

SC24-1522

In the Supreme Court of Florida

TERRY HUBBARD,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

ON DISCRETIONARY REVIEW FROM THE
FOURTH DISTRICT COURT OF APPEAL
L.T. No. 4D22-3429

RESPONDENT'S JURISDICTIONAL BRIEF

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STATEMENT OF THE ISSUE

Petitioner Terry Hubbard is a convicted felon who has no right to vote in Florida. In July 2019, Hubbard nevertheless filled out a voter-registration form and submitted it to the Supervisor of Elections in Broward County. The supervisor transmitted information from that form to the Secretary of State in Leon County, which confirmed Hubbard's identity. As a result, Hubbard was placed on the voter rolls. Hubbard then illegally voted in Broward County in the 2020 election. The question presented is:

Whether Article IV, Section 4(b) of the Florida Constitution and Section 16.56, Florida Statutes, authorize the Statewide Prosecutor to prosecute Hubbard for his voting-related crimes.

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STATEMENT OF THE CASE AND FACTS

Florida has long disenfranchised certain felons who have not had their civil rights restored via clemency. Art. VI, § 4(b), Fla. Const. Petitioner Terry Hubbard is one such felon. Pet. App. 5.¹ Yet he registered to vote and then voted in the 2020 election anyway. Pet. App. 5–6. For that, in 2022, the Statewide Prosecutor charged him with false affirmation in connection with an election and voting by an unqualified elector. Pet. App. 6 (citing §§ 104.011(1), 104.15, Fla. Stat.).

Hubbard moved to dismiss the information, arguing that the Statewide Prosecutor lacked jurisdiction to charge him. *Id.* The Florida Constitution provides that the Statewide Prosecutor 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.” Art. IV, § 4(b), Fla. Const. Under the 2022 version of the enabling statute, the Statewide Prosecutor could prosecute such

¹ The appendix is not Bates numbered, so the State’s citations correspond to the PDF page numbers.

crimes when they “occurred[] in two or more judicial circuits as part of a related transaction” or were “connected with an organized criminal conspiracy affecting two or more judicial circuits.” § 16.56(1)(a), Fla. Stat.

The parties stipulated the following facts to resolve the motion. Pet. App. 6–7. Hubbard registered to vote in Broward County before the 2020 election. Pet. App. 6. To do so, he completed a voter-registration application and submitted it to the Broward Supervisor of Elections. *Id.* The supervisor forwarded information from the application to the Secretary of State in Leon County for verification. *Id.* When the Secretary of State completed verification, that office notified the supervisor back in Broward, *see* Pet. App. 7, and the supervisor sent Hubbard a voter ID card, *id.* Hubbard then voted in the 2020 general election in Broward County. *Id.* Along with all other votes, his vote went to the Department of State’s Division of Elections in Leon County. *Id.* Hubbard himself never physically entered, mailed, or electronically transferred anything to Leon County. *Id.* And “[t]he acts charged in the State’s Information did not involve a criminal conspiracy.” *Id.*

The trial court dismissed the information for lack of jurisdiction, and the State appealed. Pet. App. 7–8. While the appeal was pending, the Legislature expanded the Statewide Prosecutor’s “effects” jurisdiction by removing the criminal-conspiracy requirement for voting-related crimes. Ch. 23-2, § 1, Laws of Fla. It thus gave the Statewide Prosecutor authority, effective February 15, 2023, to prosecute such crimes when they “affected[] two or more judicial circuits,” as well as when they “occurred[] in two or more judicial circuits as part of a related transaction.” *Id.* § 1–2. On appeal the State pressed both bases of jurisdiction.

The Fourth District agreed with both of those arguments and reversed the order dismissing the information. Pet. App. 11–12. Chapter 2023-2 supplied a basis for the Statewide Prosecutor’s authority because, as the district court held, the amendment was procedural and could apply in the pending case under *Love v. State*, 286 So. 3d 177 (Fla. 2019), and U.S. Supreme Court precedents applying changes to jurisdiction in pending cases. Pet. App. 10–11. And the Statewide Prosecutor could charge Hubbard because the actions necessary to Hubbard’s election participation “occur[red] in both

Broward and Leon County,” “voter fraud impacts the public’s confidence in elections throughout the state,” and the results of elections for statewide and federal offices “[n]aturally” affect voters statewide. Pet. App. 11–12.

Hubbard moved for rehearing, rehearing en banc, and certification of a question of great public importance. See Pet. App. 18. The Fourth District denied the first two requests but certified the following question:

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?

*Id.*²

Hubbard timely invoked this Court’s jurisdiction.

² The question certified by the district court has a ready answer that no party to this litigation disputes: Yes, the Statewide Prosecutor can charge violations of Florida’s voting laws. The parties instead dispute whether, under the unique facts of Hubbard’s case, the Statewide Prosecutor’s jurisdiction to prosecute was implicated. See *supra* p. i.

ARGUMENT

The Court should decline to exercise its discretionary jurisdiction.

Article V, Section 3(b)(4) of the Florida Constitution provides that this Court “[m]ay review any decision of a district court of appeal that passes upon a question certified by it to be of great public importance.” Here, the Court has jurisdiction because the Fourth District passed upon, Pet. App. 5–6, and then certified, Pet. App. 18, a question it deemed to be 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?”

The Court should nevertheless decline to exercise its discretionary jurisdiction. Review is unwarranted because there is no conflict among the district courts, the Fourth District’s decision is correct, and Hubbard’s reasons for review are unpersuasive.

A. There is no conflict among the district courts, and further percolation would benefit the Court.

To date, all district courts to consider the issues in this case—the Fourth and Third Districts—agree that the Statewide Prosecutor has the power to charge voting crimes like Hubbard’s. Pet. App. 11–

12; *State v. Miller*, 394 So. 3d 164, 166 (Fla. 3d DCA 2024). Two other districts—the Second and Sixth—are likely to soon weigh in, as the issue is pending in appeals there as well.³

That uniformity means that there is no need for this Court to address the certified question (or the State’s proposed question) now. If either the Second or Sixth District disagreed with the Third and Fourth, the resulting express and direct conflict would permit the Court to exercise discretionary jurisdiction. *See* Art. V, § 3(b)(3), Fla. Const. By contrast, should those districts join the growing chorus of courts holding that the Statewide Prosecutor properly charged these cases, that consensus would suggest that the issue does not present any difficult question requiring this Court’s intervention.

On top of that, the Court “prefer[s]” that issues percolate “to enable [it] to make the most informed decisions.” *State v. Barnum*, 921 So. 2d 513, 533 (Fla. 2005) (Pariente, C.J., concurring in result only), *as revised on denial of reh’g* (Feb. 9, 2006); *cf. Georgia v. President of the United States*, 46 F.4th 1283, 1305 (11th Cir. 2022)

³ *Hart v. State*, No. 2D23-0493 (fully briefed); *State v. Washington*, No. 6D23-2104 (argument held July 25, 2024).

(Grant, J.) (criticizing nationwide injunctions, which “escalate pressure on the Supreme Court docket by limiting percolation and raising the stakes of individual lower-court decisions”). To that end, the Court has “discouraged district courts from certifying as questions of great public importance first-time interpretation[s]” like those here. *Barnum*, 921 So. 2d at 533 (Pariente, C.J., concurring in result only).

Review is therefore unnecessary at this time.

B. The Fourth District’s decision is correct.

The decision below is also correct. As the Fourth District held, the Statewide Prosecutor can prosecute Hubbard under two independent statutory bases of authority: (1) Hubbard’s offenses occurred in two or more judicial circuits as part of a related transaction, and (2) under the amended statute, the offenses affected more than one judicial circuit. *See* Pet. App. 11–12.

1. Hubbard’s crimes “occurred[] in two or more judicial circuits as part of a related transaction.” § 16.56(1)(a), Fla. Stat. (2022); § 16.56(1)(c), Fla. Stat. (2023). When he falsely affirmed his eligibility to vote on his voter-registration application and then illegally voted,

those actions were necessary to his ultimate aim of illegally participating in the election. His conduct formed part of a broader transaction that crossed circuit lines: by registering to vote, he triggered governmental action in the Seventeenth and Second Judicial Circuits. By law, the Broward County Supervisor of Elections was required to transmit information from his voter-registration form to the Secretary of State in Leon County, which then reviewed that information in Leon. Only then could Hubbard successfully vote in Broward. The Fourth District therefore correctly found that Hubbard’s actions “occur[red] in both Broward and Leon County,” implicating two judicial circuits. Pet. App. 11. No more is required.

Hubbard has argued that the *elements* of the crimes must have themselves “occurred in more than one judicial circuit.” See Ans. Br. 24–27, *State v. Hubbard*, 392 So. 3d 1067 (Fla. 4th DCA 2024) (No. 4D22-3429). But that interpretation draws no support from Section 16.56’s text. Under that text, it suffices that the crime “occurred[] in two or more judicial circuits *as part of a related transaction.*” § 16.56(1)(c), Fla. Stat. (2023) (emphasis added). Thus, every district court to address the question has found the text satisfied so long as

the related transaction itself crosses circuit lines. *See King v. State*, 790 So. 2d 477, 479–80 (Fla. 5th DCA 2001); *Miller*, 394 So. 3d at 168–70.

That must be correct as a logical matter. The Statewide Prosecutor’s enabling statute has always permitted him to prosecute offenses whose elements naturally occur in just one place, like “burglary.” Ch. 85-179, § 1, Laws of Fla. It would make sense to permit such prosecutions because a purely local crime could be said to occur in multiple circuits “*as part of*” a related transaction that itself crossed circuit lines. § 16.56(1)(c), Fla. Stat. (2023) (emphasis added); *see King*, 790 So. 2d at 479 (adopting that reasoning). Any other reading would make a hash of the statute.

Hubbard was also incorrect in arguing below that the “related transaction” must be comprised exclusively of criminal conduct—and thus that governmental action in Broward and Leon County could not make up part of the multi-circuit transaction. *See Ans. Br. 24–27, Hubbard*, 392 So. 3d 1067. That additional requirement appears nowhere in the text of Section 16.56. *See* § 16.56(1)(a), (c), Fla. Stat. (2023); *see also* Art. IV, § 4(b), Fla. Const. All the text requires is that

the transaction be “related” to the defendant’s criminal conduct. When the Legislature wanted to use “criminal” as a modifier, it said so explicitly, requiring, for example, in another subsection of the statute that a crime be “connected with an organized *criminal* conspiracy affecting two or more judicial circuits.” Ch. 85-179, § 1, Laws of Fla. (emphasis added).

2. The Statewide Prosecutor could also prosecute the crimes under the additional authority that the Legislature granted him during Hubbard’s prosecution: the authority to prosecute voting-related crimes when they “affected[] two or more judicial circuits.”⁴ Pet. App. 11–12. As a procedural law, Chapter 2023-2 applied prospectively to this ongoing prosecution. *Love v. State*, 286 So. 3d 177, 180, 187–88 (Fla. 2019) (“[T]he statute applies to [relevant events], including in pending cases, that take place on or after the statute’s effective date essentially, giving the statute prospective application”).

⁴ Before that amendment, the Statewide Prosecutor could prosecute voting-related crimes that affected multiple circuits only if there were an “organized criminal conspiracy.” § 16.56(1)(a), Fla. Stat. (2022). Chapter 2023-2 eliminated the conspiracy requirement.

The Fourth District correctly reasoned that Chapter 2023-2 is procedural because it did “not expand or diminish Hubbard’s rights”; it merely addressed “authority to prosecute certain cases.” Pet. App. 10. Chapter 2023-2 thus altered only the “method of conducting [criminal] litigation,” or the “machinery of the judicial process.” *Abdool v. Bondi*, 141 So. 3d 529, 539 (Fla. 2014). That Chapter 2023-2 applies here accords with many federal and Florida cases applying jurisdictional changes to pending cases. Pet. App. 10–11 (citing *United States v. Alabama*, 362 U.S. 602, 604 (1960)); *see also, e.g., Griffith v. Fla. Parole & Prob. Comm’n*, 485 So. 2d 818, 820–21 (Fla. 1986); *State ex rel. Arnold v. Revels*, 109 So. 2d 1, 3 (Fla. 1959); *Jennings v. Fla. Elections Comm’n*, 932 So. 2d 609, 613 (Fla. 2d DCA 2006) (collecting U.S. Supreme Court cases).

And the alleged crimes “affected[] two or more judicial circuits” because they caused governmental action in two circuits, undermined statewide public confidence in elections, and influenced statewide and federal office races, which “[n]aturally . . . impact[] voters” statewide. Pet. App. 11–12.

For either of those reasons, the Fourth District was correct.

C. Hubbard’s reasons for review are unpersuasive.

Last, Hubbard has not demonstrated a need for review. In his view, this case is “neither fact specific nor extremely narrow” and has “widespread ramifications” because the State argued that “the issue impacts the entire state,” the Statewide Prosecutor is prosecuting “ten other defendants” under similar circumstances, and the Statewide Prosecutor is “usurp[ing] the authority of the locally elected State Attorney.” Pet. Br. 5–7. As to the issue’s ramifications, the State argued that voter fraud, not the question of the Statewide Prosecutor’s jurisdiction, affects the entire state. Init. Br. 14–17, *Hubbard*, 392 So. 3d 1067; see Pet. App. 11–12. As for the importance of the jurisdictional issue itself, it implicates less than a dozen “present litigants”—hardly enough to require this Court’s review. See Raoul G. Cantero, III, *Certifying Questions to the Florida Supreme Court: What’s So Important?*, 76 Fla. Bar J. 40, 40 (May 2002). Answers to questions of great public importance are meant to “benefit more” than that. See *id.*; e.g., *id.* at 41 (citing *Beach v. Great W. Bank*, 670 So. 2d 986, 994 (Fla. 4th DCA 1996), which involved a question that “potentially af-

fect[ed] thousands”). Indeed, that the Statewide Prosecutor has jurisdiction to prosecute offenses like Hubbard’s matters only in the relatively rare circumstance where a State Attorney declines to prosecute the offense and the Statewide Prosecutor makes a different decision.⁵

Last, within Florida’s constitutional design, the Statewide Prosecutor has “concurrent jurisdiction” with the State Attorneys. Art. IV, § 4(b), Fla. Const. The Statewide Prosecutor’s exercise of that concurrent jurisdiction thus does not “usurp” any power from State Attorneys. They both represent the State, working in tandem to prosecute crime.

⁵ Two panels of the Third District—in *Miller* and *Wood*—declined to certify a question on the same issue. Aug. 21, 2024 Order, *State v. Miller*, No. 3D22-2180 (Fla. 3d DCA); Oct. 23, 2024 Order, *State v. Wood*, No. 3D22-1925 (Fla. 3d DCA).

CONCLUSION

The Court should decline to exercise its discretionary jurisdiction.

Dated: December 4, 2024

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief was prepared in 14-point Bookman Old Style font, in compliance with Florida Rule of Appellate Procedure 9.045(b) and contains 2,427 words, in compliance with Florida Rule of Appellate Procedure 9.210(a)(2)(A).

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was furnished via the e-Filing Portal on December 4, 2024, to all parties in the e-service list, including the following:

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