

CASE No. 4D19-_____

**IN THE DISTRICT COURT OF APPEAL
FOURTH DISTRICT OF FLORIDA**

SCOTT ISRAEL,

Petitioner-Appellant,

v.

HON. RON DESANTIS,

in his official capacity as Governor of the State of Florida,

Respondent-Appellee

On Appeal from the Seventeenth Circuit
in and for Broward County, Florida
L.T. Case No. CACE-19-005019
Hon. David A. Haimes

**GOVERNOR DESANTIS' SUGGESTION THAT THE FINAL ORDER BE
CERTIFIED AS REQUIRING IMMEDIATE RESOLUTION BY THE
FLORIDA SUPREME COURT**

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COMES NOW, Respondent-Appellee, Hon. Ron DeSantis, in his official capacity as the Governor of the State of Florida (hereinafter “Governor DeSantis”), respectfully suggests that the final order below be certified for resolution by the Florida Supreme Court pursuant to Florida Rule of Appellate Procedure 9.125.

On January 11, 2019, Governor DeSantis exercised his constitutional authority suspending Petitioner-Appellant, Scott Israel, from his office of Sheriff of Broward County for neglect of duty and incompetence. On January 29, 2019, the Florida Senate began its formal review of Executive Order 19-14, suspending Scott Israel from office. A final hearing on Executive Order 19-14 was scheduled to take place during the week of April 8, 2019. Scott Israel filed a Petition for Writ of Quo Warranto on March 7, 2019, challenging the constitutional authority of Governor DeSantis to suspend him from office. By operation of Florida Senate Rule 12.9(2), the Florida Senate abated the removal/reinstatement proceedings at the initiation of civil litigation. The Florida Senate will hold the proceedings in abated pending the exhaustion of all appellate remedies. *See* Florida Senate Rule 12.9(2). The Florida Senate is scheduled to adjourn their regular session on Friday, May 3, 2019.

On April 1, 2019, Seventeenth Circuit Court Judge David A. Haines heard argument from Governor DeSantis and Scott Israel on the jurisdictional authority of Executive Order 19-14. On April 4, 2019, Judge Haines issued his Final Order

of Dismissal and Order Granting Motion to Dismiss. The important legal issue decided by the trial court below that requires immediate resolution is that Executive Order 19-14 meets the jurisdictional threshold required by the Florida Constitution and the executive order must be properly considered by the Florida Senate for removal/reinstatement pursuant to Article IV, section 7. Delay in holding that Executive Order 19-14 meets the jurisdictional authority required by the Florida Constitution limits the Florida Senate from carrying out constitutionally prescribed responsibility in the suspension and removal process. Furthermore, the explicit separation of powers articulated in the Florida Constitution demands that the Florida Senate be the court to review Executive Order 19-14 on its merits.

This case involves a facial review of Executive Order 19-14 for jurisdictional authority. *See State ex rel. Hardie v. Coleman*, 155 So. 129 (Fla. 1934). Article IV, section 7(a) of the Florida Constitution provides, in relevant part, that the Governor, by executive order stating the grounds, may suspend a county officer for neglect of duty or incompetence. The Florida Supreme Court has held that so long as the Governor acts within his constitutional authority, the courts may not review his action—that power is vested in the Florida Senate. *See Coleman*, 155 So. at 133-35. Courts have a limited, facial review of the jurisdictional facts. *State ex rel. Hardee v. Allen*, 172 So. 222, 224 (Fla. 1937) (“[T]he courts may determine the sufficiency of the jurisdictional facts on which

the Governor rests his action, but [the courts] have no authority to determine the sufficiency of the evidence to support the ground of suspension.”). Therefore, Courts are bound to adjudge an executive order of suspension sufficient if it names one or more of the grounds for suspension expressly embraced in Article IV, section 7(a) and is supported by facts that bear a reasonable relation to the ground of suspension. *See Allen*, 172 So. at 224; *Coleman*, 155 So. at 133.

After oral argument, the Circuit Court below issued its Final Order of Dismissal and Order Granting Motion to Dismiss on April 4, 2019, holding that Executive Order 19-14 names specific grounds embraced in the Constitution (neglect of duty and incompetence) and it alleges facts that support and bear a reasonable relation to the stated grounds, holding Executive 19-14 meets the jurisdiction threshold required by the Florida Constitution and articulated in *Coleman*. *See* Final Order, App. at 7.

The Florida Rules of Appellate Procedure permit this Court to certify a trial court order as requiring immediate resolution by the Supreme Court because the issues “are of great public importance or have a great effect on the proper administration of justice throughout the state.” *See* Art. V, § 3(b)(5), Fla. Const.; Fla. R. App. P. 9.125(a). In making that decision, this Court is limited to whether (1) the order is appealable; (2) the issue is of great public importance or is likely to have great effect on the proper administration of justice; and (3) circumstances

exist which require immediate resolution by the Florida Supreme Court. *Harris v. Coalition to Reduce Class Size*, 824 So. 2d 245, 248 (Fla. 1st DCA 2002). Any doubts about the need for certification or opposition by Petitioner-Appellant, should be resolved in favor of certification. *See League of Women Voters of Fla. v. Detzner*, 178 So. 3d 6, 8 (Fla. 1st DCA 2014).

Here, there is a need for immediate resolution of this dispute by the Florida Supreme Court. Florida Senate Rule 12.9(2) abates any Senate removal proceedings pending the exhaustion of all appellate remedies. The Florida Senate is set to adjourn its regular session on May 3, 2019. The issue is of great public importance and is likely to have a great effect on the proper administration of justice. First, the timely review on an executive order of suspension provides clarity and stability for the administration of the official duties of the office. Second, the issue presented impacts the Governor's constitutional suspension authority outlined in Article IV, section 7, which directly impacts the entire state of Florida. Third, the doctrine of separation of powers demands that the Florida Senate exercise its exclusive jurisdiction to adjudicate the merits of the executive order of suspension.

Additionally, a similar controversy is current pending in front of the Florida Supreme Court. *See Mary Beth Jackson v. Hon. Ron DeSantis*, SC19-329 (Fla. Mar. 1, 2019). The Florida Supreme Court has granted expedited review and

disposition of that matter. *See* Order, App. at p. 9. The Florida Supreme Court’s review of this issue is virtually certain. This important dispute should be resolved by the Florida Supreme Court sooner, rather than later, and at the same time as a similar pending controversy.

Certification by this Court and an expedited decision on this issue is in the best interest of the public and efficient administration of justice.

WHEREFORE, based on the foregoing, Respondent-Appellee, Governor Ron DeSantis, respectfully requests that this Court certify the trial court’s Final Order pursuant to Florida Rule of Appellate Procedure 9.125.

CERTIFICATION

I, Nicholas Primrose, express a belief based on a reasoned and professional judgment, that this appeal requires immediate resolution by the Florida Supreme Court, as it is of great public importance or will have a great effect on the administration of justice throughout the state.

Respectfully submitted,

/s/ Nicholas A. Primrose

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CERTIFICATE OF COMPLIANCE AND SERVICE

I HEREBY CERTIFY that this computer-generated Motion is prepared in Times New Roman 14-point font and complies with the requirements of Florida Rule of Appellate Procedure P. 9.100(l) and that on April 5, 2019, a true and correct copy of the above and foregoing has been furnished by electronic service through the Florida Courts E-Filing Portal to counsel for Petitioner-Appellant: Benedict P. Kuehne (ben.kuehne@kuehnelaw.com) and Stuart N. Kaplan (skaplan@kaplanparkerlaw.com)

/s/ Nicholas A. Primrose
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