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IN THE SUPREME COURT OF FLORIDA

SC2024-1522
Lower Tribunal No(s):
4D22-3429;
062022CF008077A88810

TERRY HUBBARD,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

Brief of Amici Curiae the Niskanen Center and former Florida State Senator Jeff Brandes in Support of Petitioner

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On Discretionary Review from the Fourth District Court of Appeal

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INTEREST OF *AMICI CURIAE*

The **Niskanen Center** is a nonprofit, nonpartisan public policy think tank that advocates for the rule of law and a government that protects individual and societal freedoms. Named the "The Most Interesting Think Tank in America" by TIME Magazine in 2023,[1] the Niskanen Center provides a constructive and optimistic response to the most daunting challenges Americans face in the 21st century, including dysfunctional bureaucracies, government overreach, and high rates of crime and incarceration. The Center is named for William (Bill) Niskanen, who served on the Council of Economic Advisers to President Ronald Reagan and later became chairman of the Board of Directors of the Cato Institute.

Jeff Brandes is a former Florida State Senator who represented Florida's 24th Senate District from 2012 to 2022. Prior to that, he was a member of the Florida House of Representatives from 2010 to 2012. Senator Brandes now leads the Florida Policy Project, a

[1] Molly Ball, *The Most Interesting Think Tank in American Politics*, Time (Mar. 7, 2023), https://time.com/6258610/niskanen-center-bipartisanship-think-tank-politics/.

nonprofit, bipartisan think tank that focuses on, among other things, criminal justice issues.

SUMMARY OF ARGUMENT

The State of Florida, through its Department of State, bears sole responsibility for determining the eligibility of its citizens to vote. As evidenced in federal court proceedings and government investigations, this responsibility was regrettably neglected in the years leading up to the 2020 election. During this time, individuals with disqualifying felonies, such as Petitioner Terry Hubbard, mistakenly believed that they were eligible to vote after the State Department provided them with voter identification cards. Well after they voted, they were shocked to be facing voter-fraud prosecutions—a sad result of the State's lapse in its duties.

This case, however, is about more than the unfairness of basing a prosecution on the State's governance failures. Florida law limits the Statewide Prosecutor's authority, and the prosecution of Mr. Hubbard falls well outside that authority. The purported crimes did not entail the predicates for the Statewide Prosecutor to act because they did not "occur[] in two or more judicial circuits as part of a related transaction"; nor were they in any way "connected with an

organized criminal conspiracy affecting two or more judicial circuits." § 16.56(1)(a), Fla. Stat. (2022).

The Fourth District concluded otherwise (reversing the trial court's dismissal) based on a 2023 amendment to Section 16.56—enacted *after* the trial court's dismissal—that expanded the authority of the Statewide Prosecutor. But Florida law is clear: "Except as expressly provided in an act of the Legislature …, the reenactment or amendment of a criminal statute operates prospectively and does not affect or abate … [t]he prior operation of the statue or a prosecution of enforcement thereunder." § 775.022(3), Fla. Stat. Section 775.022 is express about its broad scope and states that "the term 'criminal statute' means a statute, whether *substantive or procedural*, dealing *in any way* with a crime or its punishment …." *Id.* § 775.022(2) (emphasis added).

According to the Fourth District, the 2023 amendment—which determines when the Statewide Prosecutor may prosecute an alleged crime—is not a statute that "deal[s] *in any way* with a crime or its

punishment." § 775.022(2), Fla. Stat. (emphasis added).[2] The Fourth District failed to acknowledge the "in any way" language and its broad scope. If the 2023 amendment impacts the prosecuting authority for a crime, which the Fourth District acknowledged, it follows directly that the amendment "deal[s] in any way with a crime or its punishment." § 775.022(2), Fla. Stat.

Section 775.022 is not the only reason the 2023 amendment cannot be applied retroactively. It is undisputed that the event in question—*i.e.*, the initiation of the prosecution—has already occurred, which means that the 2023 amendment invokes the presumption against retroactivity, regardless of whether the 2023 amendment can be categorized as "procedural" in contrast to "substantive." *See Love v. State*, 286 So. 3d 177, 187–88 (Fla. 2019) ("[T]he mere fact that a new rule is procedural does not mean that it applies to every pending case. A new rule concerning the filing of

[2] The State, for its part, did not even take the extreme position in the Fourth District that the 2023 amendment was not a statute that deals "in any way with a crime or its punishment."

complaints would not govern an action in which the complaint had already been properly filed under the old regime ….").

Accordingly, because the 2023 amendment does not apply, the Statewide Prosecutor had power to prosecute *only if* the alleged crimes "occurred[] in two or more judicial circuits as part of a related transaction." § 16.56(1)(a), Fla. Stat. (2022). The State cannot make this showing because Mr. Hubbard's alleged activities took place within a single judicial circuit.

The State's attempts to compensate for its failures through criminal prosecution are both inefficient and unjust. This Court should deny the State's efforts to expand the Statewide Prosecutor's authority beyond its statutory bounds, reverse the Fourth District's judgment, and affirm the trial court's holding that the Statewide Prosecutor lacks the authority to prosecute Mr. Hubbard.

THE STATE'S RESPONSIBILITIES

For many years, Article VI, Section 4 of Florida's Constitution provided that "[n]o person convicted of a felony . . . shall be qualified to vote or hold office until restoration of civil rights or removal of disability." Between 2014 and 2018, more than 840,000 Floridians signed a petition expressing their support to amend Article VI,

Section 4 of the State's Constitution. *See* Florida Division of Elections, *Voting Restoration Amendment* .[3] The amendment, later known as "Amendment 4," proposed the following amendments to Article VI, Section 4 of the Florida Constitution:

> (a) No person convicted of a felony, or adjudicated in this or any other state to be mentally incompetent, shall be qualified to vote or hold office until restoration of civil rights or removal of disability. *Except as provided in subsection (b) of this section, any disqualification from voting arising from a felony conviction shall terminate and voting rights shall be restored upon completion of all terms of sentence including parole or probation.*
>
> (b) *No person convicted of murder or a felony sexual offense shall be qualified to vote until restoration of civil rights.*

Constitutional Amendment Petition Form, Voting Restoration Amendment (changes in italics).[4] On November 6, 2018, Florida voters approved Amendment 4. *See* Alexander Klueber & Jeremy Grabiner, *Voting Rights Restoration in Florida: Amendment 4 –*

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[3] https://dos.elections.myflorida.com/initiatives/initdetail.asp?account=64388&seqnum=1.

[4] https://dos.elections.myflorida.com/initiatives/fulltext/pdf/64388-1.pdf.

Analyzing Electoral Impact and its Barriers, Harvard Kennedy School of Government, 4 (Apr. 2020).[5]

The State of Florida—through the State Department's Division of Elections and with assistance from other state agencies and the county Supervisors of Elections—is responsible for determining whether registered voters with felony convictions are eligible to vote under Amendment 4. *See* § 98.075(5), Fla. Stat. (July 1, 2019); § 98.0751(3)(a), Fla. Stat.; Fla. Adm. Code §§ 1S-2.041(4)(c), 1S-2.039(11)(f)(3).[6] The State Department is charged with "protect[ing] the integrity of the electoral process by ensuring the maintenance of accurate and current voter registration records." § 98.075(1), Fla. Stat.

To be eligible to vote in Florida, a person must submit a registration form to their local county Supervisor of Elections. If the county Supervisor of Elections deems the form complete on its face,

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[5] https://ash.harvard.edu/files/ash/files/voting_rights_restoration_in_florida_-_amendment_4_final.pdf.

[6] All statutory citations in this section refer to versions of each law in effect in 2020. Where such laws have since been amended in a material way, that statute has been designated with the year that the previous version (which was in operation in 2020) was enacted.

and the Division of Elections determines that the person is real, then the person is added to the voting roll and sent a voter identification card, subject to having their registration revoked for a disqualifying felony conviction. *See Jones v. DeSantis*, No. 4:19-cv-300-RH/MJF, 462 F. Supp. 3d 1196, 1212 (N.D. Fla. 2020) (citing documents filed in the case at ECF No. 148-16 at 5 and ECF No. 389-3 at 29).[7]

The State Department is then required to "identify those registered voters who have been convicted of a felony and whose voting rights have not been restored." § 98.075(5)(a), Fla. Stat. As part of this process, the State Department's Division of Elections reviews the registration for disqualifying felony convictions. *See Jones*, 462 F. Supp. 3d at 1212 (citing § 98.075(5), Fla. Stat.). The Florida Department of Law Enforcement, among other state agencies, is required to provide reports to the State Department to help it

[7] In *Jones v. DeSantis*, a federal court addressed Florida SB 7066, which requires certain legal financial obligations imposed in a sentence to be paid for a person with a past felony conviction to vote. 462 F. Supp. 3d 1196 (N.D. Fla. 2020). In declaring that requirement to be unconstitutional, the court acknowledged certain factual aspects of the State's administration of the system. The Eleventh Circuit reversed, but did not base that reversal on (or otherwise disturb) the facts relied on by the district court and recited here. *Jones v. Governor of Fla.*, 975 F.3d 1016, 1026 (11th Cir. 2020).

identify ineligible voters. § 98.093(2)(d), Fla. Stat. (2014); *id.* § 98.093(2)(e) (2014) (role of Florida Commission on Offender Review); *id.* § 98.093(2)(f) (2014) (role of Department of Corrections).

When the State Department reviews a voter registration application and makes an initial determination of voter eligibility, it must forward this information to the applicable Supervisor of Elections. § 98.0751(3)(a), Fla. Stat. Once the Supervisor is notified that a person may not be eligible, the Supervisor has seven days to notify the registered voter of that potential ineligibility. *Id.* § 98.075(7)(a)(1). The notice must include a statement that failure to respond may result in removal of the voter's name from the registration system. *Id.* If the Supervisor removes the voter's name, it must notify the voter of that action. *Id.* § 98.075(7)(a)(5).

ARGUMENT

I. The State is improperly using criminal prosecution to compensate for its governance failures.

The State Department and Florida Department of Law Enforcement have failed in their duties to determine the eligibility of voters. Between January 8, 2019 (Amendment 4's effective date) and May 2020, the State Department identified as many as 85,000 voter

registrations for people with past convictions in need of screening. *Jones*, 462 F. Supp. 3d at 1212, 1228 (citing documents filed in the case at ECF No. 408 at 146, 185–86); *see also* Lawrence Mower & Langston Taylor, *In Florida, the Gutting of a Landmark Law Leaves Few Felons Likely to Vote*, ProPublica (Oct. 7, 2020)[8]; Dara Kam, *A Top Florida Elections Official Gets Grilled on Felon Voting*, Tampa Bay Times (May 4, 2020).[9] During that time, the State Department did not review a single voter registration application from any registrant with a prior felony offense. *Jones*, 462 F. Supp. 3d at 1228.

Florida's system for determining voter eligibility had become, according to one federal judge, an "administrative train wreck." *Jones*, 462 F. Supp. 3d at 1239.[10] As the Eleventh Circuit

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[8] https://www.propublica.org/article/in-florida-the-gutting-of-a-landmark-law-leaves-few-felons-likely-to-vote.

[9] https://www.tampabay.com/florida-politics/buzz/2020/05/04/a-top-florida-elections-official-gets-grilled-on-felon-voting/.

[10] *See also* Lawrence Mower, *DeSantis' Voter Fraud Suspect Was Issued New Voter ID*, Tampa Bay Times (Nov. 7, 2022), https://www.tampabay.com/news/florida-politics/2022/11/07/desantis-voter-fraud-id-registration-arrests-felon/; Mower & Taylor, *supra*, *In Florida, the Gutting of a Landmark Law Leaves Few Felons Likely to Vote*.

acknowledged in late 2020, "Florida has yet to complete its screening of any of the registrations. Until it does, it will not have credible and reliable information supporting anyone's removal from the voter rolls, and all 85,000 felons will be entitled to vote." *Jones v. Governor of Fla.*, 975 F.3d 1016, 1026 (11th Cir. 2020). The State Department was not the only agency that failed in its duties. The Florida Department of Law Enforcement's own investigative report shows that it stopped sending reports to the State Department about potential matches of voters and individuals in the offender registration database from 2019 to January 2022. *See* Florida Department of Law Enforcement, *Investigative Report.*[11]

Despite the mounting evidence of the State's abandonment of its duties, the Statewide Prosecutor in August 2022 arrested 20 Floridians on charges that they registered and voted illegally in 2020. *See* Adam Edelman, *DeSantis' Election Police Charged 20 with Voter Fraud. Advocates Say There's More to the Story*, NBC News (Sept. 3,

[11] https://www.brennancenter.org/sites/default/files/2022-11/FDLE%20JA-32-0008%20IR%2049%20-%20info%20from%20FDLE%20re%20MOU%20sex%20offender%20checks.pdf.

2022).[12] Many of these individuals were issued voter registration cards and remained on the voter rolls for election day in 2020. *See* Mower, *supra*, *DeSantis' Voter Fraud Suspect Was Issued New Voter ID*; Katie LaGrone, *Former Felon Arrested for Voter Fraud Receives Sample Ballot Weeks Before General Election*, ABC News (Nov. 14, 2022).[13]

That's what happened to Mr. Hubbard:

- Mr. Hubbard filled out a voter application form in Broward County, once in July 2019, and again in February 2020.
- The Broward Supervisor of Elections forwarded information from Mr. Hubbard's application to the Office of the Secretary of State in Leon County each time.
- Thereafter, the Secretary of State concluded its review, and the Supervisor issued two voter ID cards to Mr. Hubbard under the same voter ID Number.

R1.68-69, Joint Stipulation of Facts ¶¶ 1–7.[14]

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[12] https://www.nbcnews.com/politics/desantis-election-police-charged-20-voter-fraud-advocates-say-story-rcna45895.

[13] https://www.abcactionnews.com/news/election-2022/former-felon-arrested-for-voter-fraud-receives-sample-ballot-weeks-before-general-election.

[14] References to the Record herein are as follows: The "R" denotes the Record on Appeal of the Florida Supreme Court, and the "R1" denotes the record on appeal in the Fourth District Court of Appeal.

For Floridians in Mr. Hubbard's situation, the State's own failures created the conditions necessary for the mistakes the State now characterizes as crimes worthy of statewide prosecution. In particular:

- The State Department engaged in little outreach to inform the public of the changes to the felon voting law. *See* Mower & Taylor, *supra*, *In Florida, the Gutting of a Landmark Law Leaves Few Felons Likely to Vote*.
- The State Department neglected to provide reasonable means by which Floridians could reliably determine whether felony convictions prevent them from voting. Data on felony convictions is currently scattered across the state's 67 county clerk's offices, and much of that information is incomplete or outdated. *See* Mower & Taylor, *supra*, *In Florida, the Gutting of a Landmark Law Leaves Few Felons Likely to Vote*; LaGrone, *supra*, *Former Felon Arrested for Voter Fraud Receives Sample Ballot Weeks Before General Election*.
- The State's voter registration website does not provide details on which convictions constitute disqualifying felonies. *See* John Bowden, *Florida Sued Over Confusing Voter Rules That Disenfranchise People with Felony Convictions*, Independent (Apr. 27, 2023).[15]
- The voter registration application does not provide that individuals with certain felonies may not register. *Id.*
- The State Department did not timely screen applications as required under the law. *Supra* pp. 9–11.

[15] https://www.the-independent.com/news/world/americas/us-politics/florida-lawsuit-felon-voting-brennan-b2328485.html.

- The Law Enforcement Department did not send monthly reports to the State Department about potential matches of voters and individuals in the state offender database. *Supra* p. 11.

All of this could have been avoided had the State competently administered the law. By way of comparison, the State of Alabama managed to navigate a similar statutory scheme, as it also disenfranchises citizens convicted of an array of felony offenses until they have completed all terms of their sentence. *See* Ala. Code § 17-3-30.1; Ala. Code § 17-3-31; Ala. Code § 15-22-36.1. But, unlike Florida, Alabama has established a centralized state data repository and unified process run by the Board of Parole and Pardons that advises any applicant within 14 days if the applicant is eligible to register to vote and explains the basis for any denial. *See* Ala. Code § 15-22-36.1(f). As part of the process, Alabama issues a Certificate of Eligibility to Register to Vote to a person with a prior felony conviction once the Bureau of Parole and Pardons has confirmed that person's voting eligibility—a document upon which the voter may rely. *Id.* § 15-22-36.1(b).

With this prosecution, the State of Florida is attempting to paper over its failures and shift blame to those who relied on the

State's ability to perform its basic functions competently. This unfair blame-shifting approach to governance should not be condoned. Improperly weaponizing the criminal justice system is a poor substitute for proper governance.

II. The 2023 amendment—enacted after the trial court's dismissal—cannot justify this prosecution.

Not only does the State overreach by prosecuting alleged crimes that the State itself enabled with its governance failures, but the State attempts to do so through an impermissible retroactive application of a law enacted *after* the trial court's dismissal. The Fourth District adopted the State's argument for retroactive application of the 2023 amendment because the Fourth District viewed the amendment as a "procedural" change in contrast to a "substantive" change. The Fourth District Court was wrong about this, as Mr. Hubbard has explained in his brief. But the Court need not even reach this issue, because Florida is law is clear that the 2023 amendment cannot apply here, regardless of whether it is a procedural or substantive change.

Florida Statute, § 775.022 (enacted in 2019) states that, "[e]xcept as expressly provided in an act of the Legislature …, the

reenactment or amendment of a criminal statute operates prospectively and does not affect or abate … [t]he prior operation of the statue or a prosecution of enforcement thereunder." § 775.022(3), Fla. Stat. The statute clarifies that "[a]s used in this section, the term 'criminal statute' means a statute, whether *substantive or procedural*, dealing *in any way* with a crime or its punishment, defining a crime or a defense to a crime, or providing for the punishment of a crime." *Id.* § 775.022(2) (emphasis added).[16]

The Fourth District relegated this key issue to a footnote, stating:

> [S]ection 775.022, Florida Statutes (2022), does not preclude retroactive application of the amendments to section 16.56. Section 775.022(3) precludes retroactive application of "a statute, whether substantive or procedural, dealing in any way with a crime or its punishment, defining a crime or a defense to a crime, or providing for punishment of a crime.' As noted, *the 2023 amendments to section 16.56 impact the prosecuting authority but do not address a crime or the punishment of a crime*.

[16] Any construction of Section 775.022(2) advanced by the State that does not give meaning to the words "substantive or procedural" and "in any way" would be inconsistent with the controlling law of this Court. *See State v. Bodden*, 877 So. 2d 680, 686 (Fla. 2004) ("[W]ords in a statute are not to be construed as superfluous if a reasonable construction exists that gives effect to all words ….").

R.1005 n.1 (emphasis added).

According to the Fourth District, the 2023 amendment—which determines when the Statewide Prosecutor may prosecute an alleged crime—is not a statute that "deal[s] *in any way* with a crime or its punishment." § 775.022(2), Fla. Stat. (emphasis added).[17] This is a remarkable conclusion. The Fourth District failed to acknowledge the breadth of the "in any way" language, which sets an extraordinarily low bar for statute to come within the scope of Section 775.022. Courts in Florida and around the country have recognized that the language/phrase "in any way" is broad and expansive in its reach. *See Smiley v. State*, 966 So. 2d 330, 336–37 (Fla. 2007) (recognizing that a term defined as "deal[ing] in any way with crime or its punishment" was "defined in a broad context"); *Little River Theatre Corp. v. State*, 135 Fla. 854, 857, 858–59 (1939) (noting that statutory language criminalizing conduct connected "in any way with any lottery" was "broad" in scope); *Westchester Gen. Hosp., Inc. v.*

[17] The State, for its part, did not even take the extreme position in the Fourth District that the 2023 amendment was not a statute that deals "in any way with a crime or its punishment."

Evanston Ins. Co., 48 F.4th 1298, 1303 (11th Cir. 2022) (applying Florida law) ("[T]he 'in any way involving' language is *extremely broad* in scope, and it indicates that the provision applies to any claim *even remotely* involving 'services of a professional nature.'") (emphasis added) (citing *HR Acquisition I Corp. v. Twin City Fire Ins. Co.*, 547 F.3d 1309, 1316 (11th Cir. 2008); and *Mergenet Sols., Inc. v. Carolina Cas. Ins. Co.*, 56 So. 3d 63, 64 (Fla. 4th DCA 2011)); *United States v. Gray*, 260 F.3d 1267, 1272 (11th Cir. 2001) (characterizing the phrase "in any way or degree, obstructs, delays, or affects commerce" as "expansive language"); *Colo. Boxed Beef Co. v. Evanston Ins. Co.*, 2018 U.S. Dist. LEXIS 217936, *5 (M.D. Fla. Dec. 27, 2018) (applying Florida law) ("[T]he phrase 'or in any way involving' is broad as a term of regular English usage, and courts have so noted.") (citing *Mergenet Sols., Inc.*, 56 So. 3d at 64; *360 Condo. B Ass'n, Inc. v. U.S. Liab. Ins. Co.*, 2012 U.S. Dist. LEXIS 193086 (S.D. Fla. Dec. 20, 2012)).

The Fourth District acknowledged that the 2023 amendment "impacts the prosecuting authority." R.1005 n.1. That is sufficient for Section 775.022 to apply here and preclude retroactive application of the 2023 amendment. *See Smiley*, 966 So.2d at 336–37 (holding that a statute was a "criminal statute" that "deal[s] *in any way with crime*

or its punishment" because it had a "direct *impact* on the prosecution of the offense") (emphasis added). If the 2023 amendment impacts the prosecuting authority for a crime, it follows that the amendment "deal[s] in any way with a crime or its punishment." § 775.022(2), Fla. Stat.

Apart from the categorical bar of Section 775.022, the Fourth District was wrong to apply the 2023 amendment retroactively for other reasons. Even if the 2023 amendment is "procedural" in contrast to "substantive" (which Mr. Hubbard properly contests), the amendment still cannot be applied here because the event in question has already occurred. This Court addressed this point in *Love v. State*, 286 So. 3d 177 (Fla. 2019). There, the issue was whether an amendment that altered the burden of proof at pretrial immunity hearings applied to pending cases involving criminal conduct alleged to have occurred before the effective date of the statute. *Id.* at 179. This Court took the case to resolve a split between the Second and Third Districts on whether the amendment should be applied to pending cases. *Id.*

This Court agreed with the Second District's decision in *Martin v. State*, where the Second District held that the amendment

represented a procedural change. This Court, however, declined to adopt the Second District's extreme position regarding the retroactive reach of the amendment:

> We agree with *Martin* that section 776.032(4) is a procedural change …. However, we disagree with *Martin*'s all-or-none conclusion that the new procedures apply in all pending cases, even where the immunity hearing was held *prior to* the statute's effective date. The determination of whether a new procedure applies in a pending case generally depends on the posture of the case.

Love, 286 So. 3d at 179-80 (emphasis added). This Court elaborated by quoting the U.S. Supreme Court's decision in *Landgraf v. USI Film Productions*:

> [T]he mere fact that a new rule is procedural does not mean that it applies to every pending case. A new rule concerning the filing of complaints would not govern an action in which the complaint had already been properly filed under the old regime, and the promulgation of a new rule of evidence would not require an appellate remand for a new trial.

Love, 286 So. 3d at 187–88 (quoting *Landgraf v. USI Film Productions*, 511 U.S. 244, 275 n.29 (1994) (emphasis omitted)). The bottom line is that even procedural rules will not apply retroactively when the procedures affected have already transpired.

Federal law is in accord. In *Martin v. Hadix*, the U.S. Supreme Court explained that it has taken "pains to dispel the 'suggestion that

concerns about retroactivity have no application to procedural rules.'" 527 U.S. 343, 359 (1999) (quoting *Landgraf*, 511 U.S. at 275 & n.29); *Shipes v. Trinity Indus.*, 31 F.3d 347, 349 (5th Cir. 1994) ("[T]he Court [in *Landgraf*] indicated that when a procedural matter has been properly decided under the old rule, and a new procedural rule is subsequently enacted while the ultimate resolution of the case is still pending, no reversal is required.").

Accordingly, even if Section 775.022 did not foreclose the State's retroactivity argument, *supra* pp. 15–18, and even if the State were correct that the 2023 amendment represents a procedural change (and it does not), the next step is to identify what procedure the amendment pertains to and determine whether the amendment became effective before that procedure transpired. Here, the amendment pertains to the Statewide Prosecutor's initiation of a prosecution, which occurred *before* the amendment became law. And even if the amendment pertained to some other procedure, the result would be the same, because the trial court dismissed the entire case *before* the amendment became law.

Finally, the State has referred to the 2023 amendment as "jurisdictional" and implied that the Supreme Court in *Landgraf* held

that a jurisdictional amendment is a third category of change (in addition to procedural and substantive change) that comes with special powers. That's wrong. In *Landgraf*, the Supreme Court simply clarified that jurisdictional amendments are often—but not always—procedural in contrast to substantive:

> Application of a new jurisdiction rule usually takes away no substantive right but simply changes the tribunal that is to hear the case. Present law normally governs in such situations because jurisdictional statutes speak to the power of the court rather than the rights or obligations of the parties.

Landgraf, 511 U.S. at 274 (citations and quotation marks omitted). Thus, the Supreme Court did not create a third category of amendment to which special rules apply.

Moreover, the 2023 amendment does not represent the kind of "jurisdictional" statute that the Supreme Court was referring to in *Landgraf*. The Supreme Court was referring to statutes that affect the power of "the court" to hear a case, not the power of one of "the parties." 511 U.S. at 274.

The State has previously cited cases where an appellate court applied a law enacted while the case was on appeal. *See Jennings v. Fla. Elections Comm'n*, 932 So. 2d 609 (Fla. 2d DCA 2006); *Perez v.*

Bell S. Telecomms., Inc., 138 So. 3d 492 (Fla. 3d DCA 2014); *Bunin v. Matrixx Initiatives, Inc.*, 197 So. 3d 1109 (Fla. 4th DCA 2016). But none of these cases involved an appellate court *reviving* a *criminal* prosecution based on a law enacted *after* the case was dismissed. More importantly, these cases all pre-date Section 775.022 and this Court's decision in *Love*, both of which preclude the result the State seeks.

For each of these many reasons, the 2023 amendment—enacted after the dismissal here—cannot be applied retroactively. This Court should correct the Fourth District's contrary ruling.

CONCLUSION

The State's failure to govern properly led us here. But rather than admit its shortcomings or even try to fix them, the State has opted to prosecute one of its citizens for crimes that could not have been committed if the State had performed even the most basic of functions competently. To make matters worse, the State attempts to prosecute Mr. Hubbard through an impermissible retroactive application of a law enacted *after* the trial court's dismissal. This Court faces many difficult decisions, but this is not one of them. This

Court should reverse the Fourth District and affirm the trial court's dismissal.

Date: June 2, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on June 2, 2025, a true and correct copy of this brief was served through the Florida Courts E-Filing Portal to all counsel who have registered for service on the Portal, including counsel for the parties listed below, and furnished by electronic mail to the following counsel of record for the parties:

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief contains 4,522 words per the word count feature in Microsoft Word and was prepared using Bookman Old Style 14-point font and thereby satisfies the requirements of Florida Rule of Appellate Procedure 9.370(b).

/s/ Wesley A. Butensky