

**IN THE DISTRICT COURT OF APPEAL  
FOR THE THIRD DISTRICT, STATE OF FLORIDA**

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

STATE OF FLORIDA,  
*Appellant,*

v.

RONALD LEE MILLER,  
*Appellee,*

ON APPEAL FROM THE ELEVENTH JUDICIAL CIRCUIT,  
IN AND FOR MIAMI-DADE COUNTY, STATE OF FLORIDA

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**BRIEF OF *AMICI CURIAE* FORMER MEMBERS OF THE  
COMMISSION ON THE STATEWIDE PROSECUTION FUNCTION**

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## **IDENTITY OF AMICI CURIAE**

*Amici* are former officials who served on Governor Daniel Robert Graham's Commission on the Statewide Prosecution Function (the "Commission"). As a result, they were integrally involved in the creation of the Office of Statewide Prosecution ("OSP") and have unique insight into its intended role and jurisdiction.

Raúl L. Martínez is a former mayor of the City of Hialeah located in the county of Miami Dade, Florida. He was elected in 1981 and served as mayor for 24 years from 1981 until 2005. As the mayor of Hialeah, Mr. Martínez directly oversaw and managed the police department. In addition, Mr. Martínez sat as a Board Member of the Florida League of Cities.

Robert C. Josefsberg is a partner with Podhurst Orseck in Florida. He previously served as an assistant U.S. Attorney for the Southern District of Florida, Special Counsel to the Dade County Grand Jury, a member of the U.S. Supreme Court Advisory Committee on Criminal Rules and Chairmanship of the Florida Bar's Criminal Law Certification Committee, and General Counsel to Governor Graham in 1980. In 2022, the University Miami School of

Law established the Robert C. Josefsberg Endowed Chair in Criminal Justice Advocacy.

Messrs. Martínez and Josefsberg were among a select few chosen by Governor Graham to serve on the Commission. The Commission was created by the Governor in 1984 to “draft a constitutional amendment to permit the establishment of an agency with statewide responsibility for prosecuting organized criminal activity” along with “legislation to establish and define the jurisdiction of an agency with statewide responsibility for prosecuting organized criminal activity.”<sup>1</sup> The Florida Legislature debated the Commission’s recommendations during the 1985 Regular Session, and the proposed constitutional amendment and enabling legislation that ultimately led to the creation of the OSP largely mirrors the Commission’s recommendations.

The issue on appeal is whether the OSP has the jurisdiction to prosecute Appellee where all actions performed by Appellee occurred in one judicial circuit. Having served on the Commission, *Amici* can personally attest to why the OSP was created and the intended scope

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<sup>1</sup> Fla. Exec. Order No. 84-150 (A. 4-5).

of its jurisdiction and authority. As such, *Amici* respectfully submit this brief to ensure the Court has an accurate accounting of the OSP's jurisdiction and purpose.

### **PRELIMINARY STATEMENT**

The OSP was created to be an independent statewide agency focused on addressing the perils of complex, organized crime and other statewide conspiracies that affect multiple judicial circuits in Florida. As members of the Commission who were actively involved in the debates, discussion, and ultimate creation of the OSP, *Amici* can confirm that the OSP's role was intended to be limited to prosecuting organized crime and complex criminal cases spanning multiple circuits that would be effectively impossible for local state attorneys to address. At no point was the OSP intended or designed to replace state attorneys and usurp their role in prosecuting single-circuit crimes. In fact, the potential for conflict between the OSP and state attorneys was a concern held by many (including *Amici*) when the OSP was being debated, leading to the explicit multi-circuit limitation on its authority in the Florida Constitution. The OSP's recent actions—prosecuting an alleged crime where Appellee's actions occurred in one judicial circuit, where there is no broader

alleged conspiracy, and which indisputably could have been brought by a state attorney—are contrary to the intent and purpose behind establishing the OSP.

The objective underlying the formation of the OSP was simple. In the 1970s and 1980s, Florida faced both rising statewide crime (where the perpetrators focused their efforts across multiple areas of Florida), as well as the rise of organized crime, which by its very nature threatened the entire State. State attorneys lacked the authority and resources to effectively deal with these challenges. In addition, state attorneys would occasionally engage in “turf wars” about who would bring certain cases based on the location and nature of the case. Stated plainly, Florida was suffering from organized crime and disorganized prosecutors.

The State investigated several potential options and decided, after the recommendation of the Commission, that the OSP was the best option to combat multi-jurisdictional crime. Although the need for the OSP was apparent, many—including *Amici*—were concerned the OSP would wield considerable authority and, as such, there was potential for abuse. As a result, the Commission’s recommendations, which the Legislature adopted, ensured that the OSP would have a



measure of independence, as well as several meaningful checks on its power to preserve the role of state attorneys.

The OSP's authority was *expressly limited* by the Florida Constitution to crimes "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."<sup>2</sup> This limitation was specifically enshrined in Florida's Constitution—rather than the OSP's enabling statute—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.

Consistent with *Amici's* understanding of the intended scope of its jurisdiction and authority, since its creation the OSP has focused on prosecuting multi-circuit crimes, such as organized medical fraud, organized elder fraud, organized public assistance fraud, gang violence, organized retail theft, cargo theft, human trafficking, drug trafficking, and white-collar crimes. Indeed, the OSP has noted this

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<sup>2</sup> Art. IV, § 4(b), Fla. Const.

publicly and proudly in their annual public reports for years—without ever pointing to single-circuit voting crimes. Until now.

The OSP’s actions in the instant case—the prosecution of the Appellee for alleged actions that took place in only one circuit—appear to be without precedent. There is neither mention of an alleged statewide conspiracy, nor any organized criminal activity that could not be effectively prosecuted by a state attorney. All told, the prosecution here bears no resemblance to the purpose and intent of the OSP, which *Amici* helped create. It should not stand.

## **ARGUMENT**

### **I. YEARS OF INADEQUATE ATTEMPTS TO COMBAT GROWING STATEWIDE CRIME CREATED THE NEED FOR THE OSP**

In the 1970s, Florida faced an epidemic of crime, specifically organized crime that occurred throughout the State and was not limited to one specific circuit.<sup>3</sup> Recognizing that the state attorney

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<sup>3</sup> See Fla. Dep’t of Crim. L. Enf’t, 1977 Annual Report, *Crime in Florida*, at 12 (A. 16) (showing a 24.8 percent increase in violent crime and a 24.2 percent increase in nonviolent crime between 1973 and 1977); Fla. Dep’t of Crim. L. Enf’t, 1980 Annual Report, *Crime in Florida*, at 13 (A. 163) (showing a 72.5 percent increase in violent crime and a 32.5 percent increase in nonviolent crime between 1976 and 1980).

system was poorly matched to the threat of growing organized and multi-jurisdictional crime, the Governor and Legislature made several attempts to create a statewide prosecutorial role before the creation of the OSP. In 1973, the Legislature passed the Statewide Grand Jury Act, which created a statewide grand jury that could investigate criminal activity spanning more than one county.<sup>4</sup> However, the Statewide Grand Jury Act left the state attorney system otherwise intact; indictments returned by the statewide grand jury were referred to a state attorney for prosecution.<sup>5</sup> Such limitations left Florida’s prosecution system unable to effectively target multi-circuit crimes and statewide criminal conspiracies.<sup>6</sup>

As a 1977 study commissioned by the Florida Bar—which *Amicus* Josefsberg participated in—concluded, Florida’s state attorney system was ineffective at prosecuting crimes occurring across multiple circuits within the State, and especially organized

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<sup>4</sup> Ch. 73-132, Laws of Fla. (codified at §§ 905.31-.40, Fla. Stat. (2023)) (A. 304-307).

<sup>5</sup> *Id.* (A. 305).

<sup>6</sup> See Fla. Bar Special Comm. on The Statewide Prosecution Function, Report to The Board of Governors, at 22-26 (1977) (A. 339-342).

crime, which was an increasing concern.<sup>7</sup> Because the jurisdiction of state attorneys was limited to their individual circuits, they were not “responsible for nor aware of crime problems in other parts of the State” and there was “no unified or central direction . . . on existing or imminent criminal activity of statewide importance which should have a unified, state wide response.”<sup>8</sup>

In 1977, following the release of the Florida Bar study, Governor Reubin Askew promulgated Executive Order 77-24, creating the Governor’s Council for the Prosecution of Organized Crime (the “Council”).<sup>9</sup> The Council consisted of five state attorneys appointed by the Governor and tasked with coordinating state attorneys’ offices, the Florida Department of Law Enforcement, and other agencies and resources to direct multi-circuit prosecutorial efforts. The Legislature later codified the Council by creating the Office of Prosecution Coordination and the Council for the Prosecution of Organized Crime.<sup>10</sup> The Legislature further provided that one of the

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<sup>7</sup> *Id.* at 1-8 (A. 318-325).

<sup>8</sup> *Id.* at 1 (A. 318).

<sup>9</sup> Fla. Exec. Order No. 77-24 (A. 410-411).

<sup>10</sup> Ch. 77-403, Laws of Fla. (A. 412-415).

appointed state attorneys would serve as legal advisor and direct the operation of the statewide grand jury.<sup>11</sup> The legal advisor was also empowered to prosecute indictments returned by the statewide grand jury, rather than requiring that any indictment be transferred to a local state attorney.<sup>12</sup>

The Council too proved ineffective. Governor Graham subsequently issued several executive orders during his term in office to clarify and revitalize the Council.<sup>13</sup> Yet the threat of statewide organized crime nonetheless persisted, with the Council recognizing that “the magnitude and pervasiveness of organized criminal activity [in Florida] is shared by few other states.”<sup>14</sup>

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<sup>11</sup> *Id.* § 2 (A. 413).

<sup>12</sup> *Id.* § 4 (A. 414).

<sup>13</sup> Fla. Exec. Order No. 79-9 (A. 416-417); Fla. Exec. Order No. 83-87 (A. 418-422); Fla. Exec. Order No. 83-193 (A. 423-427).

<sup>14</sup> See R.S. Palmer & Barbara M. Linthicum, *The Statewide Prosecutor: A New Weapon against Organized Crime*, 13 Fla. St. U. L. Rev. 653, 663 (1985), <https://ir.law.fsu.edu/lr/vol13/iss3/7> (“Palmer & Linthicum, *Statewide Prosecutor*”) (citing Governor’s Council on Organized Crime, 1983 Annual Report, at 5) (A. 433).

## **II. THE OSP WAS CREATED OUT OF A DESIRE TO EFFECTIVELY ADDRESS ORGANIZED CRIME AND STATEWIDE CRIMINAL ACTIVITY**

Due to the failure of these earlier organizations and institutions, more was needed. In August 1984, Governor Graham formed the Commission on the Statewide Prosecution Function with a singular mandate: create a statewide agency with the authority to address “the threat that organized criminal activity poses to the quality of life of the citizens of Florida.”<sup>15</sup> The Commission members were attorneys, law enforcement personal, and current and former elected officials who had firsthand knowledge of the issues that Florida faced from organized crime. Those members included *Amici*.

The executive order directed the Commission to:

(a) draft a constitutional amendment to permit the establishment of an agency with statewide responsibility for prosecuting organized criminal activity, and (b) draft legislation to establish and define the jurisdiction of an agency with statewide responsibility for prosecution of organized criminal activity.<sup>16</sup>

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<sup>15</sup> Fla. Exec. Order No. 84-150 (A. 4-5).

<sup>16</sup> *Id.* (A. 5).

The Commission met five times starting in September 1984.<sup>17</sup>

At the first meeting, the Commission heard from individuals who were actively involved in the statewide investigation of organized crime. This included the State Attorney for the Nineteenth Judicial Circuit, the Director of the Division of Criminal Investigations of the Florida Department of Law Enforcement, and the Commissioner of the Florida Department of Law Enforcement. All of them echoed the same sentiment: *in order to combat organized crime*, it was necessary to have a statewide organization with coordinated investigation and prosecutorial capacity.<sup>18</sup>

At the second meeting, the Commission reviewed the testimony of those individuals working in the law enforcement and criminal justice fields. The Commission also identified issues that could result from the creation of a statewide prosecutor and would need to be addressed.<sup>19</sup>

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<sup>17</sup> Letter from Alan C. Sundberg, Chairman, Gov.'s Comm. On the Statewide Prosecution Function, to Fla. Gov. Bob Graham, at 1 (Feb. 8, 1985) ("Sundberg Letter") (A. 457).

<sup>18</sup> *Id.* at 2 (A. 458).

<sup>19</sup> *Id.*

The third meeting was a two-day public hearing. The Commission invited over three hundred individuals, including sheriffs, police chiefs, state attorneys, and other interested persons to attend and speak.<sup>20</sup> The Commission also heard testimony from recognized experts on the statewide prosecution of organized crime. All the experts, along with a vast majority of the speakers, agreed Florida needed an office with statewide prosecutorial capacity to address “sophisticated crime that is multijurisdictional in scope.”<sup>21</sup>

The fourth and fifth meeting of the Commission involved internal discussions on how to resolve the issues identified in the previous meetings. Following these meetings, the Commission presented its recommendations to Governor Graham on February 8, 1985.<sup>22</sup>

The *Amici* and the other Commission members enthusiastically recommended that a statewide prosecutorial system be established to combat organized criminal activity in Florida that was “multi-

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<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *See generally* Sundberg Letter (A. 457-463).



jurisdictional in nature” and “operates statewide without regard to jurisdictional boundaries.”<sup>23</sup> The OSP was thus specifically created to address large-scale, statewide conspiracies that would affect multiple jurisdictional circuits.

On March 6, 1985, Governor Graham held a press conference alongside the two legislative sponsors of the Commission’s recommendations. Governor Graham stated that a statewide prosecutor would “add continuity to the investigation and prosecution of long-term, complex organized crime cases,” “accumulate expertise in organized crime investigations,” and provide a “critical linkage” for investigative resources “in the war on drugs and organized crime.”<sup>24</sup>

On May 31, 1985, the Legislature adopted the statewide prosecutor bill and constitutional amendment with only five

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<sup>23</sup> Fla. Exec. Order No. 84-150 (A. 4-5).

<sup>24</sup> See Palmer & Linthicum, *Statewide Prosecutor*, at 669 (citing Gov. Graham’s Remarks Concerning the Statewide Prosecutor Amendment (Mar. 6, 1985) (A. 445)).

dissenting votes.<sup>25</sup> The legislation largely tracked the Commission’s recommendations, with only a few minor differences.<sup>26</sup> After passing the Legislature, the constitutional amendment was then voted on by the general electorate. Specifically, the ballot proposal for the OSP proposed “to grant to the Attorney General authority to appoint a statewide prosecutor having concurrent jurisdiction with the state attorneys to prosecute multi-circuit violations of the criminal laws of the state.”<sup>27</sup> It was approved with 72% of the vote in 1986.

### **III. GIVEN THE OSP’S BROAD MANDATE, THE COMMISSION RECOMMENDED, AND THE LEGISLATURE IMPOSED, SIGNIFICANT LIMITATIONS ON THE OSP TO ENSURE ITS INDEPENDENCE AND PRESERVE THE ROLE OF STATE ATTORNEYS**

From the moment the Commission came into existence until the Legislature adopted the statewide prosecutor bill and constitutional

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<sup>25</sup> Fla. S. Jour., 17th Sess., 1007 (1985) (A. 466); *id.* at 1009 (A. 468); Fla. H.R. Jour., 87th Sess., 1162 (1985) (A. 471); *id.* at 1163 (A. 472).

<sup>26</sup> Compare Ch. 85-179, Laws of Fla. (A. 473-478) with Sundberg Letter (A. 457-463).

<sup>27</sup> Ballot Summary, Authority of Attorney General to Appoint a Statewide Prosecutor, Fla. Div. of Elections, Initiatives / Amendments / Revisions Database, <https://dos.elections.myflorida.com/initiatives/fulltext/pdf/10-43.pdf> (last visited Oct. 5, 2023) (A. 479-480).

amendment, there was intense debate about the scope of OSP's authority. Previous attempts to create a statewide prosecutor had failed in large part because of a concern that the OSP could be used to harass political enemies and centralize prosecutorial authority away from local elected state attorneys, a concern that *Amici* shared. Notably, a key party that had historically opposed the creation of a statewide prosecutor was the Florida Prosecuting Attorneys Association ("FPAA"),<sup>28</sup> which worried that an OSP or similar entity would be able to second-guess their decision-making and bring cases in their stead.

Concerns about the contours of the authority of an OSP were also echoed by newspapers throughout the State. For example, in a January 9, 1985 article titled "Appoint statewide DA," the Orlando Sentinel recognized that "[m]ost criminals—especially those engaged in the organized, big scale operations of drug trafficking and racketeering—don't pay attention to geographic borders." At the

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<sup>28</sup> The FPAA is a nonprofit corporation whose members are 19 elected State Attorneys and all of their Assistant State Attorneys within the State of Florida.

same time, it raised concerns regarding the role and reach of a statewide prosecutor.<sup>29</sup>

This prosecutor's job would be to investigate statewide organized crime. That means *that whoever gets the job shouldn't be looking over the shoulders of state attorneys*. It would be a waste of time and money if the new person should turn out to be just one more prosecutor to handle local cases.

The state should learn some lessons from the problems that cropped up with the statewide grand jury 10 years ago. Too many of the cases were misdemeanor gambling charges. That won't cut it. A crack group of investigators and prosecutors *should nail big-time criminals . . .*<sup>30</sup>

Those concerns did not go unaddressed by the Commission or the Legislature itself. The Commission, including *Amici*, understood the failure to address these issues previously was an important reason why earlier attempts to create a statewide prosecutor had failed. As such, the Commission, and then the Legislature, focused on two fundamental issues attendant to the creation of the OSP: *First*, the OSP's independence; and *second*, the jurisdictional limits

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<sup>29</sup> Editorial, *Appoint Statewide DA*, Orlando Sentinel, Jan. 9, 1985, at A-14 (A. 481); see also Editorial, *Crime's Boundaries*, Miami Herald, Mar. 26, 1985, at 16A (A. 482-483).

<sup>30</sup> Editorial, *Appoint Statewide DA*, Orlando Sentinel, Jan. 9, 1985, at A-14 (A. 481) (emphasis added).

of the OSP. The Commission knew that limiting the degree of overlap between a statewide prosecutor and state attorneys was critical to ensure both the support and effectiveness of a statewide prosecutor.

### **A. INDEPENDENCE**

The Commission quickly concluded that any statewide prosecutor would need to have sufficient independence to function effectively. The Commission determined that the OSP should be located in the Department of Legal Affairs under the Attorney General, but emphasized that the OSP “should operate independently of the rest of the department.”<sup>31</sup> In order to “assure the independence of the office, the Commission opted to make [the OSP] a separate budget entity, to exempt the staff from career service, and to provide that the Statewide Prosecutor be appointed by the Attorney General and Governor jointly.”<sup>32</sup>

Further, to “insulate the Statewide Prosecutor from any undue political influence” and prevent the statewide prosecutor from using that “position as a stepping stone to a state political office,” the

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<sup>31</sup> See Sundberg Letter at 4 (A. 460).

<sup>32</sup> *Id.*

Commission recommended that “the Statewide Prosecutor be appointed for a term of four years” without being subject to removal prior to the end of the term “except by the joint action of the Governor and the Attorney General,” and that “the statewide prosecutor would be prohibited from running for or being appointed to a state office for two years after leaving the position.”<sup>33</sup>

When the debate moved to the Legislature, the same issues dominated. The House and Senate agreed with the Commission on the removal process and the limited prohibition on the statewide prosecutor’s ability to seek future office, but debated whether the OSP should be located in the Department of Legal Affairs and appointed by the Attorney General, or whether it would reside in the Governor’s office and be appointed by the Governor. This point was hotly contested as it addressed the key question of the OSP’s independence and whether it would (in practice or theory) be beholden to certain state officials.

Eventually, the Legislature determined the OSP would be located in the Office of the Attorney General and appointed by the

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<sup>33</sup> *Id.*

Attorney General, ensuring that the Governor *would not* have a role in selecting the statewide prosecutor. However, the Legislature wanted to limit the Attorney General’s authority. It mandated the Attorney General could only appoint a statewide prosecutor from a list proposed by the supreme court nominating commission.<sup>34</sup> The ultimate goal of all these changes was to ensure the OSP had sufficient independence.

## **B. JURISDICTION**

The second issue—concerning the reach and breadth of the OSP’s jurisdiction—was the most difficult to address, and perhaps the most important. The Commission knew the potential for conflict between a statewide prosecutor and the individual state attorneys. Indeed, as the Commission was well aware, previous efforts to establish a statewide prosecutor had been opposed by the FPAA because of a concern about the OSP’s jurisdiction. The Commission, and then the Legislature, wanted to avoid having the OSP supplant

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<sup>34</sup> See § 16.56(2), Fla. Stat. (2023) (“The Attorney General shall appoint a statewide prosecutor from not less than three persons nominated by the judicial nominating commission for the Supreme Court.”).

state attorneys or in any way be responsible for crimes that state attorneys could handle and had the resources to address.

Accordingly, the determination as to the OSP's jurisdiction was informed, in part, by its *purpose*: address the influx of organized crime across the state and handle complex statewide conspiracies that could not be adequately addressed by individual state attorneys. As such, the authority given to the OSP was *not* intended to give the OSP the power to pursue the same criminal cases as state attorneys.

To determine an appropriate starting point for the OSP's authority, the Commission looked to the Statewide Grand Jury Act for limits on subject matter jurisdiction. The Statewide Grand Jury Act was adopted in 1973 to "strengthen the grand jury system and enhance the ability of the state to detect and eliminate organized criminal activity by improving the evidence-gathering process in matters which transpire or have significance in *more than one county*."<sup>35</sup> But the Commission recommended even further jurisdictional limits than set forth in the Statewide Grand Jury Act. To prevent overlap between statewide and local prosecutors, the

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<sup>35</sup> Ch. 73-132, Laws of Fla. (A. 304-305) (emphasis added).



Commission sought to limit the OSP to multi-circuit criminal activity and, similarly, narrow the jurisdiction of statewide grand jury from multi-county to multi-circuit crimes.<sup>36</sup>

Another jurisdictional issue discussed by the Commission was whether the OSP should be allowed to prosecute public corruption cases occurring in a single circuit without a request from local authorities. After some debate, the Commission declined to include prosecuting such single-circuit crimes in the OSP's powers because they thought such authority would detract from the OSP's focus on statewide issues such as prosecuting statewide criminal organizations.<sup>37</sup>

As the Commission explained in its official report to the Governor on February 8, 1985:

In summary, the enabling legislation provides that *before the Statewide Prosecutor can initiate criminal prosecution, a two-part jurisdictional test must be met*: first, the subject matter of the offense prosecuted must be one of the offenses enumerated in the enabling legislation, and second, such offense must be occurring, or must have

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<sup>36</sup> See Sundberg Letter at 5 (A. 461).

<sup>37</sup> Palmer & Linthicum, *Statewide Prosecutor*, at 667-68 (citing Memorandum from Barbara Linthicum, Dep. Gen. Council, Exec. Office of the Gov., to file (Sept. 21, 1984)) (A. 443-444).

occurred, in two or more circuits as part of a related transaction.<sup>38</sup>

The Legislature itself also focused on the important, and controversial, question of what exact crimes would fall within the jurisdictional purview of the OSP. Per the recommendation of the Commission, the enabling legislation specifically listed 17 enumerated categories of crimes that the OSP could prosecute. Of import, the enabling legislation also stated that the OSP “shall have such power only when any such offense is occurring, or has occurred, in two or more judicial circuits as part of a related transaction, or when any such offense is connected with an organized criminal conspiracy affecting, or has affected, two or more judicial circuits.”<sup>39</sup> The purpose was to “reduce the potential of overlap between the Statewide Prosecutor and state attorneys.”<sup>40</sup> However, there were concerns that these limitations did not go far enough.

The FPAA, among others, did not believe that even the narrower language proposed by the Legislature was sufficient. Instead, they

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<sup>38</sup> Sundberg Letter at 5 (A. 461) (emphasis added).

<sup>39</sup> Ch. 85-179, § 1, Laws of Fla. (A. 473-474).

<sup>40</sup> H.R. Comm. on Judiciary, Staff Analysis, HB 387 (1985) (A. 486).

requested that the Legislature enshrine in the forthcoming constitutional amendment, as opposed to the enabling legislation, the requirement that the OSP could *only* prosecute crimes occurring in more than one circuit. The purpose of this change was to explicitly *make it more difficult for future legislatures to expand the authority of the OSP*. Once the Legislature complied with the FPAA’s request to limit the authority of the OSP and make it impossible for future legislatures to significantly increase the mandate or authority of the OSP without amending the Constitution, the FPAA agreed to support the creation of the OSP.<sup>41</sup> The final language of the constitutional amendment itself provided that the OSP has “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.”<sup>42</sup>

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<sup>41</sup> See Palmer & Linthicum, *Statewide Prosecutor*, at 676 (citing Fla. Prosecuting Attorney’s Ass’n, meeting minutes (Feb. 20, 1985)) (A. 452).

<sup>42</sup> Art. IV, § 4(b), Fla. Const.

The importance and effect of adding this language to the Constitution cannot be overstated. Similar to the Commission, certain members of the Legislature also favored an exception whereby the OSP could prosecute political corruption cases that *only* occurred in a single circuit.<sup>43</sup> However, the incorporation of the multi-circuit jurisdiction into the Constitution eliminated that possibility, ensuring instead that a statewide prosecutor could not prosecute a single-circuit political corruption case without amending the Constitution, notwithstanding the important nature of such crimes. As parties—including *Amici*—recognized at the time, the language in the amendment prevented the OSP from prosecuting single-circuit political corruption cases *unless* the case was connected with a criminal conspiracy that affects two or more judicial circuits. The purpose of the amendment, and a key aspect of the Commission’s and Legislature’s support for it, was the limitation of the OSP’s authority specifically to crimes of statewide import that occurred in more than one circuit.

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<sup>43</sup> See Palmer & Linthicum, *Statewide Prosecutor*, at 678 (citing Fla. S., tape recording of proceedings (May 22, 1985) (statements of Sen. Carlucci, Dem., Jacksonville, and Sen. Kiser)) (A. 454).

#### **IV. CONSISTENT WITH ITS PURPOSE, THE OSP HAS FOCUSED, UNTIL LAST YEAR, ON PROSECUTING COMPLEX STATEWIDE AND MULTI-CIRCUIT CRIMES**

The OSP itself has stated that combatting “complex, multi-circuit criminal organizations” was the “legislative intent in the creation of [the] office in 1985.”<sup>44</sup> Consistent with the intention of *Amici* and other members of the Commission, the Legislature, and voters, the OSP has historically focused on investigating and prosecuting multi-jurisdictional organized crimes, such as trafficking and fraud, often involving multiple conspirators. Specifically, the OSP has focused its efforts on prosecuting crimes involving organized medical fraud, organized elder fraud, organized public assistance fraud, gang violence, organized retail theft, cargo theft, human

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<sup>44</sup> Nick Cox, 2011 Annual Report, Fla. Off. of Statewide Prosecution, at 1 (A. 489); *see also* Nick Cox, 2012 Annual Report, Fla. Off. of Statewide Prosecution (A. 506) (clarifying in a 2012 Annual Report that OSP’s intention is to “attack the criminal organization that support and drive” the frauds they prosecute, which is “the intended purpose of our statutes and part of the focus we continue to advocate”); Nick Cox, 2019 Annual Report, Fla. Off. of Statewide Prosecution (A. 520) (highlighting in 2019 Annual Report that the OSP prosecutors were “focusing even more on criminal organizations and multi-defendant racketeering as contemplated by our enabling Statute”).

trafficking, drug trafficking, and white collar crime.<sup>45</sup> That work is detailed in Annual Reports from 2011 to 2021 posted on the OSP's website. Those reports make no mention of any effort by the OSP to charge or prosecute individuals for voting crimes during those years.

As illustrated by the history of the OSP and its actions for the past 30 years, it was designed to "investigat[e] and prosecut[e] long-term, complex organized crime cases."<sup>46</sup> It was emphatically *not* created to investigate and prosecute *single acts* of alleged voter fraud that occur in one jurisdiction. Such crimes, as they always were intended, should be handled by state attorneys.

As members of the Commission that were deeply involved with the creation of the OSP, *Amici* can assure this Court that the OSP was *not* designed to supplant state attorneys and prosecute local

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<sup>45</sup> See generally Office of Statewide Prosecution – Annual Reports, Fla. Off. of the Att’y Gen, <https://www.myfloridalegal.com/statewide-prosecutor/office-of-statewide-prosecution-annual-reports> (last visited Oct. 5, 2023) (A. 533) (providing annual overviews of the Office of Statewide Prosecution for the years 2011-2021).

<sup>46</sup> Palmer & Linthicum, *Statewide Prosecutor*, at 669 (citing Gov. Graham’s Remarks Concerning the Statewide Prosecutor Amendment (Mar. 6, 1985) (on file with Prosecution Coordination Office, the Capitol, Tallahassee, Fla.)) (A. 445).

crimes in their stead; rather, it was designed to *supplement* state attorneys by pursuing cases they did not have the authority or resources to effectively prosecute. From the beginning, and until a year ago, those cases involved organized crime, statewide conspiracies, and complex crimes that affect more than one circuit. The recent actions by the OSP to prosecute individual voting crimes, such as Appellee's case (with no allegation of any statewide conspiracy), go far beyond what we and other members of the Commission, Legislature, or voters ever considered when creating the OSP.

## CONCLUSION

For the reasons above, *Amici* request that this Court affirm the decision of the trial court.

Respectfully submitted,

Date: October 6, 2023

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## **CERTIFICATE OF SERVICE**

I hereby certify that on October 6, 2023, a true and correct copy of the foregoing has been furnished via electronic service to all counsel of record on this day.

*/s/ David Giller* \_\_\_\_\_  
David Giller

## **CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY, under Florida Rule of Appellate Procedure 9.045(e), that this Brief complies with the applicable font and word count requirements. It was prepared in Bookman Old Style 14-point font, and it contains 4,848 words.

*/s/ David Giller*

David Giller