

SC2023-1246

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**SUPREME COURT OF FLORIDA**

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MONIQUE WORRELL,  
*Petitioner,*

v.

RON DESANTIS, as Governor of the State of Florida,  
*Respondent.*

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**BRIEF OF AMICI CURIAE FORMER U.S. ATTORNEYS GENERAL  
IN SUPPORT OF RESPONDENT**

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## STATEMENT OF INTEREST

*Amici* are several former United States Attorneys General.<sup>1</sup> Edwin Meese III served as United States Attorney General from 1985 to 1988. Michael B. Mukasey served as United States Attorney General from 2007 to 2009. Jefferson B. Sessions III served as United States Attorney General from 2017 to 2018. William P. Barr served as United States Attorney General from 1991 to 1993 and from 2019 to 2020. During their tenures as public officials and since, *amici* have been committed to advancing the rule of law and improving the administration of justice for all Americans.

As public officials and private citizens, they have an interest in seeing that our criminal laws are vigorously enforced. *Amici* collectively have decades of experience drafting, enforcing, and interpreting the law at the state and federal levels. As leaders of the United States Department of Justice—executives who oversaw “[a]ll functions of other officers . . . and all functions of agencies and employees of the

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<sup>1</sup> No party’s counsel authored this brief in whole or in part, and no person other than *amici* and their counsel contributed money intended to fund the preparation or submission of this brief.

Department[,]” 28 U.S.C. § 509—*amici* offer a unique perspective on the issues in this case.

### **SUMMARY OF ARGUMENT**

This case has nothing to do with prosecutorial “discretion” or “independence.” Ms. Worrell’s actions did not involve prosecutorial discretion, but rather prosecutorial abdication of duties and setting aside the Legislature’s policy judgments in favor of her own. This offends Florida’s constitution and bedrock separation-of-powers principles and makes a mockery of the rule of law.

When “the People of the United States” set down the road to ratifying the Constitution, they agreed to “establish Justice,” “insure domestic Tranquility,” and “provide for the common defence.” Preamble, U.S. Const. To achieve those ends—and to secure “the steady administration of the laws”—the Founders “divided the powers of the new Federal Government into three defined categories.” *Seila Law LLC v. C.F.P.B.*, 140 S. Ct. 2183, 2202 (2020) (citation omitted). In doing so, they lodged all “[t]he executive power” in the President and required him to “take Care that the Laws be faithfully executed.” Art. II, § 1, U.S. Const.; *id.* § 3. They then rendered the President “directly

accountable to the people through regular elections,” and rendered the Executive Branch accountable to the President “through the threat” of suspension and removal. *Seila*, 140 S. Ct. at 2203.

Roughly one century later, “the people of the State of Florida” set down a similar path, ratifying a constitution that established “liberty,” “insure[d] domestic tranquility,” and “maintain[ed] public order.” Preamble, Fla. Const. When crafting their constitution, the people of Florida—like the people of the United States—divided their government into three distinct departments, *see id.* Art. III, Art. IV, Art. V, U.S. Const., and “vested” all “[t]he supreme executive power” in a governor, who had to “take care that the laws be faithfully executed,” Art. IV, § 1(a), Fla. Const. They then rendered the Governor accountable to the people through regular elections, *id.* § 5(a), and rendered “state officer[s]” accountable to him through the threat of suspension, *id.* § 7(a)-(b).

At both the federal and state levels, the “constitutional strategy” was the same: ensure the Executive is “accountable to the people”—and ensure that “executive officials” are accountable to the Executive. *Seila*, 140 S. Ct. at 2203; *Free Enter. Fund v. P.C.A.O.B.*, 561 U.S.

477, 483 (2010). In both cases, “[t]he buck stops with the” Chief Executive, *Free Enter. Fund*, 561 U.S. at 493, who, in Florida, may suspend certain officers for “neglect of duty,” “incompetence,” and the “inability to perform official duties”—duties like pursuing, punishing, and imprisoning violent criminals. Art. IV, § 1(a), Fla. Const.

Rather than respecting this constitutional design, Monique Worrell wants to disregard her duties with zero consequence. Before the Governor’s suspension order, Ms. Worrell’s constituents bore the brunt of her pro-criminal practices and policies.

State attorneys like Ms. Worrell should uphold their paramount duty to protect the public by vigorously enforcing, and “faithfully execut[ing],” the laws. Art. IV, § 1(a), Fla. Const.; *see also* Art. II, § 3, U.S. Const. But Ms. Worrell did the opposite. By choosing abdication over execution, Ms. Worrell refused to protect the very people she was elected to serve. That is textbook “incompetence” and “neglect.” Art. IV, § 7(a), Fla. Const.

Governor DeSantis did not transgress any constitutional limits when he held her accountable for it.



## ARGUMENT

### I. **The government has an obligation to protect the public and maintain public order.**

“A primary purpose of the Constitution was to give structure to government, to provide protection, and to allow our citizens to pursue an orderly and peaceful life without fear.” *Barnes v. Mississippi Dep’t of Corr.*, 907 F. Supp. 972, 981 (S.D. Miss. 1995), *aff’d sub nom. Barnes v. Anderson*, 116 F.3d 1477 (5th Cir. 1997). Indeed, “providing for their safety” is the first “of many objects to which a wise and free people find it necessary to direct their attention.” The Federalist No. 3 (John Jay). It is a right that every person is entitled to. See James Kent, *Commentaries on American Law* \*15 (1826) (“The right of personal security is guarded by provisions which have been transcribed into the constitutions in this country from Magna Carta”).

The right to personal security leads to one of the government’s most essential obligations: “enforcing th[e] laws.” 3 William Blackstone, *Commentaries on The Laws of England* \*2 (St. George Tucker ed., 1803). As “mutual protection and assistance is the only reasonable purpose of all reasonable Societies,” John Trenchard, *Cato’s*

Letters No. 62, at 245 (London 3d ed. 1733), and is “the first object of government”. The Federalist No. 10 (James Madison).

The Government has long been “bound to redress” crime through “the ordinary forms of law”—*i.e.*, through pursuing, prosecuting, and imprisoning criminals. Blackstone, *supra* at \*115. That is equally true in Florida. There, the People codified this duty into the first sentence of their constitution, confirming that the government was founded to “insure domestic tranquility, *maintain public order*, and guarantee equal civil and political rights to all.” Preamble, Fla. Const. (emphasis added).

## **II. Prosecutors are critical in protecting the public and maintaining order.**

To maintain public order, the Federal Constitution and Florida’s constitution lodged the duty to protect in a predictable place: the Executive. *See Seila*, 140 S. Ct. at 2203; *State v. Tuttle*, 177 So. 3d 1246, 1249 (Fla. 2015). To satisfy this duty, the Executive, through its prosecutors, has traditionally followed a familiar formula: “identify, target, and incapacitate” criminals “whenever they are on the streets.” Michael Vitiello, *Three Strikes*, 87 J. Crim. L. & Criminology 395, 481 (1997) (quoting William P. Barr, Office of Policy Dev., U.S. Dep’t of

Justice Memo NCJ-139583 at ii (1992), <https://perma.cc/MZD3-RRVP>). And that makes good sense. For decades, a substantial body of evidence shows that this strategy works, *see, e.g.*, Mary Cary, *How States Can Fight Violent Crime: Two Dozen Steps to a Safer America*, Heritage Foundation (June 7, 1993), [perma.cc/W8W6-JUA7](https://perma.cc/W8W6-JUA7), and that more permissive, anti-punishment policies do not. William P. Barr, *Memorandum to the President, Recommendations for State Criminal Justice Systems* (July 28, 1992), <https://perma.cc/Y6DE-PFUU>.

Unfortunately, a growing cadre of prosecutors—prosecutors like Ms. Worrell—are resurrecting the very policies that we know increase levels of violence in society. Prosecutors across the country are relying on a policy of “de-prosecution,” which is the “decision not to prosecute crimes even when the facts and evidence are sufficient to convict defendants.” Thomas Hogan, *A Litany of Failure: Assessing progressive criminal-justice policies*, *City Journal* (August 2, 2022) <https://perma.cc/6HPW-L28X>.

The results of these policies reveal why it is so important for prosecutors to uphold the rule of law. Since the early days of the anti-punishment movement, *see, e.g.*, Bland, *George Soros’ quiet overhaul*

of the U.S. justice system, Politico (Aug. 30, 2016), [perma.cc/XXJ2-7XKW](https://perma.cc/XXJ2-7XKW), violent crime has spiked, with homicide rates jumping by more than 50 percent, see Cong. Rsch. Serv., *Violent Crime Trends, 1990-2021* (Dec. 12, 2022), [perma.cc/38X7-JWN7](https://perma.cc/38X7-JWN7). According to a recent survey of 37 American cities—most of whom have permissive prosecution policies—violent crimes “remained elevated compared to 2019,” with 24 percent more homicides during the first half of 2023 compared to the first half of 2019. Council on Criminal Justice, *Crime Trends in U.S. Cities: Mid-Year 2023 Update* (July 2023), [perma.cc/R8HL-UZH4](https://perma.cc/R8HL-UZH4). And according to another study, a dozen major cities—nearly all with anti-punishment district attorneys—recently “hit all-time homicide records.” Bill Hutchinson, *‘It’s just crazy’: 12 Major Cities Hit All-Time Homicide Records*, ABC News (Dec. 8, 2021), [perma.cc/2YAW-T4PJ](https://perma.cc/2YAW-T4PJ).

A 2022 study using a “synthetic control algorithm” estimated that a de-prosecution policy in Philadelphia was associated with an increase of 74 homicides per year during 2015–2019, where prosecutions dropped 70 percent for both felonies and misdemeanors. Thomas P. Hogan, *De-prosecution and death: A synthetic control*

*analysis of the impact of de-prosecution on homicides*, 21 *Criminology & Public Policy*, 491, 489–534 (July 7, 2022) <https://doi.org/10.1111/1745-9133.12597>. Cities like Baltimore and Chicago—both under the leadership of progressive prosecutors—suffered the same fate as Philadelphia, with Baltimore seeing an additional 70 homicides per year from 2014–2019 and Chicago seeing 169 more homicides per year from 2015–2019. *Id.* at 510–511.

**III. By declining to enforce laws that do not comport with her policy preferences, Ms. Worrell has threatened public safety and refused to maintain order.**

Like other progressive prosecutors across the country, Ms. Worrell “authorized or allowed practices or policies” that “prevented or discouraged” her assistant state attorneys from pursuing, prosecuting, and imprisoning entire classes of criminals. Fla. Exec. Ord. No. 23-160 at 3-7. She “authorized or allowed practices or policies” that “prevented or discouraged” attorneys from “obtaining meritorious minimum mandatory sentences for drug trafficking offenses.” *Id.* at 5, 6. She “pursued practices or adopted policies” that “generally prevented or discouraged” assistant state attorneys “from incarcerating or even charging serious juvenile offenders.” *Id.* at 7. And her office

“prevented or discouraged” attorneys from pursuing “mandatory minimum sentences” and “certain sentencing enhancements” against “repeat violent offenders.” *Id.* at 4, 9. In short, Ms. Worrell decided that she would not enforce entire categories of laws that did not comport with her policy preferences.

One of the core duties of the Executive Branch “is that of apprehending and obtaining the conviction of those who have violated criminal statutes of the United States.” *United States v. Valenzuela-Bernal*, 458 U.S. 858, 863 (1982). Indeed, it is “a vitally important one.” *Id.* Like its federal counterpart, the Florida Constitution requires the Executive Branch to “faithfully execut[e],” Art. IV, § 1(a), Fla. Const., and “prosecute violations of criminal laws,” Art. IV, § 4(b), Fla. Const. And that means that Ms. Worrell has a “duty to prosecute violations of the law.” *State ex rel. Hardee v. Allen*, 172 So. 222, 225 (Fla. 1937).

Contrary to the overwrought claims of her amici, Ms. Worrell cannot avoid accountability merely by citing prosecutorial “independence” or “discretion.” *See, e.g.*, Br. of 121 Current and Former Officials at 5, 18–19; Br. of Current and Former Elected Officials at 11–

15. It is widely accepted that though “prosecutorial discretion is broad, it is not ‘unfettered.’” *Wayte v. United States*, 470 U.S. 598, 608 (1985) (quoting *United States v. Batchelder*, 442 U.S. 114, 125 (1979)).

Just as prosecutorial discretion is “subject to constitutional constraints,” *Batchelder*, 442 U.S. at 125, it also is subject to the foundational principle that requires a prosecutor to engage in an “*individualized*” assessment of the facts and circumstances of each case.” U.S. Dep’t of Justice, Justice Manual § 9-27.001 (emphasis added). When prosecutors fail to do that and instead adopt blanket policies of refusing to charge under certain laws, they effectively nullify the intent of the legislature as outlined in the criminal statutes they are sworn to enforce. By doing so, Ms. Worrell has transgressed constitutional commands, undermined public safety, and put at risk the constituents she must protect. She is not insulated from accountability to the executive solely because of the prosecutorial discretion she enjoys.

The numbers associated with Ms. Worrell’s tenure paint a stark picture of the nature of her policies. In 2021 and 2022, out of 213

referrals from the Osceola County Sheriff's office—cases involving firearms offenses, robberies, home invasions, and carjackings—only seven of those 213 referrals, or a meager three percent, “resulted in [a] mandatory minimum sentence.” Fla. Exec. Ord. No. 23-160 at 4–5.

Ms. Worrell's record on drug-trafficking crimes is similarly bleak, especially considering the scourge of our nation's ongoing opioid epidemic. Out of the 64 drug trafficking cases referred to Ms. Worrell's office by the Osceola County Sheriff's Office in 2022, not even one has resulted in a mandatory minimum sentence. Fla. Exec. Ord. No. 23-160 at 6. The Legislature made clear its intent when it established mandatory minimum sentences for certain quantities of drugs being trafficked in the state of Florida. Ms. Worrell claims that the Florida statutes on mandatory minimum sentences for gun and drug crimes “do not address or limit the prosecutor's discretion to enter into plea bargains” where the defendant pleads to an offense that does not have a mandatory minimum sentence. Pet. 41. It would be unusual if not one offender in a drug case presented to Ms. Worrell's office did not meet the criteria that justified a mandatory



minimum sentence under the law. And yet, that is precisely what Ms. Worrell suggests.

The same is true for Ms. Worrell’s juvenile sentencing record. During her tenure, the Ninth Circuit has reliably ranked last among “all 20 circuits in Florida” for the percentage of prosecuted “juvenile felony cases,” including “firearm-related felonies and violent felonies,” which Ms. Worrell has consistently failed to prosecute. Fla. Exec. Ord. No. 23-160 at 7. Yet, at the same time, Ms. Worrell’s office dropped more juvenile felony cases than any other Circuit. *Id.* Governor DeSantis was well within his authority to conclude that this “constitutes both ‘neglect of duty’ and ‘incompetence’.” *Id.* at 11.

While the above numbers are shocking, the results of Ms. Worrell’s policies are even more so. During her first year in office, the number of reported crimes in her district increased by more than 1,500, Fla. Dep’t of Law Enforcement, *Statewide Judicial Circuit Offense Report*, <https://perma.cc/YKU4-CA2Y>, even though the crime rate decreased in the rest of the state.<sup>2</sup> Murders increased by more

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<sup>2</sup> Fla. Dep’t of Law Enforcement, *Florida crime rate drops for record 50-year low*, <https://www.fdle.state.fl.us/News/2022/November/Florida-crime-rate-drops-for-record-50-year-low>.

than 25 percent.<sup>3</sup> And aggravated assaults rose nearly ten percent.<sup>4</sup> In total, that’s roughly 68 more homicides and 520 more aggravated assaults during Ms. Worrell’s first year. It should be no surprise that Ms. Worrell has admitted that her district saw “an increase in all violent crime” during her first year in office.<sup>5</sup> Despite that, Ms. Worrell maintained policies and procedures that prioritized her anti-incarceration agenda over the safety of the communities she was elected to protect.

Ms. Worrell’s second year was no better. From 2020 to 2022, violent crime in Orange County steadily increased, eclipsing more than 3,000 reported crimes.<sup>6</sup> Osceola County saw the homicide rate more than double, rising from 24 murders in 2020 to an average of

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<sup>3</sup> Greg Fox, *Violent crimes see increase in Orange, Osceola communities*, WESH2 Orlando (Oct. 8, 2021), <https://www.wesh.com/article/violent-crimes-worrell-comments-orange-osceola/37912605>.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> FLHealthCharts, *Violent Crime Year 2022 Orange County*, <https://www.flhealthcharts.gov/ChartsDashboards/rdPage.aspx?rdReport=NonVitalIndNoGrp.Dataviewer>.

nearly 62 murders in 2021 and 2022.<sup>7</sup> Drug arrests,<sup>8</sup> motor vehicle thefts,<sup>9</sup> and sexual violence<sup>10</sup> also increased during Ms. Worrell's tenure, with the rate of minor-sexual-abuse instances rising by more than 40 percent.<sup>11</sup> This all occurred when crime throughout the rest of Florida had decreased by more than 8.3 percent.<sup>12</sup>

Taking away tools from line prosecutors by discouraging or preventing the use of mandatory minimum sentences and certain sentencing enhancements has dangerous effects on the community and negatively affects the morale of the office. Line prosecutors should be free to exercise their discretion in a meaningful way.

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<sup>7</sup> FLHealthCharts, *Murder Year 2022*, <https://www.flhealthcharts.gov/ChartsDashboards/rdPage.aspx?rdReport=NonVitalIndNoGrp.Dataviewer>.

<sup>8</sup> FLHealthCharts, *Drug Arrests Year 2022*, <https://www.flhealthcharts.gov/ChartsDashboards/rdPage.aspx?rdReport=NonVitalIndNoGrp.Dataviewer>.

<sup>9</sup> FLHealthCharts, *Motor Vehicle Theft 2022*, <https://www.flhealthcharts.gov/ChartsDashboards/rdPage.aspx?rdReport=NonVitalIndNoGrp.Dataviewer>.

<sup>10</sup> FLHealthCharts, *Children Experiencing Sexual Violence (Aged 5-11 Years)* <https://www.flhealthcharts.gov/ChartsDashboards/rdPage.aspx?rdReport=NonVitalIndNoGrp.Dataviewer>.

<sup>11</sup> *Id.*

<sup>12</sup> *Florida crime rate drops for record 50-year low, supra note 2.*

Because of their familiarity with the facts, line prosecutors are in the best position to make determinations and recommendations about the appropriate course of action in any specific case in conjunction with a supervisor’s judgment. Tying their hands before they get started is a grave disservice to them and the communities they serve. It is no wonder that Ms. Worrell’s actions “resulted in a critical loss of experienced prosecutors” in the office. Fla. Exec. Ord. No. 23-160 at 13.

**IV. The Governor’s suspension authority is the proper means to hold accountable errant prosecutors like Ms. Worrell.**

The Framers had a simple solution to address prosecutors who fail to enforce the law. They “ensure[d] that the Executive Branch is overseen by a President accountable to the people.” *Seila*, 140 S. Ct. at 2207; *Free Enter. Fund*, 561 U.S. at 497–98. Under this scheme, the Founders lodged “the executive power” in the President, *Seila*, 140 S. Ct. at 2191, and vested him with “the authority to remove those who assist him in carrying out his duties.” *Free Enter. Fund*, 561 U.S. at 513–514.

Florida’s constitution functions similarly. It “vest[s]” all the “executive power” in one person, who “shall take care that the laws be

faithfully executed.” Art. IV, § 1(a), Fla. Const.; Art. II, U.S. Const. And it allows the Governor to hold other executive officers accountable by “suspend[ing]” certain “state officer[s]” for “malfeasance, misfeasance, neglect of duty, drunkenness, [and] incompetence,” among other things. Art. IV, § 7(a), Fla. Const.; *see also Myers v. United States*, 272 U.S. 52, 169 (1926) . Considering this, it makes sense that Florida’s “suspension and removal process”—much like the Federal Government’s suspension and removal process—generally “excludes the judiciary.” *Israel v. DeSantis*, 269 So. 3d 491, 495 (Fla. 2019); *State ex rel. Kelly v. Sullivan*, 52 So. 2d 422, 425 (Fla. 1951) (“It is the function of the Senate, and never that of the Courts, to review the evidence upon which the Governor suspends an officer.”).

This case is no exception. When considering a suspension order, the judiciary can only ask whether the order “sets forth allegations of fact relating to one of the constitutionally enumerated grounds of suspension.” *Israel*, 269 So. 3d at 495. If the order satisfies that “low threshold”—and thereby alleges that the suspended officer was incompetent, negligent, or drunk (among other things)—it “will be adjudged as sufficient.” *Id.* at 496 (quoting *State ex rel. Hardie*

*v. Coleman*, 115 Fla. 119, 129 (1934)); see also *Jackson v. DeSantis*, 268 So. 3d 662, 663 (Fla. 2019).

Governor DeSantis' suspension order far surpasses the standards required to justify it. It contains example after example of Ms. Worrell's practices and policies that evidence her neglect and incompetence in carrying out her sworn duties. Rather than execute the laws, she dispensed with them. Rather than arresting criminals, she coddled them, "systematically permit[ing] violent offenders, drug traffickers, serious juvenile offenders, and pedophiles to evade incarceration." Fla. Exec. Ord. No. 23-160 at 3.

That type of abdication "defies the expressed will of the Florida Legislature," it "subjects the residents of Orange and Osceola Counties and surrounding areas to increased risk of harm," *id.* at 5, and it abandons the most basic duty of Ms. Worrell's post: the duty to faithfully execute the laws—a duty made even more important in the context of laws designed to further Florida's fundamental duty to ensure the safety of its citizenry. Ms. Worrell claimed to be "[p]rioritizing public safety" and "[w]orking to restore public trust in the system."

*Reelect State Attorney Monique Worrell* (archived Oct. 26, 2023), [perma.cc/TX5K-WUQE](https://perma.cc/TX5K-WUQE). But her actions belie those claims.

Ms. Worrell failed to protect the people of the Ninth Circuit by outright refusing to prosecute broad swaths of cases in direct contravention of the law. See Fla. Exec. Ord. No. 23-160 at 12. That most certainly constitutes neglect and incompetence at such a level to justify—and, indeed, to *require*—the Governor’s suspension order.

### **CONCLUSION**

For the foregoing reasons, the Court should hold that Governor DeSantis constitutionally exercised his suspension power. The Court should thus dismiss or deny Ms. Worrell’s petition.

Dated: November 2, 2023

Respectfully submitted,

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## **CERTIFICATE OF COMPLIANCE**

I certify that this brief complies with Florida Rules of Appellate Procedure 9.045(b) and (e) and 9.370(b) because it was prepared using Bookman Old Style 14-point font and contains 3,382 words.

/s/ Jason Gonzalez  
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## **CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing was furnished via the e-Filing Portal to counsel for all parties of record on this 2nd day of November 2023, including:

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