No. 13-1499

IN THE

Supreme Court of the United States

LANELL WILLIAMS-YULEE,

Petitioner,

v.

THE FLORIDA BAR,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

BRIEF OF MAJOR B. HARDING, HARRY LEE ANSTEAD, STEPHEN GRIMES, NEAL ROTH, JOHN M. HOGAN, BUDDY SCHULZ, JOHN A. DEVAULT, III, HENRY M. COXE, III, RICHARD H. LEVENSTEIN, NEAL R. SONNETT, BURTON YOUNG, AND EDWARD R. BLUMBERG AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT

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INTEREST OF *AMICI CURIAE*[1]

This *amici curiae* brief is submitted on behalf of three former chief justices of the Florida Supreme Court and nine active members of The Florida Bar (including four past presidents) in support of the brief filed by the Respondent.

Major B. Harding is a former Chief Justice of the Florida Supreme Court. Justice Harding was appointed to the Court by Florida Governor Lawton Chiles on January 22, 1991, and served until 2002. His tenure as Chief Justice lasted from 1998 to June 2000. Prior to being appointed to the Florida Supreme Court, Justice Harding served as a circuit judge for Florida's Fourth Judicial Circuit and as a Duval County juvenile court judge.

Harry Lee Anstead is a former Chief Justice of the Florida Supreme Court. Justice Anstead was appointed to the Court by Florida Governor Lawton Chiles on August 29, 1994, and served until January 5, 2009. His tenure as Chief Justice lasted from July 1, 2002 until June 30, 2004. Prior to being appointed to the Florida Supreme Court, Justice Anstead served as a judge on Florida's Fourth District Court of Appeal from 1977 to 1994.

Stephen Grimes is a former Chief Justice of the Florida Supreme Court. Justice Grimes was appointed to the Court by Governor Bob Martinez in January of 1987 and served until November of 1997. His tenure as Chief Justice lasted from April of 1994 to May of 1996. Prior to being

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[1] This *amici curiae* brief is filed with the written consent of both parties. Neither party nor party's counsel has authored this brief in whole or in part, or contributed money that was intended to fund preparing or submitting the brief. No person other than the *amici* or their counsel has contributed money that was intended to fund preparing or submitting this brief.

appointed to the Supreme Court, he served as a Judge of Florida's Second District Court of Appeal for thirteen years.

Neal Roth is a partner and co-founder of Grossman Roth, P.A., a law firm headquartered in Miami, Florida. Mr. Roth is a past president of the Florida Justice Association, which is dedicated to strengthening and upholding Florida's civil justice system and protecting the rights of Florida's citizens and consumers.

John M. Hogan is a partner at Holland & Knight, based in Miami, Florida. Mr. Hogan serves as the chair of Holland & Knight's firm-wide Litigation Section. Prior to joining the firm, Mr. Hogan served as Chief of Staff to the Attorney General of the United States, Acting United States Attorney for the Northern District of Georgia, Counselor to the Attorney General of the United States, Chief Assistant State Attorney for Miami-Dade County, and First Statewide Prosecutor of Florida.

George E. "Buddy" Schulz Jr. is a partner in Holland & Knight's Jacksonville, Florida office and is a Florida Bar Board Certified trial lawyer. Mr. Schulz is the past chairman of Holland & Knight's litigation department, and is presently the chair of the firm's Public and Charitable Service Department, which coordinates Holland & Knight's *pro bono* and community initiatives that provide assistance to persons of limited means and organizations that help them.

John A. DeVault, III, is a partner of Bedell, Dittmar, DeVault, Pillans & Coxe, P.A., a law firm headquartered in Jacksonville, Florida. Mr. DeVault is a past president of The Florida Bar (1995-1996). He also served six years as a member of the Board of Governors of The Florida Bar and the House of Delegates of the American Bar Association. He is past chair of the Trial Lawyers Section of The Florida Bar, a founding Master of the Chester Bedell Inn of Court, and is Florida Bar Board Certified in Civil Trial and Business Litigation.

Henry M. Coxe, III is also a partner of Bedell, Dittmar, DeVault, Pillans & Coxe, P.A., a law firm headquartered in Jacksonville, Florida. Mr. Coxe is a past president of The Florida Bar (2006-07), the Jacksonville Bar Association (1992-1996), and recently served on the Florida Judicial Qualifications Commission and the Florida Supreme Court Innocence Commission. He has also been recognized with the highest awards of the Criminal Law Section of The Florida Bar, the Florida Association of Criminal Defense Lawyers, the Florida Bar Foundation, and the Jacksonville Area Legal Aid.

Richard H. Levenstein is a partner in the law firm of Kramer, Sopko & Levenstein, P.A., in Stuart, Florida. He is a past president of the Martin County Bar Association, the founding President of the Justice Major B. Harding American Inn of Court, a past Secretary of the American Judicature Society, a national Trustee of the American Inn of Court Foundation, a member of the Lawyers Committee of the National Center for State Courts, and a fellow of the American Bar Foundation and Florida Bar Foundation. Mr. Levenstein is also an emeritus member of the Florida Bar's Constitutional Judiciary Committee and a member of The Florida Bar's Law Related Education Committee.

Neal R. Sonnett is the founding partner of Neal R. Sonnett, P.A., a Miami, Florida law firm. Mr. Sonnett has served on the American Bar Association Board of Governors and the ABA Nominating Committee, is a former chair of both the ABA Criminal Justice Section and the Section of Individual Rights and Responsibilities, and has served in the ABA House of Delegates for more than 25 years. He is a past president of the American Judicature Society, the Florida Bar Foundation, the National and Florida Associations of Criminal Defense Lawyers, the Dade County Bar Association, and the Spellman-Hoeveler American Inn of Court. Prior to entering private practice, Mr. Sonnett served as an Assistant United States Attorney and Chief of the

Criminal Division for the U.S. Attorney's Office of the Southern District of Florida.

Burton Young is the founding partner of Young, Berman, Karpf & Gonzalez, P.A., a Miami, Florida law firm. Mr. Young is a past president of The Florida Bar (1970-71), The Florida Bar Foundation, and the North Dade County Bar Association. He also served six years as a member of the House of Delegates of the American Bar Association. Mr. Young is a past chair of the Florida Supreme Court Chief Justice's Advisory Committee (1997), the Florida Supreme Court Historical Society (1996), the Florida Supreme Court's Select Committee to Study the Florida Bar Examiners (1994-1997), and the Florida Supreme Court Justice Gerald Kogan Oral History Program (1999). He is a recipient of the Medal of Honor from the Florida Bar Foundation and the "President's Award of Merit" from The Florida Bar, and was honored as a "Legal Legend" by the 11th Judicial Circuit Historical Society (Historical Museum of South Florida).

Edward R. Blumberg is president of Deutsch & Blumberg , P.A., a statewide trial practice located in Miami, Florida. He is board certified in civil trial law by the National Board of Trial Advocacy and The Florida Bar and tries cases on a regular basis. Mr. Blumberg served for eight years as a member of the Board of Governors of the Florida Bar, and, from 1997 to 1998, was its president. For six years, he served as a member of the House of Delegates of the American Bar Association and is a member of the American Board of Trial Advocates. Mr. Blumberg lectures on trial practice and ethics to lawyer groups on an ongoing basis. He also assists and provides advice to young lawyers through a Florida Bar program called Lawyers Advising Lawyers. He has written articles on ethics and professionalism for Bloomberg/BNA.

SUMMARY OF THE ARGUMENT

Canon 7C(1) serves a vital and important role in preserving the integrity of Florida's judiciary and maintaining the public's confidence in an impartial judiciary. Prior to the adoption of Canon 7C(1), there was widespread corruption and a lack of public confidence in Florida's judiciary. During the 1970's, four justices of the Florida Supreme Court (which were then elected positions) resigned their offices following corruption scandals. Several justices attempted to fix cases on behalf of campaign supporters. Another justice resigned after he was filmed on a gambling junket to Las Vegas paid for by a dog track that had a case pending before the high court, while others allowed themselves to be lobbied by a lawyer representing the public utilities industry in a case with major implications to the rate-paying public and even permitted him to ghostwrite the opinion for the Florida Supreme Court.

The direct solicitation ban was one of many canons and other reforms adopted by the State of Florida in order to address widespread corruption and regain public confidence in the judiciary. Given its unique history, Florida has an especially compelling governmental interest in preserving the integrity of its judiciary and maintaining public confidence in an impartial judiciary.

The invalidation of Canon 7C(1) would be especially disastrous for Florida, which is just one generation removed from some of the worst judicial corruption scandals in our state's history. Canon 7C(1) strikes a proper balance between a judicial candidate's right to free speech and the right of future litigants to due process, while placing a minimal burden on the former.

ARGUMENT

I. CANON 7C(1) WAS PART OF FLORIDA'S RESPONSE TO WIDESPREAD CORRUPTION AND LACK OF PUBLIC CONFIDENCE IN THE JUDICIARY

Canon 7C(1) has existed in Florida since 1973. It is part of the Florida Code of Judicial Conduct, adopted by the Florida Supreme Court that same year. *See In re The Florida Bar-Code of Judicial Conduct*, 281 So.2d 21 (Fla. 1973). Canon 1 states: "A judge should uphold the integrity and independence of the judiciary." To that end, Canon 2 states: "A judge should avoid impropriety and the appearance of impropriety in all his activities." To further the purposes of Canons 1 and 2, Canon 7C(1) prohibits judicial candidates, including an incumbent judge, from personally soliciting campaign contributions.[2] The purpose of this prohibition is to prevent the appearance of *quid pro quo*, bias or corruption, and to preserve the integrity of the judiciary and maintain the public's confidence in an impartial judiciary. As the Oregon Supreme Court cogently observed in upholding its state's prohibition against direct solicitation by judicial candidates:

> The stake of the public in a judiciary that is both honest in fact and honest in appearance is profound. . . . A judge's direct request for campaign contributions offers a quid pro quo or, at least, can be perceived by the public to do so. Insulating the judge from such direct solicitation eliminates the appearance (at least) of impropriety and, to that extent, preserves the judiciary's reputation for integrity.

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[2] *See also* Fla. Code of Judicial Conduct, Canons 4D(2)(a) & 5C(3)(b)(i) (prohibiting judges from personally soliciting charitable contributions)

In re Fadeley, 310 Or. 548, 802 P.2d 31, 40 (Or. 1990) (quoted with approval in *The Florida Bar v. Williams-Yulee*, 138 So.3d 379, 387 (Fla. 2014))

The direct solicitation ban "insulates, to the extent possible, justices, judges and judicial candidates from those asked to make contributions to the campaign." *MacKenzie v. Super Kids Bargain Store, Inc.*, 565 So.2d 1332, 1336 (Fla. 1990). As the Florida Supreme Court explained in *MacKenzie*, "this insulation of judges and judicial candidates reduces the possibility of a quid pro quo relationship and serves to avoid the appearance of impropriety." *Id.* The *MacKenzie* court also understood that running for a position in the judiciary is not the same thing as running for one in the legislature, stating that the appearance of impropriety or bias "is of special concern where the branch of government involved is that charged with the duty to remain impartial, i.e., the judiciary." *Id.*; *see also Siefert v. Alexander*, 608 F.3d 974, 990 n.7 (7th Cir. 2010) ("Legislators are not expected to be impartial; indeed, they are elected to advance the policies advocated by particular political parties, interest groups, or individuals. Judges, on the other hand, must be impartial toward the parties and lawyers who appear before them.").

Canon 7C(1) was adopted against the backdrop of extensive corruption occurring within the Florida judiciary. Prior to 1976, Florida Supreme Court justices were elected by popular vote.[3] But a number of scandals threatened to topple the high court. In what reads more like a novel than a history book, *A Most Disorderly Court*[4] recounts a dark period in

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[3] Martha W. Barnett, *The 1997-98 Florida Constitution Revision Commission: Judicial Election or Merit Selection*, 52 Fla. L. Rev. 411, 420 n.44 (Apr. 2000)

[4] Martin A. Dyckman, *A Most Disorderly Court: Scandal and Reform in the Florida Judiciary*, University Press of Florida (2008) [hereinafter, "*A Most Disorderly Court*"]

Florida's history (during the early 1970s) in which four out of seven justices on the state's highest court resigned following corruption scandals. Two justices resigned in the face of impeachment proceedings.[5] Both had—among other things—tried to fix cases in lower courts on behalf of campaign supporters.[6] Another justice retired after being filmed on a "high-roller" gambling junket to Las Vegas paid for by a greyhound track with a case pending before the high court,[7]

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[5] Martin A. Dyckman, *How Florida Accepted Merit Retention: Nothing Succeeds Quite Like Scandal*, 64 Florida Law Review Forum 9 (2012) [hereinafter, "*How Florida Accepted Merit Retention*"]

[6] Justice David McCain, appointed to the Florida Supreme Court in 1970, tampered with a lower court on behalf of three campaign supporters appealing bribery convictions. When those efforts proved unsuccessful, he participated in a Florida Supreme Court decision that overturned the bribery convictions. A house subcommittee voted to propose McCain's impeachment after hearing scathing testimony of his attempts to fix the cases, but McCain boycotted the hearings and resigned before the house could vote on impeachment articles. *See* Martin A. Dyckman, *The Shoddy History of Politicized Courts*, Tampa Bay Times, Apr. 12, 2012; *How Florida Accepted Merit Retention*, *supra* note 3 at p. 13. In December 1970, Justice Hal P. Dekle (elected to the Florida Supreme Court in 1968) agreed to meet with a campaign supporter from Miami who was apprehensive over a real estate lawsuit pending in Panama City, Florida. Eight months later, while representing the high court at an investiture in Panama City, Justice Dekle approached W.L. Fitzpatrick, the circuit court judge presiding over the man's case. "Judge Dekle indicated very strongly to me that the defendants should prevail," Judge Fitzpatrick testified. After a subsequent telephone call in which Dekle reminded him of the matter, Judge Fitzpatrick recused himself. The Judicial Qualifications Commission (which had recently been created) heard of it, and, in May 1973, notified Justice Dekle that he was under investigation. After a hearing in January 1974, the commission voted him guilty of conduct unbecoming the judiciary but could not agree by the necessary nine votes (among thirteen members) on either a public or private reprimand. *Id.*; *A Most Disorderly Court*, *supra* note 2, at pp. 44-50.

[7] Justice Vassar Carlton, elected to the Florida Supreme Court in 1968, resigned before his term was up, not long after a Miami television station had filmed him rolling dice on a high-roller junket to Las Vegas. Tipped

while others allowed themselves to be lobbied by a lawyer representing the public utilities industry in a case worth millions of dollars to the rate-paying public and even permitted that lawyer to "ghostwrite" the opinion for the Florida Supreme Court.[8] Similar problems also existed at the

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off by a confidential source, investigative reporter Clarence Jones of the Miami television station WPLG followed Carlton on what appeared to be a subsidized junket to Las Vegas. "We didn't hide them [the cameras], and the photographer got this marvelous shot of me standing right behind Carlton as he threw the dice, a great big cigar in his mouth," Jones recalled. Jones' source had claimed that Justice Carlton's expenses were being paid by a Miami dog track that had a case before the high court; Carlton said that he had reimbursed whoever advanced them. Carlton resigned his judgeship shortly thereafter. *See A Most Disorderly Court*, *supra* note 2, at 19-21; Martin Dyckman, *The Shoddy History of Politicized Courts*, Tampa Bay Times, Apr. 12, 2011; Martin Dyckman, *Justice Carlton Resigns After 33 Years on Bench*, St. Petersburg Times, Jan. 17, 1974, at 1-B

[8] That scandal erupted from the first of two cases styled *Gulf Power Co. v. Bevis*, in which public utility companies appealed Public Service Commission (PSC) decisions pertaining to how much of Florida's new corporate income tax could be included in customer billings. When the Florida Supreme Court first heard the case in 1973, a five-justice panel evidently decided to give the utilities everything they wanted, and Justice Joseph A. Boyd (elected to the Florida Supreme Court in 1968) was assigned to write the opinion. But he first discussed it during a golf outing with a lawyer friend who was counsel for two utility companies that were *amici* in the case. The lawyer then prepared a "draft opinion," which he delivered personally to Justice Boyd. After Boyd's law clerk questioned the mysterious source, Boyd destroyed the evidence, tearing the document into "seventeen equal pieces," as he said later, and flushing them down a toilet. He then changed his vote to oppose the utilities. But Boyd did not know that the lawyer had also given another copy to Justice Hal P. Dekle, who, upon seeing that Boyd had voted the wrong way, used it to draft what was intended to be a majority opinion in favor of the public utilities. The lawyer visited Dekle twice while the decision was pending. The second time, Dekle dictated a note to a third justice—David McCain—through McCain's secretary: "HPD says that he thought you were with him on his 'dissent'; that [the lawyer friend] spoke to him on it but missed seeing you." Two law clerks who had seen Boyd's original document perceived Dekle's "dissent" as identical and alerted the then-

trial court level in Florida—during the late 1960's, a notorious circuit court judge required lawyers to walk the gauntlet past his bailiff and make an appropriate campaign contribution before they could present their argument.[9]

These incidents led to extensive judicial reforms in Florida, beginning with the adoption of the Florida Code of Judicial Conduct. In 1976, Florida amended its constitution and eliminated the direct election of appellate judges in favor of a merit selection and retention system.[10] That same year, the Florida Supreme Court created a Committee on Standards of Conduct Governing Judges (now known as the Judicial

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chief justice, Vassar Carlton, who ordered Dekle to rewrite it. It became something less than a full victory for the utilities. The law clerks still did not know the source of the *ex parte* document, but when they later saw the memo Dekle had dictated, they concluded that the offense was serious and that the court intended to cover it up. They leaked the memo to the St. Petersburg Times, whose front-page article prompted an investigation of Dekle and Boyd. The Judicial Qualifications Commission recommended that both be removed from office, but substitute judges the court assigned in place of all but one of the justices reduced the punishment to public reprimands. Reacting to intense criticism in the media and from members of The Florida Bar, House Speaker Donald L. Tucker ordered an impeachment investigation, during which Justice Dekle resigned. The investigating committee voted against impeaching Justice Boyd, subject to his undergoing a mental examination—which he passed. Boyd spent the rest of his life boasting that he was the only justice who had been "certified sane." *See A Most Disorderly Court*, *supra* note 2, at 1-16 & 117-119; *How Florida Accepted Merit Retention*, *supra* note 3 at 11-12.

[9] Gerald F. Richman, *The Case for Merit Selection and Retention of Trial Judges*, 72 Fla. B.J. 71 (Oct. 1998)

[10] Fla. Const., Art. V, § 10 (amended in 1976). Under the new system, voters would no longer choose from among several candidates, but would rather vote on whether a particular justice should be retained for another six-year term. *Id.* If the voters decided not to retain a particular justice, the governor would select his replacement. *Id.*, § 11. As a result of this constitutional amendment, only trial judges (at both the circuit court and county court levels) are subjected to contested elections in Florida.

Ethics Advisory Committee), authorizing the committee to render "written advisory opinions to inquiring judges concerning the propriety of contemplated judicial and non-judicial conduct." *Petition of Committee on Standards of Conduct for Judges*, 327 So.2d 5, 5 (Fla. 1976). The Florida Supreme Court subsequently authorized the committee to recommend changes to the Code of Judicial Conduct. *See Petition of Committee on Standards of Conduct for Judges*, 367 So.2d 625, 626 (Fla. 1979). From its inception, the committee has issued a large number of advisory opinions addressing questions raised with respect to each of the canons. The committee also presents campaign conduct forums for judicial candidates in all circuits with contested judicial elections. These forums teach the candidates about Canon 7 of the Code of Judicial Conduct, provide candidates with sources of guidance for campaign conduct, and inform them of possible sanctions for violating Canon 7. "These forums aid in maintaining a high level of integrity and professionalism among candidates for judicial office and in increasing public trust and confidence in the judicial system." JUDICAL ETHICS ADVISORY COMM., *An Aid to Understanding Canon 7: Guidelines to Assist Judicial Candidates in Campaign and Political Activities* (updated Nov. 2014) (available online at http://www.flcourts.org)

Additionally, a Judicial Qualifications Commission ("JQC") was created in 1972 pursuant to Article V, section 12 of the Florida Constitution. The JQC has the power to investigate and recommend to the Florida Supreme Court the removal from office of any justice or judge whose conduct "demonstrates a present unfitness to hold office, and to investigate and recommend the discipline of a justice or judge whose conduct . . . warrants such discipline." Fla. Const., Art. V, § 12. In 1997, Article V, section 12 of the Florida Constitution was amended to expand the range of disciplinary measures available for recommendation by the JQC and for imposition by the Florida Supreme Court. Prior

to 1997, the only disciplinary consequences of a violation of the Code were a public reprimand or removal from office. The revised article V, section 12(a)(1) defines "discipline" to include "fine, suspension with or without pay, or lawyer discipline." *See, e.g., In re Rodriguez*, 829 So.2d 857 (Fla. 2002) (judge suspended and fined $40,000 for Canon 7 violations including accepting contributions made for purpose of influencing judicial decisions and filing misleading campaign reports with the Division of Elections).

Together, these reforms have restored public confidence in an impartial judiciary. Since 1977, only 18 judges in Florida have been removed from judicial office for improper conduct. *See* Judicial Ethics Advisory Committee, *An Aid to Understanding Canon 7*, at pp. 4-5 (Nov. 2014).[11] Of the 18 judges that have been removed from judicial office, five were accused of Canon 7 violations.[12] Of the 79 judges whom the Florida Supreme Court has publicly reprimanded, 12 were accused of campaign violations of Canon 7.[13] Thus, Canon 7C(1) has been an effective—and essential—tool in severing the direct link between campaign contributors and judicial candidates that was at the heart of the destructive corruption scandals that infected Florida's judiciary during the 1970's.

Yet the threat remains. As recently as the late 1980's, Florida's judiciary became embroiled in another major corruption scandal. In 1989, federal authorities launched an undercover sting operation called "Operation Court Broom" to investigate allegations of corruption in the Circuit Court of

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[11] *See also A Most Disorderly Court*, *supra* note 2, at pp. 170-71

[12] *Id.* at p. 170. A sixth resigned from the bench and the bar after being convicted of concealing his net worth on a campaign financial disclosure statement. *Id.* at p. 171

[13] *Id.*

Miami-Dade County, Florida.[14] The two-year investigation resulted in the disclosure of a racketeering conspiracy by a handful of Miami-Dade County judges to suppress evidence, reduce bail, release the names of confidential informants, and otherwise fix criminal cases in exchange for cash payoffs.[15] The "Operation Court Broom" sting was the largest judicial corruption investigation in Florida's history,[16] and ultimately resulted in the convictions of three circuit court judges, two former circuit judges, six lawyers and one businessman.[17]

II. CANON 7C(1) FURTHERS A COMPELLING GOVERNMENT INTEREST IN PRESERVING THE INTEGRITY OF THE JUDICIARY AND MAINTAINING PUBLIC CONFIDENCE IN AN IMPARTIAL AND INDEPENDENT JUDICIARY

The invalidation of Canon 7C(1) could have especially dire consequences in Florida, which is only one generation removed from some of the worst judicial corruption scandals in our state's (and nation's) history. Given Florida's recent and unique history, there is no question that maintaining an impartial judiciary--the goal of Canon 7C(1)--is a compelling governmental interest (in all states, but especially in Florida). *See In re Amendment to the Code of Judicial Conduct – Amendments to Canon 7*, 985 So.2d 1073, 1075 (Fla. 2008) ("[W]e have held to be the compelling government interest in '[m]aintaining the

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[14] The facts of "Operation Court Broom" are recounted in several Eleventh Circuit opinions. *See United States v. Castro*, 89 F.3d 1443 (11th Cir. 1996), *cert. denied*, 519 U.S. 1118, 117 S.Ct. 965 (1997); *United States v. Shenberg*, 89 F.3d 1461 (11th Cir. 1996), *cert. denied*, 519 U.S. 1118, 117 S.Ct. 965 (1997); *United States v. Massey*, 89 F.3d 1433 (11th Cir. 1996), *cert. denied*, 519 U.S. 1127, 117 S.Ct. 983 (1997)

[15] *Castro*, 89 F.3d at 1447; *Massey*, 89 F.3d at 1436

[16] Warren Richey, '*Court Broom Judge' Gets 15 Years in Corruption Case*, Ft. Lauderdale Sun-Sentinel, July 16, 1993

[17] Jim Farrell, *Job-Holder Took Payoffs in Florida*, Hartford Courant, July 16, 2005

impartiality, the independence from political influence, and the public image of the judiciary as impartial and independent.'") (quoting *In re Code of Judicial Conduct (Canons 1, 2 and 7A(1)(B))*, 603 So.2d 494, 497 (Fla. 1992)); *see also In re Kinsey*, 842 So.2d 77, 87 & n.7 (Fla. 2003) (citing cases and stating that "preserving the integrity of our judiciary and maintaining the public's confidence in an impartial judiciary" is a compelling governmental interest).

More than 60 years ago, Justice Felix Frankfurter penned a memorable definition of the importance of an independent judiciary, and those words ring no less true today:

> Courts are not representative bodies. They are not designed to be a good reflex of a democratic society. Their judgment is best informed, and therefore most dependable within narrow limits. Their essential quality is detachment, founded on independence. History teaches that the independence of the judiciary is jeopardized when courts become embroiled in the passions of the day and assume primary responsibility in choosing between competing political, economic and social pressures.

Dennis v. United States, 341 U.S. 494, 525, (1951) (Frankfurter, J.) (concurring in affirmance of judgment)

Indeed, "an evenhanded, unbiased and impartial judiciary is one of the pillars upon which our system of government rests." *Ackerson v. Kentucky Judicial Retirement and Removal Com'n*, 776 F. Supp. 309, 313 (W. Ky. 1991) ("We have no difficulty in finding a compelling state interest in an impartial judiciary.") Over twenty years ago, the Oregon Supreme Court, in upholding a code of judicial

conduct similar to Florida's Canon 7C(1), articulated the compelling state interest served by the solicitation restriction:

> As we have elsewhere explained, the interest that Canon 7 B(7) . . . protects is the state's interest in maintaining, not only the integrity of the judiciary, but also the appearance of that integrity. The persons most actively interested in judicial races, and the persons who are the most consistent contributors to judicial campaigns, are lawyers and potential litigants. The impression created when a lawyer or potential litigant, who may from time to time come before a particular judge, contributes to the campaign of that judge is always unfortunate. Although many or most lawyers may act with pure motives, *viz.*, to ensure a qualified judiciary and to ensure vigorous public debate, the outside observer cannot but think that the lawyer or potential litigant either expects to get special treatment from the judge or, at the least, hopes to get such treatment. It follows that, if it is at all possible to do so, the spectacle of lawyers or potential litigants directly handing over money to judicial candidates should be avoided if the public is to have faith in the impartiality of its judiciary.
>
> So long as judges are chosen by the electoral process, it will be impossible to deny lawyers and potential litigants the right to give to campaigns or to deny judges the right to seek contributions. Both activities are too important in the scheme of things to permit either to be forbidden outright. . . . Some other, less intrusive method is needed.

> Canon 7 B(7) [which is similar to Florida's Canon) is that method. It permits the judge to obtain funds to carry out a campaign but eliminates the specter of contributions going from the hand of the contributor to the hand of the judge. The limitation on the ability to raise funds need not cause the campaign to suffer, if the judge picks good people for his or her campaign finance committee. It is true that the committee, however well suited to the task, may have trouble obtaining as much as the judge might have raised by personal buttonholing, but that is the point.

In re Fadeley, 802 P.2d at 40

As *Fadeley* acutely observed, the campaign finance rules governing judicial elections are necessarily (and should be) more restrictive than those pertaining to the elections of legislators. The constituents of a candidate for legislative office "have a perfect right to expect the legislative candidate to make certain promises of performance in office, and, upon election, to abide by those promises." Charles J. Kahn, Jr., *Judicial Elections: Canon 7, Politics, and Free Speech*, 72 Fla. B. J. 22, 30 (July/August 1998). By contrast, "citizens as potential litigants are not entitled to an expectation that a judge will rule in accordance with philosophical predilection as opposed to the law and facts of a given case." *Id.*

Canon 7C(1) was thus designed to balance two fundamental constitutional rights: the right of a judicial candidate to free speech; and the right of litigants to due process, which would be threatened by corruptly influenced judges (a fate Florida knows all too well) or by the loss of public confidence in the integrity and impartiality of the judiciary. Canon 7C(1) effectively serves the latter interest while placing a minimal burden on the former. *Id.* ("This

clash of constitutional values, not inherent in nonjudicial elections, requires a policy choice. Florida, in keeping with its commitment to an independent judiciary, has made such a policy choice through the restrictions imposed by Canon 7").

CONCLUSION

Amici Curiae request that this Court affirm the decision of the Florida Supreme Court, and hold that Canon 7C(1) of the Florida Code of Judicial Conduct is constitutional because it promotes the State's compelling interest in preserving the integrity of the judiciary and maintaining the public's confidence in a impartial judiciary, and that it is narrowly tailored to effectuate those interests.

Respectfully submitted,

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