

IN THE SUPREME COURT OF FLORIDA

TERRY HUBBARD,

*Petitioner,*

v.

STATE OF FLORIDA,

*Respondent.*

CASE NO: SC2024-1522  
L.T. NOS: 4D2022-3429; 22-  
8077CF10A

**UNOPPOSED MOTION FOR LEAVE OF COURT**  
**TO FILE AN AMICUS BRIEF**

Pursuant to Florida Rule of Appellate Procedure 9.370, the Southern Poverty Law Center (SPLC) moves for leave to appear as Amicus Curiae in support of the Appellant and states as follows:

1. The Southern Poverty Law Center (SPLC) is a nonprofit 501(c)(3) organization that is a catalyst for racial justice in the South and beyond, working in partnership with communities to dismantle white supremacy, strengthen intersectional movements, and advance the human rights of all people. Through its Decarceration and Decriminalization practice, the SPLC employs litigation and advocacy to reform the criminal legal system by ending unjust detention and

challenging unconstitutional and racially discriminatory law enforcement practices. The SPLC also recognizes that the right to vote is fundamental to our constitutional system and essential to preserving all other rights. Yet, changes in law and policy have made voting more difficult and time-consuming for all Americans—and particularly Black and Brown people. The Democracy and Voting Rights Advocacy and Litigation Impact Team works to protect this foundational right—primarily through litigation in the South—by ensuring fair and equal access to the ballot for all eligible voters

2. Amicus Curiae seeks to provide the Court with context for answering the certified question before it. Specifically, Amicus Curiae offers historical, legal, and factual insight into how the expansion of the Office of Statewide Prosecution’s jurisdiction—based on incidental or administrative connections to multiple circuits—undermines the constitutional limits placed on that office and risks displacing the authority of locally elected state attorneys.

3. Amicus Curiae further highlights the ways in which such expansion may lead to selective and politically motivated enforcement, particularly in voting-related prosecutions, which disproportionately impact marginalized communities. This

perspective will assist the Court in understanding the real-world implications of adopting the Fourth District's interpretation and why a narrow, constitutionally grounded approach to OSP jurisdiction is essential.

4. A copy of the proposed amicus brief is attached as Exhibit A.

5. The undersigned has conferred with Craig Trocino, Esq. counsel for Petitioner, and Alison E. Preston, counsel for Respondent. Counsel for Petitioner consents to this motion. Counsel for Respondent has indicated that they do not oppose the motion of amicus curiae.

WHEREFORE, the SPLC respectfully requests that this Court grant its motion for leave to appear as amicus curiae in this proceeding.

Respectfully submitted,

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**Certificate of Service**

I DO HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail to the following, this 30th day of May, 2025:

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# **EXHIBIT A**

NO. SC2024-1522

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**IN THE SUPREME COURT OF FLORIDA**

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TERRY HUBBARD,  
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**On Discretionary Review from a Decision of the  
Fourth District Court of Appeal  
L.T. NOS: 4D2022-3429; 22-8077CF10A**

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**BRIEF OF AMICUS CURIAE SOUTHERN POVERTY LAW CENTER  
IN SUPPORT OF PETITIONER TERRY HUBBARD**

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### **Interest of Amicus Curiae**

The Southern Poverty Law Center (SPLC) is a nonprofit 501(c)(3) organization that is a catalyst for racial justice in the South and beyond, working in partnership with communities to dismantle white supremacy, strengthen intersectional movements, and advance the human rights of all people.

Through its Decarceration and Decriminalization practice, the SPLC employs litigation and advocacy to reform the criminal legal system by ending unjust detention and challenging unconstitutional and racially discriminatory law enforcement practices.

The SPLC also recognizes that the right to vote is fundamental to our constitutional system and essential to preserving all other rights. Yet, changes in law and policy have made voting more difficult and time-consuming for all Americans—and particularly Black and Brown people. The Democracy and Voting Rights Advocacy and Litigation Impact Team works to protect this foundational right—primarily through litigation in the South—by ensuring fair and equal access to the ballot for all eligible voters.

Amicus Curiae is interested in this case because of its broader implications: allowing the Office of Statewide Prosecution (OSP) to

assert jurisdiction where multi-county activity is only incidental to the offense charged—or based on a vague assertion that an offense “affects” more than one county—would risk expanding the OSP beyond its constitutional limits, inviting prosecutorial overreach and increasing the possibility of politicized enforcement.

### **Summary of the Argument**

The Fourth District Court of Appeal held that the OSP—an entity constitutionally authorized to prosecute only specified offenses that occur in or affect two or more counties, see Fla. Const. art. IV, § 4(b), Fla. Stat. § 16.56—had jurisdiction to prosecute Mr. Hubbard, even though the alleged criminal conduct occurred solely in Broward County. The court reasoned that the charged offenses’ “subsequent involvement of the Secretary of State in Leon County” *and* purported impact on voters statewide were sufficient to trigger OSP’s multi-circuit jurisdiction. *State v. Hubbard*, 392 So. 3d 1067, 1073 (Fla. 4th DCA 2024), reh’g denied (Sept. 23, 2024), review granted, No. SC2024-1522, 2025 WL 79096 (Fla. Jan. 13, 2025).

This expansive reading of OSP’s authority threatens to erode the constitutional limits on statewide jurisdiction, undermine the independence of locally elected State Attorneys, and enable

politicized or selective prosecution. As Judge May cautioned in her dissenting opinion, “The OSP is not some Marvel superhero that can magically extend its long arm of the law into a single judicial circuit and steamroll over the local state attorney.” *Hubbard*, 392 So. 3d 1075 (May, J., dissenting).

That concern is not hypothetical. The State—through the OSP—has signaled its intent to centralize criminal enforcement of voter-related offenses, as evidenced by Governor DeSantis’s remarks at a press conference announcing the arrest of twenty individuals for alleged voter fraud: “Before I proposed this, this was my idea, before I proposed this, well, because people weren’t getting prosecuted! . . . [T]his stuff [was] seeming to fall through the cracks.”<sup>1</sup>

Amicus Curiae urges this Court to answer the certified question in the negative. Upholding OSP jurisdiction based solely on incidental statewide affects or agency processing would not only be contrary to the plain language of the statute but would also upset the

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<sup>1</sup> *Governor’s Press Conference on Election Integrity*, THE FLORIDA CHANNEL (Aug. 18, 2022, at 24:40 ), <https://thefloridachannel.org/videos/8-18-22-governors-press-conference-on-election-integrity/> [hereinafter Press Conference].

constitutional balance of prosecutorial authority and invite unchecked centralization.

### **Argument**

#### **A. The Office of Statewide Prosecution is Being Used to Circumvent Local Prosecutorial Authority and Undermine the Democratic Process.**

The *Hubbard* majority's holding is anathema to Florida's structure of prosecutorial authority and raises serious concerns about democratic accountability. By enabling the Statewide Prosecutor—appointed by the Attorney General—to override the discretion of locally elected State Attorneys, the State undermines the autonomy of local government and dilutes the power of voters to shape criminal legal system policy in their communities.

Amicus Curiae supports Petitioner's position that the Florida Constitution and section 16.56 of the Florida Statutes impose strict jurisdictional limits on the Office of Statewide Prosecution. Under Article IV, section 4(b), the OSP may only prosecute offenses occurring in or affecting two or more judicial circuits. The lower court's decision undermines this structure by allowing jurisdiction based on downstream administrative processing or speculative

statewide interest, neither of which meets the constitutional threshold.

Florida's twenty State Attorneys are elected by voters in their respective jurisdictions. Fla. Stat. § 27.01. As elected officials, State Attorneys campaign on a platform about their policies and how they intend to run their respective offices. In voting for a candidate for State Attorney, voters necessarily express their agreement with their chosen candidate's policy preferences. Once elected to office, State Attorneys must implement their platforms. *Borzilleri v. Mosby*, 874 F.3d 187, 192 (4th Cir. 2017) ("Elections mean something. Majorities bestow mandates. Elected prosecutors translate those mandates into policies."). As elected officials "responsible for the local government function of implementing Florida's criminal justice system," *State v. Rogers*, 391 So. 3d 661, 664 (Fla. 1st DCA 2024), State Attorneys are accountable to their constituencies. It is for this reason that charging decisions should be made at the local level.

For both the political accountability and pragmatic reasons . . . local officials should retain primary control over crime in their jurisdiction . . . . No other level of government has the . . . electoral-driven need to respond to the pulse of the community . . . . Local voters

have an electoral recourse if they do not agree with a given approach.<sup>2</sup>

Conversely, the Statewide Prosecutor is housed within the Office of the Attorney General, who appoints the Statewide Prosecutor.<sup>3</sup> Fla. Const. art. IV, § 4(b). As such, the Statewide Prosecutor, rather than being accountable to voters, works at the direction of the Attorney General. “One thing clear from Florida’s structure is that the Statewide Prosecutor is not in a position principal to the elected state attorneys.” *State v. Rogers*, 391 So. 3d 661, 665 (Fla. 1st DCA 2024).

Though each prosecutorial authority has a unique and separate role to play, “[o]ne should not be sacrificed or usurped by the other. Each should operate within its own constitutional and statutory authority.” *Hubbard*, 392 So. 3d at 1076 (May, J., dissenting).

Preserving these distinct roles is critical to the state’s constitutional hierarchy. A decision upholding OSP’s authority here

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<sup>2</sup> Colin Taylor Ross, Note, *Policing Pontius Pilate: Police Violence, Local Prosecutors, and Legitimacy*, 53 HARV. J. ON LEGIS. 755, 777 (2016), [https://journals.law.harvard.edu/jol/wp-content/uploads/sites/86/2016/05/HLL206\\_crop.pdf](https://journals.law.harvard.edu/jol/wp-content/uploads/sites/86/2016/05/HLL206_crop.pdf).

<sup>3</sup> The Attorney General selects from a list of names provided by the judicial nominating commission for the supreme court. Fla. Const. art. IV, § 4(b). A judicial nominating commission is comprised of nine members, all appointed by the Governor. Fla. Stat. § 43.291(1).



would not merely broaden its reach, it would undermine the independence of local prosecutors. To be sure, this is not simply a matter of conflicting policy preferences. Because Mr. Hubbard’s alleged conduct occurred entirely in Broward County, bringing in the Statewide Prosecutor here is not just political overreach—it is jurisdictional overreach, too.

The Florida Constitution provides that a State Attorney has complete discretion in deciding whether and how to prosecute. Fla. Const. art II, § 3. Prosecutorial discretion is so intrinsic to the legal system that both the Florida Rules of Professional Conduct and the American Bar Association provide for the special responsibilities of a prosecutor in exercising this discretion.

The commentary to Rule 4-3.8 of the Florida Rules of Professional conduct requires a prosecutor to act as “a minister of justice,” and acknowledges that systematic abuse of prosecutorial discretion would be a violation of the Rules of Professional Conduct.

Likewise, Standards 3-1.2 of The American Bar Association Standards for the Prosecution Function (“ABA Standards”) specifies that the duty of the prosecutor is to “seek justice within the bounds of the law, not merely to convict.” This is because:

[P]rosecutor[s] serve the public interest and should act with integrity and balanced judgment to increase public safety both by pursuing appropriate criminal charges of appropriate severity, and by exercising discretion to not pursue criminal charges in appropriate circumstances. The prosecutor should seek to protect the innocent and convict the guilty, consider the interests of victims and witnesses, and respect the constitutional and legal rights of all persons, including suspects and defendants.

Even courts are prohibited from interfering with a prosecutor's exercise of discretion, so long as impermissible motives do not contribute to a prosecution. *See State v. Bloom*, 497 So. 2d 2, 3 (Fla. 1986) (holding that the Florida Constitution "prohibits the judiciary from interfering with this kind of discretionary executive function of a prosecutor.").

Despite this, the OSP's expansion into election-related crimes appears driven, at least in part, by the Governor's dissatisfaction with the lack of local prosecutions. Indeed, at the press conference touting the arrest of twenty individuals—including Mr. Hubbard—the Governor said he had the idea to create the Office of Election Crimes and Security because "people weren't getting prosecuted."<sup>4</sup> He said that the State would not "just turn a blind eye" to the alleged election-

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<sup>4</sup> Press Conference, *supra* note 1 at 24:40.

law related crimes and that “the days of that happening in Florida are over.”<sup>5</sup> He went so far as to acknowledge that local prosecutors may be exercising their discretion in declining to prosecute these alleged offenses. “I do think there’s probably some prosecutors that have been loath to take these cases.”<sup>6</sup>

These statements reflect a deliberate strategy to bypass local prosecutors, regardless of their priorities or resource limitations. To enable centralization of these prosecutions, the Governor asserted that he could deputize the Attorney General since elections are of interest to the people of Florida:

Well, now we have the ability with the Attorney General and the Statewide Prosecutor to bring those on behalf of the State of Florida, because you have a vote here, for some of these elections, that affects people in other counties depending on the election and the race, and so it’s really a major interest for the State as a whole that we do it, and we do it right.<sup>7</sup>

DeSantis’ remarks set the stage for what could come should this Court uphold OSP’s jurisdiction—the State, through whatever party

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<sup>5</sup> *Id.* at 19:41 (cleaned up).

<sup>6</sup> *Id.* at 19:56 (cleaned up).

<sup>7</sup> *Id.* at 20:00 (cleaned up).

is in power, could marshal the OSP whenever a crime is “a major interest to the state.”

Despite the disagreement with local prosecutors’ charging decisions, the autonomy of prosecutors to make them is “fully consistent with their accountability to the voters on a local basis,” as well as “local preferences with respect to prosecutorial philosophy and priorities, and allocation of available prosecutorial resources.” *In re AJ Contracting Co., Inc.*, 300 B.R. 182, 199 (Bankr. S.D.N.Y. 2003). *See also Warren v. DeSantis*, 90 F.4th 1115, 1135–36 (11th Cir. 2024), opinion vacated and superseded, 125 F.4th 1361 (11th Cir. 2025) (“If alignment with DeSantis’s political preferences were an appropriate requirement to perform the state attorney’s duties, there would be little point in local elections open to candidates across the political spectrum.”).

Even though prosecutors are permitted to use discretion in their charging decisions, usurping their authority through the OSP is not the only way in which DeSantis has attempted to undermine local control. He also has used his office to remove prosecutors with whose charging decisions he disagrees. “[I]f laws are being ignored or people are breaching duties, then under the Florida Constitution the check

is put in the Governor and the Florida Senate, and so that's what we did with [] State Attorney [Andrew Warren] on the other side of the State and . . . we'll continue to do that.”<sup>8</sup>

Even though a federal court eventually ruled that DeSantis's suspension of Mr. Warren was politically motivated, based on reasons like his “affiliation with and receipt of campaign funding from the Democratic Party and, indirectly, from Mr. Soros,”<sup>9</sup> DeSantis was not deterred from following through on his promise to continue to remove prosecutors he deemed to be “ignoring” the law.

Approximately one year after he suspended Andrew Warren, he suspended State Attorney Monique Worrell.<sup>10</sup> In his Executive Order, Governor DeSantis stated that “during Ms. Worrell's tenure in office, the administration of criminal justice in the Ninth Circuit has been so clearly and fundamentally derelict as to constitute both neglect of duty and incompetence.”<sup>11</sup> The Executive Order listed six specific

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<sup>8</sup> Press Conference, *supra* note 1 at 23:43.

<sup>9</sup> *Warren v. DeSantis*, 653 F. Supp. 3d 1118, 1140 (N.D. Fla. 2023), vacated and remanded, 90 F.4th 1115 (11th Cir. 2024), opinion vacated and superseded, 125 F.4th 1361 (11th Cir. 2025).

<sup>10</sup> Fla. Exec. Order No. 23-160 (Aug. 9, 2023), [www.flgov.com/eog/sites/default/files/executive-orders/2024/EO-23-160.pdf](http://www.flgov.com/eog/sites/default/files/executive-orders/2024/EO-23-160.pdf).

<sup>11</sup> *Id.*

practices or policies finding her derelict—all of which were consistent with her campaign platform—including the use of her discretion in charging decisions.<sup>12</sup>

This expansion of OSP authority is another attempt to centralize power with the state and undermine local control. In doing so, it dilutes voters' ability to hold their locally elected prosecutors accountable for enforcement decisions that reflect their values and priorities. For these reasons, this Court should reaffirm the constitutional and statutory limits on the OSP's authority and hold that jurisdiction does not lie in this case.

### **B. The Expansion of OSP Jurisdiction Threatens Statewide Overreach and Selective Prosecution**

The potential for selective enforcement compounds the legal risks of OSP's overreach. Selective prosecution occurs not when charges are legally unfounded, but when similarly situated individuals are not prosecuted, and the decision to prosecute is motivated by improper discriminatory purpose. This doctrine underscores the concern that expanding OSP's reach may not merely

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<sup>12</sup> *Id.*

centralize power—it may do so in ways that disfavor particular communities or political groups.

The Florida Constitution expressly limits OSP’s jurisdiction. See Fla. Const. art. IV, § 4(b). These limits exist “to ensure: (i) future legislatures could not easily expand the OSP’s authority to replace state attorneys; and (ii) the OSP’s efforts remain focused on the statewide criminal issues the office was created to address.”<sup>13</sup>

Despite that, the office has “expanded precipitously,” nearly doubling in size since 2022.<sup>14</sup> With this additional staff, the OSP has been able to take on “new areas of responsibility like gaming, elections, organized retail theft and cybercrimes.”<sup>15</sup>

An endorsement of OSP’s continued expansion increases the likelihood of selective or politically motivated prosecution. A claim of selective prosecution does not deal with the merits of the charges themselves; instead, it asserts “that the prosecutor has brought the

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<sup>13</sup> Brief of Amici Curiae Former Members of the Commission on the Statewide Prosecution Function, *State v. Hubbard*, 392 So. 3d 1067 (Fla. 4th DCA 2024), at 5-6.

<sup>14</sup> Fla. Office of Statewide Prosecution, 2024 Annual Report 4 (2024), <https://www.myfloridalegal.com/sites/default/files/2024-osp-annual-report-final.pdf>.

<sup>15</sup> *Id.*

charge for reasons forbidden by the constitution.” *United States v. Armstrong*, 517 U.S. 456, 463 (1996). An improper reason includes a decision to prosecute based on race, religion, or other arbitrary classification. *Id.* at 464.

To prove selective prosecution, a moving party must show that “similarly situated individuals were not prosecuted,” and “that the difference in treatment, or selectivity of the prosecution, was motivated by a discriminatory purpose.” *United States v. Smith*, 231 F.3d 800, 809 (11th Cir. 2000) (citing *Armstrong*, 517 U.S. at 465); see also *Bell v. State*, 369 So. 2d 932, 934 (Fla. 1979). A person is similarly situated if he “committed the same basic crime in substantially the same manners as the defendant,” and against whom the evidence “was as strong or stronger than that against the defendant.” *Id.* at 810. Discriminatory purpose requires a showing that decisionmaker “selected or reaffirmed a particular course of action at least in part ‘because of,’ not merely ‘in spite of,’ its adverse effects upon an identifiable group.” *United States v. Jordan*, 635 F.3d 1181, 1188 (11th Cir. 2011) (quoting *Wayte v. United States*, 470 U.S. 598, 610 (1985)).



Initial arrests by the Office of Election Crimes and Security occurred in Florida’s five “largest voting strongholds”—each of which has significantly higher Democratic voter registration than Republican.<sup>16</sup> More troubling still, at least one voter advocacy group has alleged that the Election Crimes and Security office “too frequently focused its firepower at minority voters,” and that a “pattern” of racially disparate enforcement has emerged.<sup>17</sup>

Of those initial arrests, most were of Black individuals who had received voter identification cards. Most of their cases were eventually dismissed or resulted in plea deals with no jail time.<sup>18</sup>

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<sup>16</sup> Isaac Morgan, *Gov. DeSantis’ election security team probed FL voters for fraud in heavily Democratic counties*, FLA. PHOENIX, Aug. 22, 2022, <https://floridaphoenix.com/2022/08/22/gov-desantis-election-security-team-probed-fl-voters-for-fraud-in-heavily-democratic-counties/>.

<sup>17</sup> John Kennedy, *Florida election crimes office dealt with 1,300 complaints, continues to stir controversy*, TALLAHASSEE DEMOCRAT, Jan. 17, 2024, <https://www.tallahassee.com/story/news/politics/2024/01/17/first-annual-report-shows-florida-election-crimes-office-1300-complaints-draws-controversy/72255279007/>.

<sup>18</sup> *Id.*

Aside from selective prosecution, the broad interpretation<sup>19</sup> of the term “affecting” within Fla. Stat. § 16.56 invites unchecked jurisdictional creep. When local prosecutors decline to pursue politically sensitive cases, the Legislature cannot simply rewrite the rules to force a different outcome. Accepting the Fourth DCA’s interpretation of “affecting” and “occurring” in risks opening the door to OSP prosecution of nearly any offense, as outlined in Petitioner’s Merits Brief. See Petitioner’s Merits Br. at 21, 25-26; *see also Hubbard*, 392 So. 3d at 1075 (May, J. dissenting) (“[A]ny act committed in a single judicial circuit that involves licensing in the Second Judicial Circuit would necessarily fall within the grasp of the OSP’s overreaching arm . . . . [T]he OSP [should not] be able to cherry-pick when it can prosecute a single-circuit crime.”).

As Judge Scales explained in dissent, “had the legislature intended so broadly to authorize OSP’s involvement when alleged

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<sup>19</sup> Importantly, the language of the statute itself is not ambiguous. Per the statute, OSP has authority only where an offense occurs in two more judicial circuits “or when any such offense is connected with an organized criminal conspiracy affecting two or more judicial circuits.” Fla. Stat. § 16.56.

charges implicated, related to, triggered actions in, or affected other jurisdictions, it certainly could have employed such broad language in the statute. It did not.” *State v. Miller*, 394 So. 3d 164, 173 (Fla. 3d DCA 2024), reh’g denied (Aug. 21, 2024) (Scales, J., dissenting).

Adopting the Fourth DCA’s interpretation would disregard these statutory limits and risk granting the OSP virtually boundless authority to prosecute local crimes across the State.

The Statewide Prosecutor was not designed to override local decisions. If this expansion goes unchallenged, the OSP will shift from a tool for handling organized, statewide crime to a weapon for political control.

### **Conclusion**

Upholding the Fourth DCA’s interpretation would erode the Florida Constitution’s limits on OSP’s authority. This Court should reaffirm that multi-circuit jurisdiction must be based on the conduct charged—not on incidental agency involvement or tenuous statewide effects. For the foregoing reasons, Amicus Curiae respectfully requests this Court hold that the Office of the Statewide Prosecutor lacks jurisdiction in this case, reverse the decision of the Fourth

District Court of Appeal, and reinstate the trial court's order dismissing the indictment against Mr. Hubbard.

Respectfully submitted,

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### **Certificate of Service**

I DO HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail to the following, this 30th day of May, 2025:

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### **Certificate of Compliance**

I certify that this brief is in conformity with all font and word count provisions pursuant to Rule 9.045, Fla. R. App. P. and complies with Rule 9.100, Fla. R. App. P.

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