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40+ Former State Supreme Court Justices, Top Federal and State Prosecutors File Brief in Support of State Attorney Aramis Ayala

Describes Case as Having ‘National Significance’ Due to Gov. Scott’s Interference, Urges Court to Protect Prosecutorial Independence

Friday, April, 21, 2017 -- More than 40 former judges and prosecutors filed an *amicus* brief in support of State Attorney Aramis Ayala’s Writ of Quo Warranto in response to Governor Rick Scott’s decision to remove 23 homicide cases from her office.

The brief is signed by eight former state Supreme Court justices, including former Chief Justices Gerald Kogan, Harry Lee Anstead, Rosemary Barkett, and former Justice James E.C. Perry of Florida; two former Solicitors General of the United States, five current and former state Attorneys General, 12 current and former elected District Attorneys and State’s Attorneys, and more than a dozen current and former state and federal prosecutors and legal community leaders. The signatories warn that Governor Scott’s actions threaten the core principle of prosecutorial independence, making this case one of “national significance.”

The brief contends that state attorneys are quasi-judicial officials required to serve the interests of justice, not the executive: “The state attorney’s discretion in deciding whether and how to prosecute’ is ‘absolute.’ ‘A judicial attempt to interfere with the decision whether and how to prosecute violates the executive component of the state attorney’s office.’ By the same token, an attempt by the executive to interfere with the decision whether and how to prosecute threatens to violate the judicial component of the state attorney’s office.”

Written by former Solicitor General Donald B. Verrilli, Jr., of Munger, Tolles & Olson LLP, the brief points out that “The Florida Constitution establishes a decentralized prosecutorial system, which ensures that prosecutorial decisions will be made at the local level without interference from statewide officials.” The governor’s intervention, therefore, “usurps the will of Florida voters and the interests of justice.”

“By seeking to remove Ayala from all cases that might implicate the death penalty, the Governor does serious damage to the fundamental values of separation of powers and the democratic process, and threatens the bedrock principle of prosecutorial independence upon which much of our criminal justice system rests,” the brief argues.

The lawyers argue that S.A. Ayala has the discretion to decide whether to ever seek a death sentence and to establish an office policy on the matter, stating, “Across the country, prosecutors routinely exercise their discretion by articulating a general policy regarding charging, diversion, sentencing, and enforcement priorities.” The brief cites relevant policies created by head prosecutors in jurisdictions across the country, including Oregon, New York, and Chicago.

A full list of signatories to the brief is below:

- **Former State Supreme Court Justices:** Harry Lee Anstead (Florida Chief Justice), Rosemary Barkett (Florida Chief Justice), Bobbe J. Bridge (Washington), Norman S.

Fletcher (Georgia Chief Justice), Joseph R. Grodin (California), Gerald Kogan (Florida Chief Justice), Carlos Moreno (California), and James E.C. Perry (Florida)

- **Former Solicitors General of the United States:** Walter Dellinger and Seth Waxman
- **Current and Former State Attorneys General:** Bruce Botelho (Alaska), Scott Harshbarger (Massachusetts), Jeff Modisett (Indiana), James M. Petro (Ohio), and Karl A. Racine (District of Columbia)
- **Current and Former State Attorneys:** Kimberly Foxx (Cook County, Illinois), Marilyn Mosby (Baltimore, Maryland), and Harry Shorstein (4th Jud. Cir., Florida)
- **Current and Former District Attorneys:** Mark Dupree (Kansas City, Kansas), Gil Garcetti (Los Angeles County, California), George Gascón (San Francisco, California), Christian Gossett (Winnebago County, Wisconsin), Beth McCann (Denver, Colorado), Kim Ogg (Harris County, Texas), Ira Reiner (Los Angeles County, California), Raul Torrez (Albuquerque, New Mexico), and Cyrus R. Vance, Jr. (New York County, New York)
- **Former U.S. Department of Justice Officials:** Jamie Gorelick (Deputy Attorney General), David W. Ogden (Deputy Attorney General), Ronald Weich (Assistant Attorney General), and Rory Little (Associate Deputy Attorney General)
- **Former U.S. Attorneys:** Pamela Marsh (N.D. Fla.), Carter Stewart (S.D. Ohio), Thomas L. Strickland (D. Colo.), and John Walsh (D. Colo.)
- **Former Assistant U.S. Attorneys:** Miriam Aroni Krinsky (C.D. Cal., D. Md.) and Neal Sonnett (S.D. Fla.)
- **Former Assistant Attorneys General, Assistant State Attorneys, and Assistant District Attorneys:** Bruce Jacob (Florida), Mina Q. Malik (Kings and Queens Counties, New York), and James Woodard (11th Jud. Cir., Florida)
- **Other Former Judges and Legal Community Leaders:** Martha Barnett (former ABA President), Talbot D'Alemberte (former ABA President), O.H. Eaton, Jr. (18th Jud. Cir., Florida), Nancy Gertner (D. Mass.; Senior Lecturer on Law, Harvard Law School), and William Jordan (President, National Black Prosecutors Association; Assistant District Attorney, East Baton Rouge, Louisiana)

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