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REPLY TO: Miami

October 18, 2019

Christie M. Letarte, Special Counsel  
Suite 409, The Capitol  
404 S Monroe Street  
Tallahassee, FL 32399-1100  
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Re: Scott Israel  
Executive Order of Suspension, Executive Order No. 19-14  
Senate Review

Dear Special Counsel Letarte:

I am writing to you in response to your October 17, 2019 letter outlining that the parties may present additional evidence to the Florida Senate not previously considered by the Special Master. As counsel to Sheriff Israel, I write to document my objection to the alteration of the clear rules and procedure previously established for review of the Governor's suspension of Sheriff Israel. The substantive alteration of these procedures is unfair and not in conformance with due process considerations.

**A. Objection to Presentation or Consideration of Additional Information.**

In accordance with Senate Rule 12, Sheriff Israel proceeded as required through a formal trial/hearing before the Senate Special Master, in preparation for which both parties were given an opportunity to identify and confront the evidence presented for consideration by the Special Master. The Special Master then allowed the record to remain open until submission of post-trial memoranda by the parties. The Senate Special Master's September 24, 2019 Report and Recommendation

considered and addressed all evidence presented and arguments made in support of and opposition to Sheriff Israel's suspension.

The Senate process, as explained to the parties, then called for consideration of the Special Master's Report with an opportunity for argument to the Senate Rules Committee (scheduled to commence on October 21, 2019) by the parties, but not the presentation of evidence. The Senate Rules Committee was then scheduled to present its report to the Senate on October 23, 2019.

Sheriff Israel objects to the presentation of new or additional information, including the Diane Terrell Affidavit and information. Not only is the presentation unauthorized by the announced rules and procedures governing these proceedings, but Sheriff Israel has no meaningful opportunity to address and confront the post-trial information apparently resulting from proceedings to which neither Sheriff Israel nor his counsel were invited or even informed of its scheduling. The affidavit is plainly unreliable hearsay. Additionally, Sheriff Israel was given no opportunity to examine or confront any of the underlying information, most of which appears to be based on unreliable, inaccurate, biased, and legally suspect hearsay information.

Further, notification of the potential existence of new information on October 14, 2019, and the Governor's submission of the Terrell hearsay affidavit on October 16, 2019, comes far too late for Sheriff Israel to have any meaningful opportunity to examine, investigate, and confront this extra-record information consistent with any meaningful notions of fairness and due process.

In summary on this point, Sheriff Israel diligently complied with the rules and procedures for review of the Governor's suspension. The alteration of the rules and procedures represents an unreasonable and unfair change in the process that deprives him of a meaningful opportunity to contest a suspension that he has demonstrated is unsupported by the evidence and the law.

Sheriff Israel requests that the Senate and its Rules Committee conduct a careful and meaningful review of the Special Master's Report and Recommendation without consideration of any additional information to which Sheriff Israel objects and has had no meaningful

opportunity to review and confront. The long and distinguished legacy of the Florida Senate has consistently demonstrated its fair and deliberate review of matters of importance to the people of the State of Florida, with due regard to the established processes and procedures. Especially in a matter of constitutional significance involving the suspension of an elected Sheriff not based on any compelling or proven facts, Sheriff Israel asks the Senate to be mindful of its vital role in the checks and balances defined by the Florida Constitution.

**B. Objection to *Ex Parte* Communications with Senators and Staff on Behalf of any Parties.**

I previously wrote to you on October 11, 2019, expressing my opposition to any *ex parte* discussions with Senators and their respective staff by or on behalf of any parties. I renew my objection at this time. Furthermore, in conformance with constitutional due process fairness considerations, I am requesting disclosure of all communications with the Senators and their staff members by or on behalf of any parties about the substance of the matter for review, including the substance of the discussions. My request is consistent with Sheriff Israel's constitutional guarantee of due process.

**C. Objection to Participation of New Counsel for the Governor.**

Sheriff Israel objects to the participation by new counsel for the Governor in these proceedings. New counsel announced his participation by letter to the Florida Senate on October 14, 2019, one (1) week before the start of the Senate Rules Committee proceedings.

Prior to his appearance in these proceedings, the Governor's new counsel had been principal counsel of record for Okaloosa County School Superintendent Mary Beth Jackson in proceedings challenging the Governor's Executive Order of Suspension, No. 19-13. The suspension proceedings involving both Superintendent Jackson and Sheriff Israel occurred at nearly the same time, were being challenged, and were proceeding along a similar time line. Superintendent Jackson's counsel and I consulted with one another concerning our respective matters during the pendency of those proceedings, including through the time the Superintendent's counsel successfully obtained a restoration of Superintendent Jackson to her office.

Because of the mutually shared interests of both Superintendent Jackson and Sheriff Israel in challenging the Governor's suspension orders, I shared confidential information and strategy considerations with Superintendent Jackson's counsel on behalf of Sheriff Israel, with the expectation and understanding that our discussions between lawyers similarly situated were confidential. The information I shared with Superintendent Jackson's principal counsel was material to Sheriff Israel's representation, was confidential, and was central to proceedings involving the Special Master and preparation for eventual consideration by the Senate.

That counsel's appearance as counsel for the Governor in these proceedings, after having discussed confidential information concerning Sheriff Israel under circumstances that benefitted both suspended officials, now compromises Sheriff Israel's ability to fairly present his case to the Florida Senate. It also affords the Governor an impermissible and prejudicial insight to Sheriff Israel's strategy in the suspension review proceedings. Because Sheriff Israel's challenge to his suspension has now been compromised due to no fault attributable to Sheriff Israel, we respectfully ask the Senate to disallow the Governor's use of new counsel in these proceedings.

I am available to discuss these matters with you or any representative of the Florida Senate.

Respectfully submitted,



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