IN THE

Supreme Court of Florida

Case No.: SC2024-1522
L.T. No.: 4D2022-3429;
062022CF008077A88810

TERRY HUBBARD,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

BRIEF OF *AMICI CURIAE*
STATE CONSTITUTIONAL LAW SCHOLARS
G. ALAN TARR AND ROBERT F. WILLIAMS
IN SUPPORT OF PETITIONER TERRY HUBBARD

Frederick S. Wermuth
Florida Bar No. 0184111
Quinn B. Ritter
Florida Bar No. 1018135
KING, BLACKWELL,
ZEHNDER & WERMUTH, P.A.
25 E. Pine Street
Orlando, Florida 32801
(407) 422-2472
fwermuth@kbzwlaw.com
qritter@kbzwlaw.com

James C. Dugan*
WILLKIE FARR &
GALLAGHER LLP
787 Seventh Avenue
New York, NY 10019-6099
(212) 728-8654
jdugan@willkie.com
**Admitted pro hac vice*

Counsel for Amici Curiae G. Alan Tarr and Robert F. Williams

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STATEMENT OF INTEREST OF *AMICI CURIAE*

Amici are Professors G. Alan Tarr and Robert F. Williams, both state constitutional law scholars. As experts in state constitutional law, *amici* have a significant interest in ensuring Florida's Constitution is interpreted consistent with its text, history, and purpose. Florida's Constitution constrains the authority of the Office of Statewide Prosecution ("OSP"). And *Amici* aim to provide informed perspectives on how relevant constitutional provisions limit OSP's authority—limitations with important implications for the balance of power in state government. *Amici* will also provide guidance on the original meaning and purpose behind the constitutional provisions delineating the distinct roles of locally-elected State Attorneys and OSP. Because the questions before the Court affect the fundamental structure of prosecutorial power in Florida, this case's outcome will have wide-ranging consequences. *Amici* thus have a substantial interest in ensuring that the outcome is faithful to Florida's constitution.

PRELIMINARY STATEMENT

Florida's Constitution establishes the locally-elected State Attorney as the supreme prosecuting authority for single-circuit

crimes in each judicial circuit, reflecting generations of democratic experimentation consolidating prosecutorial power under direct local control—ensuring that Florida's prosecutors are directly accountable to the communities they serve, not Tallahassee.

Far from the broad prerogative it grants State Attorneys, Florida's Constitution carefully circumscribes the Attorney General-appointed Statewide Prosecutor's role to multijurisdictional offenses like organized crime. Indeed, the 1986 amendment's drafters denied the Legislature plenary authority over OSP's jurisdiction to prevent overreach and preserve State Attorneys' primacy over single-circuit crimes. Thus, the amendment creating OSP explicitly limited OSP's jurisdiction to offenses involving two or more circuits. And more, public debate around the 1986 amendment strongly indicates that voters understood that OSP's role was limited to organized criminal activity that State Attorneys could not effectively prosecute. Thus, the Legislature cannot expand OSP's jurisdiction to include single-circuit crimes.

Petitioner Terry Hubbard's alleged acts are those of an individual, not a criminal enterprise. His alleged fraud occurred wholly within and affected only one circuit. Respondent's attempt to

use OSP to prosecute him expands OSP's power far beyond its constitutionally-defined limits. Respondent's actions are ultra vires. They also undermine the State Attorneys' exclusive authority to prosecute single-circuit crimes.

Amici respectfully request that this Court quash the Fourth District Court of Appeal's opinion and approve the circuit court's dismissal order.[1]

ARGUMENT

I. The Narrow Powers Granted To OSP Cannot Impinge On The State Attorney's Supremacy As The Prosecuting Officer For Single-Circuit Crimes Under The Florida Constitution.

A. The State Attorney is *the* prosecuting officer for single-circuit crimes.

The State Attorney is no mere creature of statute. The role stands supreme by constitutional design as "*the* prosecuting officer of all trial courts" in their respective circuits.[2] This provision, adopted through a 1972 amendment rewriting the Constitution's judicial

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[1] This Court stayed, pending this appeal's disposition, petitions to invoke its discretionary jurisdiction to review *State v. Wood*, 400 So. 3d 661 (Fla. 3d DCA 2024) and *State v. Washington*, 403 So. 3d 465 (Fla. 6th DCA 2025). For the reasons below, this Court should disapprove the decision in *Wood* and approve the decision in *Washington*.

[2] Art. V, § 17, Fla. Const. (emphasis added).

branch article, exemplifies the arc of the State Attorney's powers.[3] And "[w]hen a constitutional amendment sets out to change the allocation of power between the political departments of government, it is necessary to understand the political background that motivated the amendment."[4]

Like many other nineteenth-century state prosecutors, Florida's local prosecutors were initially appointed by the Governor. Under the 1868 Constitution, State Attorneys held office for four years following their commission. And while the 1885 Constitution established the State Attorney as the default prosecutor, it also allowed the Legislature to create auxiliary prosecutors.[5] For example, Florida's Constitution allowed for a popularly elected "Prosecuting Attorney"—a position the Legislature could "abolish[] at" its "pleasure."[6] The Prosecuting Attorney was a local prosecutor and prosecuted all

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[3] Talbot D'Alemberte, *The Florida State Constitution* 190 (2016).
[4] *Lipscomb v. State*, 753 P.2d 939, 943 (Or. 1988); *see also Brinkmann v. Francois*, 184 So. 3d 504, 510 (Fla. 2016) (explaining "the Court may examine the purpose of the provision, the evil sought to be remedied, and the circumstances leading to its inclusion in our constitutional document" (quotations and citations omitted)).
[5] Art. V, § 15, Fla. Const. (1885); Art. V, § 6(f), Fla. Const. (1885, amended 1956).
[6] *Id.*

misdemeanors arising within the respective county, while the State Attorney retained jurisdiction over all other crimes.[7] The Constitution also established a "County Solicitor," appointed by the Governor, in any county where the Legislature created a Criminal Court of Record to prosecute all felonies and misdemeanors, other than capital crimes.[8]

None of these prosecutors had constitutional duties—their roles were "prescribed by law."[9] With this latitude, the Legislature repeatedly expanded state control over Florida's prosecutors. In 1905, the Legislature allowed the Governor to reassign State Attorneys among circuits.[10] This Court upheld that 1905 law in *Stone v. State*, noting that State Attorneys' duties were "statutory; and while under the constitution there must be 'a State Attorney in each Judicial Circuit,' the constitution does not expressly or impliedly require the duties 'prescribed by law' for such officer to be confined to the Judicial Circuit in which he is appointed."[11]

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[7] *Id.*
[8] Art. V, §§ 24–27, Fla. Const. (1885); Art. V, § 8, Fla. Const. (1885, amended 1956); *see also* Ch. 3731, Laws of Fla. (1887).
[9] Art. V, §§ 15, 18, 31, Fla. Const. (1885).
[10] Ch. 5399, § 2, Laws of Fla. (1905).
[11] 71 So. 634, 635 (Fla. 1916).

In 1921, the Legislature allowed the Governor to direct State Attorneys to "assist" local prosecutors in other circuits.[12] And a 1927 law created "Special Assistants to the Attorney General" who could initiate civil and criminal prosecutions in any circuit if the Governor or the Attorney General so directed.[13]

But everything changed in 1972: voters amended their constitution, consolidating prosecutorial power in elected State Attorneys.[14] The amendment abolished Prosecuting Attorneys and County Solicitors, giving exclusive prosecutorial authority (except for violations of municipal ordinances) to State Attorneys.[15] The amendment also expressly established State Attorneys as "*the* prosecuting officer of all trial courts" in their circuit.[16]

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[12] Ch. 8571, § 1, Laws of Fla. (1921).
[13] Ch. 11828, § 1, Laws of Fla. (1927).
[14] Art. V, § 17, Fla. Const. (amended 1972).
[15] The Attorney General recently reaffirmed this principle: "Under Florida's Constitution, it is the locally elected state attorney—not the Attorney General—who is 'the prosecuting officer of all trials courts in [each judicial] circuit.'" Att'y Gen.'s Mot. to Dismiss & Incorporated Mem. of Law, *Dream Defs. v. DeSantis*, No. 4:21-cv-191 (N.D. Fla. June 14, 2021), ECF No. 38 at 6 (quoting Art. V, § 17, Fla. Const.); *see also Dream Defs. v. DeSantis*, 553 F. Supp. 3d 1052, 1083 (N.D. Fla. 2021).
[16] Art. V, § 17, Fla. Const. (amended 1972) (emphasis added).

Importantly, the 1972 amendment granted State Attorneys—the only locally elected Florida prosecutors—*constitutional* authority. While having local prosecutors directly accountable to voters is unremarkable in the United States—nearly every state has elected local prosecutors—it is a uniquely American concept.[17] This hallmark was born out of experiment, as no state at its founding had elected local prosecutors.[18]

Beginning in the 1800s, a time defined by persistent national concern around political corruption and patronage, nearly every state replaced its appointment model with elections.[19] By constitutional amendment, Florida established popularly elected State Attorneys in 1944.[20] The shift to elected prosecutors embodied the ideal that officials should be accountable to voters and more reactive to

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[17] *See* Michael J. Ellis, Note, *The Origins of the Elected Prosecutor*, 121 Yale L.J. 1528, 1530 (2012) ("The United States is the only country in the world where citizens elect prosecutors.").
[18] Zachary S. Price, *Faithful Execution in the Fifty States*, 57 Ga. L. Rev. 651, 687 (2023).
[19] *Id.* at 687-88.
[20] Fla. HJR 322 (1943) (amending Art. V, § 47, Fla. Const.).

individual communities' priorities than those of politicians in state capitals.[21]

The historical development of the State Attorney's role also reflects voters' choice to create a streamlined prosecutorial structure for single-circuit crimes. The 1972 amendment removed the auxiliary entities that created uncertainty around which officer was responsible for prosecuting crimes in a circuit by imbuing that power in the locally-elected State Attorney.

B. The Florida Constitution limits OSP's authority.

When interpreting Florida's Constitution, courts "adhere to the 'supremacy-of-text principle': 'The words of a governing text are of paramount concern, and what they convey, in their context, is what the text means.'"[22] What the text means is what "voters would have understood" it to mean.[23] So "[i]n construing the meaning of a constitutional provision," this Court "ask[s] how the public would

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[21] Ellis, *supra*, at 1550–51("[R]eformers believed that elected prosecutors would also be more likely to reflect the priorities of local communities, rather than officials in the state capital.").
[22] *Advis. Op. to Gov. re: Implementation of Amend. 4, the Voting Restoration Amend.* (*Amendment 4*), 288 So. 3d 1070, 1078 (Fla. 2020) (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 56 (2012)).
[23] *Id.* at 1084.

have understood the meaning of the text in its full context when the voters ratified it."[24] "To answer this question of public meaning," this Court "consider[s] the text, contextual clues, dictionaries, canons of construction, and historical sources, including evidence related to public discussion."[25]

Starting with the text, the 1986 amendment speaks clearly and unambiguously: OSP has concurrent jurisdiction only when crimes occur in or affect two or more circuits.[26]

> The statewide prosecutor shall have 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.[27]

This reading of OSP's constitutional authority comports with "the historical background of the phrases contained within the

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[24] *Planned Parenthood of Sw. and Cent. Fla. v. State*, 384 So. 3d 67, 77 (Fla. 2024).
[25] *Id.* (citations omitted).
[26] Recently in *State v. Washington*, the Sixth District Court of Appeals, assessing facts nearly identical to those here, affirmed the dismissal of illegal voting charges and held that the OSP lacked jurisdiction to prosecute such crimes because all the alleged acts occurred in a single circuit. 403 So. 3d at 470–76.
[27] Art. IV, § 4(b), Fla. Const. (emphasis added).

operative text."[28] As Respondent acknowledges, "an animating purpose of [OSP] was to 'combat organized crime,'" and this purpose is "undoubtedly relevant to legal interpretation[.]"[29] The Legislature deliberately wrote the amendment creating OSP to limit OSP's encroachment on the State Attorneys' authority over single-circuit crimes, while also addressing a narrow concern: multijurisdictional crime that State Attorneys could not effectively prosecute.[30] Because each State Attorney serves their own circuit, efforts were taken in the 1970s to ensure efficiency and coordination across Florida's 20 judicial circuits to address "organized crime that transcends county borders."[31]

The path to OSP began in 1973, when the Legislature authorized the Governor to convene a statewide grand jury to "inquire into specified crimes or wrongs of a multi-county nature."[32] The statewide grand jury, however, proved inadequate because the local

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[28] *Planned Parenthood*, 384 So. 3d at 79 (citation omitted).
[29] Appellant State of Florida's Reply Brief at 17, *State v. Hubbard*, No. 4D22-3429 (Fla. 4th DCA Jan. 19, 2024) (citation omitted).
[30] *See generally* R. Scott Palmer & Barbara M. Linthicum, *The Statewide Prosecutor: A New Weapon Against Organized Crime*, 13 Fla. St. U. L. Rev. 653 (1985).
[31] *Id.* at 654.
[32] Ch. 73-132, Laws of Fla.

State Attorney had to prosecute any indictment it returned.[33] So in 1977, at the Florida Prosecuting Attorneys Association's ("FPAA") recommendation, Governor Reubin Askew established the Governor's Council for the Prosecution of Organized Crime ("Governor's Council").[34] Made up of five Governor-appointed State Attorneys, the Governor's Council liaised between State Attorneys, the Department of Law Enforcement, and regulatory agencies.[35] The Governor's Council also reallocated prosecutorial resources between circuits.[36]

Soon after, the Legislature created the Office of Prosecution Coordination and the Council for the Prosecution of Organized Crime ("Council").[37] Like the Governor's Council, the Council was made up of five Governor-appointed State Attorneys—with one acting as the legal advisor and directing the statewide grand jury's operation.[38] The Council's legal advisor, rather than the circuit's State Attorney, also prosecuted indictments returned by the statewide grand jury.[39]

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[33] Palmer & Linthicum, *supra*, at 654-55.
[34] Fla. Exec. Order No. 77-24 (Mar. 8, 1977).
[35] Palmer & Linthicum, *supra*, at 658.
[36] *Id.*
[37] Ch. 77-403, Laws of Fla.
[38] *Id.* § 2.
[39] *Id.* § 4.

None of these entities proved capable of effectively prosecuting organized crime, leading Governor Bob Graham to establish the Governor's Commission on the Statewide Prosecution Function (the "Commission") in 1984.[40] The Commission, tasked with creating a statewide agency to combat "the threat that organized criminal activity poses to the quality of life of the citizens of Florida,"[41] recommended that Florida amend its constitution and enact enabling legislation establishing a statewide prosecutor who could combat "the significant problem of organized crime with which the citizens of this state are today faced."[42]

To minimize conflict between OSP and State Attorneys, the Commission recommended OSP's jurisdiction be statutorily limited to (1) crimes listed in the enabling legislation, and (2) crimes that occurred, or were occurring, in two or more circuits as part of a related transaction.[43] Critically, the Commission also considered, but rejected, authorizing OSP to prosecute single-circuit public

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[40] Palmer & Linthicum, *supra*, at 654-64; *see* Fla. Exec. Order No. 84-150 (Aug. 8, 1984).
[41] *Id.*
[42] Letter from Comm'n on the Statewide Prosecution Function to Bob Graham, Gov. of Fla., at 6 (Feb. 8, 1985).
[43] *Id.* at 5.

corruption cases because some members believed it "was politically unpopular and would detract from the statewide prosecutor's ability to prosecute large criminal organizations."[44]

During debate on the Commission-recommended constitutional amendment, legislators deliberately drafted the proposed amendment both to restrict OSP's jurisdiction to only multi-circuit crimes and to prevent future expansion of OSP's authority via statute. The Commission's original proposal left OSP's jurisdictional limitation to the Legislature.[45] But the FPAA persuaded the Legislature to move the limitation into the proposed amendment's text to "make it more difficult to change this jurisdictional limitation, since any change would require a constitutional amendment."[46] The Legislature also declined to authorize OSP to prosecute single-circuit public corruption cases.[47] The Legislature adopted the proposed constitutional amendment and enabling legislation on the 1985

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[44] Palmer & Linthicum, *supra*, at 666-68, 671.
[45] *Id.* at 670-71. The House companion legislation was House Bill 387 and House Joint Resolution 386. *Id.* at 670.
[46] Palmer & Linthicum, *supra*, at 678-79.
[47] *Id.* at 678.

Regular Session's last day.[48] In 1986, voters approved the constitutional amendment with approximately 73% in favor.[49]

These changes produced an officer with limited, specifically delineated authority. Unlike State Attorneys' broad power to "be the prosecuting officer of all trial courts in [their] circuit,"[50] OSP's duties are narrow and circumscribed: prosecuting multijurisdictional crimes that the State Attorneys cannot effectively prosecute.

This reading of OSP's constitutional authority also tracks the "public debate surrounding the amendment."[51] Governor Graham and major publications[52] at the time communicated to voters that OSP's focus would be "major criminals" and organized crime.[53] Plus,

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[48] *Id.* at 675.
[49] *See* Authority of Att'y Gen. to Appoint a Statewide Prosecutor, Div. of Elec., https://tinyurl.com/yc4yk2je (last visited June 2, 2025).
[50] Art. V, § 17, Fla. Const.
[51] *Planned Parenthood*, 384 So. 3d at 84.
[52] State courts routinely reference contemporaneous newspaper coverage of constitutional amendments in assessing the contemporaneous intent of voters. *See* Robert F. Williams & Lawrence Friedman, THE LAW OF AMERICAN STATE CONSTITUTIONS 357, 367 (2nd Ed. 2023) ("Newspaper reports are, of course, unofficial . . . . [but] they often provide the most authoritative coverage of . . . constitutional conventions and commissions.").
[53] Palmer & Linthicum, *supra*, at 668-69; *see also,* A3-15 (contemporaneous newspaper coverage discussing the then-proposed constitutional amendment and statewide prosecutor).

the ballot summary provided for "a statewide prosecutor having concurrent jurisdiction with the state attorneys to prosecute *multicircuit* violations of the criminal laws of the state."[54] Thus, voters who approved OSP's creation understood that OSP's jurisdiction was limited to complex, multi-circuit crimes that State Attorneys cannot effectively prosecute.[55]

As contemporaneous public sources explained, Florida needed OSP to address "[o]rganized crime" that was "running rampant" and that, "to appease the state attorneys," OSP's "authority [would] be limited to cases that are multijurisdictional."[56] More to the point, "[i]f the statewide prosecutor can't usurp the power of local state attorneys, much of the opposition to the concept may be avoided."[57]

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[54] Emphasis added. *See* A14-15 (ballot summary).

[55] Indeed, the 1986 OSP amendment does not call for expansive interpretation. The New Jersey Supreme Court noted the difference between constitutional "great ordinances" and those "of a different and less exalted quality." For the latter "a literal adherence to the words of the clause is the only way that the expressed will of the people can be assured fulfillment." *Vreeland v. Byrne*, 370 A.2d 825, 831-32 (N.J. 1977); *see also* James Gray Pope, *An Approach to State Constitutional Interpretation*, 24 RUTGERS L.J. 985, 1001–04 (1993) (making a similar distinction).

[56] A3–4, 6, 8, 10.

[57] *Id.* at 3.

In sum, the 1986 amendment's plain language, the historical context, and the contemporaneous evidence of voter understanding lead to one conclusion: only a constitutional amendment could authorize the prosecution Respondent proposes.

II. Respondent Flouts The Constitution By Using OSP's Statutory Authority To Pursue Purported Single-Circuit Voting Crimes.

A. OSP's enabling statute must be narrowly applied because of limits imposed by the 1986 amendment.

The Constitution's plain text limits OSP's jurisdiction to "violations of criminal laws" that occur in "two or more judicial circuits as part of a related transaction," or that affect "two or more judicial circuits as provided by general law."[58] In 1985, the Legislature passed OSP's first enabling statute, § 16.56, Fla. Stat.[59] From the start, § 16.56 limited OSP's jurisdiction to specific crimes—primarily fraud, theft, drug, and homicide crimes, along with violations of the Florida RICO Act—and even then, "only when such offense" occurs "in two or more judicial circuits as part of a related transaction, or when any such offense is connected with an organized

[58] Art. IV, § 4(b), Fla. Const.
[59] Ch. 85-179, § 1, Laws of Fla.

criminal conspiracy affecting two or more judicial circuits."[60]

Since the 1985 enabling act, the Legislature has expanded the crimes falling under OSP's jurisdiction. The version of the enabling act OSP used to charge Mr. Hubbard granted OSP authority to prosecute "[a]ny crime involving voter registration [or] voting" when it had "occurred[] in two or more judicial circuits as part of a related transaction," or when it was "connected with an organized criminal conspiracy affecting two or more judicial circuits."[61] In 2023, after the circuit court dismissed Mr. Hubbard's case, the Legislature amended § 16.56, empowering OSP to prosecute voter-registration and voting-related crimes when any such offense has "affected[] two or more judicial circuits"—without requiring that the offense be part of an "organized criminal conspiracy"—or "occurred[] in two or more judicial circuits as part of a related transaction."[62]

The dispute before the circuit court centered on the scope of OSP's statutory authority when it charged Mr. Hubbard. But the

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[60] *Id. Cf. District of Columbia v. Heller*, 554 U.S. 570, 603 (2008) (explaining the enactments immediately proceeding an amendment's adoption provides "strong evidence" of "how the founding generation conceived of" the amendment).
[61] § 16.56(1)(a)(13), Fla. Stat. (2021).
[62] Ch. 2023-2, § 1, Laws of Fla.; § 16.56(1)(c), Fla. Stat. (2023).

Court cannot answer this question without consulting the broader constitutional context—context demonstrating that this Court should construe § 16.56 *narrowly*, not expansively. As discussed, the Constitution expressly limits OSP's authority to multi-circuit crimes.[63] In turn, § 16.56 owes its existence to the constitutional amendment. Likewise, OSP's jurisdiction over multijurisdictional crimes is a limited exception to the State Attorney's constitutional status as "*the* prosecuting attorney of all trial courts."[64]

Had the Legislature wished to grant OSP far-reaching jurisdiction, it could have easily omitted the multi-circuit limitation from the 1986 amendment. The amendment's first draft did just that, instead placing the limitation in the enabling statute, permitting the Legislature to modify OSP's jurisdiction without amending the Constitution. But responding to State Attorneys' concerns, the Legislature placed the limitation directly into the amendment. Thus, OSP is precluded "from prosecuting single circuit . . . cases without a constitutional amendment, unless the case is connected with a

[63] Art. IV, § 4(b), Fla. Const.
[64] Art. V, § 17, Fla. Const. (emphasis added).

criminal conspiracy that affects two or more judicial circuits."[65]

Mr. Hubbard's alleged crimes were strictly that of an individual acting alone; he is not a member of any organized conspiracy.[66] And, his alleged crimes occurred exclusively in the Seventeenth Judicial Circuit.[67] He never physically entered, mailed, or transferred anything to the Second Judicial Circuit.[68] This dooms OSP's jurisdiction under § 16.56's previous version because Mr. Hubbard's alleged crimes do not meet the Constitution's requirement that the offenses occur in or affect two or more circuits.[69]

The same is true of the amended § 16.56. Post-dismissal,

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[65] Palmer & Linthicum, *supra*, at 678.
[66] R. at 42, 685–86, 1000–01.
[67] *Id.*
[68] *Id.*
[69] On the former prong—contrary to Respondent's position that election crimes inherently occur in two circuits—the Attorney General has previously and successfully argued that OSP has no enforcement authority over election crimes unless those crimes occurred in two circuits. *See* Florida Att'y Gen.'s Mot. to Dismiss & Incorporated Mem. of Law, *League of Women Voters of Fla. v. Lee*, 4:21-cv-186 (N.D. Fla. July 12, 2021), ECF No. 120 at 14 ("But it is Florida's twenty state attorneys who will be responsible for prosecuting any criminal violations of the challenged statutes . . . ."); *League of Women Voters of Fla., Inc. v. Lee*, 566 F. Supp. 3d 1238, 1254 (N.D. Fla. 2021) (finding no standing against Attorney General because plaintiffs had not alleged that they planned to engage in unlawful ballot collection and submission across multiple circuits).

Respondent seeks to inflate OSP's jurisdiction by arguing that voter fraud *affects* the entire State by undermining public confidence in elections. That argument would swallow the exception to the State Attorney's constitutional status as "*the* prosecuting officer" within their circuit.[70] If voter fraud affects the entire State, even if committed solely within one circuit—thus activating OSP's jurisdiction—then surely this logic applies to other crimes. A burglary occurring solely in one circuit, and not as part of any criminal conspiracy, could, on this theory, affect the entire State by undermining public confidence in law and order. So under Respondent's theory, the Legislature could amend § 16.56 to cover *any* crime occurring *anywhere* in Florida. That result reaches far beyond what voters in the 1986 election could have plausibly intended.

B. The State Attorney's powers cannot be limited or impinged by those of OSP.

As outlined, State Attorneys derive their power as *the*

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[70] Indeed, at least one court has rejected a similar argument. *See Winter v. State*, 781 So. 2d 1111, 1115–116 (Fla. 1st DCA 2001) (holding that fraud did not affect "two or more judicial circuits," simply because the alleged conspiracy "involved a fund to which employees in various judicial circuits may have contributed"), *as clarified* (Mar. 27, 2001), *and disapproved of on other grounds by Carbajal v. State*, 75 So. 3d 258 (Fla. 2011).

prosecuting officer in their circuit from the Constitution. And Florida's Constitution constrains the Legislature, which cannot act beyond the Constitution's limits.[71] The 1972 amendment's language explicitly notes that State Attorneys' power as "the prosecuting officer of all trial courts" within their circuits is limited only "as otherwise provided in this constitution."[72] The only applicable limitation in the Constitution appears in OSP's jurisdiction—which establishes "concurrent jurisdiction" only for multijurisdictional crimes.[73] So legislation cannot limit State Attorneys' exclusive authority over single-circuit crimes. "Because the office of [State Attorney] is a constitutional office, the legislature may enact laws prescribing or affecting the procedures for the preparation of indictments or presentations, *but it cannot enact laws which impede the . . . responsibilities of the office . . . without violating the state*

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[71] *Sun Ins. Office, Ltd. v. Clay*, 133 So. 2d 735, 742 (Fla. 1961) (quotation omitted) ("[T]he Florida Constitution is a limitation on power as distinguished from a grant of power, particularly with regard to legislative power.")(quotation omitted); *Moore v. Harper*, 600 U.S. 1, 27 (2023) ("Legislatures, the Framers recognized, are the mere creatures of the State Constitutions, and cannot be greater than their creators.") (quotation omitted).

[72] Art. V, § 17, Fla. Const.

[73] Art. IV, § 4(b), Fla. Const.

constitution."[74] OSP's enabling statute, therefore, cannot shift the power to prosecute single-circuit voting crimes to OSP because the Constitution places no such limitation on State Attorneys. Florida's Constitution is among the few that establish not only the local prosecutor's position, but also specifically confer the local prosecutor's express powers. So this Court must interpret the State Attorney's powers with the uniqueness of the position in mind—narrowly interpreting the Legislature's ability to infringe on those powers.

Still more, the *elected* State Attorney should not be constrained in their authority and replaced by the *unelected* Statewide Prosecutor. Voter fraud, a crime Respondent has not convincingly argued is multijurisdictional, should be left to State Attorneys whose authority, derived from the Constitution, cannot be usurped by the Legislature.

C. OSP's actions are ultra vires.

OSP did not exist at common law and cannot claim any inherent

[74] 63C Am. Jur. 2d Prosecuting Attorneys § 19 (emphasis added).

powers under the Constitution or the common law.[75] As such, OSP depends on the Constitution and Florida Statutes for its powers because, "[e]xcept as empowered by the constitution, executive officers may not act without legislative authority or beyond the limits established by the legislature."[76]

As discussed above, the Constitution circumscribes OSP's jurisdiction (1) by establishing non-exclusive jurisdiction in (2) multijurisdictional crimes.[77] The Legislature, in turn, may "provide[] by general law" how a criminal offense could "affect[] two or more judicial circuits."[78] But the Legislature's power is not plenary; it can only operate within OSP's limited constitutional authority.[79]

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[75] This Court has held that "[t]he Attorney General inherited many powers and duties from the King's Counsellor at Common Law," and thus has common-law powers, but that the Legislature can set the "outer perimeter" of this authority, *State ex rel. Shevin v. Yarborough*, 257 So. 2d 891, 893–94 (Fla. 1972). However, no such argument has been embraced by *any* state court with respect to a statewide prosecutor.

[76] 16 C.J.S. Constitutional Law § 447; *see also Fla. House of Reps. v. Crist*, 999 So. 2d 601, 615–16 (Fla. 2008); *Fla. Exp. Tobacco Co. v. Dep't of Revenue*, 510 So. 2d 936, 943 (Fla. 1st DCA 1987) (evaluating Comptroller's jurisdiction by examining the "constitutional and statutory provisions [that] gave the Comptroller power[s]").

[77] Art. IV, § 4(b), Fla. Const.

[78] *Id.*

[79] *Notami Hosp. of Fla., Inc. v. Bowen*, 927 So. 2d 139, 142 (Fla. 1st DCA 2006), *aff'd sub nom.*, *Fla. Hosp. Waterman, Inc. v. Buster*, 984

The 1986 amendment's drafters purposefully implemented these limitations. As noted, the amendment's original draft allowed the Legislature full authority to define OSP's jurisdiction.[80] But State Attorneys convinced the Legislature to include the multijurisdictional limitation in the amendment itself.[81] "[A]ccording to the state attorneys, the limitation in the constitution would make it more difficult for future legislatures to expand [OSP]'s authority."[82] The Legislature embraced this suggestion, and the amendment voters ratified in 1986 reflected it.

As such, the Legislature cannot expand OSP's jurisdiction beyond its constitutional ceiling. True, both OSP and State Attorneys are executive branch officials.[83] But by analogy, this Court is the final

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So. 2d 478 (Fla. 2008) ("State constitutions are limitations upon the power of state legislatures," and "[t]o the extent a statute conflicts with express or clearly implied mandates of the Constitution, the statute must fall.") (citations omitted).

[80] Palmer & Linthicum, *supra*, at 671.

[81] *Id.* at 671, 678–79.

[82] *Id.* at 671.

[83] *Ayala v. Scott*, 224 So. 3d 755, 759 n.2 (Fla. 2017), ("[T]he power to prosecute . . . is a purely executive function.") (citations omitted); *see also Fulk v. State*, 417 So. 2d 1121, 1126 n.2 (Fla. 5th DCA 1982) (Cowart, J., specially concurring) ("For some strange reason, the constitutional provision for state attorneys . . . is provided by section[] 17 . . . of article V [the judiciary article].").

arbiter of the Legislature's constitutional power to alter the jurisdiction of trial and appellate courts. And there, this Court has repeatedly held that "[w]hile constitutional jurisdiction cannot be restricted or taken away, it can be enlarged by the Legislature in all cases where such enlargement *does not result in a diminution of the constitutional jurisdiction of some other court, or where such enlargement is not forbidden by the Constitution.*"[84]

In this context, OSP's actions are ultra vires; its powers extend no further than multijurisdictional crimes that cannot be efficiently handled by a State Attorney.[85] And the Legislature cannot expand OSP's jurisdiction beyond its constitutional limits—doing so here would both diminish the "constitutional jurisdiction" of the State Attorney *and* be "forbidden by the Constitution."[86]

That means Mr. Hubbard's case falls outside OSP's clearly delineated jurisdiction. He committed his alleged crimes solely within one circuit. Respondent cannot transmogrify those intra-circuit offenses into a multijurisdictional offense solely because the State

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[84] *State v. Jefferson*, 758 So. 2d 661, 664 (Fla. 2000) (quoting *S. Atl. S.S. Co. v. Tutson*, 190 So. 675, 1982 (Fla. 1939)) (emphasis added).
[85] Art. IV, § 4(b), Fla. Const.
[86] *Cf. Jefferson*, 758 So. 2d at 664.

approved his registration and processed his ballot in another circuit, or because "voter fraud undermines public confidence in the integrity of statewide elections." In sum, there is no basis to conclude that Mr. Hubbard's alleged crimes triggered OSP's authority—and this prosecution is thus ultra vires.

CONCLUSION

For these reasons, this Court should quash the Fourth District Court of Appeal's opinion.

Respectfully submitted this 2nd day of June 2025,

/s/ James C. Dugan

James C. Dugan*
WILLKIE FARR & GALLAGHER LLP
787 Seventh Avenue
New York, NY 10019-6099
(212) 728-8654
jdugan@willkie.com
*Admitted pro hac vice

Frederick S. Wermuth
Florida Bar No. 0184111
Quinn B. Ritter
Florida Bar No. 1018135
KING, BLACKWELL, ZEHNDER & WERMUTH, P.A.
25 E. Pine Street
Orlando, Florida 32801
(407) 422-2472
fwermuth@kbzwlaw.com
qritter@kbzwlaw.com

Counsel for Amici Curiae G. Alan Tarr and Robert F. Williams

CERTIFICATE OF COMPLIANCE

Undersigned counsel certifies that this computer-generated brief uses 14-point proportionally spaced Bookman Old Style font and does not exceed 5,000 words in compliance with Rule 9.370(b), Fla. R. App. P.

/s/ Quinn B. Ritter
Quinn B. Ritter
Florida Bar No. 1018135

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 2, 2025, a true and correct copy of the foregoing was filed via the Florida Court's E-Filing Portal to the individuals listed in the Service List below.

/s/ Quinn B. Ritter
Quinn B. Ritter
Florida Bar No. 1018135

SERVICE LIST

Jeffrey Paul DeSousa
Alison E. Preston
Office of the Attorney General
The Capitol, PL-01
Tallahassee, Florida 32399
Jeffrey.desousa@myfloridalegal.com
alison.preston@myfloridalegal.com

Counsel for the State of Florida

Jeremy B. Scott
Chief Assistant Statewide Prosecutor
SunTrust International Center
One SE Third Ave., Ste. 900
Miami, FL 33131
(786) 792-6196
jeremy.scott@myfloridalegal.com

Co-Counsel for the State of Florida

Craig J. Trocino
1311 Miller Drive
Coral Gables, FL 33146
ctrocino@law.miami.edu

Michael Gottlieb
1311 SE 2nd Avenue
Fort Lauderdale, FL 33316
(305) 461-1005
mike@mgottlieblaw.com

Counsel for Petitioner