Journal of the Senate

Number 1—Special Session I **Monday, October 21, 2019**

At a Special Session of the Florida Senate convened under Article IV, Section 7(b), of the Constitution of the State, as revised in 1968, and subsequently amended, at the Capitol, in the City of Tallahassee, on Monday, October 21, 2019, in the State of Florida.

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CALL TO ORDER

The Senate was called to order by President Galvano at 9:00 a.m. A quorum present—37:

Mr. President	Flores	Rader
Albritton	Gainer	Rodriguez
Baxley	Gibson	Rouson
Bean	Gruters	Simmons
Benacquisto	Harrell	Simpson
Berman	Hooper	Stargel
Book	Hutson	Stewart
Bradley	Mayfield	Taddeo
Brandes	Montford	Thurston
Braynon	Passidomo	Torres
Broxson	Perry	Wright
Cruz	Pizzo	
Farmer	Powell	

Excused: Senator Diaz

PRAYER

The following prayer was offered by Senator Torres:

We pray for all the people in their daily life and work; for our families, friends, and neighbors; and for those who are alone; for this community, the nation, and the world; for all who work for justice, freedom, and peace. Hear us Lord, for your mercy is great.

Lord, make us an instrument of your peace: where there is hatred, let us sow love; where there is injury, pardon; where there is discord, union; where there is doubt, faith; where there is despair, hope; where there is darkness, light; where there is sadness, joy.

Grant that we may not so much seek to be consoled, as to console, to be understood, as to understand, to be loved, as to love. For it is in giving that we receive, it is in pardoning that we are pardoned, it is in dying that we are born to eternal life. Amen.

PLEDGE

Senator Hooper led the Senate in the Pledge of Allegiance to the flag of the United States of America.

By direction of the President, the Secretary read the following proclamation:

THE FLORIDA SENATE
PRESIDENT'S PROCLAMATION
TALLAHASSEE

TO THE HONORABLE MEMBERS OF THE FLORIDA SENATE:

WHEREAS, on January 11, 2019, the Governor issued Executive Order Number 19-14 suspending Mr. Scott Israel from the Office of Sheriff of Broward County, and

WHEREAS, on January 14, 2019, the Senate informed Mr. Scott Israel of his right to a hearing conducted in accordance with Part V, Chapter 112 of the Florida Statutes and Senate Rule 12, and

WHEREAS, on January 24, 2019, pursuant to the Senate Rules, the matter was referred to a Special Master, and

WHEREAS, on January 29, 2019, Mr. Scott Israel requested a hearing, and

WHEREAS, the Special Master engaged in public pre-hearing proceedings until litigation between the Governor and Mr. Scott Israel was initiated on March 7, 2019, and

WHEREAS, on March 12, 2019, pursuant to Senate Rules and on the recommendation of the Special Master, the matter was held in abeyance until the rendering of a final determination in the litigation and exhaustion of all appellate remedies, and

WHEREAS, on April 23, 2019, the Special Master proceedings resumed after a final determination in the litigation was rendered and appellate remedies were exhausted, and

WHEREAS, on May 1, 2019, the Special Master conducted a public case management conference during which counsel for the Governor and Mr. Scott Israel offered, and the Special Master selected, dates for a public evidentiary hearing, and

WHEREAS, on June 18, 2019, and June 19, 2019, the Special Master held a public evidentiary hearing, and

WHEREAS, on August 12, 2019, counsel for the Governor submitted proposed findings of fact and conclusions of law to the Special Master, and on August 20, 2019, counsel for Mr. Scott Israel submitted proposed findings of fact and conclusions of law to the Special Master, and

WHEREAS, on September 24, 2019, the Special Master delivered his advisory Report and Recommendation pursuant to Senate Rules for consideration by the Senate, and

WHEREAS, under Article IV, Section 7(b) of the Florida Constitution the Senate may remove from office or reinstate the suspended official and the President of the Senate may unilaterally convene the Senate in special session, NOW, THEREFORE,

I, Bill Galvano, as President of the Florida Senate, by virtue of the authority vested in me by Article IV, Section 7(b) of the Florida Constitution, do hereby proclaim the Florida Senate be convened in special session at the Capitol, beginning at 9:00 a.m. on Monday, October 21, 2019, and ending at 11:59 p.m. on Friday, October 25, 2019, for the sole and exclusive purpose of considering the reinstatement or removal of Mr. Scott Israel as Sheriff of Broward County.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the Senate of Florida to be affixed at Tallahassee, the Capitol, this 25th day of September, A.D., 2019.

Bill Galvano
President, The Florida Senate

ATTEST:
Debbie Brown
Secretary of the Florida Senate

By direction of the President, the Secretary read the following executive order:

EXECUTIVE ORDER NUMBER 19-14
(Executive Order of Suspension)

WHEREAS, Article IV, Section 7 of the Florida Constitution provides in relevant part that, "the Governor may suspend from office ... any county officer for ... neglect of duty ...[or] incompetence"; and

WHEREAS, Scott Israel is presently serving as the Sheriff for Broward County, Florida, having been reelected by the voters of Broward County in 2016 for a four-year term; and

WHEREAS, pursuant to Florida Statute § 30.15, it is the duty of elected sheriffs to be the conservators of the peace in their respective counties; and

WHEREAS, pursuant to Florida Statute § 30.07, "sheriffs may appoint deputies to act under them who shall have the same power as the sheriff appointing them, and for the neglect and default of whom in the execution of their office the sheriff shall be responsible"; and

WHEREAS, sheriffs are responsible for appointing command staff who are responsible for the training, response and security within the counties, including airports, seaports and schools within their jurisdiction; and

WHEREAS, sheriffs are responsible for the recruitment, hiring and promotion of their command staff and deputy sheriffs; and

WHEREAS, on February 14, 2018, Marjory Stoneman Douglas High Schoool in Parkland, Broward County, Florida, experienced a tragic shooting, taking the lives of seventeen students and staff members; and

WHEREAS, prior to the shooting at Marjory Stoneman Douglas High School, Broward County Sheriff's Office had a total of 21 interactions with the shooter, including two incidents that an internal affairs investigation later found warranted additional follow-up; and

WHEREAS, the first of the above incidents occurred in February 2016 when the Marjory Stoneman Douglas shooter posted a picture of a gun with a statement similar to "I am going to get this gun when I turn 18 and shoot up the school"; and

WHEREAS, Broward County Deputy Eason, acting on behalf of and in place of Sheriff Israel, did not complete an incident report, but instead noted in CAD, "No threats noted and info forwarded to (SRO) Peterson at school."; and

WHEREAS, the second of the above incidents occurred in November 2017 when Broward County Sheriff's Office received a call that the Marjory Stoneman Douglas shooter "had weapons and wanted to join the military to kill people" and "that [he] 'might be a Columbine in the making' and was a threat to kill himself."; and

WHEREAS, Broward County Deputy Treijs, acting on behalf and in place of Sheriff Israel, did not complete an incident report, but instead noted in CAD that the Marjory Stoneman Douglas shooter was autistic, his location was unknown, and directed the caller to contact another police department; and

WHEREAS, on February 14, 2018, Broward County Deputy Scot Peterson was at all times acting on behalf of and in place of Sheriff Israel while serving as the School Resource Officer at Marjory Stoneman Douglas High School; and

WHEREAS, on February 14, 2018, Broward County Deputy Peterson exercised the discretion of Sheriff Israel consciously deciding not to engage the Marjory Stoneman Douglas shooter, while the shooter was actively killing and attempting to kill the students and teachers of Marjory Stoneman Douglas High School; and

WHEREAS, according to the Marjory Stoneman Douglas Public Safety Commission Report dated January 2, 2019, there were six other Broward County Sheriff Deputies acting on behalf of and in place of Sheriff Israel who were in close proximity to the Marjory Stoneman Douglas High School that "did not immediately move towards the gunshots to confront the shooter"; and

WHEREAS, Sheriff Israel is responsible for developing, implementing and training his deputies on policy related to active shooters; and

WHEREAS, Sheriff Israel is responsible for inserting into the Broward County Sheriff's Office Active Shooter Policy that a deputy "may" enter the area or structure to engage an active shooter and preserve life; and

WHEREAS, on November 15, 2018, Sheriff lsrael stated to the Marjory Stoneman Douglas Public Safety Commission "that he wanted his deputies to exercise discretion and he did not want them engaging in 'suicide missions.'"; and

WHEREAS, as noted by the Marjory Stoneman Douglas Public Safety Commission Report dated January 2, 2019, Broward County Sheriff's Office policy for responding to an active shooter situation is inconsistent with current and standard law enforcement practices; and

WHEREAS, even if the duty to engage an active shooter was discretionary, the responsibility for the exercise of that discretion falls upon the elected sheriff; and

WHEREAS, the Marjory Stoneman Douglas Public Safety Commission Report further revealed a failure on the part of Sheriff Israel and his deputies to timely establish an incident command center; and

WHEREAS, to meet the Sheriff's duty to be the conservator of the peace, it is necessary for the Sheriff to provide adequate, up-to-date, frequent, thorough and realistic training to handle high-risk, high-stress situations, including mass casualty incidents; and

WHEREAS, Sheriff Israel's deputies interviewed by the Marjory Stoneman Douglas Public Safety Commission could not remember the last time they attended active shooter training or what type of training they received; and

WHEREAS, on January 6, 2017, a tragic shooting occurred at the Fort Lauderdale-Hollywood Airport in Broward County, Florida, taking the lives of five and injuring dozens more; and

WHEREAS, during the shooting at the Fort Lauderdale-Hollywood Airport the Broward County Sheriff's Office failed to contain and maintain security resulting in a breach of airport security; and

WHEREAS, an internal investigation into the Fort Lauderdale Airport shooting uncovered a lack of leadership by Sheriff Israel, including: a failure by Sheriff Israel to establish proper containment procedures for the crime scene, a failure by Sheriff Israel to establish a centralized command and response, a failure by Sheriff Israel to provide his deputies adequate, thorough and realistic training, and a failure by Sheriff Israel to establish an appropriate response to a mass casualty incident; and

WHEREAS, the investigation also revealed that Sheriff Israel's neglect of duty and incompetence lead to "most of the law enforcement personnel who responded [lacking] clear instructions, objectives, and roles."; and

WHEREAS, Sheriff Israel has egregiously failed in his duties as Sheriff for Broward County; and

WHEREAS, Sheriff Israel failed to maintain a culture of vigilance and thoroughness amongst his deputies in protecting the peace in Broward County, Florida; and

WHEREAS, Sheriff Israel has demonstrated during multiple incidents that he has not provided for the proper training of his deputies; and

WHEREAS, two separate reports into the recent mass casualty shootings in Broward County specifically found that Sheriff Israel has not and does not provide frequent training for his deputies resulting in the deaths of twenty-two individuals and a response that is inadequate for the future safety of Broward County residents; and

WHEREAS, two separate reports into the recent mass casualty shootings in Broward County specifically found that Sheriff Israel has not implemented proper protocols to provide guaranteed access to emergency services, nor proper protocols to have timely, unified command centers setup to control a crime scene, leading to confusion, a lack of recognized chain-of-command, and ultimately a failure to contain the dangerous situation; and

WHEREAS, Sheriff lsrael has contravened his oath of office as set forth in Article II, section 5, of the Florida Constitution, to "...faithfully perform the duties" of Sheriff of Broward County, Florida; and

WHEREAS, due to his demonstrated neglect of duty and incompetence, Sheriff Israel can no longer demonstrate the qualifications necessary to meet his duties in office; and

WHEREAS, it is in the best interests of the residents of Broward County, and the citizens of the State of Florida, that Sheriff Israel be immediately suspended from the public office, which he now holds;

NOW, THEREFORE, I, RON DESANTIS, Governor of Florida, pursuant to the Constitution and the laws of the State of Florida, do hereby find, determine, and for the purposes of Article IV, section 7, of the Florida Constitution, allege as follows:

A. Scott Israel is, and at all times material was, the Sheriff for Broward County, Florida.
B. The office of sheriff is within the purview of the suspension powers of the Governor, pursuant to Article IV, section 7, of the Florida Constitution.
C. The actions and omissions of Scott Israel as referenced above and as noted in the Marjory Stoneman Douglas Public Safety Commission Report, dated January 2, 2019 and attached hereto, constitute neglect of duty and incompetence for the purposes of Article IV, section 7, of the Florida Constitution.
D. If, after execution of this suspension, additional facts are discovered that illustrate further neglect of duty and incompetence—or other constitional grounds for suspension of Sheriff Israel—this Executive Order may be amended to allege those additional facts.

BEING FULLY ADVISED in the premises, and in accordance with the Constitution and the laws of the State of Florida, this Executive Order is issued, effective immediately:

Section 1. Scott Israel is hereby suspended from the public office that he now holds, to wit: Sheriff for Broward County, Florida.

Section 2. Scott Israel is hereby prohibited from performing any official act, duty, or function of public office; from receiving any pay or allowance; and from being entitled to any of the emoluments or privileges of public office during the period of this suspension, which period shall be from the effective date hereof, until a further executive order is issued, or as otherwise provided by law.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Florida to be affixed, at Tallahassee, this 11th day of January, 2019.

Ron DeSantis
GOVERNOR

ATTEST:
Michael Ertel
SECRETARY OF STATE

[Referred to the Senate Special Master January 24, 2019.]

MEMORANDUM

To: Debbie Brown, Secretary
From: Bill Galvano, President
Subject: Executive Order of Suspension 19-14, re Scott Israel
Date: March 12, 2019

On Thursday, March 7, 2019, Executive Order of Suspension 19-14 was challenged by way of a Petition for Writ of Quo Warranto in Broward County's 17th Judicial Circuit Court. Subsequent to the filing of the Writ and after receiving statements from the parties, Special Master Goodlette recommended the matter be held in abeyance until a final determination in the pending litigation has been rendered including the exhaustion of all appellate remedies.

I accept Special Master Goodlette's recommendation. Therefore, pursuant to Senate Rule 12.9(2), the proceedings regarding EO 19-14 are held in abeyance.

Re: Executive Order of Suspension No. 19-14
Suspension of Mr. Scott Israel, Sheriff
Broward County, FL

REPORT AND RECOMMENDATION OF SPECIAL MASTER

On January 11, 2019, Governor Ron DeSantis suspended Scott Israel from his public office as the Sheriff of Broward County. (See Executive Order 19-14.) Sheriff Israel was then serving his second term in office, having been elected in 2012 and 2016. The suspension order levies two constitutional charges against Sheriff Israel: neglect of duty and incompetence. In broad strokes, the Governor claims that Sheriff Israel's failed leadership resulted in multiple deaths from two mass shooting incidents in Broward County. (See Gov. Proposed Order at 2.)

Under Senate Rule 12.8, the undersigned was appointed as Special Master to receive evidence and make recommendations to the Florida Senate about Sheriff Israel's suspension. See also Fla. Stat. § 112.41(4) (allowing the appointment of a special master in these proceedings). In June 2019, I presided over a two-day evidentiary hearing in Tallahassee. I heard sworn testimony from four live witnesses, with additional testimony submitted by deposition transcripts. The parties also submitted over fifty exhibits that were entered into evidence. The evidentiary hearing has been transcribed, and references to that proceeding are indicated by "Tr." References to the exhibits are identified by "Gov." for the Governor, and "Israel" for Sheriff Israel, followed by a bates-page reference where applicable.

I. Governing Law & Standard of Review

An overview of the underlying legal principles offers context to this report. Article IV, Section 7 of the Florida Constitution authorizes the Governor to suspend a county official based on several enumerated grounds. It is then the Florida Senate's responsibility to either remove or reinstate the suspended official. See Art. IV, § 7(b), Fla. Const.

The Governor bears the burden of prosecuting the suspended official before the Senate. Fla. Stat. § 112.43. And he must prove the grounds for suspension by a preponderance of the evidence. (See Gov. Proposed Order at 46 (citations omitted).) A preponderance of the evidence is the greater weight of the evidence, or evidence that more likely than not tends to prove a certain proposition. See Dufour v. State, 69 So. 3d 235, 252 (Fla. 2011). Failing to prove the charges requires the officer "be reinstated, and the Senate may provide that the county, district, or state, as the case may be, shall pay reasonable attorney's fees and costs of the reinstated officer upon his or her exoneration." Fla. Stat. § 112.44.

I have been appointed under Fla. Stat. § 112.41(4). This provision, and the Senate rules passed thereunder, authorizes me to receive evi-

dence and make recommendations to the Florida Senate. It should be noted that this report is not a complete restatement of all the evidence. Rather, it is an advisory summary that reflects the conclusions I reached based on the parties' arguments and evidence. Also pertinent, my report is not binding. The Senate is free to accept or reject my conclusions as it sees fit. (See Senate R. 12.7.) The entire record will be made available for review to the Florida Senate.

As noted, the Governor has charged Sheriff Israel with two constitutional offenses: neglect of duty and incompetence. (Executive Order 19-14.) The Florida Supreme Court has defined neglect of duty as "the neglect or failure on the part of a public officer to do and perform some duty or duties laid on him as such by virtue of his office or which is required of him by law." Israel v. Desantis, 269 So. 3d 491, 496 (Fla. 2019) (citation omitted). Incompetency "has reference to any physical, moral, or intellectual quality, the lack of which incapacitates one to perform the duties of his office" and "may arise from gross ignorance of official duties or gross carelessness in the discharge of them . . .[or] from lack of judgment and discretion." Id.

II. Procedural History

On January 11, 2019, Governor DeSantis issued Executive Order 19-14 suspending Sheriff Israel. As permitted under the Florida Constitution, Sheriff Israel requested a formal hearing to contest his suspension. I was appointed as Special Master to conduct an evidentiary hearing and make recommendations to the Senate pursuant to Fla. Stat. §112.41(4).

At a preliminary case management conference, Sheriff Israel requested a bill of particulars. For those unaware of this procedural device, a bill of particulars is a written statement designed to give the requesting party further details about the claims alleged. It protects the litigants from surprise and defines the issues in the action. On February 25, 2019, the Governor filed a bill of particulars, which is now the controlling pleading.

In an effort to challenge the validity of his suspension, Sheriff Israel filed a legal action in the Circuit Court of the Seventeenth Juridical Circuit. See Sheriff Israel v. Governor Ron DeSantis, Circuit Case No. CACE 19-005019 (Broward County). As required under Florida Senate Rule 12.9(2), these proceedings were stayed pending a resolution of the legal case. The abeyance was short lived. Several weeks later, the Circuit Court denied Sheriff Israel's petition for legal review.

Sheriff Israel appealed. And the appellate court immediately certified the case to the Florida Supreme court, citing its "pass through" jurisdiction for cases of great public importance. On April 23, 2019, the Florida Supreme Court unanimously affirmed the Circuit Court's decision and concluded Sheriff Isreal's legal challenge.

These proceedings resumed upon issuance of the Supreme Court mandate on May 16, 2019. In accordance with my prehearing schedule, the parties exchanged witness and exhibit lists, completed pre-hearing depositions, and submitted bench memoranda. The two-day final hearing took place on June 18-19, 2019.

Sheriff Israel presented live testimony from four witnesses, all current or former members of the Broward County Sheriff's Office: Colonel Jack Dale, Detective John Curcio, Executive Director Robert Pusins, and himself. Additional witness testimony was submitted in the form of deposition transcripts. The deposition witnesses were Assistant Chief James Polan, Major Kevin Shults, Lieutenant Colonel Edward Grant, Broward County Commissioner Steve Geller, Major Michael DiMaggio, Deputy Jesus Madrigal, Captain James Diefenbacher, Major Steve Robson, and Chief Steve Kinsey. Sheriff Israel's exhibits, with one exception,[1] were admitted into evidence without objection. The Governor did not call any live witnesses but submitted twenty-four exhibits.

After the hearing transcript was made available, the parties filed proposed orders. Although contentious at points, both Sheriff Israel and the Governor were given a full and fair opportunity to investigate the allegations, obtain and examine relevant evidence, and present evidence and argument for my review. One final point I would like to reiterate. This report is not intended (and does not) restate all of the evidence. I have, however, reviewed all of the materials in formulating my recommendations below.

II. Findings and Recommendations

Before turning to the merits, a few preliminary issues warrant discussion. First, Sheriff Israel has labeled his suspension as a political tool by Governor DeSantis to secure financial and political support. (See, e.g., Israel Bench Memo at 8 ("Solely to secure votes, DeSantis made a political campaign promise to parents of the murdered students and the NRA that he would remove Sheriff Israel from office if then-Governor Scott did not do so.") Sheriff Israel has weaved this argument throughout his pleadings and made it a prominent point during the final hearing.

(See, e.g., Tr. 36:16-22 ("Sheriff Israel finally has an opportunity to demonstrate that the governor's suspension of him was not for any legal matter, was not because of any constitutional reason but was a brutal political ploy designed to obtain his election and fulfill his promise to the National Rifle Association."). These arguments are a red herring and ultimately fall on deaf ears. My task is to review the evidence submitted to determine if Sheriff Israel was incompetent or neglected his duties. The impetus for Sheriff Israel's suspension has no bearing on these questions. What matters is only whether the record sustains the charges against Sheriff Israel. In other words, my inquiry has been (and must be) purely objective.

Second, Sheriff Israel has alleged that his suspension lacked the due process required under the Florida Constitution. (See Tr. 13:12-25.) As the record reflects, I have denied several requests from Sheriff Israel to suspend these proceedings pending resolution of ancillary investigations and criminal proceedings. (Id. at 15:5-12.) I will not reiterate the basis for my prior rulings here, but I would like to make a few observations. Executive Order 19-14 went into effect on January 19, 2019, Sheriff Israel demanded review before the Senate only weeks later, and the final hearing occurred in June 2019. This timeline left nearly six months for Sheriff Israel to prepare a defense. But instead of diligently pursuing the facts needed to challenge the Governor's claims, Sheriff Israel chose to focus his efforts on a failed legal challenge. For example, it was not until June 3, 2019 that Sheriff Israel properly requested witness subpoenas. (See Israel Updated Subpoena Requests.) The record is clear that any obstacles to Sheriff Israel preparing a defense were of his own making. The issue of due process will ultimately be a question for a court of law (should that challenge come), but I stand by my prior rulings that these proceedings have comported with the law in all material respects. Both Sheriff Israel and Governor DeSantis were given a full and fair opportunity to investigate the allegations, obtain and examine relevant evidence, and present evidence and arguments for my review.

Turning now to the merits, Executive Order 19-14 cites two events as the basis for Sheriff Israel's suspension: "the Fort Lauderdale-Hollywood International Airport shooting on January 6, 2017, and the Marjory Stoneman Douglas High School shooting on February 14, 2018." (Gov. Proposed Order at 5.) For clarity of analysis, my findings are organized into two segments that address each incident and the charges related thereto.

A. Fort Lauderdale-Hollywood International Airport Shooting

i. General Background

This section is intended to provide an overview of the shooting. Additional facts relevant to each charge are discussed under the subheadings that follow. On January 6, 2017, Esteban Santiago flew into the Fort Lauderdale Airport. Santiago had checked one item of luggage — a semi-automatic handgun. He retrieved the handgun at the baggage claim area of Terminal 2, loaded it in an adjacent bathroom, and then opened fire on the public without warning. (See Gov. Ex. E at 225; Madrigal Dep. 15:13-20.) Five people were killed and another six injured.

At that time, the Broward County Sheriff's Office (hereinafter "BSO") provided law enforcement services at the Fort Lauderdale Airport through an operational contract with the Broward County Aviation District. (See Gov. Proposed Order at 5.) Deputy Jesus Madrigal, assigned to the security checkpoint in Terminal 2, immediately responded to the sound of the gunshots. (See Madrigal Dep. 6:19-25.) He approached the suspect and took him into custody without further incident. (Id. at 15:20-16:3.) Deputy Madrigal confirmed that he was trained to immediately respond to an active shooter. (Id. at 12:8-21,

18:14-22.) His testimony was unequivocal on this point: "I was basically going — reacting towards my — what I was trained on what to do. So I went towards the shooting." (Id. at 14:23-25; see also id. at 32:19-25.)

The gunshots understandably caused panic. Hundreds of people, including potential witnesses, scattered and sought shelter in Terminal 2. As relayed by Deputy Madrigal, passengers hid in the baggage carousel and other restricted areas. (Id. at 21:19-25.) More BSO deputies responded, and by all accounts, their reactions were textbook. (See Gov. Ex. C at 14.) The deputies, working with airport fire rescue and other outside agencies, established a perimeter and began treating victims. (Id.) Canine officers swept the immediate vicinity for explosives, and the BSO Swat Team cleared Terminal 2 that panicked passengers flooded. (Id.)

During the response, a command post and emergency operations center were established. (Gov. Ex. C 14.) The onsite personnel formed a plan that would have allowed operations at Terminal 2 to resume. (Id.) To the credit of these first responders, the remainder of the airport was open and functioning. (Id.) But that quickly changed when more active shooters were falsely reported in the airport.

Approximately ninety-minutes after the shooting, and in the midst of response efforts, a Customs and Border Patrol Agent heard what he thought was additional gunshots. (Gov. Ex. C 16.) Despite others telling him the sounds were not gunfire, the agent ran to Terminal 2. He passed several Broward Fire Rescue Emergency Services personnel, who reported the agent's misinformation over the radio channel. The misinformation was then relayed across the primary law enforcement channel as "Border Patrol reporting shots fired in Terminal 2." (Id.) Simultaneously, airport security cameras captured deputies appearing to go on alert, while numerous requests for confirmation of the call or location were made. (Id. at 17.) Upon overhearing the radio calls, a JetBlue supervisor decided to clear his employees from Terminal 3. This incited further panic and sent TSA agents, airport employees, and customers running outside to the parking garage. (Id. at 17-18.) The fleeing people also caused an anxious deputy in front of Terminal 4 to make another radio transmission of "shots fired" coming from the garage.

The heightened response from law enforcement officers, coupled with news coverage, caused passengers in the airport to panic and flee in all directions. (Gov. Ex. C 20.) Airport security footage captured passengers knocking over signs, dropping luggage, and running into doors. These actions led to more radio traffic about shots fired and a virtual evacuation of all passengers and staff from the airport. Even TSA agents left their post to flee. (Id. at 20-22.) Three minutes elapsed between employees evacuating Terminal 3 and the airport's mass evacuation. (Id. at 23.)

Fortunately, only one injury was reported during the panic. A BSO canine deputy responding to the scene was forced to park his car in the middle of the roadway because of the fleeing civilians. An airport passenger opened the rear door to hide in the vehicle and the dog jumped out. As trained, the dog immediately engaged the passenger. Their encounter lasted for several moments until a nearby law enforcement officer restrained the dog. (See Gov. Ex. C 24.)

Bringing everyone back in the concourses was not an option for several reasons. Primarily, there was still a security concern that other active shooters were mixed among the civilians. There were too many reports of shots fired coming from what would routinely be deemed as credible sources, leading to belief that something occurred or potentially could take place. (Gov. Ex. C 33.) People were also hiding in the concourses, terminals, and garages, so those locations had to be physically cleared. (Id.) Faced with these circumstances, BSO command determined to move all civilian personnel off-site. The Port Everglades Seaport was the rally point because it sat less than one mile away, had fixed perimeter security, and could accommodate the large volume people. (Id. at 35.) It took several hours to obtain buses and relocate the civilians to the port. This process was frustrated by the sudden influx of thousands of personal vehicles, cabs, and ride-share vehicles, such as Uber and Lyft, that were summoned to the scene.

The BSO command post was closed at 1:00 am, and the port was cleared several hours later. With the exception of Terminal 2, the Fort Lauderdale Airport reopened the next day. (See Gov. Ex. C at 38.) In the end, this mass shooting caused the deaths of five people.

Governor DeSantis has levied five specific charges against Sheriff Israel related to this incident. (See Gov. Bill of Particulars 10-11.) Each charge is addressed in turn below.

ii. Sheriff Israel neglected his duty and/or was incompetent in failing to protect the lives of the five victims killed on January 6, 2017 at the Fort Lauderdale Airport

The evidence is uncontroverted that the Fort Lauderdale Airport shooting occurred suddenly and without notice. The suspect retrieved an automatic weapon that was legally checked in his luggage, loaded the gun while concealed in the bathroom, and upon emerging opened fired on nearby passengers. (See Gov. Ex. C 12.) There was no warning that this tragedy was about to occur. (Id.) Although Sheriff Israel is statutorily charged with conserving the peace in Broward County, this mandate does not guarantee that no person will be harmed and no crime will occur. Outside of stationing a deputy to supervise every passenger in the airport, which no one is suggesting was required, the shooting was not preventable by Sheriff Israel or anyone else.

There is one further point I feel compelled to address. Governor DeSantis has attempted to downplay the actions of Deputy Madrigal, who first responded to the scene and apprehended the shooter. For instance, the Governor's proposed final order remarks that the shooter had run out of ammunition by the time Deputy Madrigal arrived and he did "not fire a single round of ammunition." (Gov. Proposed Order ¶¶ 6-8.) I can understand the Governor's zealous advocacy against Sheriff Israel, but the actions of Deputy Madrigal were unassailably courageous. Without concern for his personal safety, Deputy Madrigal immediately responded to the gunfire and ran towards the danger. (See Gov. Ex. C 12-14.) The fact that Deputy Madrigal never fired his weapon is not a badge of dishonor, but a testament to his training and courage to recognize that the situation was already defused. Deputy Madrigal's quick apprehension of the gunman allowed law enforcement to immediately secure the scene and assist victims. (Id.) It is likely that more lives would have been lost but for his courage.

In sum, the Governor has not offered any evidence for how Sheriff Israel could have prevented the Fort Lauderdale Airport shooting. For these reasons, I find the Governor has not proven the specific charge outlined above.

iii. Sheriff Israel neglected his duty and/or was incompetent in failing to protect the health and safety of the victims injured on January 6, 2017 at the Fort Lauderdale Airport: The ensuing chaos and confusion after the initial shooting led to unnecessary injuries that could have and should have been avoided with appropriate training

This charge also merits only brief attention. One injury was reported after the initial shooting — a fleeing passenger who was bit by a canine officer. (Gov. Ex. C 24.) The facts underlying this incident are not in dispute. A BSO K-9 deputy responding to Terminal 1 was forced to park his vehicle in the roadway because of civilians running to the adjacent garage. Once stopped, the deputy jumped out and began running to the terminal where gunfire had been reported. Simultaneously, an airport passenger ran around the BSO vehicle and opened the rear door to hide from the perceived threat. The dog reacted as trained and started apprehending (biting) the passenger. The encounter lasted several moments until a nearby law enforcement officer intervened. (Id. at 23-25.)

The Governor has offered no evidence to suggest this incident was the result of improper training. To the contrary, the record is unrebutted that the deputy acted in accordance with department policy by immediately leaving the car and responding to the call of a second active shooter. (See, e.g., Tr. 70:15-25.) The Governor has advocated throughout these proceedings that instant and direct law enforcement response to an active shooter is required. It is implausible to now suggest this deputy, and by implication Sheriff Israel, was derelict in doing exactly that. This incident is ultimately attributable to the panic of an ordinary citizen, not an institutional failure of the BSO. For these reasons, I find the Governor has not proven the specific charge outlined above.

iv. Sheriff Israel neglected his duty and/or was incompetent in providing appropriate staffing levels at the Fort Lauderdale-Hollywood International Airport to meet the growing needs of the airport's increased size and passenger capacity

The Fort Lauderdale Airport hosts approximately 29.2 million passengers a year. This ranks it among the largest American airports. (See Gov. Ex. C C at 58.) The BSO provides law enforcement services for the airport and handles general security. (Id. at 60.)

Pertinent here, staffing levels at the airport decreased during Sheriff Israel's tenure. The BSO airport division counted 150 positions in 2008, but a decade later, it fell to 116. (Id. at 59-60.) Relying on these numbers, the Governor claims that Sheriff Israel failed to staff the airport at appropriate levels. (See Gov. Bill of Particulars at 6.)

The Governor's argument is problematic for several reasons. For starters, it is built on the faulty premise that an overall reduction in personnel equates to understaffing. But one does not necessarily follow the other. For instance, it could be that the airport was overstaffed in 2008. Without some measuring stick to use as comparison, which the Governor has not supplied, it is impossible to discern whether the overall staffing at the Fort Lauderdale Airport was objectively deficient in 2017. The Governor also fails to mention that the cited staffing reductions were almost entirely civilian employees. (Gov. Ex. C at 60-61.) There were nearly the same number of sworn-deputies on site in 2017 (92) as there were a decade earlier (98). (Id.) This hardly represents a "drastic" decrease in security as the Governor proclaims. (See Gov. Proposed Order at 12.)

The challenge for the Governor, however, is the simple fact that Sheriff Israel did not control the staffing levels at Fort Lauderdale Airport. The airport is overseen by Broward County through its Aviation Division (BCAD). No tax revenues are expended in support of airport operations. BCAD generates its funding via user fees, rentals, and other applicable airport charges. (See Gov. Ex. C at 58.) BCAD contracts with BSO to provide the law enforcement services and personnel discussed above. The staffing levels are set by this agreement and the funds BCAD decides to allocate. (See Tr. 268:16-2272:16; see also Israel Exs. 14-17.) At bottom, BCAD and the County determined the funding and staffing allocations at Fort Lauderdale Airport. For these reasons, I find the Governor has not proven the specific charge outlined above.

v. Sheriff Israel neglected his duty and/or was incompetent in failing to provide frequent and effective training for a mass casualty/active shooter situation at the Fort Lauderdale Airport

There is no dispute that BSO deputies assigned to the Fort Lauderdale Airport received training. Indeed, all deputies underwent active shooter training on a rotational basis. The BSO Airport Division also participated in "tabletop drills," and at least two live action exercises designed to simulate active threats in an airport setting. (See Gov. Proposed Order ¶¶ 41-42.) The Governor insists this training was not enough and left the BSO unprepared for the shooting and evacuation that followed.

Insistence is all the Governor gives. He has not established any standards from which to measure against. Although more training is generally better than less, there is a practical limit on the training any organization can provide. The BSO, like every government entity, has limited resources it must allocate. There was no evidence offered to suggest that the volume or content of training Sheriff Israel decided upon fell below what is typical for a similarly situated law enforcement agency. Without a comparator or some other data about industry training standards, the Governor's claim that Sheriff Israel was incompetent or neglected his duty amounts to little more than guess work.

That preliminary issue aside, much of the Governor's criticism about training is taken verbatim from a draft incident report prepared after the shooting by Major Angelo Cedeno. (See Gov. Proposed Order ¶ 39.) Additional background is helpful. Following the airport shooting, BSO conducted an incident review known as an "After Action Report." This is a standard post-event process designed to study and learn from a significant event. (Tr. 280:10-281:7.) Typically, incident reviews involve a detailed effort to identify relevant facts, examine responses, and make recommendations.

With the Fort Lauderdale Airport shooting, the After Action Report was assigned to Major Cedeno. His draft totaled 119 pages and included numerous criticisms. (Gov. Ex. C.) For instance, the report found tabletop exercises and disaster drills at the airport were infrequent and deficient in preparing for the shooting. (Id. at 10.) Command staff vetted Deputy Cedeno's report, and following yet another draft, BSO published a final After Action Report. (See Gov. Ex. E.) The final report is considerably shorter and does not contain many of the same deficiencies or criticisms.

The Governor's argument about training relies almost exclusively on Major Cedeno's report. (See, e.g., Gov. Proposed Order ¶¶ 49-58.) The Governor essentially asks that I adopt the report and its unfavorable conclusions to find this charge satisfied. I cannot do so for several reasons. The record is unrebutted that Major Cedeno was not asked to prepare a final report. Rather, his instructions were to gather all relevant information for further vetting by command staff and other subject matter experts. (See Tr. 274:4-22.) It is likewise unrebutted that BSO command staff found the report factually erroneous in some respects. (Kinsey Dep. 42:4-42:1.) Finally, many of the statements made by Major Cedeno are conclusory and without anecdotal support. It is difficult (if not impossible) to determine how accurate these representations are absent additional evidence, which was not provided. Boiled down, Major Cedeno's report represents one position about the airport shooting and BSO response. More evidence, such as testimony from Major Cedeno and those involved with the underlying incident, was required to lend credence to this account and elevate it above the competing material from Sheriff Israel.

The above analysis is not meant to suggest I believe the BSO was perfectly prepared for an active shooter at the Fort Lauderdale Airport. There were lapses in readiness that became evident after the fact. For instance, there was no protocol for relocating the thousands of passengers and employees fora forced evacuation. So, once security was compromised in the airport, confusion ensued on how to proceed. (See Gov. Ex. E 246.) However, it is impossible to plan for all scenarios that may arise during an emergency of this magnitude. The burden placed on the BSO was extraordinary. Securing the airport grounds, evacuating tens of thousands of airport patrons safely, providing medical treatment to the injured, and investigating the incident all posed a serious challenge to responding law enforcement and medical personnel. While not perfect, I cannot conclude BSO's response to the shooting was indicative of incompetence or dereliction of duty as to Sheriff Israel. For these reasons, I find the Governor has not proven the specific charge outlined above.

vi. Sheriff Israel neglected his duty and/or was incompetent in staffing BSO's Airport District with employees who were complacent and not diligent in their duty to protect the peace

Pointing to the "knee-jerk reactions" that led to false reports of a second shooter and mass chaos at the Fort Lauderdale Airport, the Governor claims that Sheriff Israel staffed the Airport District with employees that were complacent and not up to the task. (See Gov. Proposed Order ¶ 48-50.) Upon closer examination, this argument does not withstand scrutiny.

The initial response by BSO personnel at the airport was, by all accounts, commendable. Several deputies secured the shooter while others worked to establish a perimeter and treat victims. Resources were also deployed to sweep the affected area and reopen Terminal 2. (See Gov. Ex. C 12-15.) The "knee-jerk reactions" cited by the Governor occurred only later when outside law enforcement arrived on scene. The false alarm that sparked panic came from a border patrol agent, who Sherriff Israel did not hire, control, or otherwise supervise. (Id. at 16.) The BSO cannot be faulted for failing to control the situation that followed. Thousands of passengers and employees (including TSA agents) fled towards available exits. Hundreds of others also called 911 to report shots fired at various locations. (Id. at 16-21.) No amount of resources or training could have quelled the panicked passengers.

The Governor also cites comments from Captain James Diefenbacher stating that the Airport District had a perceived sense of security — "basically controlling crowds" rather than "going to domestic violence." (Gov. Proposed Order ¶ 48.) Even if accepted at face value, these statements do not indicate incompetent staffing by Sheriff Israel. Further, Captain Diefenbacher's perception is objectively refuted by the

actions of Deputy Madrigal, who immediately responded to the shooting and ran towards the danger. (See Gov. Ex. C 12-14.) Deputy Madrigal also testified that he did not believe his coworkers were complacent or otherwise unfit for duty. At best, the evidence on this issue is inconclusive, which is not enough to warrant a finding of incompetence or dereliction of duty against Sheriff Israel. For these reasons, I find the Governor has not proven the specific charge outlined above.

* * * *

In conclusion, Sheriff Israel insists that his deputies' response to the Fort Lauderdale Airport shooting "was a model" for emergency preparedness. (Israel Proposed Order pg. 25-26.) I cannot agree with that assertion, and my report should not be read as an endorsement that no mistakes were made leading up to, during, or after the shooting. My finding here is simply that the Governor did not meet his burden of proving that Sheriff Israel neglected his duties or was incompetent. The Governor's case was hindered by his nearly exclusive reliance on the draft incident report prepared by Major Cedeno. But the Governor presented no evidence to rebut the testimony that Major Cedeno's report was merely a collection of preliminary information that was unreliable and untested. Against this factual backdrop, I cannot reach the Governor's proffered conclusion that Sheriff Israel was constitutionally deficient in his duties.

B. Marjory Stoneman Douglas High School Shooting

i. General Background

This section is intended to provide an overview of the incident at Marjory Stoneman Douglas High School ("Stoneman Douglas"). Additional relevant facts are discussed under the subheadings that follow. On February 14, 2018, Nikolas Cruz arrived at Marjory Stoneman Douglas High School armed with a rifle and several hundred rounds of ammunition concealed in a bag. Cruz was a former student at the school and had a history of behavioral problems. (See Gov. Ex. F 277.)

Cruz entered the school through an unstaffed gate that was open for school dismissal. A school employee saw Cruz with "a nice-sized duffle bag" and radioed there was a "suspicious kid" on campus. (Id. at 326.) The employee went to confront Cruz but he ducked into Building 12 through another unlocked door. (Id. at 295.) Cruz made an immediate right into the stairwell and retrieved the semi-automatic rifle concealed in his bag. (Id.)

Cruz exited the stairwell after several seconds and began firing indiscriminately into the first-floor hallway. Percussion from the gunshots caused dust to fall from the ceiling tiles, which almost immediately activated the campus fire alarm. (Id.) Several students were shot and gravely injured. Cruz continued down the hallway firing into classrooms. The speed with which this attack happened prevented some students from having a chance to respond, and at least one student was struck while seated at his desk. (Id. at 296.)

The sound of gunshots caused some students to panic. A large group from the third floor fled towards the west stairwell only to return upon hearing more gunfire. During this time, the first 911 calls were received by the Coral Springs Communications Center. (Id. at 296.) Other students who were unaware of the shooter, meanwhile, exited their classrooms as if it was a normal fire drill. (Id. at 297-98.)

The first law enforcement officer at the school was BSO Deputy Scott Peterson. He arrived at Building 12 as Cruz was approaching the west end of the first-floor. (Id. at 358-59.) Deputy Peterson was the School Resource Officer ("SRO") assigned to Stoneman Douglas for that academic year under a contract with the Broward County Schools. Deputy Peterson had been an SRO for nearly three decades, spending the last nine years at Stoneman Douglas. (Id. at 357.) It goes without saying that Deputy Peterson was familiar with the layout and procedures at Stoneman Douglas.

Deputy Peterson stationed himself outside the east entrance of Building 12 as Cruz entered the second-floor hallway and again began firing his rifle. (Id. at 358.) Despite his later statements to the contrary, Deputy Peterson was aware of the threat inside Building 12. For instance, he told an unarmed security guard to leave the area since he was not armed. (Id.) Gunshots were also audible from the body camera of another officer who sat approximately four times further away. (Id. at 364; see also Gov. Proposed Order ¶¶ 124-128.) Deputy Peterson did not approach the doors to Building 12 or even look in the windows. Instead, with his gun drawn, Deputy Peterson retreated to an adjoining area. (Id. at 300.) Deputy Peterson would later explain that he did not enter Building 12 because he was trained to contain the area. (Id. at 365.)

Deputy Peterson sheltered at the base of a stairwell next to another building. Around this same time, Cruz entered the third-floor of Building 12 and fired over sixty rounds. (Id. at 361.) Cruz entered several rooms in search of victims and even tried to shoot out the windows in the teacher's lounge. In addition to sitting idle, Deputy Peterson reported erroneous information and directions over the BSO radio channel. For example, he directed deputies to shut down nearby intersections. He also told deputies to remain 500 feet away from Building 12. (Id. at 360-62, 366-67.) Deputy Peterson hid for approximately forty-eight minutes, well after Cruz fled and other law enforcement officers entered Building 12. (Id. at 360.)

Deputy Peterson was not the only law enforcement officer whose actions have come under scrutiny. Six other BSO deputies (Kratz, Eason, Stambaugh, Perry, Seward, and Goolsby) responded to the scene while gunfire was still audible, but they did not display urgency. Several stopped to grab equipment from their vehicles or don ballistic vests. (Id. at 437, 468.) Other issues with the BSO response to the shooting are discussed where needed below.

After this tragedy, the Florida Legislature created the Marjory Stoneman Douglas High School Public Safety Commission to investigate the personal and system failures that culminated in the shooting. The Commission issued its initial findings in January 2019. (See Gov. Ex. F.) The MSD Commission report need not (and will not) be repeated here, but its timeline and analysis has been invaluable. With this general background, I will turn to the specific charges Governor DeSantis has levied against Sheriff Israel related to this incident. (See Gov. Bill of Particulars 10-11.)[2]

ii. Sheriff Israel neglected his duty and/or was incompetent in requiring his deputies, including, but not limited to the actions of Deputy Peterson, to engage an active shooter, which resulted in additional fatalities

This charge is difficult to comprehend because of what I presume is a typographical error. The allegations that follow, however, make clear that the Governor seeks to hold Sheriff Israel responsible for his deputies not immediately entering Building 12 to apprehend the shooter. (See Gov. Bill of Particulars 12-13.) The Governor's proposed order also offers this conclusion. (See Gov. Proposed Order ¶ 166 ("Deputy Peterson's decision not to enter Building 12 upon hearing gun shots resulted in eight more fatalities and more injuries, a failure to act which should be attributed to [Sheriff] Israel.”))

The record is clear that several deputies were in a position to intervene at some point during the shooting. Deputy Peterson was on scene within minutes and well before Cruz entered the third-floor of Building 12. But instead of engaging the shooter to prevent further loss of life, Deputy Peterson fled to a position of personal safety. At no time did Deputy Peterson attempt to investigate the location of the gunshots. (See Gov. Ex. F 366-67.) Several other deputies who reached the scene (Kratz, Eason, Stambaugh, Perry, Seward, and Goolsby) likewise failed to move toward the gunshots and engage the shooter. They instead took defensive positions on the adjacent roadway. (Id. at 437-38.)

I have no trouble concluding these deputies neglected their duty during the Stoneman Douglas shooting and bear varying degrees of culpability. However, I cannot adopt the Governor's position that their personal failures, in and of themselves, create grounds to remove Sheriff Israel. To be sure, Sheriff Israel bears ultimate responsibility for the neglect of his deputies. See Fla. Stat. 30.07. But it is impractical to suggest that he can face removal from office based on the conduct of a subordinate that was never authorized, sanctioned, or ratified. More is needed because Sheriff Israel does not (and cannot) supervise each deputy. Imposing such sweeping responsibility upon an elected official would establish an unworkable precedent. Almost any elected official overseeing a large organization would be subject to removal at any time because even well-trained and supervised employees can make grievous mistakes.

Sheriff Israel's duty as conservator of the peace is fulfilled through the development of policies, procedures, and training. See, e.g., Israel v. Desantis, 269 So. 3d 491, 497 (Fla. 2019) (J. Muniz, Concurring in Judgment). It is his responsibility to equip deputies with the knowledge and resources needed to protect the residents of Broward County and promote the peace against criminal behavior. To that end, neglect or incompetence of the magnitude required for removal must be tied to an institutional failure. It is not enough to show that a deputy (or deputies) acted improperly and failed to follow protocol, which is all the Governor proposes here. For these reasons, I find the Governor has not proven the specific charge outlined above.

iii. Sheriff Israel neglected his duty and/or was incompetent in failing to protect the lives of the seventeen victims killed at Marjory Stoneman Douglas High School

The record is devoid of evince that Sheriff Israel or anyone at the BSO was aware of a specific threat immediately before the Stoneman Douglas shooting. Thus, I interpret this charge as a claim that Sheriff Israel failed to prevent the shooting through proactive police work, which would have identified Cruz as a threat. (See Gov. Proposed Order ¶¶ 149-158.)

There were twenty-one contacts between BSO and Cruz before the shooting. (See Gov. Ex. F. 504.) Most of these incidents were minor and warranted no further action. For instance, BSO responded to the Cruz household nine times for domestic disputes. However, two specific calls warranted additional attention from BSO deputies that was not conducted. The Governor's argument focuses on those incidents. (See Gov. Proposed Order ¶¶ 149-161.)

In 2016, BSO received a call that Cruz had posted a photograph on Instagram of himself with a gun. The post included a statement similar to "I am going to get this gun when I turn 18 and shoot up the school." Deputy E. Eason handled the call for service. He could not view the post because it had been removed, but he was verbally apprised of its contents. Deputy Eason did not complete an incident report and instead made the following entry into the dispatch system: "No threats noted and info forwarded to (SRO) Peterson at school." (See Gov. Ex. F 623-630.)

In 2017, only months before the shooting, BSO received a call that Cruz had weapons and wanted to join the military to kill people. The witness stated that Cruz "might be a Columbine in the making" and was a threat to kill himself. (Gov. Ex. F 508.) Deputy G. Treijs handled the report and referred the caller to another police department in the jurisdiction where Cruz was thought to reside. Deputy Treijs did not prepare an incident report. (Id.)

BSO investigated these contacts after the shooting. Deputies Eason and Treijs were disciplined for not thoroughly acting on the information presented. (Gov. Exs. P, R.) Specifically, both deputies were cited for violating BSO Standard Operating Procedure 3.6.1, which requires that deputies prepare an incident report when presented with credible information of a violent threat. (See Gov. Ex. R 3388.)

The Governor makes several arguments related to Deputies Eason and Treijs. First, the Governor claims that Sheriff Israel should be held directly responsible for their failures. (See Gov. Proposed Order ¶¶ 156, 160.) I cannot accept this theory for the same reasons explained above. To remove a constitutional officer like Sheriff Israel, the alleged neglect or incompetence must be tied to an institutional failure. It is not enough to show that an employee acted improperly, especially when the conduct at issue contradicted written policy.

The Governor does attempt to establish a direct connection to Sheriff Israel. He claims Sheriff Israel was "responsible for allowing [Deputies Eason and Deputy Treijs] to remain at BSO at the time of [their] failures in following protocol regarding reporting incidents." (Id.) This argument sits on a faulty premise: that Sheriff Israel or anyone at BSO knew Deputies Eason and Treijs were not properly preparing incident reports. There was no evidence presented that BSO command staff knew of this misconduct and yet let it continue.

The Governor further claims that Sheriff Israel failed in his constitutional duty because he did not have a specific policy to handle "threats of school shootings." (Id. ¶ 161.) It is suggested that such threats should have been sent directly to Sheriff Israel. (Id. ¶ 161.) This policy seems virtuous in the abstract, but there are obvious problems that advocate why such action should not be constitutionally mandated. Among other things, the Governor's proposed policy ignores the chain of command system that is the backbone of law enforcement structure. Sheriff Israel oversees an agency with 5,600 budgeted positions. Mandating that he personally review and vet certain reports would undoubtedly disrupt his other equally important responsibilities. Furthermore, the Governor's suggested policy draws an arbitrary line at school shootings. What about bomb threats? They are equally rare and have catastrophic potential. Under the Governor's logic (Id. ¶ 154), it would seem necessary to have Sheriff Israel review those threats as well. Lastly, the Governor has provided no evidence that his proffered policy is employed elsewhere or is considered important for school safety. If Sheriff Israel's peers do not maintain such a policy, it can hardly be incompetent for him to do the same. For these reasons, I find the Governor has not proven the specific charge outlined above.

iv. Sheriff Israel neglected his duty and/or was incompetent in developing, adopting, and training BSO deputies that they may engage with an active shooter

Although not required by state law or regulation, most law enforcement agencies in Florida have policies that address how to confront and disarm an active gunman. BSO is no exception. At the time of the Stoneman Douglas shooting, the BSO Active Shooter Policy stated, "If real-time intelligence exists, the sole deputy or a team of deputies may enter the area and/or structure to preserve life. A supervisor's approval or on-site observation is not required for this decision." (Gov. Ex. F 469.) The policy also said that the deputy contact team would continue until the subject has surrendered, barricaded himself, the subject's hostilities have been stopped or the contact team has been relieved by SWAT. (Id.)

Much has been made of the Active Shooter Policy's wording, specifically the language that deputies "may" pursue the shooter. The Governor claims this language afforded too much discretion and prioritized police protection over helping victims. (See Gov. Proposed Order ¶¶ 193-221.)

I agree that the BSO Active Shooter Policy was not ideal. Stronger language could have helped reaffirm the overarching priority in such situations, which is stopping the threat. I cannot agree, however, that the BSO Active Shooter Policy was so deficient that it evidences neglect of duty or incompetence on the part of Sheriff Israel. The reason for this is simple — many Florida law enforcement agencies use similar policies that afford a single deputy discretion to engage an armed assailant. (See Israel Ex. 32.) For instance, the Marion County Sheriff's Office policy states, "In an incident involving an active shooter, the situation may indicate that the first deputy or deputies on the scene engage and attempt to neutralize the shooter." (Id. at 2142.) Some policies even require that an individual deputy wait for backup and approach the subject through a structured engagement. (Id. at 2143.)

The Governor relies heavily on the MSD Commission report, which concluded that the BSO policy was inconsistent with standard law enforcement practices. (Gov. Proposed Order ¶ 201.) But the report is devoid of any analysis or evidence to support that assertion. By contrast, Sheriff Israel has provided the text of nearly every active shooter policy then utilized by his peers. The BSO policy is not materially different.

Apart from the policy itself, the Governor claims that Sheriff Israel failed to adequately train his deputies: "BSO training on active shooter was inadequate to clearly define the role of the deputy and allowed too much discretion over saving lives." (Id. ¶ 221.) He criticizes both the content and frequency of the training. (Id. ¶¶ 178, 180, 185, 218-220.)

As for frequency, Sheriff Israel required his deputies (including SROs like Deputy Peterson) to receive two active shooter trainings on a three-year cycle. (Tr. 425:5-7.) The Governor proclaims this was deficient, but yet again, he has failed to establish what is accepted law enforcement practice in this area. More preparation is always preferable to less. Yet it is not possible (or even feasible) to require constant training on every topic. Law enforcement agencies are constrained by available resources, including time. It is important to remember that every hour a deputy spends training he is not available for active duty. There is nothing in the record to suggest that a three-year training cycle was outside the norm, much less constitutionally insufficient.

The Governor next stresses that several deputies interviewed after the Stoneman Douglas shooting were unable to recall the last time they attended active shooter training. (Gov. Proposed Order ¶ 201.) Even if true, their faulty memory does not mean Sheriff Israel's training program was flawed. Among other problems, there is no indication of how many deputies were interviewed or who made these statements. As evident from the facts above, many deputies on scene had incentive to limit their personal responsibility. It is unfair to assign much reliability to the Governor's evidence without more information. Finally, as noted in the MSD Commission report, many deputies responded to the shooting in the proper manner by running to the scene, seeking out the shooter, providing medical aid and evacuating victims. (Gov. Ex. F 469.)

The Governor's complaints about the content of Sheriff Israel's active shooter training also fall short. The Governor makes critiques with no reference to what is accepted law enforcement practice in this area. By way of example, the Governor suggests that Sheriff Israel should have required SROs to undertake live-active shooter training in a school setting. (Gov. Proposed Order ¶ 201.) It goes without saying that this type of exercise would be beneficial. But the question here is not whether Sheriff Israel utilized best practices. Pursuant to Executive Order 19-14, he can be removed from office only upon a showing of incompetence or neglect of duty. Without evidence that Sheriff Israel omitted training that must be considered necessary, the assertion that he neglected his constitutional mandate is not sustainable.

Identifying additional training that Sheriff Israel could have offered is only half the equation. It was the Governor's obligation to also show that this added training was required to meet the minimal qualifications for a law enforcement agency. The Governor did not carry the latter part of his burden.

It also bears mention that several pieces of evidence cut against the Governor and suggest that BSO deputies received adequate training to confront an active shooter. Deputy Madrigal's response during Fort Lauderdale Shooting is but one example. The MSD Commission also found that Deputy Peterson knew the appropriate response yet failed to act. (Gov. Ex. F 368 "BSO trained Deputy Peterson on active shooter response, and he was familiar with solo-deputy response protocols. Peterson knew through his training that the appropriate response was to seek out the active shooter and not containment.")) Overall, the evidence presented to me suggests it was individual failures that plagued the Stoneman Douglas response, not neglect or incompetence by Sheriff Israel. For these reasons, I find the specific charge outlined above was not proven.

v. Sheriff Israel neglected his duty and/or was incompetent in staffing BSO's School Resource Officer Program with employees who were complacent and not diligent in their duty to protect the peace

Beyond conclusory assertions, the Governor presented no evidence to establish that Sheriff Israel staffed the BSO program with deputies who were unfit for the task. The only SRO officer discussed with any detail is Deputy Peterson. His failures, although undoubtedly significant, are alone not enough to incriminate the entire SRO program. Accordingly, I find the Governor has not proven the specific charge outlined above.

* * * *

At bottom, Sheriff Israel and the BSO are not blameless for the tragedy at Stoneman Douglas. I agree with the MSD Commission that mistakes were made and areas should be improved. That said, the evidence offered has not demonstrated that Sheriff Israel should be removed from office based on this incident. While the Governor has offered a plethora of criticism, he has not shown that Sheriff Israel's policies, procedures, or trainings on active shooter situations were inconsistent with Florida law enforcement standards. To me, the record suggests that the Stoneman Douglas shooting was a culmination of individual failures. Most notably Deputy Peterson, who "knew through his training that the appropriate response was to seek out the active shooter" and yet failed to act. (Gov. Ex. F 368.) One final point. The Governor's case against Sheriff Israel is premised almost entirely on the MSD Commission report. Yet the committee chairman, Sheriff Bob Gualtieri from Pinellas County, has stated publicly that nothing in the report was meant to constitute grounds for Sheriff Israel's removal. See https://www.nbcmiami.com/news/local/MSD-Commission-Chair-Would-Not-Recommend-Removal-of-BSO-Sheriff-From-Office-502532751.html. I agree with his assessment — the report, in and of itself, is simply not enough.

1. **Attorneys' Fees and Costs**

Sheriff Israel requests reimbursement for the costs and fees incurred in opposing the Governor's executive suspension. Under Fla. Stat. § 112.44, if a suspended officer is reinstated, the Senate may provide for the payment "of such attorney's fees and costs as the officer may reasonably have incurred in his or her own defense." Fla. Stat. § 112.44. Whether to award such relief lies within the Senate's discretion. Id.

Having reviewed the record and weighed the merits of Sheriff Israel's request, it is my recommendation that the Senate not award fees and costs. Despite Sheriff Israel's suggestion otherwise, this was not a situation of executive overreach. There was certainly evidence to support a *prima facie* case that he neglected the duties of his office. In my view this weighs against making taxpayers shoulder the burden of Sheriff Israel's defense.

III. Conclusion

Consistent with the foregoing discussion, I recommend:

1. The Florida Senate confirm the President's appointment of the undersigned Special Master in this case.
2. The Florida Senate confirm that Executive Order 19-14 and the Governor's Bill of Particulars meets the jurisdictional requirements of the Florida Constitution, statutes, and applicable case law, and that fundamental due process has been afforded to Sheriff Israel.
3. The Florida Senate, pursuant to Article IV, Fla. Const. and Fla. Stat. § 112.44, REINSTATE Scott Israel to his elected position as the Sheriff of Broward County because the Governor has not proven the specific charges of suspension in Executive Order 19-14.
4. The Florida Senate deny Sheriff Israel's request for attorneys' fees and costs.

Respectfully,
J. Dudley Goodlette
September 24, 2019

1. Sheriff Israel's Exhibit 28 was excluded because a copy was not furnished to the opposing counsel prior to the hearing.

2. Several charges related to the Stoneman Douglas shooting overlap or are duplicative. (*See* Gov. Bill of Particulars 10-11.) For ease of analysis, I have condensed these charges where appropriate.

[Referred to the Committee on Rules.]

MOTIONS RELATING TO COMMITTEE MEETINGS

On motion by Senator Benacquisto, the rules were waived and the Committee on Rules was granted permission to extend time of adjournment of the meeting this day until 9:00 p.m.

COMMITTEES OF THE SENATE

(As revised December 14, 2018)

Agriculture

Senator Albritton, Chair; Senator Gainer, Vice Chair; Senators Broxson, Montford, and Rader

Appropriations

Senator Bradley, Chair; Senator Simpson, Vice Chair; Senators Bean, Benacquisto, Book, Brandes, Braynon, Flores, Gainer, Gibson, Hutson, Lee, Mayfield, Montford, Passidomo, Powell, Rouson, Simmons, Stargel, Stewart, and Thurston

Appropriations Subcommittee on Agriculture, Environment, and General Government
Senator Mayfield, Chair; Senator Powell, Vice Chair; Senators Albritton, Bean, Berman, Broxson, Hooper, Hutson, Rodriguez, and Stewart

Appropriations Subcommittee on Criminal and Civil Justice
Senator Brandes, Chair; Senator Bracy, Vice Chair; Senators Gainer, Gruters, Harrell, Perry, Rouson, and Taddeo

Appropriations Subcommittee on Education
Senator Stargel, Chair; Senator Diaz, Vice Chair; Senators Baxley, Book, Flores, Montford, Pizzo, and Simmons

Appropriations Subcommittee on Health and Human Services
Senator Bean, Chair; Senator Harrell, Vice Chair; Senators Book, Diaz, Farmer, Flores, Hooper, Passidomo, Rader, and Rouson

Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Senator Hutson, Chair; Senator Thurston, Vice Chair; Senators Brandes, Lee, Perry, Simpson, Taddeo, and Torres

Banking and Insurance
Senator Broxson, Chair; Senator Rouson, Vice Chair; Senators Brandes, Gruters, Lee, Perry, Taddeo, and Thurston

Children, Families, and Elder Affairs
Senator Book, Chair; Senator Mayfield, Vice Chair; Senators Bean, Harrell, Rader, Torres, and Wright

Commerce and Tourism
Senator Gruters, Chair; Senator Torres, Vice Chair; Senators Hutson, Stewart, and Wright

Community Affairs
Senator Flores, Chair; Senator Farmer, Vice Chair; Senators Broxson, Pizzo, and Simmons

Criminal Justice
Senator Perry, Chair; Senator Brandes, Vice Chair; Senators Bracy, Flores, and Pizzo

Education
Senator Diaz, Chair; Senator Montford, Vice Chair; Senators Baxley, Berman, Cruz, Perry, Simmons, and Stargel

Environment and Natural Resources
Senator Montford, Chair; Senator Albritton, Vice Chair; Senators Berman, Mayfield, and Wright

Ethics and Elections
Senator Baxley, Chair; Senator Braynon, Vice Chair; Senators Diaz, Passidomo, Powell, Rodriguez, and Stargel

Finance and Tax
Senator Gainer, Chair; Senator Gruters, Vice Chair; Senators Baxley, Bracy, Bradley, Pizzo, Powell, and Stargel

Governmental Oversight and Accountability
Senator Hooper, Chair; Senator Rader, Vice Chair; Senators Albritton, Bean, and Torres

Health Policy
Senator Harrell, Chair; Senator Berman, Vice Chair; Senators Baxley, Bean, Book, Cruz, Diaz, Hooper, Mayfield, and Rouson

Infrastructure and Security
Senator Lee, Chair; Senator Perry, Vice Chair; Senators Bean, Cruz, Hooper, Hutson, Stewart, and Taddeo

Innovation, Industry, and Technology
Senator Simpson, Chair; Senator Benacquisto, Vice Chair; Senators Bracy, Bradley, Brandes, Braynon, Farmer, Gibson, Hutson, and Passidomo

Judiciary
Senator Simmons, Chair; Senator Rodriguez, Vice Chair; Senators Baxley, Gibson, Hutson, and Stargel

Military and Veterans Affairs and Space
Senator Wright, Chair; Senator Cruz, Vice Chair; Senators Broxson, Gainer, Harrell, Pizzo, and Torres

Reapportionment
(*Membership to be considered for appointment at a later date*)

Rules
Senator Benacquisto, Chair; Senator Gibson, Vice Chair; Senators Book, Bradley, Brandes, Braynon, Farmer, Flores, Hutson, Lee, Montford, Passidomo, Rodriguez, Simmons, Simpson, Stargel, and Thurston

Joint Legislative Committees:

Joint Administrative Procedures Committee
Senator Stewart, Alternating Chair; Senators Cruz, Hooper, Perry, and Wright

Joint Committee on Public Counsel Oversight
Senator Powell, Alternating Chair; Senators Broxson, Farmer, Gruters, and Harrell

Joint Legislative Auditing Committee
Senator Brandes, Alternating Chair; Senators Baxley, Lee, Montford, and Rader

Joint Select Committee on Collective Bargaining
Senator Hooper, Alternating Chair; Senators Diaz, Stargel, Thurston, and Torres

Other Legislative Entity:

Joint Legislative Budget Commission
Senator Bradley, Alternating Chair; Senators Benacquisto, Book, Brandes, Braynon, Gibson, and Simpson

ADJOURNMENT

On motion by Senator Benacquisto, the Senate adjourned at 9:17 a.m. for the purpose of holding committee meetings and conducting other Senate business to reconvene at 2:00 p.m., Wednesday, October 23 or upon call of the President.