No. 09-154

IN THE

Supreme Court of the United States

FLORIDA ASSOCIATION OF PROFESSIONAL LOBBYISTS, INC., ET AL.,
Petitioners,
v.
DIVISION OF LEGISLATIVE INFORMATION SERVICES OF THE FLORIDA OFFICE OF LEGISLATIVE SERVICES, ET AL.,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

AMICUS CURIAE BRIEF OF THE AMERICAN CENTER FOR LAW AND JUSTICE IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICUS*[*]

The American Center for Law and Justice (ACLJ) is an organization dedicated to the defense of constitutional liberties secured by law. Counsel of record for *amicus* has presented oral argument before this Court numerous times, most recently in *Pleasant Grove City v. Summum*, 129 S. Ct. 1125 (2009).

The effect of overbroad campaign finance and lobbying regulation upon the exercise of First Amendment rights is of the utmost importance to *amicus*, as evidenced by the ACLJ's participation as counsel for Emily Echols in *FEC v. McConnell,* 540 U.S. 93, 231-32 (2003), and as *amicus* in *FEC v. Wis. Right to Life, Inc.*, 551 U.S. 449, 470 (2007).

SUMMARY OF ARGUMENT

The Florida statute upheld by the Eleventh Circuit in *Fla. Ass'n of Prof'l Lobbyists, Inc. v. Div. of Legislative Information Servs. of the Fla. Office of Legislative Servs.*, 525 F.3d 1073, 1080 (11th Cir. 2008) ("*FAPL*"), violates the First Amendment. The statute encompasses protected grassroots issue advocacy, which has been recognized by this Court as deserving of extensive First Amendment protection. *See FEC v. Wis. Right to Life, Inc.*, 551

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[*] Counsel of record for all parties received notice at least ten days prior to the due date of the *amicus curiae*'s intention to file this brief. The parties have consented to the filing of this brief. No counsel for any party authored this brief in whole or in part. No person or entity aside from the ACLJ, its members, or its counsel made a monetary contribution to the preparation or submission of this brief. The ACLJ has no parent corporation, and no publicly held company owns 10% or more of its stock.

U.S. 449, 470 (2007); *see also United States v. Rumley*, 345 U.S. 41, 47 (1953).

Although compelling government interests may justify regulation of express electioneering, *Wis. Right to Life, Inc.*, 551 U.S. at 478, or direct lobbying, *Rumley*, 345 U.S. at 47, these interests should not be extended to justify regulation of grassroots issue advocacy. The Eleventh Circuit's reliance on *United States v. Harriss*, 347 U.S. 612 (1954), to uphold regulation of issue advocacy is misplaced, as the statute in *Harriss* was narrowly interpreted to apply only to direct contacts with legislators. *Id* at 620.

Additionally, the failure to provide clear, definitive protection for grassroots issue advocacy will undermine the government's interest in avoiding corruption or the appearance of corruption. While large corporations are well equipped to deal with extensive and confusing regulatory requirements, the voices of grassroots issue organizations with limited man-power and funding will be suppressed. This will allow for insiders to more easily influence legislation without strong public opposition, leading to at least the appearance of a more corrupted process.

Finally, if the constitutional problems raised by the Florida statute are not addressed, further impermissible restrictions will inevitably result. Recent advances in technology have made grassroots issue advocacy more prevalent than ever. This fact, coupled with the media attention given to numerous recent corruption scandals, has rendered both traditional lobbying and grassroots issue advocacy

tempting targets for further regulation. It is imperative that this Court provide clear guidance and protection for the core First Amendment freedoms embodied by grassroots issue advocacy.

ARGUMENT

The Florida statute will subject protected forms of grassroots issue advocacy—"such as opinion articles, issue advertisements, and letterwriting [sic] campaigns," *FAPL*, 525 F.3d at 1080—to rigorous and intrusive reporting and disclosure requirements, *id* at 1075. This Court has established a clear distinction between direct lobbying or electioneering and grassroots issue advocacy. *Wis. Right to Life*, 551 U.S. at 481; *Rumley*, 345 U.S. at 47. By restricting protected forms of advocacy without a compelling government interest, the Florida statute violates the First Amendment. With recent advancements increasing the presence of issue advocacy and media attention focused on lobbying scandals, further enactments are inevitable and this Court must provide clear guidance to legislators to protect the First Amendment.

I. The Florida Act Violates the First Amendment.

The Florida statute fails to survive constitutional scrutiny. The statute impermissibly burdens protected forms of grassroots issue advocacy without a sufficiently compelling government interest.

A. Federal Courts have Consistently Recognized the Extensive First Amendment Protections to be Afforded Grassroots Issue Advocacy.

"Political speech, of course, is 'at the core of what the First Amendment is designed to protect.'" *Morse v. Frederick*, 551 U.S. 393, 404 (2007) (quoting *Virginia v. Black*, 538 U.S. 343, 365 (2003)); *see also FEC v. Wisconsin Right to Life, Inc.*, 551 U.S. 449 (2007). Likewise, grassroots issue advocacy, whether in the context of issue advertisements, *Wis. Right to Life, Inc.*, 551 U.S. at 449, or publicly targeted grassroots advocacy efforts, *Rumley*, 345 U.S. at 46, is afforded strong protection.

In *Rumley v. United States*, 197 F.2d 166 (D.C. Cir. 1952), *aff'd by* 345 U.S. at 48, the United States Court of Appeals for the District of Columbia Circuit considered a congressional resolution authorizing investigation of "all lobbying activities intended to influence, encourage, promote, or retard legislation." *Id.* at 169. The House Select Committee on Lobbying Activities had broadly interpreted the resolution to allow for the investigation of pamphleteering by citizen groups. Mr. Rumley belonged to an organization that sold and distributed pamphlets and books on public policy issues in an attempt to influence public opinion. He was convicted for failing to produce his organization's records for examination. *Id.* at 172.

In reversing Rumley's conviction, the Circuit Court pointed out the great importance of the "right to influence public opinion . . . by books, pamphlets and other writings" and the First Amendment's

severe limitation on Congress's power to "abridge" such advocacy. *Id.* at 173–74. The court noted the stark contrast between congressional authority to restrict traditional or direct lobbying activities and Congress's lack of authority to regulate communications with the general public. *Id.* at 175. The court proclaimed:

> It is said that lobbying itself is an evil and a danger. We agree that lobbying by personal contact may be an evil and a potential danger to the best in legislative processes. 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.*

Id. at 174 (emphasis added). The Florida Act threatens the "healthy essence of the democratic process" by burdening grassroots issue advocacy with onerous registration and reporting requirements. *See id.*

This Court has also construed legislative enactments to not reach indirect or grassroots advocacy. In *United States v. Rumely*, this Court followed the canon of constitutional avoidance by narrowly interpreting the disputed resolution: "As a matter of English, the phrase 'lobbying activities' readily lends itself to the construction placed upon it below, namely, 'lobbying in its commonly accepted sense,' that is, 'representations made directly to the Congress, its members, or its committees.'" 345 U.S. at 47 (quoting *Rumley*, 197 F.2d at 175). The Court

recognized that legislative attempts to regulate grassroots advocacy would create constitutional problems:

> [G]iving the scope to the resolution for which the Government contends, that is . . . *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.*

Id. at 46 (emphasis added).

The *Rumely* Court recognized the important distinction between "'lobbying in its commonly accepted sense," *i.e.*, "representations made *directly to the Congress*,'" and attempts "'to saturate the thinking of the community'" through activities directed toward the general public. *Id.* at 47. This contrast focuses on the *identity of the recipient of the communication* (a member of Congress vs. the general public) as opposed to *the speaker's identity*.

Later, in *United States v. Harriss*, 347 U.S. 612 (1954), this Court considered certain provisions of the Federal Regulation of Lobbying Act ("FRLA"). FRLA required registration and certain disclosures by compensated persons who, either alone or through agents, principally engaged in seeking to influence the content, passage, or defeat of legislation. *Id.* at 618-19. Ultimately, FRLA withstood a facial challenge under several provisions

of the First Amendment only because this Court narrowly construed FRLA as limited to persons who intended to "influence the passage or defeat of legislation" *"through direct communication with members of Congress."* *Id.* at 623 (emphasis added).

While the *Harriss* Court did refer to certain public communications, such as "an artificially stimulated letter campaign," *id.* at 625–26, it did not provide a green light for government regulation of grassroots issue advocacy. *Harriss*, relying upon *Rumely*, emphasized the key difference between direct communications with a member of Congress and communications directed toward the general public. In response to allegations that FRLA might result in the chilling of protected speech, the Court noted that any significant amount of deterrence would be avoided by limiting the statute's application to those engaging in direct contact with legislators. *Id.* at 626. The holding in *Harriss* with respect to the potential violation of the First Amendment was tied to the narrow construction of the statute.

As recently as *Wisconsin Right to Life*, this Court reiterated the First Amendment's broad protection of grassroots issue advocacy. In the context of television advertisements, the Court found that, while the Bipartisan Campaign Reform Act ("BCRA") could prohibit express electioneering advertisements (or the equivalent) near an election day, BCRA was unconstitutional as applied to genuine grassroots issue advertisements. *Id.* at 457. The Court recognized the special status of issue advocacy under the First Amendment and its importance in educating the public. *Id.* at 469. The

Court commented that "'freedom of discussion . . . [to] fulfill its historic function . . . must embrace all issues about which information is needed . . . to enable members of society to cope with the exigencies of their period.'" *Id.* at 474 (quoting *Thornhill v. Alabama*, 310 U.S. 88, 102 (1940)).

As these cases demonstrate, while Congress and state legislatures may regulate traditional lobbying activities, such as face-to-face meetings with legislators, the First Amendment provides robust protection to grassroots issue advocacy. As explained previously, this Court has continually considered the communication's target audience—not its author—to determine the extent of allowable regulation. By contrast, the Florida Act burdens speakers regardless of their target audience and impermissibly treats grassroots issue advocacy as if it were interchangeable with traditional lobbying activities.

B. No Compelling Government Interest Supports the Regulation of Grassroots Issue Advocacy.

When a content-based government regulation directly burdens political speech such as grassroots issue advocacy, that regulation must survive strict scrutiny. *Wis. Right to Life, Inc.*, 551 U.S. at 464. To sustain a challenged regulation, the government must demonstrate that it is the least restrictive means of serving a compelling state interest. *Id.* Though certain government interests have supported the regulation of express campaign advertising and traditional lobbying activities, none

have sustained the regulation of grassroots issue advocacy.

In *Wisconsin Right to Life*, this Court noted that the fact "[t]hat a compelling interest justifies restrictions on express advocacy tells us little about whether . . . [it] justifies restrictions on issue advocacy." *Id.* at 478. Furthermore, "the interests held to justify restricting corporate campaign speech or its functional equivalent do not justify restricting issue advocacy." *Id.* at 457. The Court discounted the proposition that "'the governmental interest in preventing corruption and the appearance of corruption could justify regulating grassroots issue advocacy. *Id.* at 478–79. Although avoiding corruption and the appearance of it justifies some limitations on campaign contributions and electioneering expenditures, this Court properly refused to stretch the anti-corruption interest to justify regulation of issue advocacy. In the words of the Court, issue advocacy is "by no means equivalent to contributions, and the *quid-pro-quo* corruption interest cannot justify" its regulation. *Id.*

The Court further rejected the idea that perceived distortions of public opinion created by mass corporate wealth could justify restrictions on issue advocacy. *Id.* at 481. This idea stemmed from the enormous amount of corporate funds which could be spent on express advocacy and electioneering efforts, but did not necessarily reflect popular sentiment. *Id.* at 481 n. 10. However, the Court found that this interest did not extend beyond campaign speech because corporations retained the ability to speak on issues. Therefore, such an

interest could hardly encompass genuine issue advocacy. *Id.* at 480.

The Eleventh Circuit, relying on *Florida League of Professional Lobbyists, Inc. v. Meggs*, 87 F.3d 457, 461 (11th Cir. 1996), proposed that the interests described in *Harriss* are sufficient to justify the burden that the Florida Act places upon grassroots issue advocacy. *FAPL*, 525 F.3d at 1080. In this case and *Meggs*, however, the Eleventh Circuit misinterpreted *Harriss*. The *Harris* Court's recognition of a government interest in "self protection," *Harris*, 347 U.S. at 625, does not justify regulation that reaches far beyond direct lobbying contacts to encompass grassroots issue advocacy.

Moreover, the Eleventh Circuit erred by declining to apply strict scrutiny analysis based solely on the appearance that the *Harriss* Court did not use it. *See Meggs*, 87 F.3d at 460. The *Harriss* Court did not apply a specific level of constitutional scrutiny because no such analysis was necessary. The Court noted repeatedly that its entire discussion was framed by its narrow interpretation of the Act to apply only to direct lobbying contacts. This alone enabled the Act to avoid exacting scrutiny under the First Amendment, rendering any comparison against the government's asserted interests unnecessary. *Harriss*, 347 U.S. at 625–26. Similarly, the Eleventh Circuit's assertion that *Harriss* discounted any potential chilling effect on protected speech, *Meggs*, 87 F.3d at 460–61, failed to appreciate that the discussion in *Harriss* was dependent upon the Act's narrow construction. *Harris*, 347 U.S. at 626. Thus, reliance on *Harriss* to definitively state that the First Amendment allows restriction of indirect

contacts, *FAPL*, 525 F.3d at 1080, especially in the absence of strict scrutiny, is a clear misreading of *Harriss*.

C. The Act is Unconstitutionally Overbroad

The actual or threatened enforcement of the Florida Act will impermissibly deter a "substantial amount" of protected expression, rendering the Act unconstitutionally overbroad. *Virginia v. Hicks*, 539 U.S. 113, 118–19 (2003). The Florida Act's broad definitions encompass a large amount of constitutionally protected grassroots issue advocacy. The Eleventh Circuit did not dispute "that lobbying activity, as defined in the Act, encompasses not only direct communications from lobbyists to legislators and state officials . . . but also indirect communications—such as *opinion articles, issue advertisements, and letterwriting* [sic] *campaigns—to the press and public at large.*" *FAPL*, 525 F.3d at 1080 (footnote omitted) (emphasis added).

While the Eleventh Circuit recognized that this Court limited its opinion in *Harriss* to encompass only "'contributions and expenditures . . . attempting to influence legislation through *direct communication with Congress*,'" *id.* at 1080 n.8 (quoting *Harriss*, 347 U.S. at 623), it offered no such limitation in interpreting the Florida statute. The court merely proclaimed that "[b]ecause the *First Amendment* allows required reporting of considerably more than face-to-face contact with government officials, we decline to invalidate the Act on its face as substantially overbroad. Instead, we leave 'whatever overbreadth may exist [to] be cured

through case-by-case analysis.'" *Id.* at 1080 (quoting *Broadrick v. Oklahoma*, 413 U.S. 601 (1973)) (citation omitted).

The Eleventh Circuit's decision is inconsistent with both *Rumely* and *Harriss*. As discussed previously, both decisions recognized an important difference between "'lobbying in its commonly accepted sense,'" *i.e.*, "'representations made *directly to the Congress*, its members, or its committees,'" and attempts "'to saturate the thinking of the community'" through articles, writings, and other activities directed toward the general public. *Rumely*, 345 U.S. at 47; *see also Harriss*, 347 U.S. at 620. Both *Rumely* and *Harriss* focused on *the target audience*, which here, as in *Rumely*, encompasses the general public. While the organization in *Rumely* was a grassroots entity and not a professional lobbying firm, *Rumely*, 345 U.S. at 42, the First Amendment's protection is not lessened by the mere fact that an individual who is hired to aid an organization in its grassroots issue advocacy works as a professional lobbyist. It is the extent to which the targeted form of communication bears a direct relation to corruption or its appearance—not the speaker's occupation—that determines whether the government's regulation is justified.

Additionally, the Act's overbreadth is demonstrated by the previously discussed misreading of *Harriss*. As stated, the lower court's declaration that *Harris* supports the regulation of indirect contacts is incorrect. Therefore, the Eleventh Circuit's acknowledgment that the Florida statute reaches indirect contacts, *FAPL*, 525 F.3d at 1080, demonstrates that the Act is overbroad.

II. The Act Will Negatively Affect Grassroots Issue Advocacy and Significantly Undermine the Government's Interest in Avoiding Corruption.

The Florida Act's requirements will severely limit the ability of smaller grassroots organizations and citizen groups to advocate their positions due to the risk and difficulty involved in compliance. These restrictions will inevitably shift more power to "special interests with deep pockets" who are in a "much better position to comply with complicated, demanding registration and reporting requirements" than ordinary citizens who will be discouraged from "speaking their minds." Jacob Sullum, *Astroturf and Sunlight: The chilling effect of public disclosure requirements*, REASON ONLINE, Aug. 19, 2009, http://www.reason.com/news/show/135508.html.

The compliance difficulties that burdensome regulations pose for small grassroots organizations were evidenced in a 2007 study by the Institute for Justice. Jeffrey Milyo, Institute for Justice, *Campaign Finance Red Tape: Strangling Free Speech & Political Debate*, Oct. 2007, *available at* http://www.ij.org/images/pdf_folder/other_pubs/CampaignFinanceRedTape.pdf. The study "examine[d] whether ordinary citizens [could] successfully perform the duties mandated . . . as a condition for participating in the public debate over ballot measures." *Id.* at 8. The experiments conducted used actual disclosure forms and instructions from California, Colorado, and Missouri.

The study found that all 255 participants would be subject to legal penalties for failing to complete the required forms correctly, *id.* at 4, 15, with a majority reporting the need for more than the allotted time, *id.* at 8. An overwhelming majority of participants reported a negative experience which is not surprising as the required forms are complex with unclear and inaccessible instructions. *Id.* at 10. Additionally, surveyed individuals "were sincerely frustrated in their attempts to complete the disclosure forms – and believed these difficulties would *deter political activity*." *Id.* at 21 (emphasis added). In conclusion, the study found that "ordinary citizens, even if highly educated, have a great deal of difficulty deciphering disclosure rules and forms." *Id.* at 28.

The chilling effect of burdensome registration and reporting requirements is magnified by the fact that grassroots organizations often first learn of them by hearing about the potential penalties that other grassroots organizations face due to inadvertent violations. For example, residents of Parker North, Colorado were sued for violating campaign finance laws by not registering as an "issue committee" after they posted lawn signs and distributed flyers in an attempt to oppose the annexation of their neighborhood. *Id.* at 11. Many organizations will forgo engaging in protected expression rather than face the prospect of potential legal sanctions for unknowing violations of lobbying statutes.

On the other hand, large organizations, especially for-profit ones, are in a much better position to comply with registration and reporting requirements. Several articles have recognized, in

various contexts, the ability of large entities to comply with, and even champion, onerous regulation and have noted the benefits those entities often derive from their requirements. It is commonly believed that government regulation protects the ordinary citizen and that large entities often oppose regulation. Timothy P. Carney, *Individual Liberty, Free Markets, and Peace*, CATO POLICY REPORT, July/Aug. 2006, *available at* http://www.cato.org/research/articles/cpr28n4-1.html. However, many large corporations are often the biggest proponents of extensive government regulation. For example, Enron was a staunch supporter of extensive energy regulation rooted in environmentalism. *Id.* Philip Morris has often championed regulations on tobacco advertising which would likely cripple its smaller competitors through the costs of compliance and legal services. *See* David Ress, *FDA Regulation Could Benefit Big Tobacco, Experts Say*, RICHMOND TIMES-DISPATCH, Aug. 10, 2009, *available at* http://www2.timesdispatch.com/rtd/business/health_med_fit/article/TOBA10_20090809-215404/285079/.

These large entities employ massive resources in their lobbying efforts. In only three months, several pharmaceutical companies each spent between three and six million dollars on health care lobbying. Andrea Seabrook & Peter Overby, *Drug Firms Pour $40 Million into Health Care Debate*, NAT'L PUBLIC RADIO, July 23, 2009, *available at* http://www.npr.org/templates/story/story.php?storyId=106899074. According to the Center for Responsive Politics, top lobbying expenditures so far in 2009 range from 6 to 26 million dollars, with

almost all of the top spenders being major corporations or their representatives. Opensecrets.org, *Lobbying Top Spenders*, http://www.opensecrets.org/lobby/top.php?showYear=2009&indexType=s (last visited Aug. 27, 2009). Corporations with massive resources have no problem complying with administrative and recording costs and already employ numerous attorneys who are capable of ensuring compliance. Moreover, these entities have extensive experience with the intricacies of governmental bureaucracy and are not easily deterred by the threat of penalties or more onerous regulation.

By contrast, most public interest organizations, community groups, and citizens' advocacy groups are relatively small and rely on either private funds or donations, which in many cases leaves them operating on shoestring budgets. Many of these groups do not possess the legal expertise or wealth of experience necessary to comply with extensive government regulation. Intrusive lobbying regulation not only results in large administrative costs but also provides a deterrent to expression due to the specter of negative government action. The inability of citizens' groups and advocacy organizations to deal with the necessary requirements will severely decrease their willingness to enter the public discussion and place them at a greater disadvantage vis-à-vis large corporations.

Deterring grassroots organizations from encouraging members of the public to contact elected representatives about issues they are concerned about would actually undermine the government's interest in avoiding corruption or its appearance.

The deterrent effects imposed by more extensive regulation will "limit the public's access to 'an uninhibited marketplace of ideas' dealing with public policy issues." Jay Alan Sekulow & Erik M. Zimmerman, *The Law of Lobbying: Weeding Them Out by the Roots: The Unconstitutionality of Regulating Grassroots Issue Advocacy*, 19 STAN. L. & POL'Y REV. 164, 178 (2008).

This Court has recognized that the interest in avoiding corruption is based on the need to shed light upon large lobbyist expenditures or corporate contributions that benefit politicians. This pursuit of transparency sought to avoid the apparent existence of a political *quid pro quo*, *Wisconsin Right to Life*, 551 U.S. at 478, which could give the contributors the actual or apparent ability to circumvent the will of the people. Conversely, "[r]egulation that would hamper efforts to inform and motivate citizens to contact Congress will increase the power of professional lobbyists [and corporate insiders] inside [Washington]." Sekulow & Zimmerman, 19 STAN. L. & POL'Y REV. at 175. To properly serve its interests, the government should facilitate rather than inhibit citizen participation and contact with elected officials which is often stimulated by grassroots advocacy groups. This has been properly recognized as "the healthy essence of the democratic process." *Rumley*, 197 F.2d at 174. Legislation such as the Florida Act hinders this process and allows the growth of insider influence to "impede the effectual exercise of the people's power." *Id.*

III. A Failure to Address These Important Constitutional Concerns Will Result in More Extensive Unconstitutional Restrictions.

If the constitutional concerns raised by the Florida statute are overlooked, legislatures will undoubtedly continue to expand the regulation of grassroots issue advocacy. Recent developments in communications technology, the marked increase in advocacy groups, the unpopularity of lobbyists, and the political nature of the topic make further expansive lobbying regulation all the more likely. Without clearly defined limitations on the permissible extent of lobbying regulations, it is very likely that future regulations, like the Act at issue here, will be imposed upon grassroots issue advocacy.

The idea of citizens coming together to "lobby" their government regarding issues of concern has been a fundamental part of the American experience since the founding. R. Eric Peterson, *Lobbying Reform: Background and Legislative Proposals, 109th Congress*, CRS REPORT FOR CONGRESS 1–2 (Mar. 23, 2006). However, in recent decades, the number of organized interest groups has notably increased. *Id.* Also, the increase in the availability of technology, especially the Internet, has made issue advocacy easier than ever before. No longer do groups of citizens championing particular causes have to rely on face-to-face meetings or printed newsletters to advocate their views. The Internet allows advocacy groups to widen their sphere of influence by passing information to like-minded persons all over the nation, which provides public

interest and other advocacy groups with more visibility than ever before.

Recent scandals surrounding the conduct of lobbyists have also increased publicity and debate over the issues of improper influence and corruption. One glaring example is the conviction of former Washington lobbyist Jack Abramoff on corruption and tax charges. Abramoff was accused of numerous improper actions including showering government officials with lavish gifts and taking members of Congress to Scotland for golf outings. The widely publicized fall-out from the Abramoff scandal led to a media outcry and the subsequent conviction of several government officials. Neil A. Lewis, *Abramoff Gets Four Years in Prison for Corruption*, N.Y. TIMES, Sept. 4, 2008, *available at* http://www.nytimes.com/2008/09/05/washington/05abramoff.html?_r=1.

Allegations surrounding improper ties to lobbyists also became an issue in the 2008 Presidential campaign, Jim Rutenberg, Marilyn W. Thompson *et al.*, *For McCain, Self-Confidence on Ethics Poses its Own Risk*, N.Y. TIMES, Feb. 21, 2008, *available at* http://www.nytimes.com/2008/02/21/us/politics/21mccain.html, and have even haunted the executive branch, *Obama Criticized after Lobbyists Banned from Dem Fundraiser but Allowed to Give Later*, FOX NEWS, June 18, 2009, http://www.foxnews.com/story/0,2933,527269,00.html (last visited Aug. 28, 2009). President Obama issued a highly publicized executive order proposing to limit the connection between professional lobbying and executive branch service and otherwise placing

stricter ethics limits on contacts. Exec. Order No. 13490, 74 Fed. Reg. 4673 (Jan. 26, 2009). The increase in the number and scope of advocacy organizations and the technology that makes them more effective, coupled with the recent negative attention to lobbying's influences on government, make further restriction a virtual certainty.

It is crucial that any future restrictions be properly and carefully crafted. Some allege that organizations improperly circumvent current requirements by appealing to the public through "stealth" campaigns, influencing citizens to contact elected officials. Peterson, *supra*, at 2. Those in favor of broader regulation allege that existing lobbying regulations and disclosure requirements are insufficient to curb so-called "astroturf" campaigns. *Id.* They fear that organizations seeking to remain anonymous will form "stealth" coalitions and supposed separate organizations to "shield their lobbying activities." R. Eric Peterson, *Lobbying Disclosure: Themes and Issues, 110th Congress*, CRS REPORT FOR CONGRESS 2 (May 29, 2007).

Given the increasing call for more intrusive regulation that targets grassroots issue advocacy, new regulations will raise fundamental constitutional concerns. Without clear limitations, these regulations are likely to violate the First Amendment—as the Florida Act does—by subjecting a wide range of grassroots issue advocacy to burdensome regulation. This Court should grant review and set forth a bright-line rule upholding the First Amendment's robust protection of grassroots issue advocacy.

CONCLUSION

Congress and state legislatures must be reminded of the extent of the First Amendment's protection of grassroots issue advocacy. This Court should grant review and reverse the judgment of the Eleventh Circuit.

Respectfully submitted,

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