

IN THE DISTRICT COURT OF APPEAL OF FLORIDA

THIRD DISTRICT

CASE NO. 3D22-2180

**STATE OF FLORIDA,**

Appellant,

-vs-

**RONALD LEE MILLER,**

Appellee.

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**BRIEF OF AMICUS CURIAE FLORIDA ASSOCIATION OF CRIMINAL  
DEFENSE LAWYERS—MIAMI CHAPTER**

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APPEAL FROM THE CIRCUIT COURT  
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

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## **INTRODUCTION**

Florida's voters overwhelmingly passed Amendment 4 to Florida's Constitution in 2018, with 5,148,926 voters (64.55%) in favor and 2,828,339 (35.45%) opposed.<sup>1</sup> The amendment restores the voting rights of Floridians who had been convicted of felonies other than murder and sexual offenses.

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[https://dos.elections.myflorida.com/initiatives/initdetail.asp?account=64388  
&seqnum=1](https://dos.elections.myflorida.com/initiatives/initdetail.asp?account=64388&seqnum=1)

Governor Desantis, at the time a candidate for governor, opposed passage of the amendment.<sup>2</sup> Implementation of the amendment was, to put it mildly, not a process that gave prospective new voters a great deal of clarity on what their rights and responsibilities were. See *Jones v. Desantis*, 462 F.Supp.3d 1196, 1293 (N.D. Fla. 2020) (making findings of fact that Florida’s implementation of Amendment 4 was an “administrative train wreck”).<sup>3</sup> Nevertheless, proponents of Amendment 4 and of eliminating felon disenfranchisement quickly moved to register new voters in the light of passage of the amendment.

Around the same time, alleged voter fraud became a national issue with significant political resonance as former President Trump vociferously asserted that the reason he lost the 2020 presidential election was

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<sup>2</sup> <https://www.tampabay.com/florida-politics/buzz/2018/09/20/ron-desantis-on-gambling-charter-schools-differing-from-rick-scott-and-his-concerns-with-student-testing/> (“And also I don’t support automatic restoration of voting rights (for felons). I’m going to be very tough on crime, and I’m never going to budge on that.”).

<sup>3</sup> The federal District Court’s legal finding an equal protection violation in the system Florida set up was overturned on appeal in *Jones v. Governor of Fla.*, 975 F.3d 1016 (11<sup>th</sup> Cir. 2020). That ruling did not disturb the factual findings below, including what would be plain to any rational person of any political persuasion reviewing how Amendment 4 implementation has played out in Florida—it has indeed been an administrative train wreck.

widespread voter fraud.<sup>4</sup> Governor Desantis, preparing to announce his presidential campaign in this political environment, signed a bill in 2022 to create a special election police force<sup>5</sup>, and then held a “campaign-style event in Fort Lauderdale before cheering supporters” where he announced the arrest of Ronald Lee Miller and 19 other people Governor Desantis asserted “did not go through any process, they did not get their rights restored, and yet they went ahead and voted anyways, . . . That is against the law and now they’re gonna pay the price for it.”<sup>6</sup> Governor Desantis specifically discussed in a press release touting these arrests the “major problems we saw in other states” in the most recent presidential election, clearly referencing former

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<sup>4</sup> A recent poll finds that 69% of Republicans or Republican-leaning independents believe that President Biden did not legitimately win the 2020 presidential election. <https://www.cnn.com/2023/08/03/politics/cnn-poll-republicans-think-2020-election-illegitimate/index.html> Seven out of ten people in the electorate for the upcoming Republican presidential primary election in which Governor Desantis is a candidate believe this despite no court or other deliberative body anywhere in the country having found any evidence of widespread voter fraud or voter fraud which would have affected the outcome of the 2020 presidential election.

<sup>5</sup> <https://apnews.com/article/2022-midterm-elections-covid-health-crime-florida-5fad57fac85e0944b6e8eeb423b195b7>

<sup>6</sup> <https://apnews.com/article/2022-midterm-elections-voting-rights-florida-presidential-bfbf3d7d4f5dea4fa2a11589e4235c71>

President Trump's voting fraud claims."<sup>7</sup>

Ronald Lee Miller, one of the people being so prosecuted, sounded bewildered when he was interviewed by local news after his first court appearance for this arrest, with the story reporting:

Miller, who had served time in prison on a murder conviction, said he had even gotten a state-issued voter ID in 2020. Miller asked, "How can you send me a card and turn around and arrest me for a card you sent me?" Miller didn't know that the voter registration volunteer at the grocery store, who told him he could sign up to vote, was wrong.<sup>8</sup>

Mr. Miller lives in, is alleged to have voted illegally in, was arrested in, and is being prosecuted in Miami-Dade County, before an Eleventh Judicial Circuit Judge (the Honorable Laura Anne Stuzin) who is democratically accountable to the citizens of Miami-Dade County, having been elected by them in 2016 and 2020<sup>9</sup>. Mr. Miller is not, however, being prosecuted by the

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<sup>7</sup> <https://www.flgov.com/2022/08/18/governor-desantis-announces-the-arrest-of-20-elections-criminals/>

<sup>8</sup> <https://www.local10.com/news/local/2022/09/16/miami-man-faces-voter-fraud-charges-in-broward-county/>

<sup>9</sup> Judge Stuzin was appointed to the County Court bench in 2015, ran for election in 2016 and was not opposed, was appointed to the Circuit Court bench in 2017, and ran for election in 2020 and was not opposed. When a judicial candidate is not opposed their name does not appear on the electoral



Eleventh Circuit State Attorney's Office or Katherine Fernandez Rundle, the elected prosecutor for the Eleventh Judicial Circuit.<sup>10</sup> Mr. Miller is being prosecuted by the Office of Statewide Prosecution (OSP), which is based in Tallahassee and headed by Nicholas B. Cox, who was appointed by Attorney General Ashley Moody. The Statewide Prosecutor, unlike all other head state prosecutors and all state judges<sup>11</sup> in Florida, is not directly democratically accountable to any voters.

Below, Mr. Miller moved to dismiss the prosecution on the grounds that the OSP had no jurisdiction to prosecute him since his offense of allegedly voting illegally occurred entirely in Miami-Dade County. (R. 25-28). The parties stipulated to the facts that Mr. Miller registered to vote in Miami-Dade County, the registration application was reviewed in Leon County, and the Miami-Dade Supervisor of Elections approved Mr. Miller's voter application

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ballot, but they have still gone through the electoral process including filing necessary paperwork and disclosures and campaigning and fundraising in the local community.

<sup>10</sup> Ms. Fernandez Rundle is also democratically accountable to the citizens of Miami-Dade County, having been elected by them eight consecutive times, most recently in 2020.

<sup>11</sup> Although District Court judges and Supreme Court justices are appointed by the governor, they face retention elections where they are directly accountable to the voters in the community they serve.

and sent him a voter ID card, after which he voted in November 2020 in Miami Dade County and that vote, like all other votes in Florida, was forwarded to the Florida Division of Elections in Leon County. (R. 32-33). Judge Stuzin found that the OSP did not have jurisdiction because the charged offense did not occur in two or more judicial circuits. (R. 44-46).

The State appealed the granting of the motion to dismiss in December 2022. In February 2023, well after the appeal was filed and the decision being appealed from was issued, the legislature passed and Governor Desantis signed 2023 Fla. Laws ch. 2, which was obviously directed specifically at these voter fraud prosecutions and which purports to expand the jurisdiction of the OSP to situations where voter fraud “is affecting, or has affected” two or more circuits. 2023 Fla. Laws ch. 2, 2023 Fla. SB 4, *compare* Fla. Stat. § 16.56 (2023) *with* Fla. Stat. § 16.56 (2022). The earlier version of the statute (in place at the time the voting happened, the prosecution was instituted, the motion to dismiss was granted, and the appeal was filed) did not differentiate the OSP’s jurisdiction in voter fraud cases from other cases.

FACDL-Miami, a voluntary bar organization composed of current and former criminal defense lawyers practicing in Miami-Dade County, moved for and was granted leave to file this amicus brief. FACDL-Miami advocates for

the interests of those accused of crimes in Miami-Dade County as well as the lawyers who represent those people. FACDL-Miami has a professional interest in not seeing the prosecutorial authority of the government expanded beyond its constitutional limits. We also have an interest in direct democracy and in prosecutorial power being restrained by accountability to the local electorate.

## **ARGUMENT**

### **I. The 2022 Version of Florida Statutes Section 16.56 Is At Issue. This Statute Does Not Permit Prosecution For This Crime, Which Per the Stipulated Facts Occurred in One Jurisdiction.**

The State tries to divert the Court's attention to the current, 2023 version of the statute defining the OSP's jurisdiction. The reason the statute was amended is because after the governor publicly touted and campaigned for president on the voter fraud arrests that include this case, multiple judges, including Judge Stuzin in this case, dismissed them for lack of jurisdiction by the OSP. Under the version of the statute in place at the relevant time (the time the alleged crime happened, the time the prosecution was occurring, the time the motion to dismiss was filed and granted, and the time the state appeal was filed) the alleged voter fraud had to **occur** in more than one jurisdiction for the OSP to acquire jurisdiction. Here the stipulated facts are

that all relevant actions taken by Mr. Miller (registering to vote and voting) occurred in Miami-Dade County<sup>12</sup>. There is thus no jurisdiction for the OSP to prosecute this case.

The State's only argument on this point is that "Miller's crimes happened as part of a multi-circuit related transaction: his scheme to vote illegally in the 2020 election", and that "scheme", they say, includes "registration [where] he falsely affirmed his eligibility to vote" and "voting". (Initial Brief pp. 21-22). But the parties have *stipulated* that both parts of this alleged nefarious two-part scheme—the registration and the voting—occurred in Miami-Dade County. Thus, it is difficult to understand the State's point here. The State says that Mr. Miller "could not have registered without using the State's process for acceptance of voter registration applications" which "entailed, among other things, the Department of State's verification of certain application information in the Second Judicial Circuit". (Initial Brief pp. 21-22). The State cites to Florida Statutes 97.053(6), which discusses

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<sup>12</sup> The stipulated facts say that a Third-Party Voter Registration Organization submitted Mr. Miller's voter registration application to the Broward County Supervisor of Elections initially, and Broward then forwarded the application to Miami-Dade for action. (R. 32). Mr. Miller accurately reported on the application that his residence was in Miami-Dade County, so sending it to Broward appears to have been an error by the third-party organization. The State does not assert this as a basis for jurisdiction.

how the “department” must verify the “authenticity or nonexistence of the driver license number, the Florida identification card number, or the last four digits of the social security number provided by the applicant”. The statute says nothing about where that verification occurs. Furthermore, Mr. Miller is not alleged to have provided incorrect identity information, which is all that is apparently reviewed in Tallahassee. The Circuit Court correctly found that everything Mr. Miller is alleged to have done wrong (the registration and the voting) occurred in Miami-Dade County.

The State government (legislative and executive branch) obviously realizes this, because in response to this argument they changed the statute. That alone is persuasive evidence that the original statute did not confer jurisdiction, as it is unlikely the legislature and governor spent their valuable time passing meaningless legislation. See *State v. Calderon*, 951 So.2d 1031, 1033 (Fla. 3<sup>rd</sup> DCA 2007) (“we are required to assume the legislature does not write meaningless provisions”).

The State’s real argument is that this Court should apply the 2023 post-amendment language of section 16.56, which purports to confer jurisdiction on the OSP when voting fraud not just occurs in, but **affects**, more than one jurisdiction. But appellate courts do not issue advisory opinions. *State v. Spence*, 658 So.2d 660, 661 (Fla. 3<sup>rd</sup> DCA 1995). And they do not rule on

issues that have not been argued and decided below. See *Greenspoon Marder, P.A. v. Moscoso*, 114 So.3d 327, 329 n.2 (Fla. 3<sup>rd</sup> DCA 2013) (“This argument was not raised in the lower tribunal, and therefore, the issue was not developed in the record.”); *Sunset Harbour Condo Ass’n v. Robbins*, 914 So.2d 925, 928 (Fla. 2005) (“As a general rule, it is not appropriate for a party to raise an issue for the first time on appeal.”); *Tillman v. State*, 471 So.2d 32, 35 (Fla. 1985) (“In order to be preserved for further review by a higher court, an issue must be presented to the lower court and the specific legal argument or ground to be argued on appeal or review must be part of that presentation if it is to be considered preserved.”). There is no dispute that the State’s argument regarding the application of the 2023 amendment to section 16.56 was not raised in any form below. It could not have been. The 2023 amendment did not exist at the time.

The Circuit Court’s decision in this case was simple: Because the statute conferring jurisdiction on the OSP only does so if this crime occurred in multiple jurisdictions, and this crime didn’t occur in multiple jurisdictions, this case is dismissed. That is the ruling the State is appealing. There was no ruling below on whether this crime affected multiple jurisdictions, so this Court should not reach that question in the first instance.

The State’s argument that the amendment to section 16.56 is

“procedural” (and therefore, they argue, retroactive) does not mean that it can be applied to this pending appeal. Reversal would be saying the lower court judge was wrong to grant the motion to dismiss. That is not so, and it was clearly not so under the law that the lower court judge was required to follow at the time of granting the motion to dismiss.

The State cites *Perez v. Bell S. Telecomms, Inc.*, 138 So.3d 492 (Fla. 3<sup>rd</sup> DCA 2014) as their only authority for the principle that a new procedural law can be applied on appeal when enacted after the trial court ruling. *Perez* is clearly inapplicable. In that civil case, the trial judge found a doctor’s personal opinion inadmissible. At the time of the trial judge ruling Florida followed the test of *Frye v. United States*, 293 F. 1013 (D.C. Cir.1923) regarding expert testimony, but before the appeal was decided Florida adopted the test of *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993). *Daubert*, this Court said, was a stricter test than *Frye* which acted to “tighten the rules for admissibility of expert testimony in the courts of this state”. *Perez* at 497. Thus it is hardly surprising that this Court affirmed the trial court’s exclusion of the proposed testimony in *Perez*, or provided guidance for future courts that such opinion testimony based on subjective belief and unsupported speculation was inadmissible under *Daubert*, just as the trial court had found it was under *Frye*, which had broader admissibility

standards. The affirmance in *Perez* is self-evidently very different than the unprecedented action the State asks this Court to take here, which is reverse a trial court based on a change in law that occurred after the trial court ruled.

If the State believed that the 2023 amendment to Florida Statutes section 16.56 granted jurisdiction to the OSP over this case, there was a simple solution. They could have voluntarily dismissed this appeal, refiled the case in Circuit Court, and, if the defense again moved to dismiss, made their jurisdictional arguments based on the 2023 amendment to the Circuit Court in the first instance.

Instead, on April 17, 2023, the State moved this Court to relinquish jurisdiction to the trial court. Specifically in that motion they said they planned to amend the information and litigate this issue before the trial court. (Motion to Relinquish Jurisdiction p. 2). The State noted in that motion that this would “allow the trial court to rule in the first instance on the import of the new legislation and promote judicial efficiency”, which is obviously a recognition of the need for a lower court ruling on the issue they now seek to have this court rule on in the first instance. (*Id.* p. 11). This Court denied the relinquishment motion, and the State, rather than voluntarily dismissing the appeal and proceeding in the Circuit Court, elected to proceed with this appeal.



*Amicus* frankly suspects that the reason the State made this strategic decision is because this case and this issue has attracted significant media scrutiny (invited by Governor Desantis, on the verge of announcing his presidential campaign, holding a campaign-style press conference surrounded by cheering supporters to announce the arrest of Appellee and 19 other people) and the media/public relations optics around a voluntary dismissal might not look positive to someone concerned with the political rather than the legal ramifications of this prosecution. It is not this Court's role to save the State from the consequences, particularly the political consequences, of its strategic litigation decisions.

The Circuit Court judge was right that pursuant to the statute in effect when it ruled which required that the alleged voter fraud occur in more than one jurisdiction, the OSP did not have jurisdiction. This Court should affirm the granting of the motion to dismiss.

**II. Even Pursuant to the 2023 Version of Section 16.56, the Office of Statewide Prosecution Does Not Have Jurisdiction Over this Case.**

If the Court does reach the merits, it should find that even under the 2023 version of the statute, there is no such jurisdiction over this case on these undisputed facts.

The statute now in place allows the OSP to prosecute voter fraud cases “when any such offense is affecting, or has affected, two or more judicial circuits”. Fla. Stat. § 16.56(1)(c)(5) (2023).

The last charging document, an Amended Information filed August 29, 2022, charges only that the alleged voter fraud was “part of a related transaction occurring in two or more judicial circuits”. (R. 17). There is nothing in the Amended Information which charges that the alleged voter fraud “is affecting, or has affected, two or more judicial circuits”. Therefore, to the extent that the 2023 legislative amendment could have conferred jurisdiction over some theoretical voter fraud case, it did not do so over this actual voter fraud case. Ronald Lee Miller is not charged with doing anything that “affected” any judicial circuits. That jurisdictional assertion would be necessary for the 2023 legislative amendment to have any bearing over this case.

In *Zanger v. State*, 548 So.2d 746 (Fla. 4<sup>th</sup> DCA 1989) the Court held that an information filed by the OSP which did not properly allege the basis for OSP jurisdiction was fundamentally defective, stating that “[w]e therefore hold, preliminarily, that the statewide prosecutor has jurisdiction only in cases involving crimes which implicate more than one judicial circuit. The remaining question, alluded to earlier, is whether this jurisdictional element

must appear on the face of the information.” *Zanger* at 748. Yes, the *Zanger* Court answered. Jurisdiction is “determined solely from the face of the information”. *Zanger* at 748, citing *McLean v. State*, 23 Fla. 281, 2 So. 5 (1887); *State v. Vasquez*, 450 So.2d 203 (Fla. 1984); *Allen v. State*, 463 So.2d 351 (Fla. 1<sup>st</sup> DCA 1985); *Brehm v. State*, 427 So.2d 825 (Fla. 3<sup>rd</sup> DCA 1983). Therefore, in a statewide prosecutor case, the basis for statewide jurisdiction must be charged in the information. In *Zanger*, the result was vacating a conviction after trial due to the defective information, as “any conviction based on an information which does not properly allege jurisdiction is void”. *Zanger* at 748.

The Florida Supreme court held in *Carbajal v. State*, 75 So.3d 258 (Fla. 2011) that *Zanger* went too far in stating that the Circuit Court does not acquire jurisdiction over a case when the OSP does not allege their jurisdictional basis in the information. There is a difference between a prosecutor’s jurisdiction and a Court’s jurisdiction, and “even assuming that the OSP in fact lacked jurisdiction to prosecute Carbajal, such a defect in the information would not divest the circuit court of jurisdiction over the felony offenses charged against Carbajal. The issue of whether an information is filed by the OSP or a state attorney has no effect on the circuit court’s subject matter jurisdiction.” *Id.* at 262. Carbajal lost because he was trying to

challenge a conviction after the applicable time limit of Florida Rule of Criminal Procedure 3.850, which would have required him to show the Court never acquired jurisdiction over him. His “claim concerning the OSP’s jurisdiction is a claim that he should have raised long ago.” *Id.* at 264.

Here, there is no dispute that the Court had and has subject matter jurisdiction over Mr. Miller. The sole issue is whether the OSP has jurisdiction to prosecute him. Per *Zanger*, in a holding that was not modified by *Carbajal*, the jurisdictional basis for the OSP to prosecute must be alleged in the information. See also *Small v. State*, 56 So.3d 52, 53 (Fla. 4<sup>th</sup> DCA 2011) (“When an information fails to allege the necessary jurisdictional allegations to support OSP jurisdiction, the information is fatally defective . . .”). If, as the State alleges in this portion of their argument, that jurisdictional basis is that Mr. Miller’s actions affected two or more judicial circuits, they cannot prevail on this appeal, because they did not allege in the information the “is affecting, or has affected” language.

Beyond this fatal charging issue, there is also nothing in the record that would allow this Court to conclude that Mr. Miller’s alleged actions **did** affect more than one judicial circuit. The joint stipulation of facts says no such thing. (R. 32-33). The State’s argument is that voter fraud in a statewide election always affects more than one judicial circuit because it “undermines

the public's confidence in the integrity of state elections" and voting can affect the outcome of a close election and "at a minimum alters the vote tallies". Initial Brief pp. 13-14. Both arguments simply assume what they set out to demonstrate.

If all that matters is people's (assumed, since there is no record evidence they exist) perceptions, literally any crime could be said to affect people in other judicial circuits. Someone who lives in Orlando may be scared to travel to Miami because they hear of an armed robbery that occurred there. That does not give the OSP jurisdiction to prosecute that armed robbery. What is needed is "clear proof of an **actual impact** in other judicial circuits." *Winter v. State*, 781 So.2d 1111, 1116 (Fla. 1<sup>st</sup> DCA 2001) (emphasis added) (*overruled on other grounds* in *Carbajal v. State*, 75 So.3d 258 (Fla. 2011)). A theoretical person's hypothetical concern that elections are unfair is not "clear proof of an actual impact". There would be no possible workable limit to such a notion of the OSP's authority.

The fact that (by definition) voter fraud would change vote tallies also does not mean that such fraud affects people in another jurisdiction. What would be required is voter fraud that, individually or as part of some conspiracy, changes the outcome of the election. There is no evidence in the record that Mr. Miller's alleged voter fraud had any impact on the

outcome of any election and thus any practical ramifications, inside or outside Miami-Dade County. The State cites no race which Mr. Miller's alleged election fraud affected in terms of changing the outcome. Nor was there any race in the November 2020 election in Florida decided by a single vote. The closest statewide election (i.e. one that Mr. Miller could have voted in when registered in Miami-Dade County that has a direct impact on a voter in another county) by both vote margin and percentage was the presidential election, and Donald Trump still beat Joe Biden in Florida by nearly 400,000 votes (51.2% to 47.9%)<sup>13</sup>.

Simply put, as is true for almost all of us almost every time we vote, on an individual level Mr. Miller's vote did not matter and could not possibly have changed the outcome of any election. Certainly, some conspiracy to cast many illegal votes could have such an effect, but no such conspiracy has been alleged here. Thus, the charged conduct plainly did not affect anybody outside of Miami-Dade County in the sense of having a clear and actual impact on them. The vote tally does not affect people. Which politicians are elected or which referendums are enacted affects people. There is no evidence that Mr. Miller changed any of that, and he clearly did not.

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<https://results.elections.myflorida.com/Index.asp?ElectionDate=11/3/2020>

Therefore, both because the information did not charge that Mr. Miller's vote affected anybody in another judicial circuit, and because the undisputed facts demonstrate that it did not, this Court should affirm the granting of the motion to dismiss.

### **III. The Florida Constitution, and Sound Policy Rationales, Support Requiring Most Crimes, Including This Crime, To Be Prosecuted By Elected State Attorneys.**

Florida's Constitution (Article I, Section 15(a)) forbids prosecuting anybody "without such presentment or indictment or an information filed under oath by the prosecuting officer of the court". Article V, Section 17 provides that "Except as otherwise provided in this constitution, the state attorney shall be the prosecuting officer of all trial courts in that circuit". In Miami-Dade County, the elected state attorney is Katherine Fernandez-Rundle, who undisputedly could prosecute this case. Article V, Section 4(b) creates the position of statewide prosecutor, appointed by the Attorney General, giving them 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”.

The history of amending the Florida Constitution to create the statewide prosecutor position is ably explained in the Brief of *Amici Curiae* American Civil Liberties Union, Brennan Center for Justice, American Civil Liberties Union of Florida, and NAACP Legal Defense and Educational Fund, at pages 7-12. The office was created because of limitations in single-circuit state attorneys prosecuting multi-circuit organized crime. The Statewide Prosecutor, a New Weapon Against Organized Crime, 13 Fla. St. U.L. Rev. 653 (Fall, 1985), cited in that amicus brief, is an excellent contemporaneous source for the political history of creating what became the Office of the Statewide Prosecutor. Elected state attorneys opposed the creation of the office, and multiple compromises were reached to assuage their concerns. Thus the constitutional amendment approved by the voters includes the “occurs” or “affects” language regarding multi-circuit crimes. The occur/affect element is mandatory for OSP jurisdiction, absent another constitutional amendment.

This sort of prosecution, and the jurisdictional arguments being made here, were clearly never contemplated in the long and deliberative process resulting in proposing and passing the constitutional amendment that created the Office of the Statewide Prosecutor. Nobody trying to respond to



the problem of organized crime would have imagined an appointed prosecutor in Tallahassee prosecuting someone in Miami for the third-degree felony of voting when ineligible. This Court should not allow the OSP to exceed its constitutional mandate.

Voter fraud is a crime, and it should be. Whether what Ronald Lee Miller is alleged to have done is voter fraud and therefore a crime is extremely debatable, because as discussed in the Statement of Facts the law was so in flux at the time and because the evidence seems so lacking that he had any knowledge and intent. He, apparently, filled out a form given to him by a volunteer eager to register convicted felons to vote after the passage of Amendment 4, was mailed a voter registration card, logically assumed he was therefore eligible to vote, and voted. Ultimately, whether such conduct is criminal, and if so whether it warrants prosecution, is a decision properly made by the locally elected state attorney. If the public disagrees with that decision, they can therefore respond at the ballot box. That is how our democracy is supposed to work. Granting members of the executive branch of government enhanced power to prosecute those they disagree with or see political gain in prosecuting is a poor idea for many reasons.

Our federalist system is fundamentally about “protect[ing] the liberty of

the individual from arbitrary power. When government acts in excess of its lawful powers, that liberty is at stake.” *Bond v. United States*, 564 U.S. 211, 222 (2011). As then-Congressman Ron Desantis said in 2016 at a panel discussion on Justice Scalia and federalism, “although the Revolution was a revolt against executive authority, the impulse that inspired the Constitution was that the founders saw runaway legislatures in the states at the time. Therefore, they wanted to have a government of, by, and for the people.”<sup>14</sup> This is precisely why, when it comes to prosecuting and potentially taking the liberty of Floridians, the state constitution wisely grants exclusive authority to a locally elected state attorney except in limited circumstances inapplicable here.

## **CONCLUSION.**

FACDL-Miami respectfully submits that this Court should affirm the Circuit Court’s granting of the motion to dismiss this case. The Circuit Court was right because the alleged voter fraud did not occur in multiple jurisdictions, as the law required. This Court should not consider for the first time on appeal the State’s argument based on a later expansion of the

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<sup>14</sup> <https://www.cato.org/sites/cato.org/files/articles/pilon-regent-law-review-v30n1.pdf> p. 84.

statutory prosecutorial authority when the alleged voter fraud affects multiple jurisdictions. Even if the Court did consider that new legislation, Mr. Miller was not charged with affecting multiple jurisdictions, and the voter fraud here did not affect multiple jurisdictions. The Florida Constitution, and sound federalism-based policy considerations, prohibit this prosecution by the Office of Statewide Prosecutor. The Eleventh Circuit State Attorney's Office is the only office with the authority to prosecute this case, and they have not done so. If the public disagrees with that exercise of prosecutorial discretion, the remedy, as it so often is in our democracy, is at the ballot box.

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**CERTIFICATE OF SERVICE AND COMPLIANCE**

I HEREBY CERTIFY that this brief is typed in 14-point Arial font, is 4,841 words, and that a true and correct copy of the foregoing was efiled with the Third District Court of Appeals, and a copy served via email on Alison Preston, Esq., counsel for Appellant at [alison.preston@myfloridagal.com](mailto:alison.preston@myfloridagal.com), on counsel for Appellee Robert Barrar, Esq. at [robertibarrar@gmail.com](mailto:robertibarrar@gmail.com), and on all other persons registered for e-service, this 6th day of October, 2023.

/s/ Daniel Tibbitt  
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