Department of Children and Families and the Department of Education; failed to

[3] The Grand Jury twice returned no true bills against Superintendent Jackson relating to the conduct that allegedly forms the basis for her suspension under Executive Order 19-13.

implement a proper procedure for removing any teacher who faces allegations that involve the health or safety or a student; and failed to provide adequate, necessary and frequent trainings for school district personnel, especially in the areas of ethics, child abuse and mandatory reporting obligations. *Id.* at 15-17. The Grand Jury Reports form the factual basis for the conclusion in the Executive Order that Superintendent Jackson has committed "neglect of duty and incompetence" warranting her removal from office. App. 9. All of these allegations relate to acts or omissions which occurred prior to or during the 2015-2016 school year—more than five months prior to the beginning of Superintendent Jackson's current term of office.

NATURE OF THE RELIEF SOUGHT

Petitioner seeks relief because Respondent has exercised executive powers in a manner inconsistent with the text of Article IV, § 7 of the Florida Constitution and the precendents of this Court. Superintendent Jackson seeks the issuance of a writ of quo warranto to require Governor DeSantis to demonstrate both his authority and the jurisdictional basis to issue Executive Order 19-13, suspending her from the office of Superintendent of Schools for Okaloosa County, Florida. The facts alleged in Executive Order 19-13 relate allegations which occurred prior to or during the 2015-2016 school year, well before Superintendent Jackson was elected to her current term. The text of the Florida Constitution and the

longstanding precedents of this Court indisputably hold that Governor DeSantis is without authority to suspend Superintendent Jackson for actions preceding her current term of office.

Given the significant public interest in the Governor's exercise of suspension authority under the Florida Constitution, the right of public officers to public office, the right of local electors to select their officers, and the imminence of the Senate's consideration of Superintendent Jackson's removal from office based upon the allegations in Executive Order 19-13, Petitioner requests expeditious review of this matter. For the same reasons, a proceeding in any other court would be inadequate to afford the requested relief.

ARGUMENT

I. THE GOVERNOR'S AUTHORITY TO REMOVE AN OFFICIAL FROM OFFICE UNDER ARTICLE IV, SECTION 7, FLORIDA CONSTITUTION, IS LIMITED TO ACTS OCCURRING DURING THE OFFICER'S CURRENT TERM OF OFFICE

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

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

"The power of suspension, being solely in the Governor, must be limited to the grounds stated in the Constitution." *State ex rel. Hardie v. Coleman*, 155 So. 129, 134 (Fla. 1934). Textually, nothing in section 7(a) grants the Governor carte blanche authority to suspend public officers for acts or omissions committed to prior to the beginning of their term of office.

In accordance with that limitation, this Court has long held that the Governor's authority to suspend an officer under the Florida Constitution is limited to acts occurring during the current term of office of the suspended officer. *In re Advisory Opinion to Governor*, 60 So. at 337 ("The power thus given the Governor to suspend the incumbent of an office and to fill the office by appointment is necessarily confined to the current term of office."); *Rosenfelder v. Huttoe*, 24 So. 2d 108, 110 (Fla. 1945) ("No rule is better settled under our democratic theory than this: when one is re-elected or reappointed to an office or position he is not subject to removal for offenses previously committed."); *State ex rel. Turner v. Earle*, 295 So. 2d 609, 613 (Fla. 1974) ("Recognizing that there are divergent views, we find that the rule supported by the great weight of authority and specifically adopted by this Court in construing statutory and constitutional provisions authorizing the removal of public officers guilty of misconduct when such provisions do not refer to the term of office in which the misconduct occurred is that a public officer may not be removed from office for misconduct which he committed in another public

office or in a prior term of office in the absence of disqualification to hold office in the future because of the misconduct.") (internal citations omitted). Implicit in this holding is the principle that the intervening election cleanses the taint of allegations occurring prior to the current term of office. Thus, the Governor's authority to suspend as granted by Article IV, Section 7, of the Florida Constitution does not extend to acts preceding the officer's current term.

Executive Order 19-13 exclusively relies upon alleged acts or failures occurring prior to Superintendent Jackson's current term of office. The long standing precedents of this Court require that Executive Order 19-13 should be invalidated, and Superintendent Jackson should be subsequently reinstated as Superintendent of Schools of Okaloosa County, Florida.

II. SECTION 112.42, FLORIDA STATUTES, IMPERMISSIBLY ENLARGES THE GOVERNOR'S SUSPENSION AUTHORITY BY ALLOWING THE GOVERNOR TO SUSPEND AN OFFICER FOR MISCONDUCT OCCURRING PRIOR TO THE OFFICER'S CURRENT TERM OF OFFICE AND IS UNCONSTITUTIONAL

The natural anticipated response from the Governor to the assertion that the his authority is limited to only suspending public officers for acts or omissions committed in the current term, is that the Legislature has enacted laws that have expanded that authority. As originally enacted in 1969, Section 112.42, Florida Statutes (1969), stated:

> The Governor may suspend any officer on any constitutional ground for such suspension that occurred during the existing term of the officer or

> during the next preceding 4 years, *if the suspended officer held public office at the time the ground or grounds for suspension occurred*.

(Emphasis added). By its plain language, the statute sought to expand the suspension powers of the Governor beyond those specifically provided for in the Florida Constitution by authorizing the Governor to suspend any officer on grounds occurring in the officer's existing term of office or preceding term of office up to four years. The Legislature subsequently amended the statute in 1971 to remove the emphasized language, broadening the authority to include any constitutional grounds for suspension occurring in the current term of office or in the next preceding four years, regardless of whether the officer was in office at the time of the occurrence. *See* Ch. 71-333, § 1, Laws of Fla. Thus, the statute as it stands now has not only attempted to expand the Governor's suspension authority for constitutional grounds which occurred prior to a current term of office, but also enlarged the authority to cover constitutional grounds occurring before the public officer was in public office.

The statute's purported enlargement of the Governor's suspension authority as granted by the Florida Constitution was noted by the Florida Supreme Court in *State ex rel. Turner v. Earle*. 295 So. 2d at 617, n.7 ("The constitutional question as to whether the Legislature can enlarge the suspension power of the Governor as conveyed by Article IV, Section 7, Florida Constitution has not as yet been raised.

The constitutionality of this statute which obviously relates only to the Governor's authority to suspend has not been measured against Article IV, Section 7, Florida Constitution . . ."). To date no court has addressed the constitutionality of section 112.42, Florida Statutes.

It is axiomatic that "[e]xpress or implied provisions of the Constitution cannot be altered, contracted or enlarged by legislative enactments." *Ostendorf v. Turner*, 426 So. 2d 539, 544 (Fla. 1982), quoting *Sparkman v. State*, 58 So. 2d 431, 432 (Fla. 1952). Furthermore, where authority is constitutionally exclusively granted to the Executive Branch of government, the Legislative Branch may not intrude on that authority. *In re Advisory Opinion of The Governor*, 334 So. 2d 561, 562-63 (Fla. 1976) (finding the Governor's clemency powers which were constitutionally derived could not be made subject to the Administrative procedures Act); *see also In Re Advisory Opinion of the Governor Civil Rights*, 306 So. 2d 520 (Fla. 1975); *Singleton v. State*, 21 So. 21 (Fla. 1896). The only grant to the Legislature is limited to the conduct of proceedings, "prescribed by law." Art. IV, § 7(b), Fla. Const. Accordingly, if the Legislature or others seek to expand the Governor's suspension authority under the Florida Constitution, such must be done through revision or amendment to the Florida Constitution itself.

This is precisely what occurred with regard to the grounds for removal of judicial officers. Like the current constitutional provision relating to removal of

elected officers, a prior version of the Florida Constitution did not refer to the term in which misconduct must occur with regard to the removal of judicial officers. *See* Art. V, § 12(d), Fla. Const. (1973). When faced with the question, the Florida Supreme Court held that a circuit judge could not be removed from office for misconduct alleged to have occurred prior to the judge's current term of office. *See State ex rel. Turner v. Earle*, 295 So. 2d at 616-617. This Court reiterated the rule supported by the great weight of authority and its own precedent: "a public officer may not be removed from office for misconduct which he committed in another public office or in a prior term of office in the absence of disqualification to hold office in the future because of such misconduct." *Id*. at 613.

Subsequent to the decision in *Turner*, Florida voters amended Article V, § 12(d) of the Florida Constitution in 1974, altering the removal provision relating to judicial officers which addressed the issue of when the misconduct may have occurred. *See Inquiry Concerning Davey*, 645 So. 2d 398 (Fla. 1994) (noting the amendment to Article V, Section 12, Florida Constitution, authorizing removal of judicial officers for conduct occurring prior to the current term of office). As a result, the Court in *Davey* held that the Florida Constitution now authorized the discipline and removal of judges for acts occurring prior to the judge's current term.

Florida voters have approved no such similar amendment to Article IV, Section 7(a), of the Florida Constitution. The text of Section 7(a) only provides for suspension or removal from office for acts occurring during the officer's current term of office. To the extent that section 112.42, Florida Statutes, purports to enlarge that authority by allowing the Governor to suspend an officer for misconduct occurring prior to the officer's current term, such statute is unconstitutional on its face.

CONCLUSION

Governor DeSantis' authority to suspend Superintendent Jackson under Article IV, Section 7, Florida Constitution, is limited to acts occurring during Superintendent Jackson's current term of office which commenced November 22, 2016. Executive Order 19-13 exclusively asserts alleged acts or omissions occurring prior to her election to current office. Therefore, Executive Order 19-13 is an invalid exercise of authority, and Superintendent Jackson is entitled to reinstatement as Superintendent of Schools of Okaloosa County, Florida.

Petitioner respectfully requests this Court's issuance of an order directing Ron DeSantis, Governor of the State of Florida, to show cause why Executive Order Number 19-13 (January 11, 2019), should not be invalidated, why Mary Beth Jackson should not be reinstated as a Superintendent of Schools of Okaloosa County, Florida, and, in accordance with Fla. R. App. P. 9.040(c), if the Court

determines that Petitioner has sought an improper remedy treat this matter as though the proper remedy had been sought, award Mary Beth Jackson her attorney fees and costs incurred in accordance with section 112.44, Florida Statutes, together with all such other and further relief which this Court may deem just and proper.

Respectfully submitted on March 1, 2019.

/s/ *George T. Levesque*
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 1, 2019, a true copy of the foregoing has been filed via the Court's electronic filing system, which shall serve a copy via email to the following counsel of record, constituting compliance with the service requirements of Fla. R. Jud. Admin. 2.516(b)(1) and Fla. R. App. P. 9.420:

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CERTIFICATE OF COMPLIANCE

I certify that this petition complies with the font requirements of Florida Rule of Appellate Procedure 9.100(*l*).

/s/ *George T. Levesque*
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