IN THE DISTRICT COURT OF APPEAL OF FLORIDA,
THIRD DISTRICT

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

STATE OF FLORIDA,

Appellant,

v.

RONALD LEE MILLER,

Appellee.

BRIEF OF *AMICUS CURIAE* THE ASSOCIATION OF PROSECUTING ATTORNEYS IN SUPPORT OF APPELLEE

QUINN EMANUEL URQUHART & SULLIVAN, LLP
2601 South Bayshore Drive, Suite 1550
Miami, FL 33133
Tel.: (305) 439-5008
Samuel G. Williamson (Florida Bar No. 1033817)
Thomas S.P. Geeker (Florida Bar No. 1035932)
samwilliamson@quinnemanuel.com
thomasgeeker@quinnemanuel.com

QUINN EMANUEL URQUHART & SULLIVAN, LLP
51 Madison Avenue, 22nd Floor
New York, NY 10010
Tel.: (212) 849-7000
Sascha N. Rand (*pro hac vice pending*)
sascharand@quinnemanuel.com

Counsel for Amicus Curiae

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STATEMENT OF INTEREST OF *AMICUS CURIAE*

The Association of Prosecuting Attorneys ("APA") is a national non-profit organization created by prosecutors from across the country to strengthen their efforts in ensuring safer communities and improving their performance in the criminal justice system. The APA provides resources such as training and technical assistance to develop proactive and innovative prosecutorial practices. It acts as a global forum for the exchange of ideas, allowing prosecutors to collaborate with each other and other criminal justice partners. The APA also serves as an advocate for prosecutors on emerging issues related to the administration of justice, including by submitting briefs as amicus curiae in appropriate cases. The APA's board of directors includes current prosecutors from states throughout the nation. The APA has sixteen attorneys on staff with over 350 years of collective criminal justice experience.

The APA has a significant interest in the resolution of the jurisdictional issue in this case. As explained in the following brief, local state attorneys' independence and discretion are the bedrock of the criminal justice system, and that vital role should inform the Court's interpretation of the constitutional and statutory provisions

that govern the Office of Statewide Prosecution's ("OSP") jurisdiction to prosecute alleged single-circuit voter-registration and voting crimes. Because the APA routinely grapples with and advocates for these critical issues, in contexts around the country, including in Florida, its participation as *amicus curiae* will provide valuable, informed insight that will benefit this Court.

SUMMARY OF ARGUMENT

This Court should affirm the decision below because the constitutional and statutory provisions that govern OSP's jurisdiction cannot, and should not, be interpreted to grant OSP the authority to prosecute the purely local crimes of allegedly registering to vote and voting while ineligible in one judicial circuit for which Appellee has been accused.

First, the requirements for OSP jurisdiction that are set out in Article IV, Section 4(b) of the Florida Constitution and Section 16.56 of the Florida Statutes are not met here. Those provisions expressly limit OSP's jurisdiction to cases where an offense (1) "occurred[] in ***two or more judicial circuits*** as part of a related transaction" or (2) "affected[] ***two or more judicial circuits***[.]" Art. IV, § 4(b), Fla.

Const.; § 16.56(1)(c), Fla. Stat. (2023).[1] (emphasis added). Decades of case law interpreting OSP's jurisdiction uniformly hold that it does not have authority to prosecute crimes that occur only in one circuit. The history behind the creation of OSP similarly evidences a role that is limited to multi-circuit crimes. And case law interpreting the authority of the statewide grand jury, whose jurisdiction is modeled off of OSP's, points to the same lack of jurisdiction here. In arguing to the contrary, Appellant asks this Court to accept an interpretation of OSP's authority that cannot be squared with the text of the constitutional and statutory provisions that govern its authority, the history behind OSP's creation, and "hundreds of years of *stare decisis* and the foundation of our legal system." *State v. Hubbard*, No. 22008077CF10A, at *9 (Fla. 17th Cir. Ct. Dec. 23, 2022).

Second, recognizing that the purely local offenses with which Appellee is charged are ones that should be exclusively addressed by

[1] On appeal, Appellant contends that this Court should interpret and apply Section 16.56 as that statute has been amended after the decision below dismissed Appellee's case. *See* Appellant's Initial Br. at 9–13. *Amicus curiae* APA takes no position as to which version of Section 16.56 the Court should apply, and thus addresses the version Appellant contends controls. The arguments, observations, and perspectives offered in this brief apply to either version of Section 16.56.

local state attorneys will vindicate the importance of prosecutorial independence and accountability to the communities they serve. These values are at the core of the criminal justice system. Indeed, Florida's constitution charges state attorneys with the responsibility of prosecuting crimes that occur in the circuits in which they are elected. As discussed *infra*, some state attorneys have prosecuted cases like this one, while others have not. It is their responsibility to make those decisions. Permitting OSP to prosecute Appellee for the purely local crimes alleged here would erode state attorneys' independence. It would also usurp the traditional method by which Florida voters can assure themselves that the State's vast power to prosecute will not be abused: the democratic principle that local elected officials are responsible to the electorate of his or her circuit.

For these reasons, the Court should affirm the decision below.

ARGUMENT

I. This Prosecution Exceeds OSP's Statutory and Constitutional Authority

This appeal centers on whether the charged offenses (1) "occurred[] in ***two or more judicial circuits*** as part of a related transaction," or (2) "affected[] ***two or more judicial circuits***[.]" Art.

IV, § 4(b), Fla. Const.; § 16.56(1)(c), Fla. Stat. (2023). As the plain text of the constitutional and statutory provisions that govern OSP's jurisdiction, the history behind OSP's creation, and long-standing Florida jurisprudence confirm that neither condition is met, this Court should affirm.

A. Appellee's Charged Offenses Did Not Occur in Two or More Judicial Circuits as Part of a Related Transaction

Though Florida courts have frequently seen fit to "broadly construe the prosecutorial authority of the statewide prosecutor," they have consistently held that an offense does not "occur in two or more judicial circuits as part of a related transaction" unless the prosecuted "criminal enterprise operates or has operated" in those circuits. *King v. State*, 790 So. 2d 477, 479 (Fla. 5th DCA 2001) (internal quotation marks omitted, emphasis added). This "broad view of the OSP's prosecutorial authority" requires a showing of "criminal activity in ***two or more judicial circuits***." *Scott v. State*, 102 So. 3d 676, 677 (Fla. 5th DCA 2012) (emphasis added). Indeed, the Supreme Court of Florida has itself held that what matters is the ***location of the criminal actions*** by the defendant and its co-conspirators. *See Carbajal v. State*, 75 So. 3d 258, 262 (Fla. 2011)

("Carbajal is correct that if his criminal activity in Florida actually occurred ***in only Lee County, Florida***, the OSP was not authorized to prosecute charges arising from that conduct.") (emphasis added).

These limits on OSP's authority are consistent with the "plain, obvious, and common sense" meaning of the constitutional and statutory provisions that govern OSP's jurisdiction. *Advisory Op. to the Governor re: Implementation of Amendment 4 (Amendment 4), the Voting Restoration Amendment*, 288 So. 3d 1070, 1078 (Fla. 2020) (quoting Joseph Story, *Commentaries on the Constitution of the United States* 157-58 (1833)); *see also Amendment 4*, 288 So. 3d at 1078 (explaining courts in Florida "adhere to the 'supremacy-of-text principle': 'The words of a governing text are of paramount concern, and what they convey, in their context, is what the text means.'") (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 56 (2012))).

These limitations on OSP's authority are also in accord with its Constitutional origin. The Legislature and voters created OSP in 1987 as a response to the belief that, in the 1970s and 1980s, "Florida [was] a haven for organized crime elements that operate without regard to jurisdictional boundaries … because local state

attorneys do not have the authority to pursue these elements across jurisdictional lines." R. S. Palmer & Barbara M. Linthicum, *The Statewide Prosecutor: A New Weapon against Organized Crime*, 13 FLA. ST. U. L. REV. 653, 676 (1985). In 1984, Governor Daniel Robert Graham formed the Governor's Commission on the Statewide Prosecution Function (the "Commission"), which drafted the proposed constitutional amendment and enabling legislation that ultimately created OSP, to address precisely this threat. *Id.* at 664. In 1985, adopting the Commission's recommendations, Governor Graham described OSP a part of "the war on drugs and organized crime." *Id.* at 669 (quoting Gov. Graham's Remarks Concerning the Statewide Prosecutor Amendment (Mar. 6, 1985)). The Legislature, at the recommendation of the Commission, limited OSP's jurisdiction to multi-circuit crimes to ensure it would not usurp the authority of state attorneys. *Id.* at 677. In addition, the Legislature placed the multi-circuit limitation on OSP's authority in the proposed constitutional amendment, as opposed to its enabling statute, at the request of state attorneys to "make it more difficult to change this jurisdictional limitation, since any change would require a constitutional amendment." *Id.* at 677–78.

As its origin underscores, OSP was created to prosecute sprawling mafia cases that jurisdictional barriers make difficult for state attorneys to effectively prosecute. Indeed, even a suggestion to empower OSP to prosecute *single-circuit* political corruption cases, which some saw as the quintessential example of a case that could be better tried by a statewide prosecutor, was rejected by OSP's framers because it "would detract from the statewide prosecutor's ability to prosecute large criminal organizations." *Id.* at 668. OSP's strict limitation to multi-circuit offenses was, accordingly, included in both the Constitutional amendment and the enabling legislation, with single-circuit cases carefully placed outside its reach. It would be contrary to both the purpose of OSP and the text of the constitutional and statutory provisions that delineate its authority to extend the OSP to criminal activity that does not span multiple judicial circuits.

The history and jurisprudence interpreting the jurisdiction of the statewide grand jury, which is found in § 905.34, Fla. Stat., is similarly instructive. When it was crafting the multi-circuit limitation on OSP's jurisdiction, the Commission "decided to limit the statewide prosecutor's jurisdiction to the same jurisdictional limitations as the

statewide grand jury because those limitations had proven workable and had met with few objections since first adopted in 1973." *Id.* at 666–67. "In addition, to further reduce the potential that the functions of the statewide prosecutor and the state attorneys would overlap, the Commission recommended changing the jurisdiction of the statewide grand jury from multicounty to multicircuit criminal activity and adopted the same standard for [OSP]." *Id.* at 667.

Like OSP, the statewide grand jury's jurisdiction is explicitly limited to offenses that are "occurring, or ha[ve] occurred, in two or more judicial circuits as part of a related transaction[.]" § 905.34, Fla. Stat. Like OSP, this limitation on the statewide grand jury has also consistently been held to only apply where the charged offense includes crimes in multiple circuits. *See, e.g.*, *McNamara v. State*, 357 So. 2d 410, 413 (Fla. 1978) (crediting defendant's argument that the statewide grand jury's "jurisdiction is statutorily limited to ***multi-county criminal activity***" and reversing conviction) (emphasis added). As Judge Barkdull explained in one such case, "a local crime"—that is, "a crime committed in a single county"—is simply outside of the jurisdiction of such statewide bodies, to whom "[t]he Legislature might have given … such power, but it did not." *State v.*

Ostergard, 343 So. 2d 874, 877 (Fla. 3d DCA 1977) (Barkdull, J., concurring); *see also In re Final Rep. of the 20th Statewide Grand Jury*, 343 So. 3d 584, 590 (Fla. 4th DCA 2022) (repressing parts of statewide grand jury's report that contained allegations of local crimes).

The plain meaning of the constitutional and statutory provisions that govern OSP's jurisdiction, combined with decades of precedent interpreting what it means for an offense to "occur in two or more judicial circuits as part of a related transaction," establish that the charged offenses here did not meet that requirement. As the decision below recognized, Appellee "never physically entered" and "never mailed or electronically transferred anything to" another judicial circuit, and "was not part of a criminal conspiracy." R.46 (*State v. Miller*, No. F22-015012 at *3 (Fla. 11th Cir. Ct. Dec. 7, 2022)). Neither Appellee nor any associates carried out any acts related to these alleged offenses outside of the Eleventh Judicial Circuit.

Several recent decisions have explained why offenses like those alleged in this case—the signing and submission of a voter registration application and the casting of a vote while ineligible in

one judicial circuit—do not "occur in two or more judicial circuits as part of a related transaction." In *State v. Wood*, No. F22-15009 (Fla. 11th Cir. Ct. Oct. 21, 2022), Judge Hirsch granted a motion to dismiss similar to the one Appellee filed here, and for reasons that equally support affirmance here. *Id.* at *7. While the *Wood* defendant's registration and ballot were transported across jurisdictional lines, the court observed "they were not transported by him, nor by any putatively criminal co-perpetrator." *Id.* at *4. The court also reasoned that the "merely ministerial transmission of completed forms" by postal workers and Florida's election authorities is not ***criminal*** activity,[2] and thus not sufficient to meet Section 16.56's "demand[] that the crime itself ***occur***, that it ***be committed, in more than one jurisdiction***. For a crime to be prosecutable by OSP, it is that crime, and not its mere consequences or related activities, that must occur in two or more Florida jurisdictions." *Id.* at *5 (emphasis added).

[2] Indeed, crediting Appellant's interpretation of the charged offenses here having "occurred in two or more judicial circuits as part of a related transaction" would compel the conclusion that the State carried out part of the charged crimes by approving Appellee's voter registration application, sending him a voter information card, and processing his ballot, despite his alleged ineligibility.

Judge Odom similarly recognized in a recent case involving an individual charged by OSP for allegedly registering and voting despite having a disqualifying felony, "[t]he crime has been committed and completed in the jurisdiction of where the registration application was submitted and or where the Defendant submitted his vote. Thereafter, it doesn't matter who or what entity moves or transmits the fraudulent ballot." *State v. Hubbard*, No. 22008077CF10A, at *9 (Fla. 17th Cir. Ct. Dec. 23, 2022). And that resolves this case. These charged offenses are complete upon the false affirmation of one's eligibility on a voter registration application (Section 104.011(1)) or the casting of a vote (Section 104.15), not later when those registrations or votes are transported elsewhere.[3]

Other recent decisions dismissing OSP's charges against individuals with disqualifying felonies who allegedly registered and

[3] Moreover, the evidence does not suggest that Appellee knowingly or willfully violated the relevant statutes. For instance, Appellee was registered to vote by a canvasser who told him he was eligible to vote despite his felony convictions, Parker Branton & Ryan Mackey, *Miami Man Facing Voter Fraud Charges Appears in Court*, WPLG LOCAL 10 (Sept. 16, 2022, 4:19 PM), https://www.local10.com/news/local/2022/09/16/miami-man-faces-voter-fraud-charges-in-broward-county/, and Appellee was sent a voter information card by the Miami-Dade Supervisor of Elections, R.25.

voted in one circuit like Appellee are in accord. In *State v. Suggs*, No. 22-008080CF10A (Fla. 17th Cir. Ct. May 22, 2023), Judge Farmer held OSP lacked authority to prosecute a defendant who allegedly registered and voted while ineligible in the Seventeenth Judicial Circuit "because the law in effect at the time the charges were filed did not confer jurisdiction … and because even as amended the statute does not confer jurisdiction to the OSP because the Defendant did not commit elements of the crimes charged in two different circuits." *Id.* at *2. In so holding, Judge Farmer reasoned:

> [T]he mere fact that the Secretary of State erroneously verified or certified that Defendant was legally entitled to have his right to vote restored and was otherwise eligible to vote does not constitute an act or element of the charges committed by Defendant in a circuit other than the 17th Judicial Circuit. Defendant committed every act - registering to vote, attesting to his eligibility to do so (based on an erroneous certification received from the State), and casting a vote - only in the 17th Circuit in and for Broward County, Florida.

Id. And in *State v. Washington*, No. 2022-CF-009611-A-O (Fla. 9th Cir. Ct. Feb. 13, 2023), Judge Harris dismissed another such case, where OSP sought to prosecute an individual with a disqualifying felony who allegedly voted while ineligible in the Ninth Judicial Circuit even though "[a]ll of Defendant's alleged actions occurred in

Orange County," because a judicial body "will not facilitate such a concentrated power without legislative authority." *Id.* at *1.

Appellant has identified no case, of any type, in which a defendant with no co-conspirators takes relevant actions only in one judicial circuit and is nonetheless deemed to have committed an offense that "occurred[] in two or more judicial circuits as part of a related transaction." Art. IV, § 4(b), Fla. Const; § 16.56(1)(c), Fla. Stat. (2023). To the contrary, for decades and without exception, such offenses have been limited to those that entail criminal activity by a defendant or his associates that actually occurs in multiple circuits. That is absent from this case, and thus so is OSP's authority to prosecute.

B. Appellee's Charged Offenses Did Not Affect Two or More Judicial Circuits

Appellant's arguments under the second prong of the amended Section 16.56, that the charged offense "is affecting, or has affected, two or more judicial circuits," fares no better. § 16.56(1)(c), Fla. Stat. (2023); *see also* Art. IV, § 4(b), Fla. Const. Election integrity and voter confidence are important values, but the statewide interest in deterring, investigating, and punishing violations of election statutes

does not confer authority on OSP to prosecute every voting offense. As noted by Judge Odom in *Hubbard*:

> Most would agree with the idea that any crime committed against any citizen in Florida affects all Floridians. However, this premise does not establish jurisdiction for the purposes of the OSP. If it did, then the OSP would have unlimited authority to prosecute anyone who commits a crime in one circuit but that persons [sic] actions "affected", no matter how directly or indirectly, those in another circuit. Where does it end.

Hubbard, No. 22008077CF10A, at *7–8.

Prior decisions have properly interpreted the "affect" prong of Section 16.56 much more narrowly than Appellant now asks this Court to interpret it. For example, in *Winter v. State*, 781 So. 2d 1111 (Fla. 1st DCA 2001), *disapproved on other grounds in Carbajal v. State*, 75 So. 3d 258 (Fla. 2011), the defendant was charged with defrauding the Florida State Employees' Health Self Insurance Fund, a crime that "affected all of its equitable owners," that is, "employees all over Florida." *Id.* at 1115. Though the *Winter* court accepted that the defrauded fund was one "to which employees in various judicial circuits may have contributed," it held that even this depletion of funds owned by people in every circuit "falls short of the showing required to invoke an OSP prosecution." *Id.* at 1116.

If, as *Winter* held, defrauding a fund beneficially owned by specific Florida citizens (state employees) scattered throughout the State does not suffice to confer authority on OSP, the kind of attenuated effects Appellant seeks to invoke here also falls far short. To hold that every vote cast in a Florida election "affects two or more judicial circuits" because it is included in the tally of a statewide race and can affect voters' confidence in the electoral system would expand OSP's authority beyond its constitutional and statutory bounds. Any crime in Florida can, at some level of generality, be traced to a statewide affect, whether it be from a decrease to state revenues, an increase from state spending, a change in perceptions of the state's success in law enforcement, or any number of other consequences. Nonetheless, Florida's constitution and statutory law have long committed responsibility for prosecuting local crimes to state attorneys, not OSP.

II. Important Principles of Local Prosecutorial Independence Further Support Affirming the Decision Below

In addition to contradicting the constitutional and statutory provisions that govern OSP's authority, allowing this case to proceed would risk eroding local state attorneys' independence. It would also

risk encroaching on the constitutional powers vested in state attorneys and long recognized by Florida's judiciary.

Prosecutorial independence for state attorneys is an express and well-established feature of Florida's constitutional scheme. The Constitution provides that each "state attorney," who must "reside in the territorial jurisdiction of the circuit," "***shall*** be ***the*** prosecuting officer of all trial courts in that circuit and shall perform other duties prescribed by general law." Art. V, § 17, Fla. Const. (emphasis added). That OSP's "concurrent jurisdiction with the state attorneys" is limited to crimes occurring in or affecting "two or more judicial circuits" underscores the primacy of state attorneys. Art. IV, § 4(b), Fla. Const; § 16.56(1)(c), Fla. Stat. (2023).

As the constitutional prosecuting officers, state attorneys are vested with the authority "[i]n any particular case . . . to prosecute or not."[4] *Johnson v. State*, 314 So. 2d 573, 577 (Fla. 1975). Indeed, some state attorneys have decided to bring similar charges against individuals with felony convictions who registered or voted while

[4] State attorneys are guided by ethical standards, adhere to the Rules Regulating the Florida Bar, and follow the American Bar Association's Model Rule of Professional Conduct 3.8 "Special Responsibilities of a Prosecutor."

ineligible, while others have not. That discretion "is inherent in our system of criminal justice," and "[i]ts origin is found in the common law of England." *Id.* (citing *Wilson v. Renfroe*, 91 So. 2d 857 (Fla. 1956)). The Supreme Court of Florida has repeatedly affirmed its holdings that, under Florida law, "the discretion of a prosecutor in deciding whether and how to prosecute is absolute in our system of criminal justice." *State v. Cain*, 381 So. 2d 1361, 1367 (Fla. 1980) (footnote omitted); *see also State v. Greaux*, 977 So. 2d 614, 615 (Fla. 4th DCA 2008) ("The prosecutor has the sole discretion to charge and prosecute criminal acts[.]").

Florida courts have long held that state attorneys are constitutional officers, charged with the responsibility of prosecutions in the circuit in which they are elected, and that, as an elected official, "he [or she] is responsible to the electorate of [their] circuit, this being the traditional method in a democracy by which the citizenry may be assured that vast power will not be abused." *Austin v. State ex Rel. Christian*, 310 So. 2d 289, 293 (Fla. 1975); *see also Cook v. State*, 921 So. 2d 631, 644 (Fla. 2d DCA 2005) ("The State has established the offices of the state attorneys for the purpose of prosecuting crimes. Article V, Section 17 of the Florida

Constitution specifically provides that the state attorney of each circuit 'shall be the prosecuting officer of all trial courts in that circuit.' With respect to the prosecution of crimes, the State acts exclusively through the offices of the state attorneys. No other officers or agencies of the State are vested with that responsibility or power." (internal citation omitted)).

At the heart of this constitutionally prescribed role is the well-founded idea that local prosecutors are better positioned than a centralized governmental authority to apply the laws of the State in their local jurisdictions. *See* Rachel E. Barkow, *Federalism and Criminal Law: What the Feds Can Learn from the States*, 109 MICH. L. REV. 519, 556 (2011) ("In most states, the relationship between state-level and local prosecutors is coordinate, not hierarchical, with the exception of appellate jurisdiction."); Robert L. Misner, *Recasting Prosecutorial Discretion*, 86 J. CRIM. L. & CRIMINOLOGY 717, 731 (1996) ("The history of the development of the office of prosecutor has the clear theme … of 'local representation applying local standards to the enforcement of essentially local laws.'"); William T. Pizzi, *Understanding Prosecutorial Discretion in the United States: The Limits of Comparative Criminal Procedure as an Instrument of Reform*, 54

OHIO ST. L.J. 1325, 1342 (1993) ("[P]rosecutorial discretion in the American legal system must be seen as part of a political tradition that is built on a preference for local control over political power and on an aversion to strong centralized governmental authority and power.").

Florida's constitution expressly recognizes that a local electorates' duly-elected state attorney should have the independence and discretion to prosecute crimes committed in the community. Critically, these principles of local prosecution ensure that the State's vast power is not abused. *See Austin*, 310 So. 2d at 293. To allow OSP to prosecute single-circuit crimes, notwithstanding the prosecutorial decisions made by the constitutional officers elected by the citizens of those specific circuits, would fly in the face of fundamental constitutional principles on which the criminal justice system is built.

CONCLUSION

For the foregoing reasons, *amicus curiae* APA respectfully requests this Court affirm the trial court's dismissal.

DATED: Miami, Florida
October 6, 2023

QUINN EMANUEL URQUHART & SULLIVAN, LLP

By: */s/ Samuel G. Williamson*

QUINN EMANUEL URQUHART & SULLIVAN, LLP
2601 South Bayshore Drive, Suite 1550
Miami, FL 33133
Tel.: (305) 439-5008
Samuel G. Williamson (Florida Bar No. 1033817)
Thomas S.P. Geeker (Florida Bar No. 1035932)
samwilliamson@quinnemanuel.com
thomasgeeker@quinnemanuel.com

QUINN EMANUEL URQUHART & SULLIVAN, LLP
51 Madison Avenue, 22nd Floor
New York, NY 10010
Tel.: (212) 849-7000
Fax: (212) 849-7100
Sascha N. Rand (*pro hac vice pending*)
sascharand@quinnemanuel.com

Counsel for Amicus Curiae

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of October, 2023, a true and correct copy of the foregoing was filed via the Florida Court's E-Filing Portal and served via email to the following counsel of record:

Office of the Attorney General
Henry C. Whitaker
Jeffrey Paul DeSousa
Alison E. Preston
The Capitol, PL-01
Tallahassee, Florida 32399
(850) 414-3300
alison.preston@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
(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 33143
(305) 576-5600
RobertIBarrarPA@gmail.com
rbarrar@bellsouth.net

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

Counsel for Ronald Lee Miller

By: */s/ Samuel G. Williamson*
Samuel G. Williamson
Florida Bar No. 103381

CERTIFICATE OF COMPLIANCE

Pursuant to Florida Rules of Appellate Procedure 9.045, 9.210 and 9.370, *Amicus Curiae* the Association of Prosecuting Attorneys hereby certifies that the foregoing brief complies with the applicable font and wordcount requirements. It was prepared in 14-point Bookman Old Style font, and it contains 4,261 words.

By: */s/ Samuel G. Williamson*
Samuel G. Williamson
Florida Bar No. 1033817