

IN THE SUPREME COURT OF FLORIDA

Case No. SC24-1522
L.T. No. 4D22-3429

TERRY HUBBARD,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

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

**REPLY BRIEF OF
PETITIONER TERRY HUBBARD**

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

MICHAEL GOTTLIEB
Michael Gottlieb, PA
1311 SE 2nd Ave
Ft. Lauderdale, FL 33136
(954) 462-1005
mike@mgottlielaw.com

Counsel for Petitioner Terry Hubbard

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	ii
ARGUMENT.....	1
THE TRIAL COURT PROPERLY DISMISSED THE CHARGES AGAINST MR. HUBBARD BECAUSE THE OFFICE OF THE STATEWIDE PROSECUTOR DOES NOT HAVE THE CONSTITUTIONAL OR STATUTORY AUTHORITY TO PROSECUTE HIM.	1
A. THE OSP DOES NOT HAVE JURISDICTION OR AUTHORITY TO PROSECUTE HUBBARD BECAUSE ANY ACTS HE MAY HAVE COMMITTED OCCURRED IN A SINGLE JUDICIAL CIRCUIT.....	3
1. OSP Clause “Occurrence Jurisdiction” Is Triggered Only When a Crime Happens or Takes Place in Two or More Judicial Circuits.	5
2. Mr. Hubbard’s Actions Did Not Occur in Two or More Judicial Circuits as Part of a Related Transaction.....	11
B. No Legislative Act or Amendment Can Undermine or Expand Constitutional Limitations Like Those Established by the OSP Clause. ...	15
1. There is Ample Evidence That Florida Voters in 1986 Would Have Understood the Multi-Circuit Limitation in the Text of the Amendment That Created OSP To Limit OSP’s Authority To Complex, Multi-Circuit Crimes.	17
CONCLUSION	19

TABLE OF AUTHORITIES

Cases

<i>Advisory Opinion to Governor re Implementation of Amendment 4, the Voting Restoration Amendment,</i> 288 So. 3d 1070 (Fla. 2020)	2
<i>Austin v. Christian,</i> 310 So. 2d 289 (Fla. 1975)	15
<i>Buechel v. Shim,</i> 340 So. 3d 507 (Fla. 5th DCA 2021)	15
<i>City of Miami v. Gonzalez,</i> No. 3D25-1398, 2025 WL 2166078 (Fla. July 31, 2025)	1
<i>Conage v. United States,</i> 346 So. 3d 594 (Fla. 2022)	5
<i>Department of Revenue v. Kuhnlein,</i> 646 So. 2d 717 (Fla. 1994)	4
<i>Florida Department of Agriculture & Consumer Services v. Dolliver,</i> 283 So. 3d 953 (Fla. 2d DCA 2019)	4, 16
<i>Florida Hospital Waterman, Inc. v. Buster,</i> 984 So. 2d 478 (Fla. 2008)	4, 16
<i>Government Employees Insurance. Co. v. Macedo,</i> 228 So. 3d 1111 (Fla. 2017)	5
<i>Ham v. Portfolio Recovery Associates, LLC,</i> 308 So. 3d 942 (Fla. 2020)	1, 2, 14, 15
<i>Henderson v. State,</i> 155 Fla. 487, 20 So. 2d 649 (Fla. 1945)	16
<i>Holley v. Adams,</i> 238 So. 2d 401 (Fla. 1970)	15

<i>In re Advisory Opinion to the Attorney General, Limitation of Non-Economic Damages in Civil Actions,</i> 520 So. 2d 284 (Fla. 1988)	16
<i>Jacksonville v. Bowden,</i> 67 Fla. 181, 64 So. 769 (1914).....	4
<i>King v. State,</i> 790 So. 2d 477 (Fla. 5th DCA 2001)	13, 14, 15
<i>Lane v. Chiles,</i> 698 So. 2d 260 (Fla. 1997)	4
<i>Notami Hospital of Florida v. Bowen,</i> 927 So. 2d 139 (Fla. 1st DCA 2006).....	15
<i>Peters v. Meeks,</i> 163 So. 2d 753 (Fla. 1964)	15
<i>Planned Parenthood of Southwest & Central Florida v. State,</i> 384 So. 3d 67 (Fla. 2024)	1, 2
<i>Snyder v. State,</i> 715 So. 2d 367 (Fla. 5th DCA 1998)	12, 13
<i>Stapleton v. State,</i> 286 So. 3d 837 (Fla. 5th DCA 2019)	15
<i>State ex rel. Curley v. McGeachy,</i> 149 Fla. 633, 6 So. 2d 823 (Fla. 1942).....	16
<i>State v. Hubbard,</i> 392 So. 3d 1067 (Fla. 4th DCA 2024)	2, 8
<i>State v. Miller,</i> 394 So. 3d 164 (Fla. 3d DCA 2024)	5, 10, 13
<i>State v. Washington,</i> 403 So. 3d 465 (Fla. 6th DCA 2025)	Passim

<i>United States v. Anderson</i> , 328 U.S. 699, 90 L. Ed. 1529, 66 S. Ct. 1213 (1946)	6
<i>United States v. Cabrales</i> , 524 U.S. 1, 141 L. Ed. 2d 1, 118 S. Ct. 1772 (1998).....	6
<i>United States v. Ramirez</i> , 420 F.3d 134 (2d Cir. 2005).....	6
<i>United States v. Rodriguez-Moreno</i> , 526 U.S. 275 (1999).....	6
<i>United States v. Smith</i> , 22 F.4th 1236 (11th Cir. 2022).....	6

Constitutions

Article IV, Section 4(b), Florida Constitution	Passim
--	--------

Statutes

Section 16.56, Florida Statutes (1985).....	2, 4
Section 104.011, Florida Statutes (2020).....	7
Section 104.15, Florida Statutes (2020).....	7, 8
Section 910.02, Florida Statutes (1970).....	9
Section 910.03, Florida Statutes (1970).....	6, 9
Section 910.05, Florida Statutes (1985).....	6
Section 910.10, Florida Statutes (1972).....	9, 10
Section 910.15 Florida Statutes (1970).....	9, 10

Other Authorities

Florida Division of Elections, <i>Initiative Information: Authority of Attorney General to Appoint a Statewide Prosecutor</i>	18
Florida Executive Order No. 84-150 (Aug. 8, 1984).	3
Lori Rozsa, <i>The First Arrests from DeSantis’s Election Police Take Extensive Toll</i> , Washington Post (May 1, 2023).....	17
Office of the Attorney General, <i>Office of Statewide Prosecution Annual Reports</i>	18
The Florida Bar Special Committee on the Statewide Prosecution Function, <i>Report to the Board of Governors</i> 1 (1977).	18

ARGUMENT

THE TRIAL COURT PROPERLY DISMISSED THE CHARGES AGAINST MR. HUBBARD BECAUSE THE OFFICE OF THE STATEWIDE PROSECUTOR DOES NOT HAVE THE CONSTITUTIONAL OR STATUTORY AUTHORITY TO PROSECUTE HIM.

This case is resolved not by rhetorical flourish or interpretive invention, but by the plain text of the Florida Constitution and applicable statutes. Indeed, the goal of constitutional and statutory interpretation “is to arrive at a fair reading of the text by determining the application of the text to given facts on the basis of how a reasonable reader, fully competent in the language, would have understood the text at the time it was issued.” *Ham v. Portfolio Recovery Assocs., LLC*, 308 So. 3d 942, 947 (Fla. 2020) (cleaned up); see also *Planned Parenthood of Sw. & Cent. Fla. v. State*, 384 So. 3d 67, 77 (Fla. 2024) (“In construing the meaning of a constitutional provision, we do not seek the original intent of the voters or the framers. Instead, we ask how the public would have understood the meaning of the text in its full context when the voters ratified it.”); *City of Miami v. Gonzalez*, No. 3D25-1398, 2025 WL 2166078, at * 6–7 (Fla. July 31, 2025) (similar). “To answer this question of public meaning, [courts] consider the text, contextual clues, dictionaries, canons of construction, and historical sources, including

evidence related to public discussion” *Planned Parenthood of Sw. & Cent. Fla. v. State*, 384 So. 3d at 77 (Fla. 2024) (internal citations omitted).

In the context of the present case, this Court must interpret “the sources and limits of the OSP’s power in the OSP Clause [Art. IV, § 4(b), Fla. Const.] and the OSP Statute [§ 16.56, Fla. Stat. (1985)]” to determine what “occur,” “related transaction,” and “affects” mean. *State v. Washington*, 403 So. 3d 465, 470 (Fla. 6th DCA 2025). The words in the OSP Clause and the OSP Statute “are of paramount concern, and what they convey, in their context, is what the text means,” *Ham*, 308 So. 3d at 946. Indeed, this Court “adhere[s] to Justice Joseph Story’s view that ‘every word employed in [a legal text] is to be expounded in its plain, obvious, and common sense, unless the context furnishes some ground to control, qualify, or enlarge it.’” *Id.* at 946–47 (quoting *Advisory Op. to Governor re Implementation of Amend. 4, the Voting Restoration Amend.*, 288 So. 3d 1070, 1078 (Fla. 2020)). Viewed against this interpretive background, Mr. Hubbard must prevail.¹

¹ Of the nine Florida district court judges who have considered the issue, five have adopted the view Mr. Hubbard advances today. See *State v. Washington*, 403 So. 3d 465 (Fla. 6th DCA 2025) (Gannam, J., majority opinion; Wozniak, J., and Ballou, T.S., Associate Judge, concurring); *State v. Miller*, 394 So. 3d 164, 170-73 (Fla. 3d DCA 2024) (Scales, J., dissenting); *State v. Hubbard*, 392 So. 3d 1067, 1073-76 (Fla. 4th DCA 2024) (May, J., dissenting).

A. THE OSP DOES NOT HAVE JURISDICTION OR AUTHORITY TO PROSECUTE HUBBARD BECAUSE ANY ACTS HE MAY HAVE COMMITTED OCCURRED IN A SINGLE JUDICIAL CIRCUIT.

The OSP is a creature of limited jurisdiction established by the Florida Constitution to address the challenge of statewide organized criminal activity. See Art. IV, § 4(b), Fla. Const.; Fla. Exec. Order No. 84-150 (Aug. 8, 1984). The OSP Clause in the Florida Constitution—Article IV, Section 4(b)—“defined its jurisdiction.” *Washington*, 403 So. 3d at 468. The clause grants the statewide prosecutor “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. (emphasis added).

The OSP Statute “create[ed] the OSP by name and defin[ed] subject matter and other conditional limits on the office’s prosecutorial authority.” *Washington*, 403 So. 3d at 468. The Florida Legislature, through subsection (a) of the OSP Statute, granted the OSP limited authority to investigate and prosecute an enumerated list of fifteen specific crimes, including fraud, extortion, drug crimes, and violations of the Florida RICO Act. See §

16.56(1)(a), Fla. Stat. That clause also specifically and significantly limits the OSP's authority to investigate and prosecute those enumerated offenses. See § 16.56(1)(a). Consistent with constitutional limitations, the OSP may investigate and prosecute one of the specifically enumerated offenses "only when any 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." § 16.56(1)(a), Fla. Stat. (emphasis added).

Though the OSP finds its authority in both the Florida Constitution and the Florida Statutes, "the Florida Constitution is the supreme law of Florida, and, as such, it takes precedence over any contrary provisions of the common law or statutes." *Lane v. Chiles*, 698 So. 2d 260, 263 (Fla. 1997) (citing *Jacksonville v. Bowden*, 67 Fla. 181, 64 So. 769 (1914); *Department of Revenue v. Kuhnlein*, 646 So. 2d 717 (Fla.1994)). Thus, "[t]o the extent there is any conflict between . . . the OSP Clause and the OSP Statute, the constitutional provision must prevail over the subordinate statutory enactment." *Washington*, 403 So. 3d at 471 (citing *Fla. Hosp. Waterman, Inc. v. Buster*, 984 So. 2d 478, 494 (Fla. 2008)); see also *Fla. Dep't of Agric. & Consumer Servs. v. Dolliver*, 283 So. 3d 953, 959 (Fla. 2d DCA 2019) ("[L]egislative authority necessarily yields to constitutional

pronouncements—in the very context at issue here: where legislation conflicts with the express or implied mandate of” Article IV Section 4(b) of the Florida Constitution).

1. OSP Clause “Occurrence Jurisdiction” Is Triggered Only When a Crime Happens or Takes Place in Two or More Judicial Circuits.

“Neither ‘occurring’ nor ‘occurred’ are defined in the OSP Clause or OSP Statute or in any authoritative decision of the Florida Supreme Court.” *Washington*, 403 So. 3d at 472. “When a contested term is undefined in statute or by [case law], [courts] presume that the term bears its ordinary meaning at the time of enactment, taking into consideration the context in which the word appears. And [courts] typically look to dictionaries for the best evidence of that ordinary meaning.” *Conage v. United States*, 346 So.3d 594, 599 (Fla. 2022); *see also Gov’t Emps. Ins. Co. v. Macedo*, 228 So. 3d 1111, 1113 (Fla. 2017) (Courts may “look to legal and non-legal dictionary definitions” to determine the plain and ordinary meaning of an undefined term).

At the time of enactment and in the context of the OSP Clause and OSP Statute, the ordinary meaning of “occur” was “[t]o present itself in the course of events; to happen, befall, take place as an event or incident.” *Occur*, *Oxford English Dictionary* (2d ed. 1989). The contemporary legal dictionary definition is similar: “To happen; to meet one’s eye; to be found or met with; to present itself; to appear; hence to befall in due course; to take

place; to arise.” *Occur*, *Black's Law Dictionary* 1080 (6th ed. 1990). Thus, a crime occurs where it happens or takes place.

Washington, 403 So. 3d at 472.

Florida’s venue statutes underscore this understanding. See § 910.03(1), Fla. Stat. (1985) (“[C]riminal prosecutions shall be tried in the county where the offense was committed.”); § 910.05, Fla. Stat. (1985) (“If the acts constituting one offense are committed in two or more counties, the offender may be tried in any county in which any of the acts occurred.”). “These statutes tell us that, for prosecution purposes, an offense occurs where the acts constituting the offense are committed, and if the acts constituting the offense are committed in two counties, then the offense occurred in both.” *Washington*, 403 So. 3d at 473.² By this sound reasoning, the State’s attempt to divine a hidden well of expanded authority here must surely fail.

² What is more, when statutes do not specify how to determine the location where the crime was committed, “[v]enue is proper at the locus delicti.” *United States v. Smith*, 22 F.4th 1236, 1242 (11th Cir. 2022); *United States v. Ramirez*, 420 F.3d 134, 138 (2d Cir. 2005). “[T]he ‘locus delicti [of the charged offense] must be determined from the nature of the crime alleged and the location of the act or acts constituting it.’” *United States v. Rodriguez-Moreno*, 526 U.S. 275, 279 (1999) (quoting *United States v. Cabrales*, 524 U.S. 1, 6-7, 141 L. Ed. 2d 1, 118 S. Ct. 1772 (1998) (quoting *United States v. Anderson*, 328 U.S. 699, 703, 90 L. Ed. 1529, 66 S. Ct. 1213 (1946))). “In performing this inquiry, a court must initially identify the conduct constituting the offense (the nature of the crime) and then discern the location of the commission of the criminal acts.” *Rodriguez-Moreno*, 526 U.S. at 279.

The State's two-count Information charged Mr. Hubbard with one count of "willfully affirm[ing] falsely to an oath or affirmation in connection with and arising out of voting or elections, contrary to Section 104.011(1) Florida Statutes (2020)" and one count of "willfully vot[ing] in an election knowing that he was not a qualified elector, contrary to Section 104.15, Florida Statutes (2020)." (R. 9–10). Moreover, the parties 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).

Section 104.011 is violated when "[a] person . . . willfully swears or affirms falsely to any oath or affirmation, or willfully procures another person to swear or affirm falsely to an oath or affirmation, in connection with or arising out of voting or elections" Section 104.011(1), Fla. Stat. The criminal act associated with this crime is swearing or affirming falsely; the other elements relate to the necessary mens rea. It is undisputed that Hubbard did not swear or affirm his oath anywhere other than Broward County. See (R. 69); *State v. Hubbard*, 392 So. 3d 1067, 1070, 1073 (Fla. 4th DCA 2024), *Miller*, 394 So. 3d at 172 (Scales, J., dissenting). Thus, the

crime of false affirmation in connection with an election did not happen or occur anywhere other than Broward County.

Section 104.15 is violated when someone “knowing he or she is not a qualified elector, willfully votes at any election” Section 104.15, Fla. Stat. “However we formulate the elements of this crime, there is only one act—voting. The rest of the elements comprise knowledge and intent. Thus, the sole act constituting [Hubbard]’s alleged crime of unauthorized voting was his voting, and it occurred solely in [Broward] County. No act constituting the offense occurred in Leon County or anywhere else.” *Washington*, 403 So. 3d at 475; (R. 69). Because each act Mr. Hubbard allegedly committed was committed entirely within Florida’s Seventeenth Judicial Circuit, the OSP could not prosecute Mr. Hubbard. *See Washington*, 403 So. 3d at 480; *Miller*, 394 So. 3d at 171 (Scales, J., dissenting); *Hubbard*, 392 So. 3d at 1073 (May, J., dissenting). Since “an offense occurs where the acts constituting the offense are committed” and all the alleged acts constituting the offense are stipulated to have occurred in Broward County, “then the offense occurred” only in one county, Broward. *See, Washington*, 403 So. 3d at 473.

The State relies on § 910.02, Fla. Stat. (1970), § 910.03, Fla. Stat. (1972), § 910.10, Fla. Stat. (1970), and § 910.15, Fla. Stat. (1980) for its assertion that Mr. Hubbard’s venue argument “cuts for the State”—claiming

that when the OSP was created “Florida law recognized that venue was not limited to those places in which either the actus reus or another element of the crime occurred.” (Answer Brief 22–24). This argument is misguided for three reasons.

First, section 910.02, Florida Statutes (1970), assigns venue in “any county through which [a] railroad car, vehicle, watercraft, or aircraft has traveled” when a crime is committed aboard one of those conveyances while “traveling within this state and it is not known in which county the offense was committed” The State points to this statute, and § 910.03, Fla. Stat. (1972), for the proposition that the Florida legislature “recognizes it is sometimes hard to identify precisely where a crime took place, and [in those instances the legislature] liberates venue from the literal location of a crime’s elements.” (Answer Brief 23). Yet the State’s analogy is undoubtedly inapplicable here. Though sometimes it is hard to identify exactly where a crime took place, it is beyond dispute that the acts for which Mr. Hubbard was charged—false affirmation in connection with voting and illegally voting—took place solely in Broward County. (R. 69).

Second, section 910.10 provides that “who obtains property by larceny, robbery, or embezzlement may be tried in any county in which he exercises control over the property.” Under Section 910.10, it is the specific act of

exercising control over the ill-begotten property that allows a defendant to be tried in any county where that control is exercised. Again, the State stipulated that the specific acts for which Mr. Hubbard was charged all took place in Broward. Mr. Hubbard did not undertake any specific act—like exercising control over ill-begotten property—in any county other than Broward. (R. 69).

Third, section 910.15, allows a defendant “charged with committing a fraudulent practice in a manner in which it may reasonably be assumed that a solicitation or false or misleading representation could or would be disseminated across jurisdictional lines, or a theft involving the use of the mail, telephone, newspaper, radio, television, or other means of communication . . . ” to be tried “in the county in which the dissemination originated, in which the dissemination was made, or in which the last act necessary to consummate the offense occurred.” Here, Mr. Hubbard allegedly made a false affirmation in connection with voting and voted exclusively in Broward County. The “last act necessary to consummate the offense” as it is charged is signing the voter registration and casting the vote. There is no dispute that these last necessary acts occurred in Broward County only. (R. 69). Dissemination is not an element of either offense; consequently, the State may not use the ministerial dissemination by state employees doing their jobs as an “act” to create OSP authority where it does

not exist. In other words, the last act to consummate each offense was committed in Broward County, so venue is proper exclusively in Broward County.

Under the OSP Clause and Statute, “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.” *Washington*, 403 So. 3d at 473. Given this understanding, “unless the ‘offense’ has ‘occurred in two or more judicial circuits,’ the OSP has no authority, and we do not reach the issue of whether the occurrences in multiple judicial circuits were a part of a related transaction.” *Miller*, 394 So. 3d at 171 (Scales, J., dissenting). Because Mr. Hubbard’s allegedly criminal conduct took place exclusively and entirely within Broward County, the OSP lacks authority to prosecute him.

2. Mr. Hubbard’s Actions Did Not Occur in Two or More Judicial Circuits as Part of a Related Transaction.

This Court need not consider whether Mr. Hubbard’s actions were part of a related transaction because the plain text of the OSP Clause limits OSP’s “related transaction” authority to “violations of criminal laws occurring or having occurred, in two or more judicial circuits as part of a related transaction” Art. IV, § 4(b), Fla. Const. However, the State frames the OSP’s related transaction authority as “hing[ing] on considerations other

than where the elements of the crime happened, including on whether . . . the crime formed part of a broader, multi-circuit transaction.” (Answer Brief 24). The State’s understanding of the OSP’s related transaction authority is flawed. The State relies on *Snyder v. State*, 715 So. 2d 367 (Fla. 5th DCA 1998), to support its reading of “related transaction.” See (Answer Brief 24–26). The facts of *Snyder* are in no way analogous to the facts of Mr. Hubbard’s case.

In *Snyder*, four thefts occurred “in five different counties and four different judicial circuits.” 715 So. 2d at 368. Snyder argued for dismissal on grounds that the OSP “lack[ed] jurisdiction because there was no ‘related transaction’ affecting two or more judicial circuits.” *Id.* at 369. The Court found that “[a]lthough the offenses lack a relationship in terms of having taken place in one episodic period, the facts do sufficiently show that Snyder conducted them pursuant to one scheme.” *Id.* at 370. Snyder “contacted each victim by responding to an advertisement for the sale of property in the local newspaper. He then fraudulently purchased the property by offering a counterfeit cashier’s check. Each check bore the same forged bank name, account name and misspelled city, and all were forged on the same typewriter.” *Id.* Thus, because “Snyder used the same scheme to defraud his

victims[.]” the thefts were considered part of a related transaction and the OSP had authority to prosecute him. *Id.*

Here, the stipulated facts establish that Mr. Hubbard did not leave Broward County and all alleged acts occurred in Broward County. (R. 68–69). Moreover, Mr. Hubbard did not concoct any sort of criminal scheme. Rather, he completed a voter registration card **solely in Broward County** and voted **solely in Broward County**. Such simple actions limited exclusively to Broward County do not a scheme make. Indeed, all alleged acts meeting the elements of the charged offenses took place in one circuit, the seventeenth, whereas Snyder’s conduct occurred in several. Thus, the State’s reliance on *Snyder v. State*, 715 So. 2d 367 (Fla. 5th DCA 1998) misses the mark.

State’s reliance on *King v. State*, 790 So. 2d 477 (Fla. 5th DCA 2001) is similarly flawed. There, King was prosecuted by the OSP because he “operated a motorcycle chop shop in Orange County (Ninth Circuit) which depended in part on stolen motorcycles from Volusia County (Seventh Circuit).” *King*, 790 So. 2d at 479. Additionally, “a part of the operation of the chop shop was to also commit local burglaries as an additional source of income.” *Id.* The Fifth District Court of Appeals allowed the OSP to prosecute those local burglaries because those local thefts were “committed as a part

of a multi-district criminal activity[,]" *Id.* at 480, they "made possible the continuing multi-district criminal enterprise [the chop shop operation]" *Id.* at 479.

Here, for Mr. Hubbard's actions—which occurred entirely within the Seventeenth Judicial Circuit—to be committed as a part of a multi-district criminal activity, the state's processing of his registration and ballot would necessarily have to qualify as violations of criminal law. Interpreting "related transaction" as the State asks would not only ignore the Constitution's express requirement that the "violations of criminal law" occur in two or more circuits, but it would necessitate subjecting state employees to criminal liability for doing their jobs. Such a result would be both unconstitutional and illogical.

Moreover, "the *King* court's expressly policy-driven approach . . ." upon which the State relies, "does not square with the supremacy-of-text principle validated by the Florida Supreme Court in *Ham*." *Washington*, 403 So. 3d 465, 475 (Fla. 6th DCA 2025) (citing *Ham*, 308 So. 3d at 946); see also *King*, 790 So. 2d at 479 ("The policy behind the creation of the Office of Statewide Prosecution demands that we broadly construe the prosecutorial authority of the statewide prosecutor."). Given this Court's explicit endorsement of the supremacy-of-the-text principle, see, e.g., *Ham*, 308 So. 3d 946–47, *King's*

precedential value is questionable. See *Washington*, 403 So. 3d at 475 (“Even in the Fifth District, the approach does not appear to remain viable post-*Ham*.” (citing *Buechel v. Shim*, 340 So. 3d 507, 511 (Fla. 5th DCA 2021) *opinion approved of*, 339 So. 3d 315 (Fla. 2022))).

B. No Legislative Act or Amendment Can Undermine or Expand Constitutional Limitations Like Those Established by the OSP Clause.

“[T]he Florida Constitution supersedes Florida Statutes.” *Stapleton v. State*, 286 So. 3d 837, 839 (Fla. 5th DCA 2019). “State constitutions are limitations upon the power of state legislatures.” *Notami Hosp. of Fla. v. Bowen*, 927 So. 2d 139, 142 (Fla. 1st DCA 2006) (citing *Peters v. Meeks*, 163 So. 2d 753, 755 (Fla. 1964)). “Consequently, a statute enacted by the Legislature may not restrict a right granted under the Constitution.” *Id.* (citing *Austin v. Christian*, 310 So. 2d 289, 293 (Fla. 1975)). By the same token, a statute enacted by the Legislature may not undermine or expand limitations imposed by the state constitution. *Cf. Notami Hosp. of Fla. v. Bowen*, 927 So. 2d 139, 142 (Fla. 1st DCA 2006). “To the extent a statute conflicts with express or clearly implied mandates of the Constitution, the statute must fall.” *Id.* (citing *Holley v. Adams*, 238 So. 2d 401, 405 (Fla. 1970); *In re Advisory Opinion to the Atty. Gen., Limitation of Non-Economic Damages in Civil Actions*, 520 So. 2d 284, 287 (Fla. 1988); *Henderson v. State*, 155 Fla. 487,

491, 20 So. 2d 649, 651 (Fla. 1945); *State ex rel. Curley v. McGeachy*, 149 Fla. 633, 642, 6 So. 2d 823, 827 (Fla. 1942) (en banc)).

It is established that “[n]o legislative pronouncement may thwart the implementation of a constitutional mandate—particularly where, as is typically the case and here, the constitutional provision is self-executing[.]” *Dolliver*, 283 So. 3d at 960 (Fla. 2d DCA 2019); *see also Washington*, 403 So. 3d at 471 (citing *Fla. Hosp. Waterman, Inc. v. Buster*, 984 So. 2d 478, 485–86 (Fla. 2008) (“The OSP Clause occurrence jurisdiction is self-executing because it does not depend on legislative enactment.”)). The State, however, is attempting to impermissibly accord more powers to the OSP than are provided by the Florida Constitution.

Unlike the constitutional grant of broad discretionary authority to the State Attorneys, the OSP’s creation in the Florida Constitution is limited in nature, describing the statewide prosecutor as having only “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. Thus, the OSP’s limited jurisdictional confines prescribed by the Florida Constitution cannot be expanded legislatively or judicially.

1. There is Ample Evidence That Florida Voters in 1986 Would Have Understood the Multi-Circuit Limitation in the Text of the Amendment That Created OSP To Limit OSP's Authority To Complex, Multi-Circuit Crimes.

The rationale behind the OSP's creation was to hand these complex, multi-circuit cases to statewide prosecutors when they could not be effectively or efficiently prosecuted by a single-circuit state attorneys' office. See Fla. Exec. Order No. 84-150 (Aug. 8, 1984). The OSP was never imagined or intended to investigate isolated instances of voter confusion caused by Florida's own failure to administer its voting rights restoration system and thereby become a de facto voter police.³

Rather, the voters created the OSP out of sheer necessity. Florida's twenty State Attorneys were not "responsible for nor aware of crime problems in other parts of the State" and there was "no unified or central direction . . . on existing or imminent criminal activity of statewide importance

³ Attorney Barbara Linthicum, who helped organize the OSP when formed in 1986 and served on the Florida Elections Commission, states: "At that time, it was about organized crime. I can guarantee you that it never came to anybody's mind that [OSP] would be prosecuting election laws." Lori Rozsa, The First Arrests from DeSantis's Election Police Take Extensive Toll, Wash. Post (May 1, 2023), <https://www.washingtonpost.com/nation/2023/04/30/desantis-election-police-arrests-florida/#>.

which should have a unified state-wide response.”⁴ The ballot summary presented to voters advised that OSP would be “a statewide prosecutor having concurrent jurisdiction with the state attorneys to prosecute multi-circuit violations of the criminal laws of the state.”⁵

The OSP’s prosecutions since its inception in 1986 are demonstrative of the multi-circuit crimes the Florida constitution and legislature authorized it to pursue—for example organized fraud, human trafficking, Medicaid fraud, and drug trafficking.⁶ In fact, the state acknowledges “an animating purpose of the Office of Statewide Prosecution was no doubt to ‘combat organized crime’” (Answer Brief 30). The OSP’s specific history and the public debate around the amendment that created OSP makes clear that voters in 1986 would have understood the multi-circuit limitation in the constitutional text to limit OSP’s authority to complex, multi-circuit crimes that could not be effectively prosecuted by state attorneys. See Former Member Br.; *see also*

⁴ The Florida Bar Special Committee on the Statewide Prosecution Function, *Report to the Board of Governors* 1, 12 (1977), <https://tinyurl.com/4csp9r67>.

⁵ Fla. Div. Elections, Initiative Information, Authority of Attorney General to Appoint a Statewide Prosecutor, <https://initiativepetitions.dos.fl.gov/InitiativeForms/FulltextPDF/10-43.pdf>.

⁶ See Office of the Attorney General, *Office of Statewide Prosecution Annual Reports*, <https://www.myfloridalegal.com/statewide-prosecutor/office-of-statewide-prosecution-annual-reports> (last visited Nov. 28, 2023).

Appendix to State Constitutional Scholar Br. A3-13 (contemporaneous newspaper articles discussing the OSP constitutional amendment).

The State is attempting to expand OSP's authority and thereby expand its own power to prosecute. This expansion is contrary to the plain language of the Florida Constitutional Amendment, which authorized a limited. Therefore, the trial court was correct in dismissing the charges against Mr. Hubbard.

CONCLUSION

Based on the foregoing arguments and authorities, Petitioner, Terry Hubbard, respectfully requests this Court to reverse the Fourth District Court of Appeal and enter an order dismissing the charges against him because the Statewide Prosecutor lacks the requisite authority and jurisdiction to prosecute Mr. Hubbard for voting-related issues.

Respectfully submitted,

/s/ Craig J. Trocino
CRAIG J. TROCINO, ESQ.
Florida Bar No: 996270
University of Miami School of Law
1311 Miller Drive
Coral Gables, FL 33146-2300
(305) 284-8201
ctrocino@law.miami.edu

MICHAEL GOTTLIEB, ESQ.
Florida Bar Number 981133
Michael Gottlieb, P.A.
1311 SE 2nd Avenue
Fort Lauderdale, FL 33316
(305) 461-1005
mike@mgottlielaw.com
Counsel for Mr. Hubbard

CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the instant brief has been prepared with Arial 14-point font and contains 3996 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 the Florida E-Filing Portal to Jeffrey DeSousa Jeffrey DeSousa Jeffrey.DeSousa@myfloridalegal.com and Nathan Forrester Nathan Forrester, Nathan.Forrester@myfloridalegal.com and other interested parties his 3 day of November 2025.

/s/ Craig J. Trocino
CRAIG J. TROCINO
Counsel for Mr. Hubbard