

IN THE SUPREME COURT
STATE OF FLORIDA

CASE No. SC20-323

STATE OF FLORIDA,

Petitioner,

v.

BESSMAN CHARLES OBINNA OKAFOR,

Respondent.

BRIEF OF *AMICI CURIAE* PAOLO ANNINO, RICHARD BENHAM,
HOWARD K. BLUMBERG, NEIL CHONIN, JOHN A. DEVAULT, III, JUAN
CARLOS GOMEZ, BRYAN GOWDY, SCOTT F. NORBERG, PATSY
PALMER, EDIBERTO ROMAN, GEORGE E. SCHULZ, JR., HARVEY S.
SEPLER, REBECCA SHARPLESS, AND SYLVIA H. WALBOLT
IN SUPPORT OF RESPONDENT

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FLORIDA SUPREME COURT

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STATEMENT OF INTEREST OF *AMICI CURIAE*

Amici are Florida law professors and civil practitioners concerned about the instability in Florida jurisprudence, beyond this case, should the Petition be granted.

Professor Paolo Annino is the Glass Professor of Public Interest law at Florida State University Law School, and the Director of both the Public Interest Law Center and the Children's Advocacy Clinic at the law school.

Professor Richard Benham directs and teaches the Business Law Clinic and classes on contracts drafting at the Florida State University Law School. He is the law school's Entrepreneur in Residence.

Professor Howard K. Blumberg directs the appellate clinic at St. Thomas Law School as well as the oft-awarded moot court program. He has been awarded the most effective appellate litigator designation from the Daily Business Review.

Neil Chonin is the former litigation director at the Southern legal Counsel, and practices family, labor, and civil rights law in Gainesville. He is a past recipient of this Court's Tobias Simon pro bono award, and the Florida Law Review award.

John A. Devault, III, of the Bedell Law Firm, is board certified in business and civil trial litigation. He is past president of The Florida Bar, past chair of the ABA Trial Lawyers Section, and was executive editor of the Florida law review.

Professor Juan Carlos Gomez is the director of the Carlos A. Costa Immigration Clinic at Florida International University Law School and counsels national and international corporations on immigration-law compliance.

Bryan Gowdy, of Creed and Gowdy, is a board-certified appellate lawyer

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Professor Scott Norberg teaches contract, commercial, and bankruptcy law at Florida International University Law School. His many publications have been cited by commentators and courts, including the Supreme Court of the United States.

Patsy Palmer, of D'Alemberte and Palmer, is a member of The Florida Bar Appellate Practice Section and specializes in civil and constitutional litigation.

Professor Ediberto Roman teaches contracts, torts, corporations, comparative corporate law, products liability, agency, antitrust, law and accounting, and remedies at Florida International University law School and is widely published.

George E. (Buddy) Schulz, of Holland & Knight, is past chair of the firm's Litigation Department. He is a fellow of the American College of Trial Lawyers, a board-certified trial lawyer, and has litigated throughout the United States.

Professor Harvey S. Sepler teaches advanced appellate litigation and the state and national moot court teams at the University of Miami Law School. He is the recipient of the James C. Adkins award for outstanding service to appellate law.

Professor Rebecca Sharpless is the founding director of the Immigration Clinic at the University of Miami Law School and practices immigration law in the federal courts. She is the recipient of numerous awards and recognition for her work.

Sylvia H. Walbolt, of Carlton Fields, is board certified in appellate law, and is the former chair of The Florida Bar Appellate Practice Committee and former president of the American Academy of Appellate Lawyers.

SUMMARY OF ARGUMENT

The issue before the Court in this case may be succinctly stated as follows: When does an appellate court decision become final? The answer is important not just in the present criminal context, but in the civil context as well. The purpose of this amicus brief, filed by interested law professors and experienced civil practitioners from around the state, is to offer our perspective on the effect the decision of the Court in this case may have on all other litigation in the state.

Finality in all legal controversies, civil and criminal, is important. “Public policy, as well as the interests of individuals, demands it.” *Lovett v. State*, 11 So. 176, 179 (Fla. 1892). This Court has addressed what constitutes finality in litigation in cases going back at least as far as the late nineteenth century. Although the specifics of the rule have evolved over time, the fulcrum for determining whether or not a decision of an appellate court is final has always been the appellate court’s mandate.

The etymology of the word “mandate” is traceable to the early sixteenth century, from the Latin word “mandatum” meaning “something commanded.” For over half of this Court’s existence, Florida law has adhered to this derivation, and the command, once given, can be reconsidered by an appellate court only within a specific time period.

In the late nineteenth century, this Court expressly held that, absent a fraud upon the Court, the mandate could be recalled only before it was filed with the lower

court. From the early twentieth century through 2013, there was modest tinkering with the rule and this Court expressly tied the power to recall a mandate to the term of court in which it was entered.

In 2013, the Legislature abolished the archaic terms of court, and enacted a statute, section 43.44, Florida Statutes, that would provide stability and consistency by prescribing a specific time limitation for the mandate's recall. This Court quickly followed with a rule of procedure, Rule 9.340 of the Florida Rules of Appellate Procedure. Both the statute and the rule demark 120 days as the governing period.

Within 120 days, an appellate court may recall its mandate and change its ruling. In both the civil and criminal context, this is recognized as an exceptional act, countering as it does the course of action that all parties know that they must follow. Once 120 days has passed, it is understood that the decision is the final command. Whether good or bad, right or wrong, the decision is immutable, carved in proverbial stone. Later decisions may beget different legal rulings, and those legal rulings may control future actions that are not within the mandate's command, but they cannot eviscerate the mandate of the specific case. The ironclad statute and rule by which both the Legislature and this Court have codified the historic terms of court permit no deviation.

The answer to the Petition in this case, then, is clear. There is a rule. It is announced in both the Florida Statutes and the Florida Rules of Appellate Procedure. It is a period of 120 days, no more, no less. In the criminal case, as in the civil case, the mandate having issued and the time period passed, the trial court is commanded

to follow its directive. Indeed, the court is without the power or jurisdiction to do otherwise.

The only question that remains is whether a party, in this case the State, can do an end-run around the hard-and-fast 120-day rule by invoking the extraordinary-writ jurisdiction of the Court. To ask the question is to answer it. The law is clear, and has always been clear, that where an act -- here reopening the appeal -- cannot be done directly, it cannot be done indirectly. The Court has specifically warned litigants that an extraordinary writ is not a substitute remedy to be invoked to reopen a proceeding that is final.

There is no authority for substituting a writ to seek review a second time of an issue that has already been litigated to finality. And such a rule would have serious instability consequences in the civil-law arena, where judgments often yield a swift response. An extraordinary writ cannot become a magical procedure to be solicited when the remedy in law has been invoked and resolved. That the Court has writ jurisdiction and that an authorized petition to seek an extraordinary writ might properly come before this Court, does not confer second-chance litigation. The mandate having issued, 120 days having passed, the Court's decision is final and the mandate's command must be obeyed.

ARGUMENT

WHERE A DECISION HAS ISSUED AND THE TIME FOR RECALLING THE MANDATE HAS PASSED, THE LOSING PARTY CANNOT RELITIGATE THE CAUSE BY SEEKING AN EXTRAORDINARY WRIT.

Stability in the law is more than a lofty goal. In civil as well as criminal litigation, procedural rules dictate how a case proceeds and foster the stability essential to the orderly conduct of litigation. As Professor William B. Rubenstein aptly puts it, “[p]rocedural rules are the rules of the game, the rules by which adjudication is to be conducted.” William B. Rubenstein, *The Concept of Equality in Civil Procedure*, 23 *Cardozo L. Rev.* 1865, 1884 (2002). Procedural rules are “trans-substantive,” in that they “guarantee tort litigants and contract litigants, for example, the same procedural opportunities and hurdles.” *Id.* at 1884-45 (footnote omitted). “Equality is important in this schema because it is thought to contribute to an efficient and legitimate resolution of legal controversies.” *Id.* at 1874.

Implementing the rules with a consistent methodology affords confident reliance on the expectation that settled judgments and vested interests will not be upset. Reliance on orderly administration of rules that are clear, without deviation based on the predilections of any person or group, is never more important than when litigation is afoot. Such rules declare how litigation begins and how it ends.

As Justice Jackson declared, “men should be governed by laws that they may ascertain and abide by, and which will guide the action of those in authority as well as of those who are subject to authority.” Joel S. Nolette, *Towards an Administrative*

Rule of Lenity: Restoring the Constitutional Congress by Reforming Statutory Interpretation, 19 *Federalist Soc’y Rev.* 16, 19 (2018) (quoting *Sec. & Exch. Comm’n v. Chenery*, 332 U.S. 194, 217 (1947) (Jackson, J., dissenting) (footnote omitted)). Nolette, bemoaning Congress’s penchant “to pass laws that make it increasingly difficult to ascertain to whom and how they apply,” *id.*, advocated for clear-cut laws, invoking these words of James Madison:

It will be of little avail to the people, that the laws are made by men of their own choice, if the laws be so voluminous that they cannot be read, or so incoherent that they cannot be understood; if they be repealed or revised before they are promulgated, or undergo such incessant changes that no man, who knows what the law is to-day, can guess what it will be to-morrow. Law is defined to be a rule of action; but how can that be a rule, which is little known, and less fixed?

Id. at 27 (quoting *The Federalist No. 62*, at 379 (James Madison)).

It is imperative that Florida’s litigants, as well as those engaged in everything from commercial transactions to day-to-day decision making, know when an appellate court’s decision is a ruling on which they may rely. Paying homage to the overarching quest for stability, Florida’s courts and its legislature have striven for the last two centuries to erect a simple test for a decision’s finality. From common law to current Florida rule and statute, the appellate court’s mandate is center stage.

A. Time for reconsideration of an appellate court’s decision persists until, but terminates with, the receipt of the mandate by the lower court (1892-1926).

Starting with the end of the 19th Century, this Court has addressed finality and the limitations on the Court’s jurisdiction. The specific question was whether the Court retained the power and jurisdiction to reconsider an opinion after its issuance, and more specifically, after the mandate had issued and been filed in the lower court. In *Lovett v. State*, 11 So. 176 (Fla. 1892), the defendant’s conviction had been reversed based on a record indicating that the defendant had not been present for arraignment or trial. The Court issued its mandate, which was filed in the clerk’s office in mid-April, but on April’s last day, the attorney general, upon discovering that the defendant had in fact been present and that the reversal had been premised on an inaccurate transcript, moved for rehearing. *Id.*

Noting that the question would have been easier had the motion been made before the mandate reached the circuit court, and “we had recalled it before it was filed or received by the clerk,” *id.* at 177, the Court nonetheless vacated the judgment because of what it denominated a “fraud” upon the Court: a “false record” had been before the Court and the reversal had been based “solely upon its false feature.” *Id.* at 180. But the Court made clear that, absent such mistake or deception, the appellate court, having heard the case on the merits “according to its rules of practice,” *id.* at 179, did not have the power to recall or reconsider its decision. *Id.* Thus, over a century ago, this Court understood the importance of orderly procedures, and that

decisions must at some point be final:

Where a case has been heard upon its merits in an appellate court, according to its rules of practice, and the judgment of the court has been correctly entered, and the time, if any, allowed by statute or its rules for a rehearing having passed, and no application for a rehearing having been made, the *remittitur* issues and is lodged in the lower court, it may well be said that the appellate court has lost its jurisdiction of the cause, and has not power to recall or reconsider it. Under these circumstances, it has fairly and duly exercised its appellate functions, and exhausted its powers as to the cause. There must be an end of litigation. Public policy, as well as the interests of individual litigants, demands it, and the rule just announced is indispensable to such a consummation.

Id.

Five years later, the Court again considered when its jurisdiction over a case concludes. In *Merchants' National Bank v. Grunthal*, 22 So. 685 (Fla. 1897), the appeal had been dismissed because of defects in the record that the plaintiff had not sought to remedy within the time limit set forth in the court rules. *Id.* at 685-86. After dismissal, plaintiff sought reinstatement and to supplement the record, but because the court rules did not permit amending the record after dismissal, the Court denied the application, and issued its mandate. *Id.*

Several weeks later, the plaintiff filed a second application for reinstatement, this time requesting that the Court recall its mandate. *Id.* at 686-87. The Court denied this application, explaining that “the mandate of this court having been regularly issued and sent to and filed in the court below in said causes, this court has no further jurisdiction to grant a rehearing or other relief therein.” *Id.* at 687.

B. Time for reconsideration of an appellate court's decision persists until the end of the term of court within which the court's mandate issues (1926-2013).

A quarter century later, the Court again addressed its power to recall its mandate, some two years after it had been sent to the lower court. For the first time, the Court explicitly tied restrictions on the recall to its term of court. *Washington v. State*, 110 So. 259 (Fla. 1926). Because the court term within which judgment was entered had “long since passed,” the Court questioned whether it had the power to recall or vacate its judgment. *Id.* at 260. Answering that it had no such power, the Court admonished: “If this can be done now, it can be done 20 years from this time, and there is no telling when litigation would cease. The exercise of such a power, if it existed at all, would be the most uprooting and dangerous act ever exercised by any court.” *Id.*

Moreover, the Court could find “no case where the court has even gone to the extent of recalling a mandate and assuming jurisdiction of a cause after the expiration of the term at which the judgment was rendered and the mandate forwarded to the court below.” *Id.* at 261. After the term of court has passed, “the power of the court over the record ceases and the judgment possesses a solemnity and sanctity which holds it sacred and cannot be even appealed from much less recalled.” *Id.* at 260 (citations omitted). The Court retains “the power to make such orders as are necessary to protect the jurisdiction which it has exercised or may be exercising in any cause and to see that the judgment which it has rendered, or may be called upon

t[o] render, is given full force and effect (see article 5, § 5, Constitution of 1885),”¹ but jurisdiction terminates “at least with the term at which such judgment was rendered.” *Id.* at 261.

The Court deemed it unnecessary to reach the broader question whether its jurisdiction had ended before the expiration of the term, at the time that the mandate was filed in the lower court. It was sufficient to hold that the court should not “attempt to recall its mandate and reassume jurisdiction of a cause long after the expiration of the term.” *Id.* “This is in keeping with the sound principle of jurisprudence that some time, somewhere within reasonable limits, there must be an end to litigation.” *Id.*

Six years later, the Court did address whether it retained jurisdiction over a cause notwithstanding the issuance of its mandate and the receipt of the mandate in the trial court. In *Chapman v. St. Stephens Protestant Episcopal Church*, 138 So. 630, 631 (Fla. 1932), the Court, after a reversal and denial of rehearing, issued its mandate, which was duly filed in the trial court. Two months later, the appellee moved for its recall. *Id.* Relying on *Lovett and Merchants’ National Bank*, the appellant opposed the motion, asserting that “all jurisdiction of this court absolutely ended at the time the mandate was lodged in the lower court” and the Court was without jurisdiction “to order that such mandate be recalled for the purpose of

¹ This section of the Florida Constitution corresponds to the current “All Writs” jurisdiction of the Court set forth in Article V, section 3(b)(7), on which the Petitioner rests its claim to the jurisdiction of this Court.

reinvesting itself with power to have further proceedings with respect to the appeal which was finally determined according to the judgment.” *Id.*

This Court concluded that its jurisdiction “persists to the end of the term,” to modify or change its judgment in order “to prevent a miscarriage of justice.” *Id.* The Court “has jurisdiction and power which it may exercise, as the circumstances and justice of the case may require, to reconsider, revise, reform, or modify its own judgments for the purpose of making the same accord with law and justice.” *Id.* at 632. But the power to recall the mandate continued only until “the end of the term at which the judgment is rendered, and then absolutely terminates.” *Id.*

This rule of finality, that the Court retains the power to recall its mandate and reassume jurisdiction only until the end of the term of court, remained the law for the next half century. *See, e.g., McGregor v. Hammock*, 154 So. 191, 191-92 (Fla. 1934) (after the mandate issued, the court lost jurisdiction when the term ended, unless the mandate was issued “because of inadvertence, mistake, or error.”) (citations omitted); *Pawley v. Pawley*, 47 So. 2d 546 (Fla. 1950) (petition to recall mandate filed after the close of the term was denied, the “cause having been closed and the court having lost jurisdiction” on the date the term expired).²

² *Cf. Mitchell v. State*, 160 So. 3d 902, 903, 905 (Fla. 2d DCA 2009) (court could exercise its discretion to recall mandate and stay proceedings when the dispositive issue was before the Supreme Court so long as state’s request to recall mandate was made during term of court); *Gardner v. State*, 375 So. 2d 2, 2-3 (Fla. 4th DCA 1979) (mandate withdrawn after end of term because State, by inadvertence, mistake, or error, did not receive court’s opinion before the term ended).

The Legislature established the current terms of court in 1957, the same year that the District Courts of Appeal were created. Scott S. Amitrano, *Termination of Florida Terms of Court and its Effect on Appellate Mandates*, Vol. 87, No. 9, Florida Bar Journal, November 2013, 26 & n.9 (hereinafter “Amitrano”). Fast-forward to 1980, and the question whether the finality precedent equally applies to a district court’s rehearing en banc jurisdiction was before the courts. In *Rogers v. State Farm Mutual Automobile Insurance Co.*, 383 So. 2d 1221 (Fla. 5th DCA 1980), the district court affirmed, without opinion, the dismissal of the plaintiff’s lawsuit, and plaintiff untimely moved for rehearing almost two months after the end of the term of court. The district court denied the motion because it was outside the 15 days prescribed by the appellate rules, but decided to rehear the case, basing its jurisdiction on the rule governing rehearings en banc. The district court thereafter reversed its decision as being in conflict with later decisions.

Defendant sought an extraordinary writ in this Court for vacatur of the judgment, claiming that the en banc court lacked jurisdiction to resuscitate the case after the untimely rehearing motion was denied. *State Farm Mutual Automobile Insurance Co. v. Judges of the District Court of Appeal, Fifth District*, 405 So. 2d 980 (Fla. 1981). Plaintiff responded by conceding that the district court’s jurisdiction would normally end with the term of court, but claiming that jurisdiction was extended indefinitely by virtue of the en banc rule. *Id.* at 982. Plaintiff’s argument was that, because the Florida Supreme Court had jurisdiction to resolve intradistrict conflict without a time limit and the Committee Note to the rule states

that en banc rehearing is to be used in situations analogous to the Supreme Court's conflict jurisdiction, the district court had jurisdiction to resolve intradistrict conflict, which "jurisdiction is eternal" because the rule specified no time limit. *Id.*

But this Court did not view "the jurisdictional powers of an appellate court as encompassing such a grandiose temporal spectrum." *Id.* "All things must have end, even a district court's power to correct inconsistencies. The reasons for this form the bedrock of Anglo-American jurisprudence." *Id.* The Court reiterated the poignant refrain from the 1892 *Lovett* opinion:

There must be an end of litigation. Public policy, as well as the interests of individual litigants, demands it, and the rule just announced is indispensable to such a consummation.

Id. (citing *Lovett v. State*, 11 So. at 179 (citation omitted)).

The Court declared that the "'rule' which determined this end" was that set forth in *Lovett*, *Chapman*, and *Washington*. *Id.* at 982-83. The en banc rule did not undo this "well established common-law precedent that a court's power to alter its mandate generally ends with the term the mandate issued." *Id.* at 983. Because the precedent limiting an appellate court's jurisdiction equally applies to en banc rehearings and "[b]ecause the recall of mandate by the district court was made after the term in which the original mandate issued, the court was without jurisdiction," and the district court's actions were "void." *Id.*

C. Time for reconsideration of an appellate court’s decision persists until 120 days after issuance of the mandate (2013-present).

The time within which the appellate court’s jurisdiction terminates is no longer cabined by the terms of court. These terms of court, originally creatures of the 1868 Florida Constitution, were created when the state was divided into seven judicial circuits, and circuit judges were required to hold two annual terms of court in each county within their circuit. *Amitrano, supra* (citing Fla. Const. Art. VI, §7 (1868)). This Court was required to hold three terms annually, and justices worked part-time and required time to travel to Tallahassee to attend court during these terms. *Id.* (citing Fla. Const. Art. VI, § 4). But, with improvements in travel and communication, and with courts sitting perpetually throughout the year as opposed to during court terms, the utility and necessity of court terms largely came to an end. *Id.* An important use for terms of court that survived was delimiting the time period within which a mandate could be recalled.

One problem with using the anachronistic term of court as the limitation on an appellate court’s ability to recall its mandate, was that the length of time remaining in the term after a mandate issued fluctuated from as much as 180 days, to as little as a single day. *Id.* The Florida Legislature responded to the resultant deviations with Chapter 2013-25, section 10, Laws of Florida. This statute eliminated all statutes referencing “term of court,” and added a provision authorizing an appellate court to recall its mandate, capping the time limitation to do so at 120

days. Section 43.44, Florida Statutes, as effective January 1, 2014, provides:

Mandate of an appeals court -- An appellate court may, as the circumstances and justice of the case may require, reconsider, revise, reform, or modify its own opinions and orders for the purpose of making the same accord with law and justice. Accordingly, an appellate court may recall its own mandate for the purpose of allowing it to exercise such jurisdiction and power in a proper case. A mandate may not be recalled more than 120 days after it has been issued.

In response to the new statute, this Court adopted the identical 120-day limitation. *In re Amendments to the Florida Rules of Judicial Administration and the Florida Rules of Appellate Procedure*, 125 So. 3d 743 (Fla. 2013).³ The Third District Court of Appeal has recognized that, with the advent of the new rule, the decision in *State Farm Mutual Automobile Insurance Co. v. Judges of the District Court*, 405 So. 2d at 982, is no longer valid precedent. A mandate can now be recalled for 120 days, and no longer within the term of court. *McPhee v. State*, 208 So. 3d 270, 271 (Fla. 3d DCA 2016).

D. The mandate in this case could not be recalled after January 16, 2018.

This Court's mandate ordering reversal issued on September 18, 2017. The 120-day period for its recall ended on a court holiday, January 15, 2018, so January

³ Rules 2.205(b)(5) and 2.210 (b)(4) of the Florida Rules of Judicial Administration were also amended to correspond to the appellate rule, likewise providing for a 120-day limit for recalling the mandate.

16th was the last day within which the Court’s mandate could be withdrawn. The Court’s subsequent decision to overrule in part the decision on which the reversal was premised, *Hurst v. State*, 202 So. 3d 40 (Fla. 2016), in its decision in *State v. Poole*, No. SC18-245, 2020 WL 370302 (Fla. Jan. 23, 2020), in no way alters the time period for recalling the Court’s mandate, nor does it undo the Court’s ruling pursuant to which the mandate issued.⁴

Courts overrule decisions all the time. It is within the prerogative of the Court to do so, for *stare decisis* is not an absolute. Indeed, as the Court elucidated in *Poole*: “*Stare decisis* provides stability to the law and to the society governed by that law. Yet *stare decisis* does not command blind allegiance to precedent.” *Id.* at *14. But it is one thing to overrule a decision to correct a wrong. It is quite another to suggest that by overruling a decision, any past ruling that relied on that decision is void.

Amici understand that, in future proceedings, the law according to *Poole*, to the extent relevant, may govern. But that does not and cannot mean that all prior decisions in other cases for which the mandate has issued and over 120 days has passed, can be retroactively revisited in contradiction to the basic finality rule. *Amici* ask that the Court consider the need for stability and decline to depart from the

⁴ It should be noted that the apposite principle of finality of an appellate decision has little to do with the doctrine of law of the case. Law of the case has never undone a prior decision, or eviscerated the mandate of the appellate court. *See, e.g., State v. Owen*, 696 So. 2d 715, 720 (Fla. 1997) (court refused state’s request to undo retrial mandate that was based on law later overruled, explaining the decision to reverse was final and not subject to rehearing, but noting that going forward, new decisional law would govern; but prior conviction “cannot be retroactively reinstated.”).

unbroken lineage of over a century of Florida precedent. “There must be an end of litigation. Public policy, as well as the interests of individual litigants, demands it.”

Lovett, 11 So. at 179.

E. Once the 120-day period for revisiting an appellate decision has elapsed, the mandated ruling cannot be evaded by invoking the Court’s extraordinary-writ jurisdiction.

Because the decision cannot be revisited under the 120-day rule, the State seeks another avenue. But no case is cited – because none could exist -- that authorizes seeking an extraordinary writ where the reason there is no adequate remedy at law is because that remedy has already been litigated to finality. For if a party could do so, there would be no end to litigation in the appellate courts.

Indeed, the decisions of this Court have uniformly established that neither the Court, nor the Legislature, nor the State, can do indirectly that which they cannot do directly. *See, e.g., Born-Suniaga v. State*, 256 So. 3d 783, 788 (Fla. 2018) (State); *Tedder v. Video Elecs., Inc.*, 491 So. 2d 533, 535 (Fla. 1986) (Court); *Hodges v. Cooksey*, 15 So. 549, 552 (Fla. 1894) (Legislature); *Gooding v. Brown*, 22 Fla. 437, 441 (1886) (Legislature).

That is no less true when a party that cannot reopen a proceeding because it is final – here, under the 120-day rule -- attempts to evade finality by invoking the Court’s extraordinary-writ jurisdiction. *See, e.g., Mathews v. Crew*, 132 So. 3d 776, 779 (Fla. 2014) (“[M]andamus or other writs cannot be used to circumvent the constitutional restrictions on this Court's jurisdiction to review certain types of

district court of appeal decisions by extraordinary writ”) (citations omitted); *R.J. Reynolds Tobacco v. Kenyon*, 882 So. 2d 986, 989 (Fla. 2004) (rejecting all-writs petition; “We have held on a number of occasions that it is improper for a party to seek to circumvent the restrictions on this Court’s jurisdiction by filing a petition for extraordinary relief.”) (citations omitted); *St. Paul Title Ins. Corp. v. Davis*, 392 So. 2d 1304, 1304-05 (Fla. 1980) (“We will not allow the ‘all writs necessary’ provision...to be used to circumvent the clear language...that we lack jurisdiction to review per curiam decisions...[it] does not confer added appellate jurisdiction.”).

The Petition cites to cases that stand for the proposition that this Court, not the district courts of appeal, has jurisdiction over various collateral post-conviction proceedings in capital cases. *See Petition* at 2-3. That may be true in terms of the proper forum, but it certainly presupposes a proper, authorized proceeding.

In short, no case permits a flanking maneuver to dodge an express limitation on the Court’s orderly process. *Amici* submit that there would be serious instability, with serious ramifications for civil as well as criminal cases, if this were the first to do so. Rules matter.

CONCLUSION

Amici respectfully request that this Honorable Court vouchsafe the stability of the law by enforcing the Court's rules, and deny the Petition.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief was prepared in Times New Roman, 14-point font, in compliance with Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

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