No. _____

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This case presents the following questions which are closely related to the questions now before this Court in *Citizens United v. Federal Elections Commission,* No. 08-205:

1. Whether a state law that requires disclosure of the identities of those paying for grassroots lobbying – "opinion articles, issue advertisements, and letter writing campaigns" – facially violates the First and Fourteenth Amendments due to vagueness and overbreadth.

2. Whether a state law that prohibits all gifts for the purpose of lobbying facially violates the First and Fourteenth Amendments due to vagueness and overbreadth.

PARTIES TO THE PROCEEDING & CORPORATE DISCLOSURE STATEMENT

The parties to the proceeding in the court whose judgment is sought to be reviewed are listed in the caption. None has a parent corporation and no publicly held company owns stock in any of the entities.

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INTRODUCTION

This case presents an important issue that was left open by the majority in *United States v. Harriss*, 347 U.S. 612 (1954), and that has vexed lower courts ever since: whether imposition of a disclosure requirement on "indirect lobbying" – often referred to as "grassroots lobbying" – facially violates the First and Fourteenth Amendments. It also seeks review of a total prohibition on lobbyists' gifts to public officials.

In 2005, the Florida Legislature enacted what may be the strictest regulation of state lobbyists in the country. One feature of the law requires all persons and entities who are paid to write opinion articles, publish issue advertisements, and engage in other forms of indirect lobbying for legislative change or other government action to register as lobbyists and to disclose the identity of all persons and entities who paid them to engage in such activities as well as the amounts they were paid. Another feature of the law prohibits the giving of any gift "directly or indirectly" to state legislators and other officials for the purpose of lobbying.

The legislature imposed these strict requirements and the courts below upheld them without *any* evidence that they were necessary to prevent corruption of legislative or executive government functions and notwithstanding the historically-recognized threat that such restrictions pose to the press and to pure issue advocacy groups such as pro-life, civil rights, right to work, and religious organizations.

Such restrictions, like restrictions on the right of corporations to engage in pure issue advocacy in political campaigns, are void for vagueness and facially overbroad. They violate the First Amendment by sweeping far too much protected speech within their ambit without any proof that they are necessary to advance the legitimate governmental interests they may serve.

CITATIONS OF OPINIONS & ORDERS IN THE CASE

Florida Association of Professional Lobbyists, Inc. v. Division of Legislative Information Services, 566 F.3d 1281 (11th Cir. 2009) (hereinafter "FAPL v. DLIS") (final judgment affirming summary judgment for defendants). (App. 1).

FAPL v. DLIS, 525 F.3d 1073 (11th Cir. Apr. 23, 2008) (affirmed in part and question certified). (App. 3).

FAPL v. DLIS, No. SC08-791, 7 So. 3d 511 (Fla. 2008) (certified questions answered). (App. 19).

FAPL v. DLIS, No. 4:06cv123-SPM/WCS, 2006 WL 3826985 (N.D. Fla. Dec. 28, 2006) (final summary judgment). (App. 33).

FAPL v. DLIS, 431 F. Supp. 2d 1228 (N.D. Fla. 2006) (preliminary injunction denial). (App. 46).

JURISDICTION

The United States Court of Appeals for the Eleventh Circuit issued a final judgment in this case May 7, 2009. (App. 1). This court has jurisdiction to review the judgment pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS & STATUTES INVOLVED

The First Amendment to the Constitution of the United States is reproduced in the appendix. (App. 64).

The complete Florida Statute provisions at issue are reproduced in the appendix. (App. 65-98). Section 11.045 governs lobbying of the legislature. Section 112.3215 governs lobbying of the executive branch.

Both sections require lobbyists to register, to identify each principal, and to file quarterly reports showing the compensation provided or owed by each principal to a lobbyist. Fla. Stat. §§ 11.045(2)-(3) & 112.3215(3)-(5). (App. 66-72 & 87-92). The disclosure provisions apply to "grassroots" or "indirect" lobbying by defining "lobbying" and "lobbies" as "influencing or attempting to influence" legislative or executive action or nonaction through "oral or written communication or an attempt to obtain the goodwill of" a legislator or other state official. Fla. Stat. §§ 11.045(1)(f) & 112.3215(f). (App. 82 & 85).

Both also prohibit gifts from being given "directly or indirectly" to legislators and other state officials "for the purpose of lobbying." Fla. Stat. § 11.045(4)(a) & § 112.3215(6)(a). (App. 72 & 92).

STATEMENT OF THE CASE

Plaintiffs, a not for profit corporation representing professional Florida lobbyists, two individual lobbyists, and two lobbying firms, filed suit seeking invalidation of chapter 359, Laws of Florida (2005) ("the Act"), as violating the First and Fourteenth Amendments of the United States Constitution as well as provisions of the Florida Constitution. (App. 33). The district court denied a motion for preliminary injunction, *FAPL v. DLIS,* 431 F. Supp. 2d 1228 (N.D. Fla. 2006) (App. 46), and then later entered final summary judgment against all claims. *FAPL v. DLIS,* No. 4:06cv123-SPM/WCS, 2006 WL 3826985 (N.D. Fla. Dec. 28, 2006). (App. 32 & 99).

The Eleventh Circuit affirmed the summary judgment against the federal claims and certified the state law claims to the Florida Supreme Court. *FAPL v. DLIS,* 525 F.3d 1073 (11th Cir. 2008). (App. 3). The Florida Supreme Court opined that the law did not violate the Florida Constitution. *FAPL v. DLIS,* No. SC08-791, 7 So. 3d 511 (Fla. 2008). (App. 19). The Eleventh Circuit then affirmed all aspects of the district court's final summary judgment. *FAPL v. DLIS,* 566 F.3d 1281 (11th Cir. 2009). (App. 1).

Factual Background

At a special session in December 2005, the Florida Legislature passed the Act, now codified at section 11.045, Florida Statutes, relating to lobbying the Florida Legislature, and section 112.3215, Florida Statutes, relating to lobbying Florida executive agencies. (App. 65-98).

The Act imposes a disclosure provision that requires lobbying firms to file quarterly statements reporting the total compensation paid or owed by their "principals" – that is, their clients. Fla. Stat. §§ 11.045(3)(a)1.c, 112.3215(5)(a)1.c. Lobbying firms must also disclose the full name, business address, and telephone number of each principal, as well as the total compensation that each principal paid or owed to the lobbying firm. Fla. Stat. §§ 11.045(3)(a), 112.3215(5)(a). (App. 68 & 88).

The Act also prohibits gifts. Section 11.045(4)(a) provides "no lobbyist or principal shall make, directly or indirectly, and no member or employee of the legislature," nor any "agency official, member, or employee shall knowingly accept, directly or indirectly, any expenditure." Section 112.3215(6)(a) similarly states "no lobbyist or principal shall make, directly or indirectly, and no agency official, member, or employee shall knowingly accept, directly or indirectly, any expenditure." (App. 72 & 92).

The term "expenditure" is defined as "a payment, distribution, loan, advance, re-imbursement, deposit, or anything of value made by a lobbyist or principal

for the purpose of lobbying," Fla. Stat. §§ 11.045(1)(d) & 112.3215(1)(d). (App. 65 & 84).

"Lobbying" is defined as "influencing or attempting to influence legislative action or nonaction through oral or written communication or an attempt to obtain the goodwill of a member or employee of the Legislature." Fla. Stat. § 11.045(1)(f). (App. 66). "Lobbies" is defined similarly to mean "seeking, on behalf of another person, to influence an agency with respect to a decision of the agency in the area of policy or procurement or an attempt to obtain the goodwill of an agency official or employee." Fla. Stat. § 112.3215(f). (App. 85). Nothing restricts the applicability of the law to direct lobbying.

The Act has enforcement provisions that allow for audits as well as for the filing of sworn complaints. Fla. Stat. §§ 11.045(7)-(8), 112.3215(8)-(10). (App. 74 & 93). Penalties related to legislative lobbying include "a fine of not more than $5,000, reprimand, censure, probation, or prohibition from lobbying for a period of time not to exceed 24 months." Fla. Stat. § 11.045(7). (App. 74). For executive lobbying, penalties similarly include reprimand, censure, or a prohibition on lobbying any agency for a period not to exceed two years, and "a fine of not more than $5,000." Fla. Stat. § 112.3215(10). (App. 95).

The plaintiffs are lobbyists, lobbying firms, and a not for profit corporation that represents professional lobbyists. The plaintiffs use a variety of techniques in attempting to influence legislative and executive

action, including both direct lobbying and indirect lobbying by conducting surveys of voter opinion and publishing such information; organizing citizen rallies and demonstrations; publishing newsletters, faxes and e-mails to association members; publication of paid advertising; publication of opinion columns in newspapers; giving interviews to radio and television journalists; presentation of awards to legislators and other public officials to provide recognition and express appreciation; rating public officials in accordance with their support or non-support for their activity in a field of special interest to the plaintiffs or their clients and publication of such ratings; and conducting research in order to gain information, develop strategy and develop support. (Plante Dec. ¶ 11).

The plaintiffs filed suit in part because they believed that the disclosures required by the law would create dangers for themselves, their employees, and their family members that would not otherwise exist and deter their clients from continuing to engage their services. (Book Dec. ¶ 14).

Plaintiff Kenneth A. Plante, founder and chair of FAPL and a lobbyist with 27 years of experience in Florida, testified that "The compensation that a principal pays to a lobbying firm for the services of a lobbyist typically reflects significant confidential information that the principal shares with the lobbyist." (Plante Dec. ¶ 20). He explained that "The amount of compensation typically reflects the value that the principal places on the lobbyists' services, the

importance that the principal places on the assignment given to the lobbyist, the lobbyists' personal beliefs regarding the compensation that the principal should pay for the lobbyist's services, and the compensation that the individual lobbyist will receive from the lobbying firm." (Plante Dec. ¶ 20).

Prior to the enactment of the law, the plainitffs maintained the confidentiality of compensation paid to them by their clients. Two of the plaintiffs, Ronald L. Book and Guy M. Spearman, III, explained the confidentiality protects their families "from being targeted by criminals who may become aware of my compensation." (Book Dec. ¶ 14.1a., Spearman Dec. ¶ 10.a.). They further explained that they charge some clients low rates because they are pursuing "causes that I find admirable or that I believe serve charitable purposes" and that prior to the passage of the act, they did not disclose compensation arrangements with some of these clients because they "do not wish to reveal to the world that [they] share their values." (Book Dec. ¶ 15). "Revealing my fee arrangements with each client would reveal much about my own personal viewpoints, associations, and values that I do not wish to make public." (Book Dec. ¶ 15; Spearman ¶ 11).

Proceedings in the District Court

In the district court, plaintiffs sought a pre-enforcement declaration that the Act was facially

unconstitutional. They also sought preliminary and permanent injunctions against the Act's enforcement. *See FAPL,* 431 F. Supp. 2d 1228. (App. 46).

Plaintiffs argued that the Act was invalid because it had not been read three times after it was introduced in the Florida House of Representatives. They argued that the Act infringed upon the Florida Supreme Court's authority to regulate the practice of law; and they argued that the Act contravened Florida's separation of powers doctrine. *Id.* at 1232. (App. 7).

Plaintiffs also argued that the Act's expenditure restrictions, disclosure requirements, and enforcement provisions violated their rights to free speech, due process, equal protection, and privacy under both the United States and Florida Constitutions. *Id.* (App. 7).

The district court denied plaintiffs' motions for preliminary injunction and summary judgment, concluding that plaintiffs were unlikely to succeed on their claims. The district court then granted summary judgment for the defendants on all of plaintiffs' claims. *Id.* at 1237. (App. 7).

The Eleventh Circuit's Disposition of the Federal Issues

Plaintiffs contended that the Act's provisions banning expenditures as well as its compensation reporting provisions are unconstitutionally vague and

overbroad because statutory terms such as "expenditure" or "direct" and "indirect" are so inadequately defined that a person of common intelligence must guess at their meaning and that, as a result, the Act allows for unbridled discretion in its enforcement. *FAPL,* 525 F.3d at 1078. (App. 12).

The Eleventh Circuit held in reliance on *Grayned v. City of Rockford*, 408 U.S. 104 (1972), that to overcome a vagueness challenge, a statute must give the person of ordinary intelligence a reasonable opportunity to know what is prohibited; and it must provide explicit standards for those who apply them to avoid arbitrary and discriminatory enforcement. *FAPL,* 525 F.3d at 1078. (App. 12-13).

The Eleventh Circuit held that the Act did not violate due process standards for vagueness because it "clearly provides that an expenditure – which is separately defined in sections 11.045(1)(d) and 112.3215(1)(d) – is unlawful only if it is made by a lobbyist or principal and accepted by a government official." *Id.* (App. 13). The court rejected plaintiffs' contention that the Act could be read to bar *all* expenditures for lobbying purposes such as a cab fare to the capitol. *Id.* at 1078-79. (App. 13). The court held that the law only bars those lobbying expenditures that are accepted by a government official. *Id.* at 1079. (App. 13).

The Eleventh Circuit also held that it did not "regard the term 'indirect' as vague: a person of common intelligence would understand that it applies

to expenditures or compensation paid through a third party." *Id.* (App. 13).

Examining plaintiffs' argument that the Act's compensation reporting provision requires "'disclosure of compensation paid to a lobbyist even where that compensation has *not* been paid for expressly advocating passage or defeat of legislation,'" *id.* at 1079 (emphasis added), the Eleventh Circuit turned to the overbreadth principles enunciated in *Thornhill v. Alabama*, 310 U.S. 88 (1940); *Broadrick v. Oklahoma*, 413 U.S. 601 (1973); *United States v. Salerno*, 481 U.S. 739 (1987); and *Virginia v. Hicks*, 539 U.S. 113 (2003). The court noted that the overbreadth doctrine is strong medicine that should be used sparingly and only as a last resort; that generally a facial challenge must show that no set of circumstances exists under which the challenged act would be valid; and that an exception to this doctrine requires facial invalidation of a law that does not aim specifically at evils within the allowable area of state control but sweeps within its ambit a substantial amount of protected speech, judged in relation to the statute's plainly legitimate sweep. *FAPL*, 525 F.3d at 1079. (App. 14-15).

Applying these principles, the Eleventh Circuit began with recognition of the extraordinary breadth of the law. It agreed with the plaintiffs that "lobbying activity, as defined in the Act, encompasses not only direct communications from lobbyists to legislators and state officials (which is undoubtedly a legitimate object of regulation), but also indirect communications – such as opinion articles, issue advertisements,

and letterwriting campaigns-from lobbyists on behalf of their clients to the press and public at large for the purpose of influencing legislation or policy." *Id.* at 1080 (footnote omitted). (App. 15-16). Nevertheless, the court upheld the Act on the theory that "the state has a compelling interest 'in "self-protection" in the face of coordinated pressure campaigns' directed by lobbyists," citing its prior decision in *Fla. League of Prof'l Lobbyists, Inc. v. Meggs*, 87 F.3d 457, 460, 461 (11th Cir. 1996). *FAPL,* 525 F.3d at 1080 (quoting *Meggs*, 87 F.3d at 460). (App. 16).

Applying strict scrutiny, the Eleventh Circuit stated that this interest is "compelling not only when the pressures to be evaluated by voters and office-holders are 'direct,' but also when they are 'indirect.'" *Id.* (App. 16-17). The Eleventh Circuit cited *Minnesota State Ethical Practices Board v. National Rifle Association of America*, 761 F.2d 509, 511-13 (8th Cir. 1985), as an example of a case upholding a state's interest in applying its reporting requirements to *indirect* communications between a lobbyist and members of an association for the purpose of influencing specific legislation. (App. 17).

The Elevent Circuit certified all state law issues to the Florida Supreme Court. (App. 4).

The Florida Supreme Court's Disposition of the State Issues

The Florida Supreme Court held that the Act did not violate the separation of powers doctrine, that the Act was validly enacted, and that the Act did not infringe on the Supreme Court's exclusive jurisdiction to regulate lawyers or the practice of law. (App. 19).

The Eleventh Circuit's Final Judgment

After obtaining the Florida Supreme Court's answer to the certified question, the Eleventh Circuit affirmed the district court's final summary judgment. (App. 1).

REASONS FOR GRANTING THE WRIT

I. The Decision Below Will be Undermined by a Decision in *Citizens United v. FEC* Facially Invalidating BCRA Section 203

If the Court overturns *Austin* and *McConnell,* in *Citizens United*, this would undermine the Eleventh Circuit's decision to uphold both the disclosure requirement applicable to grassroots lobbying and the wholesale prohibition of direct and indirect gifts.

A. The Ruling on the Disclosure Requirement for Grassroots Lobbying Will be Undermined

In *United States v. Harriss*, 347 U.S. 612 (1954), the Court upheld the facial constitutionality of a federal law that imposed disclosure requirements on direct lobbying of members of Congress, but the *Harriss* majority avoided deciding the facial constitutionality of imposing the same requirements on "indirect lobbying" – sometimes referred to as "grassroots lobbying." It did so by construing the law at issue as applicable solely to direct, face-to-face lobbying of Congress and to direct letter writing to Congress. The majority's construction of the statute was motivated by concerns that the statute, unless narrowed, would be facially invalid.[1] The three dissenters in *Harriss* concluded the law could not be narrowed and that the federal law must therefore be

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[1] More recently, the Court has saved other federal statutes regulating political speech from invalidation by construing them narrowly as well. *See, e.g., McConnell v. Federal Election Commission,* 540 U.S. 93, 192-93 (2003) (facially upholding a part of federal campaign finance legislation by construing it to apply solely to corporate expenditures for express advocacy for a candidate in a federal election and not to pure issue advocacy); *Buckley v. Valeo*, 424 U.S. 1, 42 (1976) (narrowing the phrase "any expenditure . . . relative to a clearly identified candidate" to mean any expenditure "advocating the election or defeat of a candidate").

invalidated.[2] *Id.* at 631 (Douglas, J., dissenting with Black, J., concurring) & 634 (Jackson, J., dissenting).

Since *Harriss*, lower courts have struggled with whether state laws imposing burdens on grassroots lobbying facially violate the First Amendment. As will be discussed in Point II, they have reached inconsistent results. The trend, however, has been decidedly toward facially upholding broader and broader laws imposing heavier and heavier burdens on political speech. Some of the decisions have placed reliance on that part of *McConnell v. Federal Election Commission*, 540 U.S. 93 (2003), that upheld the facial validity of section 203 of the Bipartisan Campaign Reform Act of 2002, 2 U.S.C. § 441b, a provision that prohibits independent corporate

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[2] The law at issue in *Harriss*, the Federal Regulation of Lobbying Act, title III of the Legislative Reorganization Act of 1946, Pub. L. No. 79-601, §§ 301-11, 60 Stat. 812, 839-42, codified at 2 U.S.C. § 261-70, has been twice amended since *Harriss*. The Lobbying Disclosure Act of 1995, Pub. L. No. 104-65, expanded coverage to include contacts with staff and broaden the definition of lobbyist, but did not include indirect lobbying. *See* William V. Luneberg & Thomas Sussman, *The Lobbying Manual* at 46 (ABA 3d ed. 2005) ("the LDA was enacted only after the leaders of the reform removed the last vestiges of its express coverage of grassroots lobbying"). The Honest Leadership and Open Government Act of 2007, also expanded the law, but also not to cover indirect or grassroots lobbying. *See generally Nat'l Ass'n of Mfrs. v. Taylor,* 549 F. Supp. 2d 33 (D.D.C. 2008) (upholding the 2007 amendment). Congress defeated section 220 of the Lobbying Transparency and Accountability Act of 2007, S. 1, 110th Cong. § 220 (2007), which would have so extended the federal law.

expenditures for "express advocacy" for candidates in federal elections.[3] *McConnell* supports the argument that restrictions on grassroots lobbying are facially valid because section 203's restriction on corporate "express advocacy" has the effect of suppressing "pure issue advocacy" in light of the difficulty of distinguishing "express advocacy" from "pure issue advocacy." *See Fed. Election Comm'n v. Wisc. Right to Life, Inc.,* 127 S.Ct. 2652, 2679-84 (2007) (Scalia, J., dissenting) ("*McConnell* was mistaken in its belief that as-applied challenges could eliminate the unconstitutional applications of § 203"). If the First Amendment can tolerate a law that regulates independent corporate expenditures for pure issue advocacy in federal elections, so the argument goes, then surely it can tolerate a law that regulates lobbyists' grassroots or indirect lobbying through publication of newsletters, writing letters to the editor, and public speaking.

A case now pending before this Court, *Citizens United v. Federal Election Commissio*n, 530 F. Supp. 2d 275 (D.D.C. Jan. 15, 2008) (denying preliminary injunction); 2008 WL 2788753 (D.D.C. 2008), *prob. juris. noted,* 129 S.Ct. 594 (U.S. Nov. 14, 2008) (No. 08-205), *returned to oral arg. docket,* 2009 WL 1841614 (U.S. June 29, 2009), seriously calls into question, however, the critical holding of *McConnell.*

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[3] *See, e.g., Minn. Citizens Concerned for Life, Inc. v. Kelley,* 427 F.3d 1106, 1111-12 (2005) (citing *McConnell*) (discussed in Part II infra).

Although the petitioners focused on whether section 203 constitutionally could be applied to a documentary entitled *Hillary: The Movie*, after hearing oral argument, the Court entered an order on June 29, 2009, asking the parties for new briefs addressing the following question:

> For the proper disposition of this case, should the Court overrule either or both *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652 (1990), and the part of *McConnell v. Federal Election Comm'n*, 540 U.S. 93 (2003), which addresses the facial validity of Section 203 of the Bipartisan Campaign Reform Act of 2002, 2 U.S.C. §441b.

If the Court overturns these important precedents on the issue of the facial constitutionality of restraints on independent corporate expenditures in political elections, this seriously will call into question federal decisions upholding the facial constitutionality of restraints on indirect lobbying, including the decision of the Eleventh Circuit below. Both types of restraints apply to core political speech and both pose minimal risks of corrupting political processes. Both also have been defined in vague terms, creating grave danger to protected speech. *Wisconsin Right to Life,* 127 S.Ct. at 2669. If one is facially invalid, it follows that the other must be as well. At a minimum, the Court should grant this petition, vacate the Eleventh Circuit's decision, and remand the case for

reconsideration in light of the Court's disposition of *Citizens United.*

B. The Ruling on the Gift Ban Also Will be Undermined

The Florida gift ban challenged below may now be the most restrictive in the country. The law is so strict that it prohibits a lobbyist even from buying a legislator a cup of coffee.[4] Like the grassroots lobbying disclosure requirements, the absolute ban on gifts was passed without evidence that it is necessary to prevent corruption.

As important, the law imposes a vague and broad restraint on the valuable information exchanges that gifts can engender between lobbyists and government officials. Lobbyists assist their clients' efforts to petition government by providing an indispensable element of the legislative process – communication of people's needs and wishes to their legislators. *See generally Eastern R.R. Presidents Conference v. Noerr Freight, Inc.*, 365 U.S. 127 (1961). Their communications may take the form of a gift such as a book on pollution, a documentary regarding global warming, a collection of newspaper articles regarding abortion, a

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[4] *See, e.g.,* Troy Kinsey, *Some Say Ban on Giving Gifts to Politicians is Going Too Far,* WCTV-TV (Tallahassee) (Mar. 22, 2008) (http://www.wctv.tv/home/ headlines/16923181.html) ("be it a steak, a ticket to a basketball game, even a cup of coffee, lawmakers have to pay their own way").

pamphlet on gun ownership, a detailed report specifically advocating for or against legislation to help the homeless or to cure AIDS, or an educational trip to the Everglades. Yet, the Florida law applies to all such gifts and prohibits them whether provided directly or indirectly.

The Florida law expressly applies to direct and indirect gifts. Lobbyists thus are prohibited from donating to educational, charitable, and not-for-profit organizations associated with or favored by a legislator if the donation could be characterized as an "indirect" gift. The Florida law has been this broadly interpreted even though such indirect donations, like grassroots lobbying and corporate express advocacy, create little or no risk of corruption and have significant value by providing organizations with resources needed to further their causes.[5]

If the Court overturns *Austin* and *McConnell* and holds that laws facially violate the First Amendment when they impose significant restrictions on political speech that creates no risk of corruption

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[5] *See* Steve Bousquet, *Lawmakers Find Ways Around Lobby Rules – Thirteen State House Members Have Formed a Charity that Accepts Donation from Lobbyists. They Say They're Not Breaking the Rules,* The Miami Herald (July 11, 2009) (discussing conflicting interpretations of the Florida law provided by House counsel and the Senate rules); *compare* Fla. H. Rep. Off. of Gen. Counsel Formal Op. 07-06 (House members may solicit lobbyists to contribute to charities with which they have no involvement) *with* Fla. Sen. R. 1.361(1) (prohibiting senators from soliciting for charities during legislative sessions).

ascertainable by the Court exercising independent judicial review, the Court should grant this petition and, at a minimum, remand the case for reconsideration.

II. The Decision Conflicts with Decisions of this Court, Other Courts of Appeals and a State Supreme Court

Even, however, if section 203 is not facially invalidated, the Court should grant this petition because the Eleventh Circuit's decision is at odds with long-standing principles announced by this Court, decisions of other federal courts of appeals, and one state supreme court decision.

A. The Grassroots Lobbying Disclosure Requirement is Contrary to Precedents Facially Invalidating Indirect Lobbying & Independent Expenditure Regulations

In *Harriss* the Court held the disclosure requirements of the Federal Regulation of Lobbying Act apply only where (1) the person solicited, collected, or received contributions, (2) one of the main purposes of such person or of such contributions must have been to influence the passage or defeat of legislation by Congress, and (3) "the intended method of accomplishing this purpose must have been through *direct communication with members of Congress*." *Id.* at 623 (emphasis added). "Thus construed [the law does] not

violate the freedoms guaranteed by the First Amendment-freedom to speak, publish, and petition the Government." *Id.* at 625. The majority acknowledged that the disclosure requirements of the law "may as a practical matter act as a deterrent to [the] exercise of First Amendment rights . . . because of fear of possible prosecution for failure to comply with the Act," but explained its "narrow construction of the Act, precluding as it does reasonable fears, is calculated to avoid such restraint." *Id.* at 626.

In the same term, this Court narrowly interpreted a congressional resolution in *United States v. Rumely,* 345 U.S. 51 (1953), so as to authorize a committee to investigate only "direct" lobbying activities, and affirmed a court of appeals ruling that stated: "It is said that indirect lobbying by the pressure of public opinion on the Congress is an evil and a danger. That is not an evil; it is a good, the healthy essence of the democratic process." *Rumely v. United States*, 197 F.2d 166, 174 (D.C. Cir. 1952).

Justice Douglas, joined by Justice Black, dissented in *Harriss*, disagreeing with the majority that the law could be narrowly construed because he found "no warrant in the Act for drawing the line, as the Court does, between 'direct communication with Congress' and other pressures on Congress. The Act is as much concerned with one, as with the other." *Id.* at 631 (Douglas, J., dissenting). He saw no basis to exclude from the coverage of the act efforts to influence Congress by "radio, television of advertising measures promoting a particular measure, as well as

the 'button holing' of Congressmen." *Id.* Justice Douglas asked, "Can Congress require one to register before he writes an article, makes a speech, files an advertisement, appears on radio or television, or writes a letter seeking to influence existing, pending, or proposed legislation? That would pose a considerable question under the First Amendment." *Id.*

Justice Douglas then proceeded to answer his own question: "The language of the Act is so broad that one who writes a letter or makes a speech or publishes an article or distributes literature or does many of the other things with which appellees are charged has no fair notice when he is close to the prohibited line. . . . Since the Act touches on the exercise of First Amendment rights, and is not narrowly drawn to meet precise evils, its vagueness has some of the evils of a continuous and effective restraint." *Id.* at 632-33. He cautioned that upholding the law and leaving to judges the task of adjudicating individual applications of the law would not suffice. He explained that "if Congress could impose registration requirements on the exercise of First Amendment rights, saving to the courts the salvage of the good from the bad, and meanwhile causing all who might possibly be covered to act at their peril, the law would in practical effect be a deterrent to the exercise of First Amendment rights." *Id.* at 632.

Justice Jackson also dissented, noting that the "clearest feature of the Court's decision is that it leaves the country under an Act which is not much like the Act passed by Congress. . . . I recall few cases

in which the Court has gone so far in rewriting an Act." *Id.* at 634 (Jackson, J.). He agreed with Justice Douglas that the law could not be narrowly construed and he advocated facial invalidation. "As long as this statute stand on the books, its vagueness will be a contingent threat." *Id.* at 635. Justice Jackson also warned that "It does not seem wise to leave the scope of a criminal Act, close to impinging on the right of petition, dependent upon judicial construction for its limitations. Judicial construction, constitutional or statutory, always is subject to hazards of judicial reconstruction." *Id.*

The Eleventh Circuit acknowledged *Harriss* as a relevant precedent, but then neither narrowed the law before it as did the *Harriss* majority nor heeded the dissenters' conclusion that an unnarrowed law facially violates the First Amendment. It construed the Florida law to mean literally what it says – imposing disclosure requirements on both direct *and* indirect attempts to influence legislators and executive agency officials, yet upheld the law as facially valid.[6]

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[6] This Court could reject the Eleventh Circuit's interpretation of the Florida law, but this would be contrary to the Court's settled practice of deferring to the courts of appeals' interpretation of state law. *See McMillian v. Monroe County*, 520 U.S. 781, 787 (1997) (noting that where two Eleventh Circuit panels had reached the same conclusion regarding state law, this interpretation would be accepted); *Jett v. Dallas Independent School Dist.*, 491 U.S. 701, 738 (1989) ("We think the Court of Appeals [for the Fifth Circuit], whose expertise in

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Because a majority did not decide the constitutional issues in *Harriss* and *Rumely*, however, lower courts have taken it upon themselves to do so in examining state laws and they have reached inconsistent results.

In *Montana Auto Association v. Greeley,* 632 P.2d 300, 307 (Mont. 1981), the Montana supreme court invalidated disclosure requirements applied to indirect lobbying activities. The court relied on this Court's observation in *Rumely* that:

> Surely it cannot be denied that giving the scope to the resolution for which the Government contends, that is, deriving from it the power to inquire into all efforts of private individuals to influence public opinion through books and periodicals, however remote the radiations of influence which they may exert upon the ultimate legislative process, raises doubts of constitutionality in view of the prohibition of the First Amendment.

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interpreting Texas law is greater than our own, is in a better position to determine whether [the school district superintendent] possessed final policymaking authority in the area of employee transfers"); *Virginia v. American Booksellers Assn., Inc.*, 484 U.S. 383, 395 (1988) (the Court "rarely reviews a construction of state law agreed upon by the two lower federal courts"); *Pembaur v. Cincinnati*, 475 U.S. 469, 484 n.13 (1986) (plurality opinion) ("We generally accord great deference to the interpretation and application of state law by the courts of appeals") (citing many cases).

Greeley, 632 P.2d at 307 (quoting *Rumely,* 345 U.S. at 46). The court held that press licensing had been prohibited in *Mills v. Alabama*, 384 U.S. 214, 218-20 (1966), and noted that under the Montana lobbying law, as drafted, "Even newspaper editorials . . . would constitute lobbying activity. . . . Facially, [the law] constitutes a more drastic infringement on freedom of the press and freedom of speech than was present in Mills v. Alabama," *Greely,* 632 P.2d at 308.

In cases where the statutes at issue were no broader than the federal lobbying law construed in *Harriss*, or at least could be so construed, lower courts have had no difficulty upholding them as constitutional. *See Commission on Independent Colleges and Universities v. New York Temporary State Commission*, 534 F. Supp. 489, 498 (N.D.N.Y. 1982) (finding the New York state lobby law, construed to require disclosure of efforts to "exhort the public to make such direct contact with legislators as outlined in Harriss," did not violate the First Amendment); *Pletz v. Secretary of State*, 336 N.W.2d 789, 795 (Mich. 1983) (upholding state law when applied to solicitations of others to make direct communications).

But more recently, courts have upheld laws regulating indirect lobbying. The Vermont supreme court concluded that "Provisions that reach 'indirect' lobbying activities beyond the parameters found in *Rumely* and *Harriss* are not . . . necessarily unconstitutional; in fact, the Court intimated in these cases that Congress could require more stringent reporting." *Kimbell v. Hooper*, 665 A.2d 44 (Vt. 1995).

The Court noted that in the context of campaign finance legislation this Court had held in *Buckley v. Valeo*, 424 U.S. 1, 66-67 (1976), that "government interests sought to be vindicated by disclosure requirements to be of sufficient magnitude to counterbalance infringements on First Amendment rights." *Kimbell*, 665 A.2d at 86. Consequently, the Vermont supreme court held disclosure requirements applicable to such indirect "lobbying" activities as research, meetings with clients, preparation of materials, formation of coalitions, participation in talk shows, and sending letters to newspaper editors are facially constitutional.[7] *Id.*

In *Minnesota State Ethical Practices v. Nat'l Rifle Ass'n,* 761 F.2d 509, 512 (8th Cir. 1985), the Eighth Circuit read *Harriss* broadly to allow disclosure requirements to be imposed on communications such as internal communications among members of an organization, rather than only direct communications with legislators. The court upheld a Minnesota law requiring the NRA and its Political Victory Fund and individuals employed by the organizations to register their lobbying and political funding activities. At issue in the case were letters from the NRA to its members urging them to contact their state legislators to support three pieces of pending legislation and the defeat of Warren Spannaus, a candidate for

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[7] *See also Young Americans for Freedom, Inc. v. Gorton,* 522 P.2d 189 (Wash. 1974) (upholding grassroots lobbying disclosure provisions that did not require identification of contributors).

governor. The NRA asserted that such internal communications were distinct from the direct communications with Congress at issue in *Harriss*. The Eighth Circuit rejected the argument, giving *Harriss* an expansive reading.

The Eleventh Circuit first examined the constitutionality of lobbyist disclosure requirements 13 years ago in *Florida League of Professional Lobbyists, Inc. v. Meggs,* 87 F.3d 457 (11th Cir. 1996). The plaintiff there brought a facial challenge to a 1993 amendment to sections 11.045(4) & 112.3215, Florida Statutes, chapter 93-121, Laws of Florida, that provided that "a lobbyist hired by a principal shall disclose all lobbying expenditures, whether made by the lobbyist or by the principal, and the source of funds for all such expenditures." *Meggs*, 87 F.3d at 458. Under the 1993 law, a lobbyist's or principal's salary, office expenses, and personal expenses for lodging, meals, and travel specifically were excluded from the definition of expenditures. *See* Fla. Stat. § 11.045(3)(a) (1993).

The *Meggs* court, like the *FAPL* court, looked to this Court's decision in *Harriss* to decide the question and found that it did not provide a clear answer. It noted that the Court had construed the Federal Regulation of Lobbying Act so that it applied solely to "direct" contacts between lobbyists and officials and that the "Florida statute seems to sweep somewhat more broadly, bringing more 'indirect' lobbying, such as research and media campaigns, within its scope." *Meggs*, 87 F.3d at 460-61. The Eleventh Circuit

nevertheless upheld the Florida statute in reliance on lower court decisions such as *Minnesota State Ethical Practices*.

The Eighth Circuit returned to the disclosure issue in *Minnesota Citizens Concerned for Life, Inc. v. Kelley,* 427 F.3d 1106 (2005). There, a non-profit corporation whose purposes included informing the public on abortion and related topics, published the results of a questionnaire identifying a candidate's position on such issues without expressly advocating the election or defeat of specific candidates. The law at issue, Minn. Stat. § 10A.084 required lobbyists to report each source of over $500 per year that MCCL used for lobbying, including the source's name, address and employer. A Minnesota Campaign Finance and Disclosure Board advisory opinion interpreted subdivision 4(d) to require that a lobbyist principal provide its lobbyists the names of all persons (1) who earmarked donations over $500 to MCCL for lobbying, or (2) those "whose aggregate contributions multiplied by the percentage of the budget the lobbyist principal used for lobbying is greater than $500.

MCCL claimed that this allocation formula violated its contributors' rights to free speech and association with an advocacy organization because it required disclosure not only of contributors for *direct* lobbying, but also contributors for pure issue advocacy. The Eighth Circuit rejected this assertion, expressly relying on the holding of *McConnell v. Fed. Election Comm'n,* 540 U.S. 93, 192-93 (2003), that a line had been drawn between express advocacy and

pure issue advocacy merely to narrowly construe an overbroad, vague statute, and not to establish a constitutional rule that disclosure requirements cannot be imposed on pure issue advocacy. *Kelley*, 427 F.3d at 1111-12. In essence, the Eighth Circuit treated both *McConnell* and *Harriss* as leaving the door open for broad restrictions on indirect lobbying simply because they did not address whether restrictions on pure issue advocacy or indirect lobbying, analogous forms of core political speech, would be facially invalid.[8]

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[8] A Congressional Research Service Report also made the connection between *McConnell's* decision to uphold section 203 facially and the constitutionality of laws regulating grassroots lobbying while Congress was debating such a law in 2007. *See* Jack Maskell, *Grassroots Lobbying: Constitutionality of Disclosure Requirements* at 11, CRS Report for Congress (Jan. 12, 2007) (http://assets.opencrs.com/rpts/RL33794_20070112.pdf) (observing *McConnell* "upheld the disclosure requirement, even for so-called issue advocacy (as opposed to the 'express advocacy' of the election or defeat of an identified candidate), when those use ads ran in certain time frame before an election for federal office, thus finding, in effect, that such groups do have enough of a 'direct and intimate' relation to the political process to justify disclosing the required information regarding their activities"). The report concluded, in reliance on *McConnell* and many of the state and federal cases discussed herein that:

> it would appear that a federal statute which requires only disclosure and reporting, and does not prohibit any activity, and which reaches only those who are compensated to engage in a certain amount of the covered activity (leaving volunteer organizations, volunteers, and other individuals who engage in such activities on their own accord out of the coverage and

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In light of these decisions, the Eleventh Circuit interpreted *Harriss* in the instant case to mean that "the First Amendment allows required reporting of considerably more than face-to-face contact with government officials." *FAPL*, 525 F.3d at 1080. The Eleventh Circuit observed that in *Harriss*, 347 U.S. 612, the Court had upheld the disclosure requirements in the Federal Regulation of Lobbying Act of 1946, by construing the disclosure requirements narrowly to cover only those "'contributions and expenditures having the purpose of attempting to influence legislation through *direct communication with Congress*.'" *FAPL,* 525 F.3d at 1080 n.8 (quoting *Harriss*, 347 U.S. at 623). The communications at issue in *Harriss* were expenditures by the National Farm Committee for compensation to others to communicate face-to-face with members of Congress, at public functions and committee hearings on legislation affecting agricultural prices, and for a campaign to induce various interest groups and individuals to communicate by letter with members of Congress on such legislation.

> sweep of the provisions), would appear to fit within those types of provisions which have been upheld in judicial decisions when the statute is drafted in such a manner so as not to be susceptible to an overly broad sweep bringing in groups, organizations and other citizens who do no more than advocate, analyze and discuss public policy issues and/or legislation.

Id. at 18-19. Still, Congress rejected the proposed extension of the federal law to grassroots lobbying.

Such *direct* communications are a far cry from the "opinion articles" and "issue advertisements" that the Eleventh Circuit construed as triggering the reporting requirements of the Florida law at issue here.[9] The Court has recognized, as a matter of historical fact, that requiring registration and disclosure of funding of all such activity will deter such a substantial amount of protected speech that a statute which may have other legitimate aims cannot stand. *See, e.g., Harriss,* 347 U.S. at 631-32 (Douglas, J., dissenting) (citing cases). This is what motivated the *Harriss, Buckley*, and *McConnell* majorities to construe the federal laws before them narrowly and it is critical at this juncture for the Court to reaffirm that when laws are not so construed, as occurred here, they are facially invalid.

Expenditures for lobbying that do not involve direct contacts with the lobbied entity are the same type of speech as independent expenditures for campaigns. Both are made to influence a political process, both are core political speech, but neither has the necessary proximity to legislators that creates the

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[9] The Florida Legislature Office of Legislative Services recently responded to an inquiry from the Competitive Enterprise Institute, a non-profit, non-partisan public policy and educational organization established as a section 501(c)(3) organization that even when it is not "promoting or discouraging a piece of legislation," it is engaged in lobbying as long as it is "attempting to influence legislative action or nonaction." Fla. Leg. Off. of Leg. Servs. Lobbyist Reg. Inf. Op. No. 08-01 (Dec. 5, 2008).

substantial risk of corruption needed to justify significant regulation or even proscription. Laws imposing regulation on both types of speech simply deter a substantial amount of protected speech by those who fear identification, retribution, and punishment for noncompliance without yielding countervailing benefits.

With these principles in mind, the Eleventh Circuit's decision to uphold the law at issue facially can be seen as conflicting with decisions of the D.C., Fourth, and Fifth Circuits that have invalidated laws requiring disclosure of indirect campaign expenditures.

In *Buckley v. Valeo*, 519 F.2d 821, 832 (D.C. Cir. 1975), *rev'd in part*, 424 U.S. 1 (1976), the D.C. Circuit held that a campaign-expenditure disclosure requirement was unconstitutionally vague and overbroad because it required "reporting by groups whose only connection with the elective process arises from completely nonpartisan public discussion of issues of public importance." This Court noted in its review of *Buckley* that this decision of the D.C. Circuit was not appealed. *Buckley*, 424 U.S. at 11 n.7.

In *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334 (1995), this Court held that an Ohio law which prohibited the distribution of anonymous campaign literature facially abridges the First Amendment. Justice Stevens, with the concurrence of six other justices, expounded on the traditions of anonymous political speech, referencing works such as the Federalist Papers that were published under fictitious

names. Because section 4(b) of the Florida law prohibits the provision of "compensation for lobbying to any individual or business entity that is not a lobbying firm," the law effectively prohibits the funding of an anonymous issue-advocacy campaign. Under the statute, a "lobbyist" would have to be hired under section 4(b) and payments made to that "lobbyist" and "lobbying firm" would have to be disclosed under sections (2) and (3).

In *North Carolina Right To Life, Inc. v. Leake*, 525 F.3d 274, 283, 289 (4th Cir. 2008), the Fourth Circuit invalidated a state campaign finance law as facially unconstitutional because it imposed regulations, including reporting requirements, on speech that is "neither express advocacy nor its functional equivalent, and therefore, strays too far from the regulation of elections into the regulation of ordinary political speech," and because "imposing a political committee designation – and its associated burdens – on entities when influencing elections is only a major purpose of the organization . . . expands the definition of political committee beyond constitutional limits." (internal quotations omitted).

In *North Carolina Right to Life, Inc. v. Bartlett*, 168 F.3d 705, 713 (4th Cir. 1999), the Fourth Circuit invalidated a state law as facially unconstitutional on vagueness and overbreadth grounds because it "subject[ed] groups engaged in only issue advocacy to an intrusive set of reporting requirements."

In *Center for Individual Freedom v. Carmouche*, 449 F.3d 655, 664-65 (5th Cir. 2006), the Fifth Circuit narrowly construed a state disclosure law as only applying to "communications that expressly advocate the election or defeat of a clearly identified candidate" in order to "save[ ] it from constitutional infirmity."

Federal trial court decisions have reached similar results, as have several state supreme court decisions. For example, in *National Right To Work Legal Defense & Education Foundation, Inc. v. Herbert*, 581 F. Supp. 2d 1132, 1153-54 (D. Utah 2008), the district court held: "By diluting *Buckley's* test and regulating entities that make any disbursement to influence a ballot proposition, Utah runs the risk of burdening a substantial amount of constitutionally protected speech. Accordingly, [the state law] is unconstitutional, on its face." (internal quotations omitted). *See also Wisc. Realtors Ass'n. v. Ponto*, 233 F. Supp. 2d (W.D. Wis. 2002); *Stenson v. McLaughlin*, No. Civ. 00-514-JD, 2001 WL 1033614 (D.N.H. Aug. 24, 2001); *ACLU v. N.J. Election Law Enforcement Comm'n*, 590 F. Supp. 1123 (D.N.J. 1981); *Fair Political Practices Comm'n v. Superior Court*, 599 P.2d 46 (Cal. 1979); *State v. White*, 506 N.E. 2d 1284 (Ill. 1987); *Mont. Auto. Ass'n v. Greely*, 632 P.2d 300 (Mont. 1981); *N.J. State Chamber of Commerce v. N.J. Law Enforcement Comm'n*, 411 A.2d 168 (N.J. 1980).

There is no reason that laws regulating indirect campaign expenditures should be regarded as facially

unconstitutional while laws regulating indirect, grassroots lobbying expenditures are not.

B. The Ban on Direct and Indirect Gifts from Lobbyists Also is Contrary to Precedents Facially Invalidating Laws that Suppress Speech Without Preventing Corruption

In *Randall v. Sorrell,* 548 U.S. 230 (2006), this Court examined a state law that limited both the amounts that candidates for state office could expend on their own campaigns and the amounts that individuals, organizations and political parties could contribute to those campaigns. The Court easily concluded that *Buckley* itself required facial invalidation of the very low limits imposed on expenditures. *Id.* at 245-46. It then also invalidated facially very low contribution limitations.

The Court held that while states have significant discretion to limit contributions to prevent corruption, "contribution limits that are too low can also harm the electoral process by preventing challengers from mounting effective campaigns against incumbent officeholders, thereby reducing democratic accountability." *Id.* at 248-49. The Court used "independent judicial judgment" to examine the record in the case before it to ascertain whether the potential corrupting influence of contributions larger than those allowed outweighed the potential harm that the law limits would impose. *Id.* at 249.

The Court found that "Vermont's contribution limits are the lowest in the Nation," that its limits were "well below the lowest limit this Court has previously upheld," that the law would restrict the funding available for challengers of incumbents, yet the record "contains no indication that . . . corruption (or its appearance in Vermont is significantly more serious a matter than elsewhere"). *Id.* at 253-61. Accordingly, it struck down the law.

Gifts to legislators and other state officials, like campaign contributions, also do not *always* corrupt the political process and sometimes significantly enhance the political process. Forty-three states do not impose a ban on gifts, recognizing that such an extreme restriction on the activities of lobbyists is not necessary.[10] Yet, the defendants in the instant case

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[10] Seven other states prohibit gifts to legislators altogether. *See* Colo. Const. art. XXIX § 3; Ky. Rev. Stat. Ann. §§ 6.611 & 6.751; Mass. Gen. Laws ch. 3, § 43; Minn. Stat. § 10A.071(2); S.C. Code Ann. §§ 8-13-100 & 705; Tenn. Code Ann. §§ 3-6-301(11), 304 & 305(b); Wis. Stat. §§ 19.42(1), 19.45 & 13.625; *see also* Rebecca L. Anderson, *The Rules in the Owners' Box: Lobbying Regulations in State Legislatures,* 40 Urb. Law 375, 394 & n. 190 (2008). Section 206 of the Honest Leadership & Open Government Act of 2007, Pub. L. No. 110-81, 121 Stat. 735, codified at 2 U.S.C. § 1601, also includes a ban on gifts to a member of Congress or staffer if the person has knowledge that the gift or travel offered may not be accepted under House and Senate rules. The rules contain "numerous exceptions to the 'absolute' ban on gifts." Thor Hearne & Amy Blunt, *Federal Lobbying Regulation – The New Federal Lobbying Regulations, & What In-House Counsel Need to Know About Them,* 3 Bloomberg Corp. L. J. 65, 69 (2008). Lobbyists and their employers

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offered no evidence that Florida faces a gift problem different from those faced by the 43 states that allow gifts or that the benefits the law would yield in terms of protecting Florida from corruption would outweigh the harm that it would do to First Amendment rights to petition the government and to associate freely. Indeed, the defendants pointed not to a single example of a gift given to a Florida legislator or other official that had corrupted the legislator or official. The defendants also made no attempt to show that less restrictive laws such as those requiring disclosure of gifts or limiting the amount of gifts would be insufficient to achieve the desired objective. Accordingly, the Florida gift ban should meet the same fate as the Vermont law reviewed in *Randall*.

Few courts have reviewed wholesale gift bans, but when they have they have been found unconstitutional.

A trial court in Colorado entered a 41-page preliminary injunction against a Colorado constitutional amendment banning gifts by lobbyists to

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may host "widely attended" gatherings and participate in charitable events that honor the official and if a bona-fide "friendship" relationship exists between the giver and the received, the gifts are allowed. *Id. See also* U.S. House of Reps. R. XXV, 110th Cong. House Rules Manual – H. Doc. No. 109-157 & U.S. Sen. Standing R. XXXV, 110th Con. Sen. Manual – S. Doc. 110-1. Thus the federal law is significantly less restrictive than the Florida law.

legislators in *Developmental Pathways v. Ritter,* No. 07CV1353, Dist Ct. City & County of Denver Colo. (May 31, 2007) (http://www.courts.state.co.us/Media/Opinion_Docs/07CV1353PreliminaryInjunction.pdf), *rev'd on other grounds*, 178 P.3d 525 (Colo. 2008) (holding claim was not ripe). "The laudable goals of the Amendment," the trial judge held, "must be weighed against the preservation of the very core of our Democracy – something dependent upon a 'well-informed electorate, not a citizenry legislatively limited in its ability to discuss and debate' issues. *Buckley v. Valeo*, 4242 U.S. 1, 49 (1976)." *Ritter,* No. 07CV1353, at 40-41. The court, citing *First National Bank of Bellotti,* 435 U.S. 765, 776-77, 790 (1978), held that lobbyists, like corporations are protected by the First Amendment, that the mere fact that they are effective does not provide a basis for restricting speech, that information has value and "information itself is subject to the gift ban," and a broad ban on all gifts would not only stop communications between lobbyists, but would discourage controversial organizations such as Focus on the Family and Planned Parenthood from hiring lobbyists to convey their views for fear that they would be charged with violating the ban by meeting with legislators at fundraisers, meetings, and mealtimes. *Id.* at 31-32. The court also found the law impinges on legislators' right to receive information and to attend fact-finding trips or conferences. *Id.* at 32.

In *Barker v. Wisconsin Ethics Board,* 841 F. Supp. 2d 255 (W.D. Wisc. 1993), a federal district court

invalidated a state law prohibiting lobbyists from furnishing to candidates for elective office "any other thing of pecuniary value" aside from specified monetary contributions violated the First Amendment insofar as it prohibited uncompensated personal services by lobbyists on behalf of candidates. *Cf. Fair Political Practices Committee v. Superior Court*, 157 Cal. Rptr. 855 (Cal. 1979) (prohibiting campaign contributions by lobbyists, but not by others, violates the First Amendment).

Before more states adopt the blunt instrument of a complete gift ban that sweeps within its prohibitions a substantial amount of protected speech that poses no threat of corruption, this Court should review and invalidate the Florida gift ban as facially overbroad.

CONCLUSION

The petition for a writ of certiorari should be granted.

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Respectfully submitted,

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