

IN THE SUPREME COURT OF FLORIDA

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Case No.: SC2024-1522

L.T. No.: 4D2022-3429

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TERRY HUBBARD,  
*Petitioner,*

v.

STATE OF FLORIDA,  
*Respondent.*

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ON DISCRETIONARY REVIEW FROM THE  
FOURTH DISTRICT COURT OF APPEAL

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**BRIEF OF AMICUS CURIAE  
BRENNAN CENTER FOR JUSTICE  
IN SUPPORT OF PETITIONER TERRY HUBBARD**

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PROSKAUER ROSE LLP  
Matthew Triggs (FBN 865745)  
One Boca Place  
2255 Glades Road  
Suite 421 Atrium  
Boca Raton, Florida 33431-7360  
(561) 241-7400  
[mtriggs@proskauer.com](mailto:mtriggs@proskauer.com)

*Counsel for Amicus Curiae*

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## **STATEMENT OF INTEREST OF AMICUS CURIAE**

The Brennan Center for Justice at NYU Law School<sup>1</sup> is a nonprofit, nonpartisan law and policy institute that seeks to strengthen, revitalize, and defend our systems of democracy and justice.

As a voting rights organization that advocates for the rights of returning citizens in Florida,<sup>2</sup> *amicus* has a significant interest in this case: Respondent seeks this Court’s support for an unprecedented expansion of the Office of Statewide Prosecution’s (“OSP”) authority. Such an expansion would be contrary to OSP’s constitutional authority and would permit further prosecutions of returning citizens—such as Mr. Hubbard—who have been confused or misled about their eligibility by Florida’s byzantine voting-rights restoration system. Such an expansion would also intimidate and disenfranchise returning citizens who *are* eligible to vote. Bias in the criminal justice

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<sup>1</sup> This brief does not purport to convey the position of New York University School of Law.

<sup>2</sup> A “returning citizen” is an individual with a felony conviction.

system has meant that a disproportionate number of such citizens in Florida are Black.

Accordingly, *amicus* respectfully submits this brief to underscore the threat presented by Respondent's position to the rule of law and democratic norms in Florida.

### **PRELIMINARY STATEMENT**

In 2018, Florida voters overwhelmingly approved Amendment 4, automatically restoring voting rights for returning citizens who have completed the terms of their sentences, except those convicted of murder or felony sexual offenses.<sup>3</sup> Approximately 1.4 million people were expected to benefit from the Amendment. But in 2019, the State enacted Senate Bill 7066 ("SB7066"), requiring returning citizens to satisfy certain court-imposed debts before they can vote.<sup>4</sup> SB7066 also defined the terms "murder" and "felony sexual offense," for which voting rights are not automatically restored by Amendment 4, to include an amorphous list of crimes.<sup>5</sup> Under

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<sup>3</sup> Art. VI, § 4(a)-(b), Fla. Const.

<sup>4</sup> Ch. 2019-162, § 25, Laws of Fla.

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

SB7066, it is “sometimes hard, sometimes impossible” for returning citizens to determine whether they are eligible to vote.<sup>6</sup>

Since SB7066 was enacted, Florida’s voting-rights restoration system has been an “administrative train wreck.”<sup>7</sup> The State does not provide timely verification of eligibility; instead, it keeps potentially-ineligible voters on the rolls for years after it has approved their registrations and sent them voter-information cards, thereby leading them to believe they are eligible to vote. The State is now deploying OSP—an office created by voters and the Legislature to combat organized crime—to prosecute returning citizens like Mr. Hubbard for good-faith mistakes about their eligibility, despite earlier representations to federal courts that it would not do so.<sup>8</sup>

In August 2022, five days before Florida’s primary election, Governor DeSantis announced the arrests of Mr. Hubbard and other

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<sup>6</sup> *Jones v. Governor of Fla. (Jones II)*, 975 F.3d 1016, 1062 (11th Cir. 2020) (en banc) (Martin, J., dissenting) (citation omitted), *rev’g Jones v. DeSantis (Jones I)*, 462 F.Supp.3d 1196 (N.D. Fla. 2020).

<sup>7</sup> *Jones II*, 975 F.3d at 1059 (Martin, J., dissenting) (quoting “District Court’s unchallenged findings of fact” that Florida’s implementation has been an “administrative train wreck”).

<sup>8</sup> See *infra* notes 68-69 and accompanying text.

returning citizens for allegedly voting while ineligible in 2020.<sup>9</sup> Flanked by over a dozen uniformed officers, the Governor called the arrests the “opening salvo” of Florida’s new Office of Election Crimes and Security.<sup>10</sup> He also announced that OSP was going to prosecute Mr. Hubbard and the other individuals arrested because there are “some prosecutors that have been loath to bring these cases.”<sup>11</sup>

Mr. Hubbard’s brief sets forth ample grounds for upholding the circuit court’s order of dismissal. *Amicus* writes to emphasize three considerations in support of Mr. Hubbard’s arguments.

*First*, the Fourth District improperly held that OSP has authority to prosecute Mr. Hubbard for what are, in fact, single-circuit voting offenses. This holding contradicts the plain language of the constitutional amendment that created OSP, as well as its history and voters’ understanding of the multi-circuit limitation on OSP’s authority at the time of ratification. The Fourth District cannot

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<sup>9</sup> First Coast News, *Watch Live: Governor DeSantis Press Conference*, YouTube (Aug. 18, 2022), <https://www.youtube.com/watch?v=IBkT4A1RET8>.

<sup>10</sup> *Id.* at 1:10:48-1:12:20.

<sup>11</sup> *Id.* at 1:05:48-1:06:40.

construe OSP's enabling statute to stretch beyond what the Constitution permits. The Fourth District's holding is also contrary to decades of case law interpreting what constitutes a multi-circuit crime and would lead to absurd results.

*Second*, OSP's prosecution of Mr. Hubbard is improper because he is a victim of the confusion caused by Florida's failure to administer its complex voting-rights restoration system.

*Third*, to allow OSP to bring this prosecution will chill voting among eligible returning citizens in Florida, who are disproportionately Black, as well as other Black voters.

This Court should reverse the Fourth District's ruling and reinstate the circuit court's order of dismissal.<sup>12</sup>

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<sup>12</sup> For the same reasons, this Court should also reverse the Third District's decision in *State v. Wood*, No. 3D22-1925 (Fla. 3d DCA Sept. 25, 2024) and affirm the Sixth District's decision in *State v. Washington*, No. 6D2023-2104 (Fla. 6th DCA Feb. 21, 2025).

## **ARGUMENT**

### **I. THE FOURTH DISTRICT IMPROPERLY HELD OSP HAS AUTHORITY TO PROSECUTE MR. HUBBARD.**

#### **A. The Constitution Limits OSP’s Authority to Multi-Circuit Crimes That Cannot Be Effectively Prosecuted by State Attorneys.**

The Constitution limits OSP’s authority to complex, multi-circuit criminal cases—like organized crime—that would be difficult for State Attorneys to prosecute effectively. The plain text of the amendment that created OSP, the historical background of the multi-circuit limitation on OSP’s authority contained within the amendment’s text, and the public’s understanding of OSP’s role at the time of ratification are all unequivocal on this point.

When reviewing constitutional language, this Court “ask[s] how the public would have understood the meaning of the text in its full context when the voters ratified it.”<sup>13</sup> “To answer this question of public meaning,” this Court “consider[s] the text, contextual clues,

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<sup>13</sup> *Planned Parenthood of Sw. & Cent. Fla. v. State*, 384 So. 3d 67, 77 (Fla. 2024) (citing *Advisory Op. to Governor re: Implementation of Amendment 4, the Voting Restoration Amendment (Amendment 4)*, 288 So.3d 1070, 1081-82 (Fla. 2020)).

dictionaries, canons of construction, and historical sources, including evidence related to public discussion.”<sup>14</sup>

Turning first to the constitutional text, Article IV, Section 4(b) provides that OSP has “concurrent jurisdiction with the state attorneys to prosecute violations of criminal laws occurring or having occurred, in *two or more judicial circuits* as part of a related transaction, or when any such offense is affecting or has affected *two or more judicial circuits* as provided by general law.”<sup>15</sup> The operative text explicitly limits OSP’s authority to “violations of criminal laws” that occur in or affect “two or more judicial circuits.” Thus, OSP does not have authority to prosecute single-circuit crimes.

The “historical background of the phrases contained within the operative text” confirms OSP’s limitation to multi-circuit crimes that would be difficult for State Attorneys to effectively prosecute.<sup>16</sup> Voters and the Legislature created OSP because Florida’s geographically-

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<sup>14</sup> *Planned Parenthood of Sw. & Cent. Fla.*, 384 So. 3d at 77 (citations omitted).

<sup>15</sup> Art. IV, § 4(b), Fla. Const. (emphases added).

<sup>16</sup> *Planned Parenthood of Sw. & Cent. Fla.*, 384 So. 3d at 79 (citation omitted).

bound State Attorney system, in which State Attorneys may only prosecute crimes within their own judicial circuit, could not confront the challenge of organized crime.<sup>17</sup> Initially, the multi-circuit limitation on OSP's authority was in its enabling statute.<sup>18</sup> However, State Attorneys—historically the chief opponents of a statewide prosecutor—convinced the Legislature to move this limitation to the Constitution so that it would be more difficult for future legislatures to expand OSP's powers to usurp theirs.<sup>19</sup> Consistent with this intent, OSP's original enabling legislation—approved by the Legislature at the same time it referred the proposed amendment to voters—authorized OSP to pursue specific crimes like gambling, dangerous drug crimes, and violations of the Florida RICO Act.<sup>20</sup> The statute also specifically limited OSP's authority to the prosecution of an offense that “is occurring, or has occurred, in *two or more judicial*

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<sup>17</sup> R.S. Palmer & Barbara M. Linthicum, *The Statewide Prosecutor: A New Weapon Against Organized Crime*, 13 Fla. St. U. L. Rev. 653, 654 (1985).

<sup>18</sup> *Id.* at 671, 677-78.

<sup>19</sup> *Id.* at 678-79; Fla. HJR 386 (1985) at 1 (proposed amendment to art. IV, § 4(c), Fla. Const. (now renumbered § 4(b)); Art. IV, § 4(b), Fla. Const.

<sup>20</sup> Ch. 1985-179, § 1, Laws of Fla.

*circuits as part of a related transaction” or “is connected with an organized criminal conspiracy affecting two or more judicial circuits.”<sup>21</sup>*

The Constitution’s limitation of OSP to multi-circuit crimes that cannot be effectively prosecuted by State Attorneys is further confirmed by the “framing of the public debate” around the amendment that created OSP.<sup>22</sup> Governor Graham and major publications communicated to voters that OSP’s focus would be “organized-crime figures whose activities extend beyond one county.”<sup>23</sup> The ballot summary presented to voters also advised that OSP would be limited to “*multicircuit violations* of the criminal laws of the state.”<sup>24</sup> The undisputed history of the amendment that created OSP thus shows that when voters approved it, they understood that

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<sup>21</sup> *Id.* (emphasis added).

<sup>22</sup> *Planned Parenthood of Sw. & Cent. Fla.*, 384 So. 3d at 87.

<sup>23</sup> *Amendments*, Orlando Sentinel, Nov. 3, 1986, at A-8, <https://tinyurl.com/2csv55vr>; see also Palmer & Linthicum, *supra* note 17, at 668-69; *State Referendums*, St. Petersburg Times, Oct. 30, 1986, at 8, <https://tinyurl.com/5n7z96jr>.

<sup>24</sup> Fla. Div. Elections, Initiative Information, *Authority of Attorney General to Appoint a Statewide Prosecutor*, <http://tinyurl.com/3n2x3wsb> (last visited June 1, 2025) (emphasis added).

OSP's authority would be limited to complex criminal cases, like organized crime, that materially occurred in or affected multiple circuits and, as such, could not be effectively prosecuted by State Attorneys.

**B. The Legislature Did Not and Cannot Expand OSP's Statutory Authority Beyond the Constitution.**

OSP's enabling statute, Florida Statutes § 16.56, did not—and indeed cannot—expand OSP's authority to reach single-circuit voting crimes. That is because state constitutions are “an authority superior to both the Legislature and the Judiciary.”<sup>25</sup> The Court must construe § 16.56 consistent with the mandates of the Constitution.<sup>26</sup>

Since OSP's creation, the Legislature amended § 16.56 twice to empower OSP to prosecute voting-related crimes. First, in 2005, the Legislature amended § 16.56 to extend OSP's jurisdiction to include “[a]ny crime involving voter registration, voting, or candidate or issue petition activities.”<sup>27</sup> Importantly, this addition to § 16.56 did not

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<sup>25</sup> *Wright v. City of Miami Gardens*, 200 So.3d 765, 774 (Fla. 2016).

<sup>26</sup> *State v. Jefferson*, 758 So. 2d 661, 664 (Fla. 2000) (“Wherever possible, statutes should be construed in such a manner so as to avoid an unconstitutional result.”).

<sup>27</sup> Ch. 2005-277, § 73, Laws of Fla.

authorize OSP to prosecute single-circuit voting crimes that are not part of a larger statewide conspiracy. Consistent with the Constitution, OSP's authority remained restricted to crimes in which "such offense is occurring, or has occurred, in two or more judicial circuits as part of a related transaction, or when any such offense is connected with an organized criminal conspiracy affecting two or more judicial circuits."<sup>28</sup>

The Legislature amended § 16.56 again in 2023, after circuit courts dismissed Respondent's cases against Mr. Hubbard and other returning citizens for lack of prosecutorial authority.<sup>29</sup> The amendment authorizes OSP to prosecute voting-related crimes that are "occurring, or [have] occurred, in two or more judicial circuits as

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<sup>28</sup> *Id.*

<sup>29</sup> R.684-93; Order on Mot. to Dismiss, *State v. Washington*, No. 2022-CF-009611-A-O (Fla. 9th Cir. Ct. Feb. 13, 2023); Order on Mot. to Dismiss, *State v. Miller*, No. 13-2022-CF-015012-0001-XX (Fla. 11th Cir. Ct. Dec. 12, 2022); Order on Mot. to Dismiss, *State v. Wood*, No. 13 2022 CF 015009 0001 XX (Fla. 11th Cir. Ct. Oct. 21, 2022). OSP's annual reports also show that, before 2022, it never prosecuted anyone for alleged voting crimes. Office of the Attorney General, *Office of Statewide Prosecution Annual Reports*, <http://tinyurl.com/mr2ueccc> (last visited Dec. 13, 2023) (annual overviews of OSP for 2019-2021).

part of a related transaction,” or when “any such offense is affecting, or has affected, two or more judicial circuits,” without the requirement of an “organized criminal conspiracy.”<sup>30</sup> This too did not authorize the prosecution of single-circuit voting offenses.<sup>31</sup>

**C. The Fourth District’s Interpretation of OSP’s Authority Conflicts with Case Law Defining Multi-Circuit Crimes and Would Lead to Absurd Results.**

The Constitution limits OSP’s authority to two types of multi-circuit crimes: (1) those occurring in two or more circuits as part of a related transaction (*i.e.*, crimes under the “occurring” prong); and (2) those affecting two or more circuits (*i.e.*, crimes under the “affecting” prong). Under either prong, OSP lacks authority to prosecute Mr. Hubbard because his alleged crimes only occurred in and affected one circuit.

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<sup>30</sup> Ch. 2023-2, § 1, Laws of Fla.

<sup>31</sup> Additionally, the 2023 amendment cannot apply retroactively to Mr. Hubbard’s case. For the reasons stated in Mr. Hubbard’s brief, the modified version of § 16.56 cannot apply to Mr. Hubbard because it was passed *after* his case was dismissed and does not say that it applies retroactively. Petitioner’s Br. 14-20; R.837-44.

**1. The Fourth District Improperly Found  
Mr. Hubbard's Alleged Offenses "Occurred" in Two  
or More Circuits.**

The Fourth District first held Mr. Hubbard's alleged crimes occurred in multiple circuits as part of a related transaction merely because "submitting a fraudulent voter registration in Broward County is an act which requires subsequent involvement of the [Department] of State in Leon County. So too does voting in an election in Broward County."<sup>32</sup> This holding is wrong for at least five reasons.

First, the Fourth District's holding is contrary to prevailing case law interpreting OSP's "occurring" authority. This Court has held that OSP lacks authority when the "criminal activity in Florida actually occurred in only [one county in] Florida[.]"<sup>33</sup> The Third, Fifth, and Sixth Districts have also interpreted the phrase "related transaction" to mean interconnected criminal activity by a defendant

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<sup>32</sup> R.1006.

<sup>33</sup> *Carbajal v. State*, 75 So.3d 258, 262 (Fla. 2011).

and/or his co-conspirators that involve multiple circuits.<sup>34</sup> Here, Respondent stipulated, and the circuit court found, that Mr. Hubbard did not “physically enter” or “mail or electronically transfer” anything to the Second Judicial Circuit (Leon County), and “[t]he acts charged in the State’s Information do[] not involve a criminal conspiracy.”<sup>35</sup>

Second, the Constitution explicitly limits OSP’s “occurring” authority to “violations of criminal laws occurring or having occurred, in two or more judicial circuits as part of a related transaction[.]”<sup>36</sup> If the “related transaction” here is the Department of State’s actions, that would mean that Respondent’s own conduct consisted of “violations of criminal law.” Such an outcome, which is the logical conclusion of the Fourth District’s approach, is implausible.

Third, the Fourth District’s holding is contrary to Florida statutes that determine where a crime occurs for purposes of venue

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<sup>34</sup> See, e.g., *State v. Tacher*, 84 So.3d 1131, 1133-34 (Fla. 3d DCA 2012); *King v. State*, 790 So.2d 477, 479-80 (Fla. 5th DCA 2001); *State v. Washington*, 403 So. 3d 465, 474 (Fla. 6th DCA 2025).

<sup>35</sup> R.537.

<sup>36</sup> Art. IV, § 4(b), Fla. Const.

and which State Attorney has jurisdiction to prosecute. Under those statutes, “a crime occurs where the acts constituting the offense are committed, and if the acts constituting the offense are committed in two or more circuits, then the crime occurred in all of them.”<sup>37</sup> Here, Mr. Hubbard was charged with false affirmation in connection with an election and voting as an unqualified elector. As the circuit court concluded, “[t]he crime has been committed and completed in the jurisdiction where the registration application was submitted and or where the Defendant submitted his vote. Thereafter, it doesn’t matter who or what entity moves or transmits the fraudulent ballot.”<sup>38</sup>

Fourth, the Fourth District’s holding is contrary to case law interpreting the authority of the statewide grand jury. The legislation creating the statewide grand jury served as a model for § 16.56.<sup>39</sup> The statewide grand jury, like OSP, is limited to an enumerated list of

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<sup>37</sup> *Id.* at 472-73.

<sup>38</sup> R.692.

<sup>39</sup> Palmer & Linthicum, *supra* note 17, at 666-67; *see also Zanger v. State*, 548 So.2d 746, 748 (Fla. 4th DCA 1989) (“[T]he subject matter jurisdiction of the statewide grand jury parallels that of the statewide prosecutor’s with regard to crimes which can be indicted or prosecuted[.]”).

offenses that are “occurring, or ha[ve] occurred, in two or more judicial circuits as part of a related transaction[.]”<sup>40</sup> Florida courts, including this Court, have long interpreted “related transaction” to limit the statewide grand jury’s authority to cases involving interconnected criminal acts that implicate multiple circuits.<sup>41</sup>

In the instant case, the alleged offenses neither occurred in two circuits nor were part of a group of related single-circuit crimes occurring in multiple circuits as part of a related transaction. Respondent does not accuse Mr. Hubbard of anything beyond registering and voting in a single circuit while allegedly ineligible.<sup>42</sup> Nor does Respondent allege that he organized with anyone, or that he cast—or helped to cast—any vote other than his own.<sup>43</sup> His alleged

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<sup>40</sup> Fla. Stat. § 905.34.

<sup>41</sup> See *State v. Ostergard*, 343 So.2d 874, 875 (Fla. 3d DCA 1977) (Barkdull, J., concurring); *State v. McNamara*, 357 So.2d 410, 413 (Fla. 1978); see also *Ross v. State*, 664 So.2d 1004, 1009 (Fla. 4th DCA 1995) (statewide grand jury had jurisdiction over conspiracy-to-traffic charge where the conspiratorial agreement, “an essential element of the crime,” was reached in one judicial circuit and the landing of a decoy plane, a conspiratorial act, occurred in another judicial circuit).

<sup>42</sup> R.999-1000.

<sup>43</sup> *Id.*

criminal activity “actually occurred in only” one circuit, so “OSP was not authorized to prosecute charges arising from that conduct.”<sup>44</sup>

Finally, the mere fact that the submission of a voter registration application and ballot in Broward County requires subsequent involvement of the Department of State in Leon County does not change the fact that the alleged crimes actually and legally occurred exclusively in Broward. To hold otherwise would lead to an absurd result: OSP could prosecute a defendant for a voter registration or voting crime in every circuit except for the Second Circuit (where Leon County sits), because “if the voter registration or voting takes place there, only one judicial circuit would be involved, and there would be no OSP jurisdiction.”<sup>45</sup> It would be unreasonable to read the Constitution or § 16.56 to give OSP authority over all voting crimes *except* the ones that occur in Leon County. “Statutes, as a rule, ‘will not be interpreted so as to yield an absurd result.’”<sup>46</sup>

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<sup>44</sup> *Carbajal*, 75 So.3d at 262; R.1057-58.

<sup>45</sup> R.1008 n.4.

<sup>46</sup> *Fla. Dep’t of Highway Safety & Motor Vehicles v. Hernandez*, 74 So. 3d 1070, 1079 (Fla. 2011) (citation omitted).

## **2. The Fourth District Improperly Found Mr. Hubbard’s Alleged Offenses “Affected” Two or More Circuits.**

The Fourth District also held Mr. Hubbard’s alleged crimes affected multiple circuits because “voter fraud impacts the public’s confidence in elections throughout the state” and the elections in which he voted “were also for statewide and federal offices [and] the result of those elections impacts voters throughout the state.”<sup>47</sup> That conclusion was improper for at least two reasons.

First, the Fourth District’s reasoning that the incidental effects here are sufficient to trigger OSP’s “affecting” authority would permit the Legislature to accord boundless authority to OSP. Virtually *any* crime can be said, in some way, to have a statewide effect. Thus, if the Legislature could expand OSP’s “affecting” authority without regard to the constitutional limits, it could authorize OSP to prosecute any and every crime on the theory that it impacts the State’s economy or public confidence in law enforcement. Such a result goes far beyond what voters in 1986 could have plausibly

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<sup>47</sup> R.1005-06.

understood the multi-circuit limitation on OSP's authority within the Constitution to permit.

Second, the Fourth District's broad interpretation of "affects" would render the "occurs" limitation on OSP's authority meaningless surplusage because *any* offense listed in § 16.56 could be said to, in some way, *affect* the whole state or multiple circuits, regardless of whether it actually occurred in multiple circuits. "All parts of the statute must be given effect, and [this] Court should avoid a reading of the statute that renders any part meaningless."<sup>48</sup> Moreover, "all parts of a statute must be read together in order to achieve a consistent whole."<sup>49</sup> Here, that objective can be achieved only if the "affecting" prong is construed narrowly, to extend only to crimes that have a concrete and meaningful impact on multiple circuits.

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<sup>48</sup> *Searcy, Denney, Scarola, Barnhart & Shipley, etc. v. State*, 209 So. 3d 1181, 1189 (Fla. 2017) (citation omitted).

<sup>49</sup> *Id.* (citations omitted).

## **II. MR. HUBBARD'S CASE INVOLVES, AT WORST, AN ISOLATED INSTANCE OF VOTER CONFUSION CAUSED BY FLORIDA'S FAILURE TO ADMINISTER ITS VOTING-RIGHTS RESTORATION SYSTEM.**

Florida's incoherent voting-rights restoration system, put into place by SB7066 to undermine Amendment 4, has kept returning citizens like Mr. Hubbard uninformed about their eligibility, and in many cases has affirmatively misled them.<sup>50</sup>

Since SB7066 was enacted, Florida has struggled to timely verify the eligibility of returning citizens. Under Florida law and the Department of State's ("DOS") regulations, DOS is charged with verifying voter eligibility and identifying potentially-ineligible voters whose voting rights have not been restored so they can be removed from the rolls.<sup>51</sup> DOS is supposed to check new registrations within 24 hours of receipt against the Florida Department of Law Enforcement's ("FDLE") database and then conduct a manual review

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<sup>50</sup> Matt Dixon, *Defendants Targeted in DeSantis' Voter Fraud Crackdown Were Told They Could Vote*, Politico (Aug. 26, 2022), <https://tinyurl.com/rx4pamr3>; Sam Levine, *Floridians Charged Over Voting Believed They Were Eligible, Documents Show*, Guardian (Aug. 25, 2022), <https://tinyurl.com/mwen363f>.

<sup>51</sup> §§ 98.075(5), 98.0751(3)(a), Fla. Stat. (2022); Fla. Admin. Code R. 1S-2.041(4)(c), R. 1S-2.039(11)(f)(3).

to confirm potential matches are actually ineligible.<sup>52</sup> Florida's voter registration database is also supposed to be "cross-checked daily against FDLE records" to identify potentially-ineligible voters.<sup>53</sup> In addition, the Bureau of Voter Registration Services is supposed to conduct monthly checks to identify potentially-ineligible voters.<sup>54</sup>

Over recent years, DOS has failed to meet these responsibilities. Between January 8, 2019 (Amendment 4's effective date) and May 2020, DOS flagged for vetting some 85,000 pending registrations by returning citizens.<sup>55</sup> In those 16 months, however, DOS had "yet to complete its screening of any of the [85,000] registrations."<sup>56</sup> DOS advised a federal court that its review of those registrations could take until 2026 because its caseworkers could only process, on average, 57 registrations per day.<sup>57</sup>

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<sup>52</sup> Trial Transcript at vol. 5, 1181:17-1186:10, *Jones I*, No. 4:19cv300-RH/MJF (N.D. Fla. May 4, 2020), <https://tinyurl.com/2p9rk7wv>.

<sup>53</sup> *Id.* at 1181:25-1182:3.

<sup>54</sup> Fla. Admin. Code R. 1S-2.039(11)(f)(3).

<sup>55</sup> *Jones II*, 975 F.3d 1016, 1062 (11th Cir. 2020).

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

DOS is not the only Florida agency that has failed to perform its responsibilities. Through three statewide elections, FDLE failed to identify potentially-ineligible voters “in a time and manner that enables [DOS] to meet its obligations under state and federal law.”<sup>58</sup> Between 2019 and at least January 2022, FDLE did not send monthly reports to DOS about potential matches of voters with individuals in the Florida Offender Registration and Tracking Services database.<sup>59</sup>

In addition to keeping potentially-ineligible voters on its rolls for years, Florida sends voter-information cards to every newly-registered voter, regardless of their eligibility,<sup>60</sup> including Mr. Hubbard.<sup>61</sup> Only *after* OSP charged Mr. Hubbard and dozens of other returning citizens did the State add, in July 2023, a disclaimer to the card that it “is proof of registration but is not legal verification of eligibility to vote.”<sup>62</sup> Making matters worse, Florida’s eligibility

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<sup>58</sup> § 98.093(2)(d), Fla. Stat. (2022).

<sup>59</sup> Fla. Dep’t L. Enf’t, *Investigative Report* (2021), <https://tinyurl.com/3n5uwkdd>.

<sup>60</sup> § 97.071, Fla. Stat. (2022).

<sup>61</sup> R.1000.

<sup>62</sup> Ch. 2023-120, § 5, Laws of Fla.

requirements for returning citizens are overly complex—so complex that DOS’s internal “workflow” for determining whether a returning citizen is eligible to vote is 32-pages long.<sup>63</sup> Florida’s voter registration application also does not, on its face, alert applicants with disqualifying convictions like Mr. Hubbard that they cannot vote unless they receive clemency.<sup>64</sup>

Florida’s inability to administer its voting-rights restoration system, coupled with its failure to educate the public about its complicated eligibility requirements, has perpetuated widespread confusion.<sup>65</sup> This confusion has caused some State Attorneys to decline to prosecute cases similar to this one because criminal intent could not be established.<sup>66</sup> For example, the State Attorney for the

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<sup>63</sup> See Bureau of Voter Registration Services, Fla. Div. Elections, *Processing Potential Felon Match Files* (2021), <https://tinyurl.com/4deyrjrm>.

<sup>64</sup> See Form DS-DE 39, *Florida Voter Registration Application*, Fla. Dep’t St. (Apr. 2024), <https://tinyurl.com/3tbddd2>.

<sup>65</sup> Levine, *supra* note 50.

<sup>66</sup> It is a crime to register or vote while ineligible only if the accused knew they were ineligible but did so anyway. §§ 104.011(1), 104.15, Fla. Stat. (2022); see also *Corrales v. State*, 84 So.3d 406, 408 (Fla. 1st DCA 2012) (“The willfulness requirement assures that ‘no one will be convicted of a crime because of a mistake or because he does

Fifth Judicial Circuit declined to prosecute six returning citizens who allegedly voted while ineligible in 2020 because they were given voter-information cards, were never notified that they were ineligible, and were “encouraged to vote by various mailings and misinformation.”<sup>67</sup>

OSP’s prosecution of Mr. Hubbard for an isolated instance of voter confusion is especially inappropriate because Respondent—in litigation brought by *amicus* challenging certain provisions of SB7066—repeatedly downplayed the risk of prosecution for returning citizens who made “good faith, but mistaken” decisions about their eligibility, citing the scienter requirements in the same statutes that OSP now alleges Mr. Hubbard violated.<sup>68</sup> Relying in part on these representations, the Eleventh Circuit confirmed that no returning

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something innocently, not realizing what he was doing.”) (citation omitted); *Polite v. State*, 973 So.2d 1107, 1112-14 (Fla. 2007).

<sup>67</sup> Memorandum from Jonathan Olson, Div. Supervisor, State Att’y Off., Fifth Jud. Cir. (June 13, 2022), <https://tinyurl.com/mr39xa5p>.

<sup>68</sup> See, e.g., Opposition to Application to Vacate the En Banc 11th Circuit’s Stay at 52, *Rayor v. DeSantis*, No. 19A1071 (11th Cir. July 14, 2020), <http://tinyurl.com/2p8d27u8>; En Banc Opening Brief at 74, 75, *Jones II*, No. 20-12003 (11th Cir. July 20, 2020), <http://tinyurl.com/cbxhsctw>; En Banc Reply Brief at 68, *Jones II*, No. 20-12003 (11th Cir. Aug. 10, 2020), <http://tinyurl.com/9jaj99kj>.

citizen who “honestly believes he has completed the terms of his sentence commits a crime by registering and voting[.]”<sup>69</sup>

Respondent knows that Florida’s voting-rights restoration system is an “administrative nightmare,” that there is widespread confusion about voter eligibility, and that the State Attorneys who have declined to prosecute have done so for good reason. Yet, despite its previous representations to multiple federal courts that it would not prosecute good-faith mistakes, Respondent is doing just that. This Court should not countenance Respondent’s about-face.

### **III. ALLOWING OSP TO PROSECUTE ISOLATED INCIDENTS OF VOTER CONFUSION WILL CHILL VOTING BY ELIGIBLE RETURNING CITIZENS.**

OSP’s “opening salvo” has caused, and will continue to cause, eligible voters to fear participating in elections.<sup>70</sup> Before the November 2022 elections, one Supervisor of Elections observed:

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<sup>69</sup> *Jones II*, 975 F.3d 1016 1047-48 (11th Cir. 2020); *see also id.* at 1093 (Martin, J., dissenting) (“Florida downplays this risk [of prosecution], proclaiming that felons should rest assured that they will not be convicted if they registered in good faith because willfulness must be shown....”).

<sup>70</sup> *See, e.g.*, Paul Blest & Trone Dowd, ‘Complete Setup’: Florida Crackdown Has Ex-Felons Afraid to Vote, Vice (Nov. 3, 2022),

I have not encountered in the past this many voters calling, concerned that they may be prosecuted or what have you for voter fraud. *And these are all eligible voters that have contacted me.*<sup>71</sup>

OSP's prosecutions are particularly chilling for Black Floridians, including those who *do not* have felony convictions. When the Office of Election Crimes and Security commenced operations in July 2022, it focused its resources primarily on pursuing Black returning citizens like Mr. Hubbard who were confused or misled about their eligibility.<sup>72</sup> Of the returning citizens OSP charged in 2022, 15 are Black. Family members of Black returning citizens prosecuted by OSP have also indicated that they no longer intend to vote.<sup>73</sup> This was an entirely foreseeable outcome, particularly given the Governor's

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<https://tinyurl.com/4me7sty9>; Matt Shuham, *Some Eligible Ex-Felons Fear Voting Because of Ron DeSantis*, HuffPost (Oct. 28, 2022), <https://tinyurl.com/2waxpdcy>.

<sup>71</sup> News Service of Florida, *Florida Elections Officials Grapple with Misinformation, Myths*, Tampa Bay Times (Oct. 26, 2022), <https://tinyurl.com/9kh4xfja> (emphasis added).

<sup>72</sup> Wayne Washington, *Voter Intimidation? Black Voters Over-Represented Among Those Arrested So Far for Election Crimes*, Palm Beach Post (Oct. 10, 2022), <https://tinyurl.com/36bp627e>.

<sup>73</sup> Lori Rozsa, *The First Arrests from DeSantis's Election Police Take Extensive Toll*, Wash. Post (May 1, 2023), <http://tinyurl.com/8u7ynvj4>.

vow that there are “many more [arrests] in the pipeline.”<sup>74</sup> Recognizing this chilling effect, the U.S. Department of Justice recommends against conducting election-related arrests close to an election.<sup>75</sup>

OSP’s prosecutions will continue to harm Black voters disproportionately. Due to persistent discrimination in the criminal legal system, Black Floridians are disenfranchised at more than two and a half times the rate of non-Black Floridians.<sup>76</sup> A nationwide study of voter fraud cases also found that Black and poor individuals are more likely than white individuals to be subject to “high-profile prosecutions” resulting in “draconian charges,” and that in that sense, “Florida is an exaggerated version of America as a whole.”<sup>77</sup>

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<sup>74</sup> First Coast News, *supra* note 9, at 1:05:48-1:05:55.

<sup>75</sup> See, e.g., U.S. Dep’t of Just., *Justice Manual*, ch. 9-85.300 (2022), <https://tinyurl.com/4e7tmjxs>.

<sup>76</sup> *Florida Bans Voting Rights of Over 960,000 Citizens*, Sent’g Proj. (Mar. 2025), <https://tinyurl.com/3rft7yv6>.

<sup>77</sup> See Michael Wines, *In Voter Fraud, Penalties Often Depend on Who’s Voting*, N.Y. Times (Sept. 7, 2022), <https://tinyurl.com/pe84x8xf>.

## **CONCLUSION**

For the foregoing reasons, this Court should reverse the Fourth District's ruling and reinstate the circuit court's order of dismissal.

Dated: June 2, 2025

Respectfully submitted,

**PROSKAUER ROSE LLP**

*/s/ Matthew Triggs*

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Matthew Triggs (FBN 865745)

One Boca Place

2255 Glades Road

Suite 421 Atrium

Boca Raton, Florida 33431-

7360

(561) 241-7400

[mtriggs@proskauer.com](mailto:mtriggs@proskauer.com)

*Counsel for Amicus Curiae*

**CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY, under Florida Rule of Appellate Procedure 9.045(e), that this Brief complies with the applicable font and word-count requirements. It was prepared in Bookman Old Style 14-point font, and it contains 4,878 words.

*/s/ Matthew Triggs*

Matthew Triggs

Dated: June 2, 2025

## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on June 2, 2025, a true and correct copy of the foregoing will be furnished via the Florida Court's E-Filing Portal:

**Office of the Attorney General**

Jeffrey Paul DeSousa  
Alison E. Preston  
The Capitol, PL-01  
Tallahassee, Florida 32399  
(850) 414-3300  
alison.preston@myfloridalegal.com

*Counsel for the State of Florida*

**Craig Trocino**

1311 Miller Drive  
Suite B400  
Coral Gables, FL 33146  
(305) 284-8201  
ctrocino@law.miami.edu

**Michael A. Gottlieb P.A.**

Michael A. Gottlieb  
Clark Alan Strandell  
1311 SE Second Avenue  
Fort Lauderdale, FL 33316  
(954) 355-7286  
mike@mgottlieblaw.com  
clark@mgottlieblaw.com

*Counsel for Terry Hubbard*

/s/ Matthew Triggs

Matthew Triggs