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IN THE DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT

No. 3D22-2180
L.T. No. F22-15012

STATE OF FLORIDA,
Appellant,

v.

RONALD LEE MILLER,
Appellee.

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

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On Appeal from a Final Order of the Circuit Court for the Eleventh Judicial Circuit in and for Miami-Dade County

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M. Patrick Yingling, *PHV* pending
REED SMITH LLP
10 S. Wacker Dr., 40th Fl.
Chicago, IL 60606
Tel: (312) 207-2834
mpyingling@reedsmith.com

Paul M. Goodrich, FBN1044663
REED SMITH LLP
200 S. Biscayne Blvd, Ste 2600
Miami, FL 33131
Tel: (786) 747-0249
pgoodrich@reedsmith.com

Counsel for Amici Curiae

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INTEREST OF *AMICI CURIAE*

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

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

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

2012. Senator Brandes now leads the Florida Policy Project, a non-profit, bipartisan think tank that focuses on, among other things, criminal justice issues.

SUMMARY OF ARGUMENT

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

But this case is not just about the unfairness of basing a prosecution on the State's governance failures—instead, this case is primarily about the law. The Florida Constitution as well as the relevant statute demarcates the Statewide Prosecutor's authority, and this prosecution falls well outside that authority. The purported crime did not entail the predicates for the Statewide Prosecutor to act because it did not occur “in two or more judicial circuits as part of a related transaction”; nor was it in any way “connected with an organized criminal conspiracy affecting two or more judicial circuits.” § 16.56(1)(a), Fla. Stat.

On appeal, the State relies on a 2023 statutory amendment—enacted after the trial court’s dismissal—that expanded the authority of the Statewide Prosecutor. The State’s argument for retroactive application of this amendment fails because it is settled Florida law that a statute “dealing in any way with a crime” can only operate prospectively, unless the Legislature expressly states otherwise. § 775.022, Fla. Stat. The State’s retroactivity argument also fails because the 2023 amendment became effective only *after* the trial court’s dismissal. Even where an amendment can be characterized as “procedural” in contrast to “substantive,” it cannot apply when the procedures affected by the amendment have already transpired.

In its brief, the State fails to adequately address the statute that actually applied to the 2022 prosecution, presumably because the State is aware that its arguments are fundamentally flawed under the relevant statutory framework. To confer prosecutorial authority to the Statewide Prosecutor under the statute that applied at the time of the prosecution, the alleged crime needed to have "occurred[] in two or more judicial circuits as part of a related transaction." § 16.56(1)(a), Fla. Stat. The State contends that this alleged crime met this criterion because the State Department was required (but failed) to review Mr. Miller's registration application in Tallahassee, which is in a different judicial circuit than Mr. Miller's voting place. This theory, however, is without any legal support. In each of the cases the State cites to advance this theory, the criminal activities themselves took place in multiple judicial circuits. Here, in contrast, the alleged criminal activities on the part of the defendant took place within a single judicial circuit.

Finally, the State's alternative theory that the "effects" of alleged voter fraud "reverberate across the whole state" would eviscerate the limits placed on the authority of the Statewide Prosecutor and allow that office to prosecute based on an assertion that a crime has undefined "effects" in other judicial circuits. Countless crimes affect people and businesses across the state, but the statute that defines the scope of the Statewide Prosecutor's authority does not allow that office to prosecute them.

The State's attempts to compensate for its failures through criminal prosecution are both inefficient and unjust. That those attempts also reflect a brazen attack on the rule of law makes them worse. This Court should deny the State's efforts to expand the Statewide Prosecutor's authority beyond its clear statutory bounds and affirm the trial court's holding that the Statewide Prosecutor "does not have jurisdiction to investigate and prosecute the Defendant as part of a related transaction in two or more judicial circuits." R. 52.

THE STATE'S RESPONSIBILITIES

For many years, Article VI, Section 4 of Florida's Constitution provided that "[n]o person convicted of a felony . . . shall be qualified to vote or hold office until restoration of civil rights or removal of disability." Between 2014 and 2018, more than 840,000 Floridians signed a petition expressing their support to amend to Article VI, Section 4 of the State's Constitution. *See* Florida Division of Elections, *Voting Restoration Amendment.*[2] The amendment, later known as

[2] https://dos.elections.myflorida.com/initiatives/initdetail.asp?account=64388&seqnum=1 (describing initiative process and progress of Amendment 4).

"Amendment 4," proposed the following amendments to Article VI, Section 4 of the Florida Constitution:

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

Constitutional Amendment Petition Form, Voting Restoration Amendment (changes in italics).[3] On November 6, 2018, Florida voters approved Amendment 4. *See* Alexander Klueber & Jeremy Grabiner, *Voting Rights Restoration in Florida: Amendment 4 – Analyzing Electoral Impact and its Barriers*, Harvard Kennedy School of Government, 4 (Apr. 2020).[4]

The State of Florida—through the State Department's Division of Elections and with assistance from other state agencies and the county Supervisors of Elections—is responsible for determining

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

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

whether registered voters with felony convictions are eligible to vote under Amendment 4. *See* § 98.075(5), Fla. Stat. (July 1, 2019); § 98.0751(3)(a), Fla. Stat.; Fla. Adm. Code §§ 1S-2.041(4)(c), 1S-2.039(11)(f)(3).[5] The State Department is charged with "protect[ing] the integrity of the electoral process by ensuring the maintenance of accurate and current voter registration records." § 98.075(1), Fla. Stat.

To be eligible to vote in Florida, a person must submit a registration form to their local county Supervisor of Elections. If the county Supervisor of Elections deems the form complete on its face, and the Division of Elections determines that the person is real, then the person is added to the voting roll and sent a voter identification card, subject to having their registration revoked for a disqualifying felony conviction. *See Jones v. DeSantis*, No. 4:19-cv-300-RH/MJF,

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

462 F. Supp. 3d 1196, 1212 (N.D. Fla. 2020) (citing documents filed in the case at ECF No. 148-16 at 5 and ECF No. 389-3 at 29).[6]

The State Department is then required to "identify those registered voters who have been convicted of a felony and whose voting rights have not been restored." § 98.075(5)(a), Fla. Stat. As part of this process, the State Department's Division of Elections reviews the registration for disqualifying felony convictions. *See Jones*, 462 F. Supp. 3d at 1212 (citing § 98.075(5), Fla. Stat.). The Florida Department of Law Enforcement, among other state agencies, is required to provide reports to the State Department to help it identify ineligible voters. § 98.093(2)(d), Fla. Stat. (2014); *see also id.* § 98.093(2)(e) (2014) (role of Florida Commission on Offender Review); *id.* § 98.093(2)(f) (2014) (role of Department of Corrections).

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

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

ARGUMENT

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

The State Department and Florida Department of Law Enforcement have failed in their duties to determine the eligibility of voters. Between Amendment 4's effective date on January 8, 2019, and May 2020, the State Department identified as many as 85,000 voter registrations for people with past convictions in need of screening. *Jones*, 462 F. Supp. 3d at 1212, 1228 (N.D. Fla. 2020) (citing documents filed in the case at ECF No. 408 at 146, 185-86); *see also* Lawrence Mower & Langston Taylor, *In Florida, the Gutting of a Landmark Law Leaves Few Felons Likely to Vote*, Propublica (Oct. 7, 2020)[7]; Dara Kam, *A Top Florida Elections Official Gets Grilled on Felon Voting*, Tampa Bay Times (May 4, 2020).[8] During that time, the State Department did not review a single voter registration application from any registrant with a prior felony offense. *Jones*, 462 F. Supp. 3d at 1228.

Florida's system for determining voter eligibility had become, according to one federal judge, an "administrative train wreck." *Jones*, 462 F. Supp. 3d at 1239.[9] As the Eleventh Circuit acknowledged in late 2020, "Florida has yet to complete its screening of any

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

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

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

of the registrations. Until it does, it will not have credible and reliable information supporting anyone's removal from the voter rolls, and all 85,000 felons will be entitled to vote." *Jones v. Governor of Fla.*, 975 F.3d 1016, 1026 (11th Cir. 2020); *see also* Mower and Taylor, *supra*, *In Florida, the Gutting of a Landmark Law Leaves Few Felons Likely to Vote*. The State Department was not the only agency that failed in its duties. The Florida Department of Law Enforcement's own investigative report shows that it stopped sending reports to the State Department about potential matches of voters and individuals in the offender registration database from 2019 to January 2022. *See* Florida Department of Law Enforcement, *Investigative Report.*[10]

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

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

2022).[11] Many of these individuals were issued voter registration cards and remained on the voter rolls for election day in 2020. *See* Mower, *supra*, *DeSantis' Voter Fraud Suspect Was Issued New Voter ID*; Katie LaGrone, *Former Felon Arrested for Voter Fraud Receives Sample Ballot Weeks Before General Election*, ABC News (Nov. 14, 2022).[12]

That's what happened to Mr. Miller. As acknowledged in the Joint Stipulation of Facts:

- Mr. Miller filled out a voter application form in Miami-Dade County.
- That application was eventually transmitted to the Office of the Secretary of State in Leon County.
- Thereafter, the Secretary of State notified the Miami-Dade Supervisor of Elections that it had verified Mr. Miller's voter application, and the Supervisor issued a voter ID card to Mr. Miller.

R. 32, Joint Stipulation ¶¶ 1-4.

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

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

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

- The State Department engaged in little outreach to inform and educate the public on the changes to the felon voting law. *See* Mower & Taylor, *supra*, *In Florida, the Gutting of a Landmark Law Leaves Few Felons Likely to Vote*.
- The State Department neglected to provide any reasonable means by which Floridians could reliably determine whether felony convictions prevent them from voting. Data on felony convictions is currently scattered across the state's 67 county clerk's offices, and much of that information is incomplete or outdated. *See* Mower & Taylor, *supra*, *In Florida, the Gutting of a Landmark Law Leaves Few Felons Likely to Vote*; LaGrone, *supra*, *Former Felon Arrested for Voter Fraud Receives Sample Ballot Weeks Before General Election.*[13]
- The State's voter registration website does not provide details on which convictions constitute disqualifying felonies. *See* John Bowden, *Florida Sued Over Confusing*

[13] As recently as April 2023, Secretary of State Byrd acknowledged to Florida legislators that he "would love to see a statewide database" collecting the data necessary for the state to fulfill its statutory duty to people with prior felony convictions. *See* Ashley Lopez, *Advocates in Florida Clamor for a Fix for the Formerly Incarcerated Who Want to Vote*, NPR (May 4, 2023), https://www.tpr.org/2023-05-04/advocates-in-florida-clamor-for-a-fix-for-the-formerly-incarcerated-who-want-to-vote .

Voter Rules That Disenfranchise People with Felony Convictions, Independent (Apr. 27, 2023).[14]

- The voter registration application does not provide that individuals with certain felonies may not register. *Id.*
- The State Department did not timely screen applications as required under the law. *Supra* pp. 9-10.
- The Law Enforcement Department did not send monthly reports to the State Department about potential matches of voters and individuals in the state offender database. *Supra* p. 11.

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

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

Register to Vote to a person with a prior felony conviction once the Bureau of Parole and Pardons has confirmed that person's voting eligibility—a document upon which the voter may rely. *Id.* § 15-22-36.1(b).

With this prosecution, the State is attempting to paper over its failures and shift blame to those who relied on the State's ability to perform its basic functions competently. This unfair blame-shifting approach to governance should not be condoned. Improperly weaponizing the criminal justice system is a poor substitute for proper governance.

II. The 2023 amendment—enacted after the dismissal here—cannot serve as a basis to reverse.

Not only does the State overreach by prosecuting an alleged crime that the State itself facilitated with its governance failures, but the State endeavors to do so through an impermissible retroactive application of a law enacted only after the trial court's dismissal. In fact, almost the entirety of the State's argument on appeal depends on convincing this Court that a law enacted *after* the trial court's dismissal is a proper ground to reverse. *See* State's Brief at 9-20 (relying on the 2023 amendment). The State acknowledges that the amendment did not become effective until February 15, 2023—which was "[d]uring the pendency of this appeal"—and that the amendment "does not specify whether it applies to pending cases." *Id.* at 2, 7, 12. The State argues for this retroactive application of the 2023 amendment because, in the State's words, the amendment "eliminated the conspiracy requirement as to voter-registration and voting-related crimes." *Id.* at 10.

For its retroactivity argument, the State relies on its assertion that the amendment involved a "procedural" change in contrast to a "substantive" change. But this argument fails at the starting gate. Florida law states, "[e]xcept as expressly provided in an act of the Legislature …, the reenactment or amendment of a criminal statute operates prospectively and does not affect or abate … [t]he prior operation of the statue or a prosecution of enforcement thereunder." § 775.022(3), Fla. Stat. This law—Section 775.022 (passed in 2019)—clarifies that "[a]s used in this section, the term 'criminal statute' means a statute, whether *substantive or procedural*, dealing *in any way* with a crime or its punishment, defining a crime or a defense to a crime, or providing for the punishment of a crime." *Id.* § 775.022(2) (emphasis added). The statute governing the Statewide Prosecutor's authority to prosecute crimes, § 16.56, Fla. Stat., plainly is a statute "dealing in any way with a crime" and is thus a "criminal statute" for purposes of determining whether amendments to that statute—whether substantive or procedural—operate prospectively or retroactively. Here, per the clear terms of Section 775.022, because the Legislature did not expressly provide that the amendment would operate retroactively, the amendment cannot operate retroactively.

Even apart from the categorical bar on retroactivity under Section 775.022, the State's retroactivity argument fails. The State relies heavily on its assertion that the 2023 amendment represents a "procedural" change to the law in contrast to a "substantive" change. But even if that were true, the amendment still cannot be applied here because the procedural event in question has already occurred.

The State relies on the Florida Supreme Court's decision in *Love v. State*, 286 So. 3d 177 (Fla. 2019), but that decision shows exactly why the State is wrong. In *Love*, the issue was whether an amendment that altered the burden of proof at pretrial immunity hearings applied to pending cases involving criminal conduct alleged to have occurred before the effective date of the statute. *Id.* at 179. To be clear: the amendment in *Love* became effective after the criminal conduct alleged but before the pretrial immunity hearing. The Florida Supreme Court took the case to resolve a split between the Second and Third Districts on whether the amendment should be applied to pending cases. *Id.*

The Supreme Court agreed with the Second District's decision in *Martin v. State*, where the Second District held that the amendment represented a procedural change, rather than a substantive change, but the Supreme Court declined to adopt the Second District's extreme position regarding the retroactive reach of the amendment:

> We agree with *Martin* that section 776.032(4) is a procedural change in the law and is not categorically barred by article X, section 9 from applying in pending cases. Accordingly, we quash *Love*. However, we disagree with *Martin*'s all-or-none conclusion that the new procedures apply in all pending cases, even where the immunity hearing was held *prior to* the statute's effective date. The determination of whether a new procedure applies in a pending case generally depends on the posture of the case.

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

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

Love, 286 So. 3d at 187-88 (quoting *Landgraf v. USI Film Productions*, 511 U.S. 244, 275 n.29 (1994) (emphasis omitted)).

The bottom line is that even procedural rules will not apply retroactively when the procedures affected have already transpired. Federal law is in accord. In *Landgraf*, the U.S. Supreme Court emphasized that "the presumption against retroactive legislation is deeply rooted in our jurisprudence" and stated that the application of a new procedure generally "depends on the posture of the particular case." *Landgraf*, 511 U.S. at 265, 275 n.29. In *Martin v. Hadix*, the U.S. Supreme Court explained that the Court in *Landgraf* "took pains to dispel the 'suggestion that concerns about retroactivity have no application to procedural rules.'" 527 U.S. 343, 359 (1999) (quoting *Landgraf*, 511 U.S. at 275 and n.29); *see also Mathews v. Kidder, Peabody & Co.*, 161 F.3d 156, 161 n.8 (3d Cir. 1998) ("[A]s the Court noted in *Landgraf*, even procedural rules are subject to the presumption against retroactivity in a case in which the procedures affected have already transpired”); *Shipes v. Trinity Indus.*, 31 F.3d 347, 349 (5th Cir. 1994) (“[T]he Court [in *Landgraf*] indicated that when a procedural matter has been properly decided under the old rule, and a new procedural rule is subsequently enacted while the ultimate resolution of the case is still pending, no reversal is required.”).

Accordingly, even if Section 775.022 did not foreclose the State’s argument, *supra* pp. 16-17, and even if the State were correct that the 2023 amendment represents a procedural change, that is not the end of the inquiry. The next step is to identify what procedure the amendment pertains to and determine whether the amendment became effective before that procedure transpired. Here, the amendment pertains to the Statewide Prosecutor’s initiation of a prosecution, which occurred *before* the amendment became law. And even if the amendment pertained to some other procedure, the result would be the same, because the trial court dismissed the entire case *before* the amendment became law.

Finally, the State argues that the amendment is a “jurisdictional” change that can be applied at any time during a pending case. But that argument fails for multiple reasons. First, the cases that discuss jurisdictional amendments in this context deal with the power of a court to hear a case, not the power of one of the parties. *See Landgraf*, 511 U.S. at 274 (stating that a new "jurisdictional" law will usually govern during a pending case "because jurisdictional statutes speak to the power of the *court* rather than to the rights or obligations of the *parties*") (emphasis added; citations omitted). Second, even if the amendment could be considered "jurisdictional," it is not the type of jurisdictional law that is exempt from retroactivity concerns. The 2023 amendment does not address *which* court the State Prosecutor can bring a claim in—it addresses *whether* the State Prosecutor can bring a claim. "Statutes merely addressing *which* court shall have jurisdiction to entertain a particular cause of action can fairly be said merely to regulate the secondary conduct of litigation and not the underlying primary conduct of the parties." *Hughes Aircraft Co. v. U.S. ex rel. Schumer*, 520 U.S. 939, 951 (1997) (emphasis in original). "Such statutes affect only *where* a suit may be brought, not *whether* it may be brought at all." *Id.* (emphasis in original). However, if a statute "*creates* jurisdiction where none previously existed," then it "speaks not just to the power of a particular court but to the substantive rights of the parties as well." *Id.* (emphasis in original). “Such a statute, even though phrased in ‘jurisdictional’ terms, is as much subject to our presumption against retroactivity as any other.” *Id.*

For each of these many reasons, the 2023 amendment—enacted after the dismissal here—cannot serve as a basis to reverse.

III. The State’s theory would improperly expand the Statewide Prosecutor’s authority.

After basing its argument almost entirely on the retroactive application of a law passed after the dismissal in this case, the State devotes little space to arguing that the Statewide Prosecutor was empowered to bring this case based on the law that actually applied at the time of the prosecution. *See* State’s Brief at 20-23. The State is wrong. The trial court properly held that the Statewide Prosecutor “does not have jurisdiction investigate and prosecute the Defendant as part of a related transaction in two or more judicial circuits.” R. 52.

The Statewide Prosecutor is a creation of the Florida Constitution, which states that “[t]he 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." Art. IV, § 4(b), Fla. Const. Consistent with this provision, the Statewide Prosecutor's authority is not unlimited. Through its enabling statute, the Legislature limited the Statewide Prosecutor's authority at the time it charged Mr. Miller to a subset of enumerated crimes that occur "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. (version of statute in place in 2022). If the conditions of the enabling statute are not met, the Statewide Prosecutor lacks the authority to prosecute.

The State contends that the alleged crime here "occurred[] in two or more judicial circuits as part of a related transaction." State's Brief at 20. Because the act of registering to vote occurred in one judicial circuit, but the verification of information (by the State) occurred in a different judicial circuit, the State argues that the alleged offense was "inherently multi-circuit as part of a 'related transaction,' similar to the ones in *King*, *Tacher* and *Snyder*." *Id.* at 22-23 (citing *King v. State*, 790 So. 2d 477 (Fla. 5th DCA 2001); *State v. Tacher*, 84 So. 3d 1131 (Fla. 3d DCA 2012); and *Snyder v. State*, 715 So. 2d 367 (Fla. 5th DCA 1998)). The cases that the State cites are all easily distinguishable. In each of *King*, *Tacher*, and *Snyder*, the criminal activities themselves—*i.e.*, the physical acts necessary to commit the crimes—took place in multiple judicial circuits as part of an obviously related scheme. Here, in contrast, all of the activity comprising the alleged offense occurred within on judicial circuit. Additionally, the State's argument fails because ineptitude of the State itself, in transferring ineligible voter registrations, is essential to the State's theory that the Statewide Prosecutor had authority to prosecute.

In recognition of this reality, the State offers the Court the theory that the "effects" of voter fraud "reverberate across the whole state" and thus the Statewide Prosecutor has authority to prosecute all violations of "laws policing fraud in the franchise." State's Brief at 15. The State goes to great lengths to describe the ill effects of voter fraud, which is ironic in light of how little the State has done to clean up its voter rolls. While the State's theory would have the Court try to determine whether laws governing elections are sufficiently analogous to laws regulating wastewater treatment, *id.* at 15-16, the Court need not engage in legal gymnastics of this kind. The plain language of the statute governs, and the plain language requires the crime to occur “in two or more judicial circuits as part of a related transaction” or be “connected with an organized criminal conspiracy affecting two or more judicial circuits.” § 16.56(1)(a), Fla. Stat. This matter does not qualify. The trial court properly held that the Statewide Prosecutor “does not have jurisdiction to investigate and prosecute the Defendant as part of a related transaction in two or more judicial circuits.” R. 52.

CONCLUSION

The State’s failure to govern properly led us here. But rather than admit its shortcomings or even try to fix them, the State has opted to prosecute one of its citizens for a crime that could not have been committed if the State had performed even the most basic of functions competently. To make matters worse, the State now asks this Court to approve its ill-advised decision to prosecute by throwing out bedrock principles of statutory intepretation. This Court faces many difficult decisions, but this is not one of them. This Court should affirm the dismissal.

September 25, 2023

Respectfully submitted,

/s/Paul M. Goodrich

Paul M. Goodrich, FBN1044663
REED SMITH LLP
200 S. Biscayne Blvd, Ste 2600
Miami, FL 33131
Tel: (786) 747-0249
pgoodrich@reedsmith.com

M. Patrick Yingling, *PHV* pending
REED SMITH LLP
10 S. Wacker Dr., 40th Fl.
Chicago, IL 60606
Tel: (312) 207-2834
mpyingling@reedsmith.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this brief was furnished by electronic mail to the following individuals on September 25, 2023.

Office the Attorney General
Henry C. Whitaker
Jeffery Paul DeSousa
Alison E. Preston
The Capitol, PL-01
Tallahassee, FL 32399
Tel: (850) 414-3300
alison.preston@myfloridalegal.com
jenna.hodges@myfloridalegal.com
Counsel for the State of Florida

Jeremy B. Scott
Chief Assistant Statewide Prosecutor
SunTrust International Center
One SE Third Ave, Suite 900
Miami, FL 33131
Tel: (786) 792-6196
jeremy.scott@myfloridalegal.com
Co-Counsel for the State of Florida

Robert I. Barrar P.A.
6619 S. Dixie Highway #311
Miami, FL 33142
Tel: (305) 576-5600
robertibarrarpa@gmail.com
rbarrar@bellsouth.net
Counsel for Ronald Lee Miller

Raul C. De La Heria Jr.
999 Ponce De Leon Blvd.
Suite 510
Coral Gables, FL 33134
Tel: (305) 858-2808
rauldlh@delaheria.com
gus@delaheria.com
Counsel for Ronald Lee Miller

/s/Paul M. Goodrich

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief contains 4,867 words per the word count feature in Microsoft Word and was prepared using Bookman Old Style 14-point font and thereby satisfies the requirements of Florida Rule of Appellate Procedure 9.370(b).

/s/ Paul M. Goodrich