

**IN THE
SUPREME COURT OF FLORIDA**

TERRY HUBBARD,

Petitioner,

-VS-

THE STATE OF FLORIDA,

Respondent.

Case No. SC24-1522

Lower Tribunal No(s): 4D22-3429

F01-008287-D

JURISDICTIONAL BRIEF OF THE PETITIONER

On Review from the District Court of Appeal, Fourth District,
State of Florida.

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STATEMENT OF THE CASE & STATEMENT OF THE FACTS

The State of Florida initiated criminal election law charges against Mr. Hubbard through the Office of the Statewide Prosecutor (OSP) on August 15, 2022. (R. 9–15). The OSP notified the circuit court that it, rather than the Broward County State Attorney’s Office, would serve as the “prosecuting authority.” (R. 16–17). The two-count Information charged Mr. Hubbard as follows:

Count 1

FALSE INFORMATION IN CONNECTION WITH ELECTION

NICHOLAS B. COX, Statewide Prosecutor for the State of Florida, under oath, charges that on or about February 14, 2020, in the Seventeenth and Second Judicial Circuits of Florida, to wit: Broward and Leon Counties, Florida, as part of a related transaction occurring in two or more judicial circuits, TERRY LEWIS HUBBARD did willfully affirm falsely to an oath or affirmation in connection with an arising out of voting or elections, contrary to Section 104.011(1) Florida Statutes (2020).

Count 2

VOTING BY UNQUALIFIED ELECTOR

NICHOLAS B. COX, Statewide Prosecutor for the State of Florida, under oath, charges that on or about October 28, 2020, in the Seventeenth and Second Judicial Circuits of Florida, to wit: Broward and Leon Counties, Florida, as part of a related transaction occurring in two or more judicial circuits, TERRY LEWIS HUBBARD did willfully vote in an election knowing that he was not a qualified elector, contrary to Section 104.15, Florida Statutes (2020).

(R. 9–10).

Mr. Hubbard moved to dismiss on the grounds that OSP did not have the constitutional or statutory authority to circumvent the State Attorney's Office as the "prosecuting officer." (R. 20–26).

The parties entered a Joint Stipulation of Facts to facilitate the trial court's ruling on the motion to dismiss and dispense with the necessity of an evidentiary hearing. (R. 68–69). It was stipulated that "[a]t no point between on or about February 14, 2020, and on or about November 3, 2020, did Defendant physically enter the Second Judicial Circuit, nor did he himself mail or electronically transfer anything to the Second Judicial Circuit" and "[t]he acts charged in the State's Information did not involve a criminal conspiracy." (R. 69).

Based on the stipulated facts, the trial court granted Mr. Hubbard's motion to dismiss (R. 78). The Court found that Mr. Hubbard, "never in any way, shape[,] form or fashion entered Leon County" and that "he committed no actions in Leon County and thereby his crime did not affect Leon County." (R. 85). In other words, because the charged crimes were not "committed" in more than one judicial circuit, the OSP lacked the requisite jurisdiction to serve as the prosecuting authority. (R. 85).

The OSP appealed that decision to the Fourth District Court of Appeal. The court reversed the trial court's dismissal holding that "submitting a fraudulent voter registration in Broward County is an act which requires subsequent involvement of the Secretary of State in Leon County. So too does voting in an election in Broward County. As a result, the OSP had the authority to charge Hubbard with these crimes." Judge May dissented stating that, "One need only follow a simple logical syllogism: (1) The OSP was created to prosecute multi-judicial circuit crimes. (2) The Information does not allege a multi-judicial circuit crime. (3) The OSP does not have jurisdiction to prosecute the defendant for these charges." Mr. Hubbard filed a motion for rehearing, rehearing *en banc*. He also moved to certify the questions as one of great public importance:

I. Does Article IV section 4(b) of the Florida Constitution allow Florida Section 16.56 to grant the Office of Statewide Prosecutor the authority to prosecute offenses as a related transaction in two or more judicial circuits where the only conduct in the other judicial circuit is a ministerial function of a statewide agency?

II. Does Article IV section 4(b) of the Florida Constitution allow Florida Section 16.56 to grant the Office of Statewide Prosecutor the authority to prosecute offenses affecting two or more judicial circuits where the information does not allege any impact on other circuits and the only conduct in the other judicial circuit is a ministerial function of a statewide agency?

The Court denied the motion for rehearing and rehearing on banc, but it granted the motion to certify the question as one of great public importance.

The court fashioned its own question of great public importance as follows:

Do Article IV section 4(b) of the Florida Constitution and section 16.56, Florida Statutes, permit the Office of the Statewide Prosecutor to prosecute crimes relating to registering and/or voting in a statewide election?

STATEMENT OF THE ISSUE AND CERTIFIED QUESTION

The Fourth District Court of Appeal certified the following question as being of great public importance:

Do Article IV section 4(b) of the Florida Constitution and section 16.56, Florida Statutes, permit the Office of the Statewide Prosecutor to prosecute crimes relating to registering and/or voting in a statewide election?

JURISDICTIONAL STATEMENT & SUMMARY OF ARGUMENT

The Court has discretionary jurisdiction to review a decision of a district court of appeal that certifies a question to be of great public importance. Art. V, § 3(b)(4), Fla. Const.; Fla. R. App. P. 9.030(a)(2)(A)(v). The Fourth District Court of Appeal's decision below the certified question is such a case.

Here, the Fourt District Court of Appeal certified the following question as being of great public importance: Do Article IV section 4(b) of the Florida

Constitution and section 16.56, Florida Statutes, permit the Office of the Statewide Prosecutor to prosecute crimes relating to registering and/or voting in a statewide election? Accordingly, this Court has jurisdiction to review this decision and question pursuant to Art. V, § 3(b)(4), Fla. Const.; Fla. R. App. P. 9.030(a)(2)(A)(v).

Moreover, this Court should exercise jurisdiction over this question because it will bring widespread impact across Florida. As such, this is a case that the highest court of the State should both hear and decide on.

ARGUMENT

- I. THIS COURT SHOULD EXERCISE JURISDICTION OVER THIS CASE BECAUSE THE QUESTION CERTIFIED IS OF GREAT PUBLIC IMPORTANCE AND THE ISSUES REGARDING THE AUTHORITY OF THE OFFICE OF STATEWIDE PROSECUTOR HAS BROAD IMPACT THROUGHOUT THE STATE OF FLORIDA.

Voting issues have been thrust into the public and political dialog over recent years. By the very nature of the issue, legal resolution of voting matters inherently has widespread impact. Indeed, there are numerous cases on this very issue currently pending in various stages across the State of Florida. Therefore, resolution from this Court is necessary in this case to clarify specifically the extent to which the Office of the Statewide Prosecution has authority and discretion usurp the authority of the locally elected State Attorney and to prosecute these cases.

Matters having such widespread impact are reviewable under Article V, § 3(b)(4) of the Florida Constitution and Florida Rule of Appellate Procedure. 9.030(a)(2)(A)(v). *See also Everard v. State*, 559 So. 2d 427 (Fla. 4th DCA 1990)(holding a question is of great public importance when it would have “widespread ramifications....”). The issues here are indeed broad and do have widespread impact for the citizens of Florida and for the prosecutorial authority of local duly elected State’s Attorneys. The question here is neither fact specific nor extremely narrow. *Cf, State v. Sowell*, 734 So. 2d 421 (Fla. 1999)(“legal question deals with an extremely narrow principle of law...[the question] does not present an issue of ‘great public importance.’”); *Barnett v. Florida Dept. of Mgmt. Services*, 953 So. 2d 461 (Fla. 2007)(declining jurisdiction on a certified question because the circumstances of the case were fact specific.)

Here, this Court should exercise its jurisdiction because the question before the court had a widespread impact. Indeed, the gravamen of the OSP’s argument is precisely the claim that the issue impacts the entire state. Mr. Hubbard has not and does not agree that such cases are not multi-circuit in nature such to trigger OSP jurisdiction. Nonetheless, the legal resolution of this question circumscribing OSP jurisdiction will have widespread impact through the state of Florida. In addition to addition to the charges brought

against Mr. Hubbard's, the OSP has initiated election charges against ten other defendants in various other counties throughout the State. To date, there are three cases pending in Broward county¹; two cases in Hillsborough county²—one of which is on appeal³; two cases in Miami-Dade county with one on appeal⁴; and two cases in Orange county—one of which is one on appeal⁵.

Accordingly, because the question at bar relates directly to the OSP's ability to prosecute these cases and at least ten other cases are pending in Florida various other judicial circuits, this case would have widespread ramifications. As such, this case falls well within this Court's jurisdiction.

¹ State of Florida v. Dana, No. 22008078CF10A (Fla. Broward Cir. Ct. filed Aug. 17, 2024); State of Florida v. Noguera, No. 24005098CF10A (Fla. Broward Cir. Ct. filed May 7, 2024); State of Florida v. Singleton, No. 22008118CF10A (Fla. Broward Cir. Ct. filed Aug. 17, 2024).

² State of Florida v. Oliver, No. 22-CF-011031-A (Fla. Hillsborough Cir. Ct. filed Aug. 25, 2024); State of Florida v. Hart, No. 22-CF-011041-A, (Fla. Hillsborough Cir. Ct. filed Aug. 25, 2024), *appeal docketed*, No. 2D23-0493 (Fla. 2d DCA Mar. 7, 2023).

⁴ State of Florida v. Miller. No. 13-2022-CF-015012-0001-XX (Fla. Miami-Dade Cir. Ct. filed Aug. 22, 2022); State of Florida v. Wood, No. 13-2022-CF-015009-0001-XX (Fla. Miami-Dade Cir. Ct. filed Aug. 22, 2022), *appeal docketed*, No. 3D22-1925 (Fla. 3d DCA Dec. 8, 2022).

⁵ State of Florida v. Foster, No. 2022-CF-009607-A-O (Fla. Orange Cir. Ct. filed Aug. 17, 2022); State of Florida v. Washington, No. 2022-CF-009611-A-O (Fla. Orange Cir. Ct. filed Aug. 17, 2022), *appeal docketed*, No. 6D23-2104 (Fla. 6th DCA Feb. 27, 2023).

CONCLUSION

For the reasons set forth above, Petitioner Terry Hubbard asserts that the issue and question certified by the Fourth District Court of Appeal are of great public importance. Petitioner Hubbard respectfully requests the Court to accept jurisdiction in this case.

Respectfully Submitted,

/s/ Craig Trocino

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CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the instant brief has been prepared with Arial 14-point font and contains 1,657 words in compliance with the requirements of Florida Rule of Appellate Procedure 9.210(a).

/s/ Craig J. Trocino

CRAIG J. TROCINO

Counsel for Mr. Hubbard

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that a true copy of the foregoing has been furnished via electronic mail to counsel for the State of Florida, Assistant Solicitor General, Alison E. Preston, Allison.preston@myfloridalegal.com this 23rd day of October 2024Assistant Attorney General, this 4th day of November 2024.

/s/ Craig J. Trocino

CRAIG J. TROCINO

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