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IN THE SUPREME COURT OF FLORIDA

CASE NO. 93,106

THE STATE OF FLORIDA,

Appellant,

vs.

MATTHEW STEPANSKY,

Appellee.

AN APPEAL FROM THE FIFTH DISTRICT COURT OF APPEAL

ANSWER BRIEF OF APPELLEE

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STATEMENT OF THE CASE AND FACTS

The Appellee accepts the Appellant's Statement of the Case and Facts, with the following important additions: After accepting the Writ and reviewing the briefs, the Fifth District Court of Appeal, *sua sponte*, ordered oral argument on the Writ, which was limited to 30 minutes per side. This order specifically referenced United States v. Pizdrint, 983 F. Supp 1110 (M.D. Fla. 1997)[1], and stated that the issue of preemption would not be considered by the court at oral argument. (See, Order, Appendix A).

The Fifth District Court heard oral argument on March 3, 1998. On March 4, 1998, Judge Cobb filed the opinion of the court, in which Judge Antoon concurred and Judge Harris concurred specially and with separate opinion. (Appendix B). The court found that there was no international, federal, or state authority upon which Florida could exercise criminal jurisdiction 100 miles from its coast over a Liberian registered vessel. The court held that the Florida Legislature had enacted Florida Statute § 910.006(3)(d) without constitutional authority to do so, thereby intruding upon the exclusive province of the Congress and the President, as delineated by Article I, Section 10, of the U.S. Constitution, and issued the Writ of Prohibition.

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[1] Pizdrint is a federal case that was heard in the Middle District of Florida. It is the only other reported case that addresses criminal jurisdiction aboard a cruise ship on the high seas, as the events occurred in the Gulf of Mexico more than three miles from the nearest state's coast. Unlike the case at bar, the Pizdrint court found that the ship involved, the M/V Celebration, was owned in part by a U.S. corporation and therefore was a domestic vessel whose passengers were subject to 18 U.S.C. § 7(1). Note that the parties below in the case at bar stipulated that the M/V Atlantic is a foreign flag vessel of Liberian registration.

SUMMARY OF ARGUMENT

Subject matter jurisdiction must be grounded in constitutional authority. Florida Statute § 910.006(3)(d), State Special Maritime Criminal Jurisdiction, is without state constitutional support, and furthermore is prohibited by the U.S. Constitution, therefore the lower court was correct in holding the statute unconstitutional. The Florida Constitution limits Florida's seaward boundaries, and therefore its jurisdiction, to three miles from its coast. Neither Congress nor the President nor the U.S. Constitution have extended the boundaries of the State of Florida past three miles. The United States fixes its territorial boundaries at twelve miles from the coastline.

International law does not recognize political subdivisions (i.e. individual states) of the United States, so Florida has no authority to act independently in the international arena. Therefore, no treaty exists. Moreover, no treaty exists between the United States and Liberia allowing Florida to exercise criminal jurisdiction over a floating piece of Liberian soil (i.e. a Liberian flag ship). Therefore, the State of Florida has no authority to enact a statute purporting to exercise criminal jurisdiction over an act occurring on the high seas on this foreign flag vessel. The Fifth District Court of Appeal correctly determined that Florida's attempt to assert jurisdiction under these circumstances was unconstitutional. This decision should be affirmed by this Court.

ARGUMENT

THE STATE OF FLORIDA IS WITHOUT CONSTITUTIONAL AUTHORITY TO ENACT STATUTE § 910.006(3)(d), WHICH PURPORTS TO EXERCISE CRIMINAL JURISDICTION OVER AN ACT ALLEGEDLY OCCURRING ON THE HIGH SEAS ON A FOREIGN FLAG VESSEL

Jurisdiction generally. The jurisdiction of the courts of a state of the United States is determined by the state constitution, subject to the limitations of the U.S. Constitution, in particular the supremacy of treaties and federal law under the Supremacy Clause.[2] For example, this Court's appellate jurisdiction arises from Article V, Section 3(b), of the Florida Constitution. "Rule 9.030(a) of the Florida Rules of Appellate Procedure contains a logical restatement of the jurisdiction of the Supreme Court in appellate proceedings but it does not itself constitute a grant of jurisdictional power." (Padovano, Florida Appellate Practice, § 2.1). This axiom is best explained through another example under the Florida Constitution: there is no jurisdiction for a district court of appeal to hear an appeal in a case in which a trial court has imposed the death penalty. Thus, an act of the legislature approving the publication of a statute that purports to allow district courts of appeal to hear death penalty appeals is without constitutional authority, and therefore invalid. The Florida Legislature is without authority to create jurisdiction, only the constitution has such power. The legislature can only codify jurisdiction, within the parameters of what the constitution allows.

State criminal jurisdiction generally. It is without dispute that a state has jurisdiction to prosecute crimes which allegedly occur within its territory. (See, Art. I, § 16(a), Fla. Const.). This right competes, at times, with federal jurisdiction over the same act. United States courts first

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[2]Restatement of the Law, The Foreign Relations Law of the United States, Volume 1, § 422, Comment *b*, p. 314 (3rd ed., American Law Institute 1987).

attempted to reconcile these two seemingly competing interests in United States v. Bevans, 16 U.S. (3 Wheat) 336, L. Ed. 404 (1818). The question before the Court in Bevans was whether a murder committed on a ship in the Boston Harbour was cognizable in state or federal court. Chief Justice Marshall delivered the opinion of the Court: "What, then, is the extent of jurisdiction which a state possesses? We answer, without hesitation, the jurisdiction of a state is co-extensive with its territory; co-extensive with its legislative power." The Court further held that because the offense occurred on a U.S. ship of war that it was a federal matter. "The opinion of the court, on this point, is believed to render it unnecessary to decide the question respecting the jurisdiction of the State Court in the case." Although that issue was not decided, Chief Justice Marshall indicated that the jurisdiction of a state ended at boundaries. This principle of territorial jurisdiction is embodied in Florida Statute § 910.005.

State criminal jurisdiction extends three miles. The seaward boundary of the State of Florida is defined as three miles from its Atlantic coastline, and three leagues from its Gulf of Mexico coastline. Art. II, § 1(a), Fla. Const. (1968). This Court has already held that the three-mile Atlantic boundary of the criminal jurisdiction of the State of Florida is absolute. In Mounier v. State, 178 So. 2d 714 (Fla. 1965), two defendants, Mounier and Thompson, were convicted of unlawfully spearfishing three and four-fifths nautical miles off the Atlantic coastline of Monroe County. In overturning the convictions, this Court relied on the constitutional boundaries of the state: "[i]n 1962, however, the boundaries of Florida were changed by the people to include only a distance seaward of three geographic miles in this particular area. It appearing without any question that the offense was committed beyond this line, it follows that the conviction was a nullity and that these defendants should have been discharged." Id. at 717. If an offense committed four-fifths of a

nautical mile beyond the three-mile boundary is a nullity, then an offense alleged to have been committed 97 miles beyond the three-mile boundary is a nullity, without question.

The Fourth District Court of Appeal has acknowledged a line of United States Supreme Court cases which set the territorial jurisdiction of the State of Florida as three miles from the Atlantic coastline of Florida. State v. Efthimiadis, 690 So. 2d 1320 (Fla. 4th DCA 1997). The federal government defines the boundaries of Florida, *inter alia*, in 43 U.S.C.A. § 1312, "Seaward Boundaries of States," as three miles from its Atlantic coastline or the international boundaries of the United States. This boundary may not be extended without the approval of the U.S. Congress. Congress has not approved the extension of Florida's boundaries.

Concurrent state and federal criminal jurisdiction within three miles. Criminal jurisdiction to prosecute crimes which allegedly occur within three miles of Florida's coast is shared with the federal government. Murray v. Hildreth, 61 F.2d 483 (5th Cir. 1932). In this case, defendant James Murray petitioned for writ of habeas corpus for his release from the custody of the U.S. Marshal (Hildreth), for a murder which allegedly occurred within 200 feet of Florida's coastline, near Dania Beach, on the grounds that Florida had exclusive jurisdiction. "As between nations, there is concurrent jurisdiction in foreign waters; and, as between the United States and the several states, there is no reason why the jurisdiction over crimes within the three-mile limit could not be made concurrent, as has usually been done in the punishment of offenses committed in violation of both federal and state laws."

Exclusive federal criminal jurisdiction beyond three miles. Earlier this century, courts construing the maritime jurisdiction conferred by federal criminal statutes held that prosecuting crimes committed on the high seas "outside a marine league [three miles] from the shores and

outside the jurisdiction of any particular state are constructively a part of [U.S.] territory. Indeed, the high seas are a part peculiarly within the jurisdiction of the United States in the application of its criminal laws, as distinguished from the states and their laws." United States v. Bowman, 287 F. 588, 592-93 (S.D.N.Y. 1921), rev'd on other grounds, 260 U.S. 94 (1922). In 1988, President Reagan extended the U.S. territorial waters from three to 12 miles.[3] This extension was based on the reaction of the international community to the 1982 United Nations Convention on the Law of the Sea. Congress also established that jurisdiction to prosecute crimes which occur on the high seas outside the three-mile limit, but within the 12-mile limit, is within the exclusive jurisdiction of the federal government. Still today, this principle of federal supremacy in the maritime arena prevails: "unless Congress determined otherwise, the zone between three and twelve miles would be under the exclusive authority of the Federal Government." Restatement of the Law, The Foreign Relations Law of the United States, Volume 2, § 512, p. 38, Reporters' Notes 2 (3rd ed., American Law Institute 1987).

Since the federal government has exclusive jurisdiction from three miles off the coast of the U.S. until the outermost U.S. territorial boundary of 12 miles, an individual state has no authority to go beyond the national boundaries. Surely, Congress never intended, nor does the constitution allow for a zone of exclusive federal jurisdiction between three and 12 miles from the U.S. coastline in which a state could not exercise jurisdiction, only to have the entire ocean open up to the jurisdiction of every political subdivision of the U.S. outside of the national boundaries!

By attempting to claim jurisdiction over a matter that occurred 100 miles off its Atlantic coastline, the State of Florida is attempting to legislate far outside its constitutional realm of

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[3]Presidential Proclamation No. 5928, 54 F.R. 777 (Dec. 27, 1988); 43 U.S.C.A. § 1331.

authority. Even if the State of Florida could claim "concurrent" jurisdiction out to the recently established federal 12-mile limit, it cannot exercise jurisdiction over a non-Florida resident on a foreign vessel over 100 miles off its coast on the high seas. If it could, then conceivably § 910.006 empowers Florida to prosecute a foreign national who was either a passenger or a crew member onboard a foreign vessel during an around-the-world cruise originating from Florida, for an offense against another foreign passenger or crew member that occurred while the ship was in the Indian Ocean--a situation that sounds traditionally within federal or international admiralty jurisdiction.[4]

Constitutional grounds for federal criminal jurisdiction on the high seas. Jurisdiction to prosecute crimes which occur on the high seas arises from a grant of exclusive jurisdiction by the U.S. Constitution. No one would dispute that the power to regulate commerce with foreign nations, establish a uniform rule of naturalization, coin money and regulate the value thereof, and establish post offices are exclusive federal arenas. Each of these "powers" was expressed in Article I, Section 8, of the U.S. Constitution. Article I, Section 8, cl. 10, of the U.S. Constitution grants the power to Congress "[t]o define and punish Piracies and Felonies committed on the high seas, . . ." Accordingly, Congress, via the Judiciary Act of 1789, legislated: "§ 9. . . [T]he district courts shall have, exclusively of the courts of the several States, cognizance of all crimes and offences that shall be cognizable under the authority of the United States, committed within their respective districts, or upon the high seas[.]" 1st Cong., 1st Sess., Sept. 24, 1789; 1 Stat. 76.

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[4]As Judge Cobb inquired of the State at oral argument on March 3, 1998, if a ship departs from Kennedy Space Center [a Florida port] and travels to Mars and returns to Florida, would the State still claim jurisdiction over alleged criminal acts which occurred on the moon? Sec. 910.006 purports to give the State of Florida jurisdiction in that case.

Article III, Section 2, of the U.S. Constitution clearly and explicitly claims jurisdiction over all cases of admiralty and maritime jurisdiction. The State's contention that the states have the authority to legislate in this area, pursuant to the Tenth Amendment, is mistaken. The plain meaning of Article III, Section 2, shows that the framers intended[5] the same exclusive jurisdiction in the admiralty and maritime arena:

> SECTION 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. . . .
>
> SECTION 2. The judicial Power shall extend to *all* Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, or which shall be made, under their Authority;--to *all* Cases affecting Ambassadors, other public Ministers and Consuls;--to *all* Cases of admiralty and maritime Jurisdiction;--to Controversies to which the United States shall be a Party;--to Controversies between two or more States;--between a State and Citizens of another State;--between a State and Citizens of another State;--between Citizens of different States . . .

U.S. Const., Article III, §§ 1 and 2 (emphasis added). If any U.S. court has authority to act in this case (instead of Liberia), the federal government must hold exclusive jurisdiction pursuant to the U.S. Constitution and international law, as codified in the federal maritime criminal statutes.

Moreover, no one disputes the expressed provisions of Article I, Section 8, are exclusively federal domain. In light of the use of the word "all" in the admiralty and maritime clause of Article III, Section 2, no one should dispute the explicit and exclusive federal domain. Thus, the State's claim that § 910.006 is valid by virtue of the Tenth Amendment is without merit, because this power

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[5]"The most bigoted idolizers of State Authority have not thus far shown a disposition to deny the national judiciary the cognizances of maritime causes. These so generally depend on the laws of nations, and so commonly affect the rights of foreigners, that they fall within the considerations which are relative to the public peace...." Alexander Hamilton, The Federalist No. 80, at 478.

is delegated. The State's claim that "no specific provision of the federal constitution prohibits Florida from asserting such jurisdiction" has no basis in fact or law.

Statutory restatement of federal criminal jurisdiction on the high seas. As with most statutes regarding jurisdiction, federal criminal statute 18 U.S.C.A. § 7 is a mere logical restatement of the constitutional grant of jurisdiction. In 1984, the U.S. Congress acted upon its concern that acts of maritime terrorism were going unanswered by amending 18 U.S.C.A. § 7(7) to statutorily include the internationally recognized "passive personality exception" to the flag ship rule of jurisdiction.[6] Apparently, Congress was not satisfied with the outcome. In 1991, due to continuing concern that incidents of maritime terrorism were going unanswered, the U.S. Congress enacted 18 U.S.C.A. § 7(8).[7] Congress squarely recognized the limitations in exercising U.S. jurisdiction over prohibited

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[6]18 U.S.C.A. § 7(7) provides: [Special maritime and territorial jurisdiction of the United States . . . includes] Any place outside the jurisdiction of any nation with respect to an offense by or against a national of the United States.

Benedict on Admiralty (7th ed., Matthew Bender & Co. 1991). Chapter IX Maritime Crimes, § 112b, 9-22.1-.2, comments on these statutes and their origin:

"Internationally, jurisdiction based solely on the nationality of the victim is the most controversial and least accepted jurisdictional basis. (Footnote omitted) With few exception [sic], the United States remained hostile to it until the 1980's. (Footnote omitted).

In the past decade or so, however, increasing terrorist attacks against U.S. nationals abroad and the reluctance of foreign governments to prosecute the perpetrators on any jurisdictional ground whatever have led congress to enact several extraterritorial criminal jurisdiction statutes utilizing the passive personality principle as one of the jurisdictional bases. Some of these statutes give the United States criminal jurisdiction over crimes committed aboard foreign ships on the high seas."

[7]Title VII--Terrorism, Subtitle B--Maritime Terrorism, § 719. JURISDICTION OVER CRIMES AGAINST UNITED STATES NATIONALS ON CERTAIN FOREIGN SHIPS.

Section 7 of title 18, United States Code (relating to the special maritime and territorial jurisdiction of the United States), is amended by inserting at the end thereof the following new paragraph:

(8) To the extent permitted by international law, any foreign vessel during a voyage having a scheduled departure from or arrival in the United States with respect to an offense committed by or against a national of the United States.

acts committed upon the high seas when it drafted 18 U.S.C.A. § 7(8), which it limited "*to the extent permitted by international law.*" On April 24, 1996, the U.S. Congress declared that:

> [A]ll the territorial sea of the United States, as defined by Presidential Proclamation 5928 of December 27, 1988 [set out as a note under section 1331 of Title 43, Public Lands], for purposes of Federal criminal jurisdiction is part of the United States, subject to its sovereignty, and is within the special maritime and territorial jurisdiction of the United States for the purposes of title 18, United States Code [this title].

Pub. L. 104-132, Title IX, § 901(a), Apr. 24, 1996, 110 Stat. 1317. Although the State of Florida may argue that it has historical authority to regulate and control acts of its citizens in waters outside Florida's territorial limits,[8] the U.S. Congress has clearly evinced its intent to legislate criminal penalties in "all the territorial sea of the United States." None of the new statutes or amendments purport to give the states a scintilla of authority to "legislate as they see fit" in this arena. Admiralty and maritime law, as it pertains to actions on the high seas, is an historically federal realm for very sound policy reasons.

Flag State Rule. The country whose flag a ship flies has exclusive jurisdiction over the ship and all aboard. Indeed, a ship is treated as a floating piece of the flag state's territory. This long-standing tenant of admiralty law is recognized internationally: "Ships shall sail under the flag of one State only and, *save in exceptional cases expressly provided for in international treaties or*

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[8]Skiriotes v. State of Florida, 313 U.S. 69, 61 S. Ct. 924, 85 L. Ed. 1193 (1941), (when its action does not conflict with federal law, a state has authority over the conduct of its citizens on the high seas); S.E. Fisheries v. Dept. of Nat. Resources, 453 So. 2d 1351 (Fla. 1984), (the state has limited authority to regulate and control acts of its citizens who were fishing in waters outside Florida's territorial limits); but see, Burns v. Rozen, 201 So. 2d 629 (Fla. 1st DCA 1967), (state could enforce fishing statute only against its vessels and its citizens, and only within its territorial waters).

these articles, shall be subject to its exclusive jurisdiction on the high seas."[9] (Emphasis added). Convention on the High Seas. Done at Geneva, on 29 April 1958, Article 6, § 1. "The term 'high seas' means all parts of the sea that are not included in the territorial sea or in the internal waters of a State." Id. at Article 1. The United States has not entered into any treaty which would allow Florida to exercise criminal jurisdiction over passengers aboard a Liberian cruise ship. Furthermore, mere use of a Florida port does not rise to the level of an "exceptional case," even if Florida was a party to such an international treaty. Therefore, as a matter of international law, the M/V Atlantic's flag state, Liberia, has exclusive jurisdiction of this matter, with few exceptions (discussed above). Florida has no legal basis to claim jurisdiction over the matter, "residual[10]" or otherwise.

"Effects doctrine." The State attempts to argue that the "effects doctrine"[11] somehow applies and would justify jurisdiction by the State of Florida. The effects doctrine is only available to a sovereign state in the international arena. Since Florida is a political subdivision of the United States, it is not an internationally recognized sovereign state.[12] Assuming *arguendo* the court was

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[9]There are five internationally recognized exceptions to the flag-state (i.e. territorial) rule of jurisdiction: Objective territorial ("effects doctrine"): the acts produce a detrimental effect within that country; Protective: act may impinge on territorial integrity, security or political independence; Nationality: based on the nationality of the offender; Passive personality: based on the nationality of the victim; Universal: based on heinousness of the crime (international terrorism). United States v. Vasquez-Velasco, 15 F.3d 833, 840 (9th Cir. 1994).

[10] Matthew Stepansky has no knowledge of the concept of "residual jurisdiction," referenced in Initial Brief of Appellant at page 48.

[11]Restatement of the Law, The Foreign Relations Law of the United States, Vol. 1, § 403, pp. 244-45 (3rd ed., American Law Institute 1987).

[12]"5. *States and foreign relations.* A State of the United States is not a "state" under international law (see § 201), since by its constitutional status it does not have capacity to conduct foreign relations. The United States alone, not any of its constituent States, enjoys international sovereignty and nationhood. . . ." Restatement of the Law, The Foreign Relations Law of the United States, Vol. 1, § 1, p. 13 (3rd ed., American Law Institute 1987).

concerned about the "effects" of this case on the State of Florida, a review of the relevant points shows there are no "effects," so even if this doctrine applied, jurisdiction would be unreasonable:

1. Link of the activity to the territory of the regulating state:[13] There is no "link." The alleged offense consisted of an unidentified person walking into the complaining witness' dark cabin, laying on top of her, mumbling some obscene things and fleeing when she struggled. It was an impulsive, random act.[14] The ship was 100 miles off Florida's Atlantic coastline and 15 miles off the coast of the Bahamas when the incident allegedly occurred.

2. Extent to which activity has substantial, direct, and foreseeable effect on the territory: Matthew Stepansky could not foresee that he would be wrongfully accused of a crime, so any action taken by law enforcement officials within the state as a result was unforeseeable as well.

3. Connections such as nationality, residence, or economic activity: Neither Matthew Stepansky nor the complaining witness are residents of Florida. Both came from out of state to take a cruise on the M/V Atlantic, a foreign vessel.

4. The economic activity between the regulating state and the parties: The cruise line was owned by a foreign corporation, not the State of Florida and not a Florida corporation. Nothing in the record suggests any economic relationship between Matthew Stepansky or the complaining witness and the State of Florida.

The only "effect" the State is able to articulate in its brief is the speculation that the security of tourists and the economic well-being of tourist-related businesses is somehow threatened if the

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[13]See, footnote 12 above.

[14]Matthew Stepansky, at his own expense, took a polygraph exam shortly after being notified that formal charges had been filed by the state. The exam showed "no deception" when Stepansky denied any involvement in this incident.

state court system in Florida is excluded from this heretofore exclusively federal arena. Matthew Stepansky submits that the State's interest is better served by passing other trade or business regulations (regarding registry of ships) or bringing pressure on the U.S. District Attorney's Office to investigate the few cases that do arise. Mere departure from and arrival in a Florida port does not establish a sufficient nexus to overcome the exclusivity of the flag state rule, when not one single act or omission that is an essential element of the alleged crime occurred *within the territorial waters of the United States of America,* much less the State of Florida. Not even federal legislation makes such broad jurisdictional claims.

Due process and neutral federal courts. "The purpose behind the grant of admiralty jurisdiction was the protection and the promotion of the maritime shipping industry through the development and application, by neutral federal courts, of a uniform and specialized body of federal law. The strong federal interest in fostering commercial maritime activity outweighed the interest of any state in providing a forum and applying its own law to regulate conduct within its borders." [Footnotes omitted]. Adams v. Montana Power Co., 528 F.2d 437 (9th Cir. 1975), disapproved on other grounds in Foremost Ins. Co. v. Richardson, 457 U.S. 668, 712 S. Ct. 2654, 73 L. Ed. 2d 300 (1982). The purpose of the exclusive grant of admiralty and maritime jurisdiction to the federal judiciary is two fold.[15] First, was the desire for uniformity that flowed only from a single forum, the federal courts. Second, to meet that end, was the nondelegation of this authority by Congress to the several states.

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[15]In the companion cases of Knickerbocker Ice Co. v. Stewart, 253 U.S. 149 (1920), and State of Washington v. Dawson, 264 U.S. 219 (1924), the United States Supreme Court stated the dual purpose of the Admiralty Clause.

> One thing, however, is unquestionable; the Constitution must have referred to a system of law coextensive with, and operating uniformly in, the whole country. It certainly could not have been the intention to place the rules and limits of maritime law under the disposal and regulation of the several states, as that would have defeated the uniformity and consistency at which the Constitution aimed on all subjects of a commercial character affecting the intercourse of the states with each other or with foreign states.

The Lottawanna, 88 U.S. (21 Wall.) 558 (1874).

Any statute which contravenes either premise is unconstitutional.

> And plainly, we think, no such [state] legislation is valid if it contravenes the essential purpose expressed by an act of Congress, or works material prejudice to the characteristic features of the general maritime law, or interferes with the proper harmony and uniformity of that law in its international and interstate relations. This limitation, at the least, is essential to the effective operation of the fundamental purposes for which such law was incorporated into our national laws by the Constitution itself.

Southern Pacific Company v. Jensen, 244 U.S. 205, 37 S. Ct. 524, 61 L. Ed. 1086 (1917).

Appellee, Matthew Stepansky has the due process right under both the U.S. and the Florida Constitutions to have his case brought in a neutral court. Florida clearly seeks to "ensure protection" for citizens who come here to use our ports and spend their vacation dollars. The State acknowledges this commercial maritime interest. As it stands, however, Florida seeks to unlawfully legislate "special maritime criminal jurisdiction" where the constitution and over 100 years of case law have clearly held that state courts should not tread. The Florida statute invokes the due process purpose at the very heart of federal admiralty jurisdiction, that is to allow a neutral federal court to apply a uniform set of judicial precedents to all persons who find themselves thrust into this arena.

In the initial brief, the State argues that the Florida Special Maritime Criminal Jurisdiction Statute is merely a "stop-gap" measure by which convenient forums are created to prosecute crimes that would otherwise slip through the cracks. If cases are "slipping through the cracks," it is the

federal government's responsibility to cure this, since according to existing federal case law, the U.S. District Court appears to have jurisdiction. (Pizdrint, supra). As discussed at oral argument at the Fifth District, it should not become the state court's responsibility to handle its enormous case load and then add the work the federal system chooses not to do. Certainly, better remedies are available to the state. Florida or the federal government could legislate tighter restrictions on the operation of foreign vessels from its ports, similar to the restrictions on "Coastwise Trade" and "Great Lakes Trade," found at 46 U.S.C. § 12102 and 46 C.F.R. § 67.01, which prohibit vessels of foreign registry from making cruises between U.S. ports only. For example, only ships of U.S. registry can leave and return to U.S. ports on the "voyage-to-nowhere" gambling cruises that do not stop in any foreign port. A legislative mandate that only U.S. registered vessels operate cruises like the one in the instant case would be an immediate and final resolution to this alleged "problem." It is certainly a more legally viable solution than concocting extra-constitutional, extra-territorial jurisdiction by proclamation.

Conclusion. Florida Statute § 910.006(3)(d) is without constitutional support, either state or federal, therefore, the lower court was correct in striking it as unconstitutional. The State of Florida has no authority to enact a statute purporting to exercise criminal jurisdiction over an act occurring on the high seas on a foreign flag vessel. This Court should affirm the Fifth District Court's decision.

The Florida Constitution limits Florida's seaward boundaries, and therefore its jurisdiction, to three miles from its coast. International law does not recognize a political subdivision of the United States, and the U.S. Constitution prohibits Florida from acting independently in that arena. No treaty exists between the United States and Liberia allowing Florida to exercise criminal jurisdiction over a floating piece of its soil, i.e. a flagship. The statute is therefore invalid.

Vesting admiralty and maritime jurisdictional authority in the federal arena ensures that no individual state of the United States can act in a manner that would be contrary to international law or relations. Such a situation may not be as apparent from the more parochial vantage point of the state capitol. Because maritime matters invariably involve interaction with other nations, it is only proper that our federal government remain at the helm of this decision-making process.

Providing a "convenient" forum for such cases to be heard should not bestow jurisdiction upon the Florida courts, where international conventions and federal law, admiralty and maritime law, and logic indicate that it should not exist. The State cites 88 "authorities" that claim to support its position, however, Matthew Stepansky cites the only two that matter -- the U.S. Constitution and the Florida Constitution. Those two authorities mandate that this Court affirm the well-reasoned opinion of the Fifth District Court of Appeal.

For the foregoing reasons, the Appellee, Matthew Stepansky, respectfully requests this Court affirm the lower court's ruling that Florida Statute § 910.006(3)(d) is unconstitutional, both on its face and as applied, and affirm the issuance of the Writ of Prohibition to the respondent circuit judge of the Eighteenth Judicial Circuit.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Answer Brief of Appellee was mailed this 10th day of July, 1998, to RICHARD L. POLIN, Esq., Office of the Attorney General, Department of Legal Affairs, 444 Brickell Avenue, Suite 950, Miami, Florida 33131.

ROBIN C. LEMONIDIS

INDEX TO APPENDIX TO
ANSWER BRIEF OF APPELLEE

LETTER	DESCRIPTION
"A"	Order of the Fifth District Court of Appeal dated February 13, 1998
"B"	Opinion of the Fifth District Court of Appeal filed March 4, 1998