No. 09-154

In The Supreme Court of the United States

FLORIDA ASSOCIATION OF PROFESSIONAL LOBBYISTS, INC., a Florida Not for Profit Corporation; GUY M. SPEARMAN, III, a Natural Person; SPEARMAN MANAGEMENT COMPANY, a Florida Corporation; RONALD L. BOOK, a Natural Person; RONALD L. BOOK, P.A., a Florida Professional Association,

Petitioners,

vs.

DIVISION OF LEGISLATIVE INFORMATION SERVICES OF THE FLORIDA OFFICE OF LEGISLATIVE SERVICES, a Florida State Agency; THE FLORIDA COMMISSION ON ETHICS, an Independent Constitutional Commission; JEFF ATWATER, as President of the Florida Senate; and LARRY CRETUL, as Speaker of the Florida House of Representatives,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

BRIEF AMICUS CURIAE OF THE FLORIDA RESTAURANT & LODGING ASSOCIATION, INC., IN SUPPORT OF PETITIONERS

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INTEREST OF AMICUS CURIAE[1]

As one of the state's oldest non-profit trade organizations, established in 1946, The Florida Restaurant & Lodging Association, Inc. ("FRLA"), is privileged to represent the interests of over 10,000 restaurant and lodging establishments located throughout the state of Florida, as well as many of their suppliers and service providers. Collectively, the hospitality industry is the state's largest employer, generating $57 billion annually and comprising 20% of Florida's economy. Each year, the hospitality industry pays over $3.4 billion in sales tax revenue to the state of Florida.

In addition to advocating on behalf of Florida's hospitality industry before the legislative and executive branches of state government, one of FRLA's primary missions is to provide education and training to the over 900,000 hard-working men and women employed in the many hospitality businesses serving Florida's residents and visitors. FRLA provides food handler and food manager education for the state's restaurant employees and partners with a national

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[1] All counsel of record received notice of *amicus'* intention to file this brief at least ten days before this brief was due, and all counsel of record have indicated their respective clients' consent and/or lack of objection to the filing of the brief. *Amicus* states that no portion of this brief was authored by counsel for a party and that no person or entity other than *amicus* or their counsel made a monetary contribution to the preparation or submission of this brief.

trade association to provide lodging management training to personnel in Florida's lodging establishments. FRLA also funds and manages an educational foundation in which over 20,000 high school students participate in training programs designed to introduce them to the hospitality industry.

With respect to the case that is the subject of the pending petition for writ of certiorari before this Court, FRLA's members have been, and continue to be, directly and negatively impacted by the Florida gift ban law under challenge in this case. In particular, the law has resulted in a significant decrease in income for hospitality establishments in Florida's capitol city, Tallahassee. A 2007 study titled "Estimated Economic Impact of the Florida Gift Ban Law upon Tallahassee/Leon County, Florida," by Florida State University economists Dr. Mark A. Bonn and Dr. Julie Harrington (attached as an appendix), found that the Florida gift ban law cost Tallahassee and the surrounding area more than $4.1 million in hospitality and related spending during just the brief 60-day length of Florida's regular legislative session.

ARGUMENT

The position of the FRLA is that the complete and total gift ban in Florida imposed by the Florida gift ban law "does not aim specifically at evils within the allowable area of State control, but on the contrary, sweeps within its ambit other activities that

in ordinary circumstances constitute an exercise of freedom of speech." *Thornhill v. Alabama*, 310 U.S. 88, 97 (1940). The record compiled by the Florida Legislature during its deliberations on the Law contain no evidence whatsoever to support the contention that an absolute gift ban is necessary to maintain the integrity of the state's basic governmental processes. The decision to ban all expenditures by lobbyists was political in nature and was not closely drawn to match the goal of preventing public corruption.

While now prohibited by law from buying a public official a cup of coffee, from providing them with an educational book or video, or from giving them anything with a discernible economic value, lobbyists can still contribute up to $500 to a candidate's campaign per election cycle, contribute up to $500 per election cycle to a political committee supporting the candidate, contribute an unlimited amount of money to a political party, and contribute an unlimited amount of money to a "committee of continuous existence" or other "527" political entity affiliated with the candidate. Fla. Stat. §§ 106.08(1)(a), 106.04.

Furthermore, while the gift ban prohibits a lobbyist from buying dinner for a legislator, the lobbyist can contribute to a political party, a political committee, or a committee of continuous existence, which can itself then pay for the legislator's dinner. Against this backdrop, no evidence exists that a

blanket gift ban achieves the state's objective of preventing corruption or the appearance of same.

Another indication that the law is overbroad is the fact that the law applies to direct and *indirect* gifts. Lobbyists are therefore banned from contributing to grassroots lobbying organizations or nonprofit organizations associated with or favored by public officials. The gift law could therefore have a disparate impact on the ability of these organizations to mobilize and participate in the political process.

If the Florida law at issue in this case had simply set some maximum value on the cost of a gift or meal a lobbyist or its client could lawfully give to a public official, e.g., $100, this Court would be much harder pressed to "determine with any degree of exactitude the precise restriction necessary to carry out" the Florida Legislature's anticorruption objective, i.e., whether $50, $100, or $150 is the "right" amount. *Randall v. Sorrell*, 548 U.S. 230, 248 (2006). Here, however, the Florida Legislature did not produce any evidence that a total gift ban is necessary to achieve this objective.

One's ability to spend money in the context of speaking to public officials is a fundamental right that should not be restricted unnecessarily. In its landmark case, *Buckley v. Valeo*, 424 U.S. 1 (1976), the central holding is that "spending money on one's own speech must be permitted." *Colorado Republican Federal Campaign Committee v. Federal Election Comm'n*, 518 U.S. 604, 627 (1996). While *Buckley*

specifically dealt with campaign contributions, expenditures made by lobbyists or their clients in furtherance of communicating with government officials on matters of great public importance should be protected for similar reasons.

This Court has long recognized the fundamental right to engage in political speech. Political speech comes in many forms. It is well established that political speech exists in the form of campaign contributions and campaign expenditures, and similar constitutional protections should exist for expenditures made by lobbyists or their principals in their pursuit of political dialogue with public officials. Ordinary citizens and businesses alike use lobbyists to represent their interests at the state capitol. Personal appearances by these citizens or businesses in Tallahassee during the state's legislative session are frequently impractical in light of the time it would take away from the demands of their already full daily schedules. By hiring lobbyists, these citizens and businesses can seek to provide input into government decision-making without disrupting their personal and professional lives. That political speech, whether through an intermediary such as a lobbyist or not, is protected by the First Amendment.

This Court has upheld limits for political contributions, while recognizing that sometimes limits may cause "more harm to protected First Amendment interests than their anticorruption objectives could justify." *Randall*, 548 U.S. at 247-248. When it comes

to limiting campaign contributions, it is well established that some lower limit exists and they cannot be completely prohibited. *Id.*

Similarly, a complete gift ban is overbroad and facially invalid. The blanket prohibition of the gift ban has had a chilling effect on the ability of lobbyists and their principals to communicate with public officials on matters of great public importance. Legislators and public officials routinely maintain extraordinarily full schedules. Sometimes, the only opportunity for a legislator or public official to meet with a lobbyist may be during a meal either before or after the traditional work day. However, with a complete gift ban in place, many public officials hesitate to even enter a restaurant with a lobbyist for fear of spurring an ethics complaint based upon the appearance that they might be violating the gift ban. This chilling effect can eliminate the opportunity for the lobbyist's client to have its views relayed to the public official and impinges on the ability of that public official to gather relevant information on issues of public concern.

CONCLUSION

For all the reasons explained above, the FRLA urges this Court to grant the petition for a writ of certiorari.

Dated: September 8, 2009

Respectfully submitted,

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