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 FOR RESPONDENT

BARRY RICHARD
Counsel of Record
M. HOPE KEATING
GREENBERG TRAURIG PA
101 East College Avenue
Tallahassee, Florida 32301
(850) 222-6891
richardb@gtlaw.com

Counsel for Respondent

256928

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

TABLE OF CONTENTS

TABLE OF CITED AUTHORITIES

Page

CASES

Cited Authorities

CONSTITUTIONAL PROVISIONS AND RULES

OTHER AUTHORITIES

Cited Authorities

Page

SUMMARY OF ARGUMENT

The Court has consistently recognized that states have a compelling interest in maintaining public confidence in the integrity of the judiciary, among other public offices. The Court has further recognized that the potential for corrupt influence and the appearance of such corruption-which is inherent in *quid pro quo* contributions to, and direct solicitation of contributions from, political candidates-undermines public confidence in the integrity of elected officials.

Consequently, a state may constitutionally enact regulations designed to avoid the potential for *quid pro quo* corruption and appearance of corruption, provided that such regulations effectively serve the state's interest and are narrowly tailored.

Canon 7C(1) serves the State of Florida's interest in avoiding the potential for *quid pro quo* corruption and the appearance of corruption by breaking the direct link between contributors and judicial candidates. The Canon is narrowly tailored because it places no restrictions on the ability of judicial candidates and their supporters to engage in free and robust expression. The restriction on a judicial candidate's personal solicitation of campaign funds also places a minimal burden on the candidate's money-raising ability because an independent committee of the candidate's supporters is permitted by the Canon to raise money on behalf of the candidate.

Contrary to Petitioner's argument, Canon 7C(1) is not underinclusive. The fact that the Canon applies only to judicial candidates is not the type of factor that has fallen within the underinclusiveness doctrine for

purposes of this Court's First Amendment analysis. Just because the Canon does not apply to the executive and legislative branches does not render it ineffective to serve its intended purpose and does not cast suspicion on the Florida Supreme Court's true motive as was the case with regulations found by this Court to be underinclusive. The Canon is limited to judicial candidates because the judicial branch is the only branch over which the Florida Supreme Court, which adopted the Canon, has regulatory authority.

The ability of a judicial candidate to learn the identities of contributors does not undermine the purpose of Canon 7C(1) or make it underinclusive. Because the money is raised and managed by persons other than the candidate, and because the contributor has no way of knowing whether the candidate will ever learn of the contribution and the candidate does not know whether the contribution was actually attributable to the relationship between the contributor and the money-raiser, the linkage between the contributor and the candidate that is necessary for a *quid pro quo* corruption potential is lacking.

Petitioner's argument that Canon 7C(1) is underinclusive because it does not prohibit a candidate from soliciting non-monetary support could just as well have been made with respect to the contribution limits upheld in *Buckley v. Valeo,* 424 U.S. 1 (1976) and *McConnell v. Fed. Election Comm'n,* 540 U.S. 93 (2003). The State could reasonably have believed that the potential for corruption and the appearance of corruption are more pronounced with monetary contributions than voluntary labor. In any case, the Court has recognized that, in regulating campaign financing, reform may take one step at a time.

Petitioner's argument that Canon 7C(1) is overinclusive because it prohibits solicitations by mass mailing or speeches to large gatherings is also untenable. Any attempt to draw a meaningful line at the point at which a mailing or audience becomes large enough to create the potential for *quid pro quo* corruption or the appearance of corruption would be judicially unmanageable. Under such circumstances, the State has wide discretion as to where to draw the line.

Finally, the State may reasonably conclude that rules requiring recusal and limits on the amount of contributions are not adequate substitutes for a ban on personal solicitation. The degree of bias requiring recusal is a highly subjective determination left mainly to the judge who receives the contribution. The State could reasonably have concluded that a prohibition of personal solicitation by judicial candidates was more effective at avoiding the potential for *quid pro quo* corruption and, particularly, the appearance of such corruption, than contribution limits and the possibility of recusal. The argument is comparable to the argument rejected in *Buckley* that bribery and disclosure statutes were more narrow alternatives to contribution limits.

ARGUMENT

I. THE STATE HAS A COMPELLING INTEREST IN AVOIDING THE ACTUALITY AND APPEARANCE OF CORRUPT INFLUENCE OF JUDGES.

This Court has often emphasized that states have an "interest of the highest order" in ensuring the integrity of judges and other officers, and maintaining public confidence in such integrity:

> Courts, in our system, elaborate principles of law in the course of resolving disputes. The power and the prerogative of a court to perform this function rest, in the end, upon the respect accorded to its judgments. The citizen's respect for judgments depends in turn upon the issuing court's absolute probity. Judicial integrity is, in consequence, a state interest of the highest order.

Republican Party of Minn. v. White, 536 U.S. 765, 794 (2002) (Kennedy, J., concurring). *See also Caperton v. A.T. Massey Coal Co.,* 556 U.S. 868, 889 (2009) (finding that public confidence in the fairness and integrity of the nation's elected judges "is a vital state interest"); *Mistretta v. United States*, 488 U.S. 361, 407 (1989) ("The legitimacy of the Judicial Branch ultimately depends on its reputation for impartiality and nonpartisanship."); *In re Murchison*, 349 U.S. 133, 136 (1955) ("A fair trial in a fair tribunal is a basic requirement of due process. * * * But to perform its high function in the best way, 'justice must satisfy the appearance of justice.'")

The Court in *White* struck down a state regulation that directly restrained judicial candidates' freedom of speech by prohibiting such candidates from announcing their views on disputed legal or political issues. However, the decision followed and distinguished a line of cases beginning with *Buckley v. Valeo,* 424 U.S. 1 (1976), and continuing through *McCutcheon v. Fed. Election Comm'n*, 134 S. Ct. 1434 (2014), decided this year, that upheld restrictions on campaign contributions to candidates and solicitations for such contributions by candidates. In *Buckley,* the Court recognized the risk to the integrity of our political system posed by *quid pro quo* corruption:

> It is unnecessary to look beyond the Act's primary purpose to limit the actuality and appearance of corruption resulting from large individual financial contributions in order to find a constitutionally sufficient justification for the $1,000 contribution limitation. * * * To the extent that large contributions are given to secure a political *quid pro quo* from current and potential office holders, the integrity of our system of representative democracy is undermined.

Buckley, 424 U.S. at 26. The Court emphasized that the appearance of corruption that is inherent in *quid pro quo* contributions was almost equally important:

> Of almost equal concern as the danger of actual *quid pro quo* arrangements is the impact of the appearance of corruption stemming from public awareness of the opportunities for abuse inherent in a regime of large individual financial contributions.

Id.; *accord McCutcheon,* 134 S. Ct. at 1445 ("*Buckley* held that the Government's interest in preventing *quid pro quo* corruption or its appearance was 'sufficiently important'; we have elsewhere stated that the same interest may properly be labeled 'compelling,' so that the interest would satisfy even strict scrutiny") (*citing Buckley*, 424 U.S. at 26-27 and *Fed. Election Comm'n v. Nat'l Conservative Political Action Comm.*, 470 U.S. 480, 496-97 (1985)); *McConnell v. Fed. Election Comm'n,* 540 U.S. 93, 137 (2003) (noting the importance of the government's "interests in preventing 'both the actual

corruption threatened by large financial contributions and the eroding of public confidence in the electoral process through the appearance of corruption.'"), *overruled in part on other grounds, Citizens United v. Fed. Election Comm'n,* 558 U.S. 310 (2010); *Fed. Election Comm'n v. Nat'l Right to Work Comm.*, 459 U.S. 197, 210 (1982) ("The governmental interest in preventing both actual corruption and the appearance of corruption of elected representatives has long been recognized.").

In addressing *quid pro quo* corruption, the Court has not only upheld restrictions on contributions *to* candidates, but also on solicitations of contributions *by* candidates. In *McConnell*, the Court upheld section 323(e) of the Bipartisan Campaign Reform Act of 2002, which prohibited candidates from soliciting campaign funds that exceeded monetary limits or came from sources prohibited by the Act. Even Justice Kennedy, joined by Chief Justice Rehnquist, both of whom dissented from portions of the opinion regarding other provisions of the Act, agreed that section 323(e)'s ban on certain solicitations was constitutional:

> Ultimately, only one of the challenged Title I provisions satisfies *Buckley's* anticorruption rationale and the First Amendment's guarantee. It is § 323(e). This provision is the sole aspect of Title I that is a direct and necessary regulation of federal candidates' and officeholders' receipt of *quids.*

McConnell, 540 U.S. at 308 (Kennedy, J., concurring). Justices Kennedy and Rehnquist went so far as to agree with the majority that even solicitation by a candidate of funds to be given to a third party could be restricted:

> The regulation of a candidate's receipt of funds furthers a constitutionally sufficient interest. More difficult, however, is the question whether regulation of a candidate's solicitation of funds also furthers this interest if the funds are given to another. I agree with the Court that the broader solicitation regulation does further a sufficient interest. The making of a solicited gift is a *quid* both to the recipient of the money and to the one who solicits the payment (by granting his request). Rules governing candidates' or officeholders' solicitation of contributions are, therefore, regulations governing their receipt of *quids*. This regulation fits under *Buckley's* anticorruption rationale.

Id.

Petitioner attempts to brush aside *McConnell's* upholding of section 323(e)'s solicitation restrictions in a footnote stating that the Court did so "because the selective solicitation ban was designed to 'prevent political parties from using tax-exempt organizations as soft-money surrogates' to create an end-run around contribution limits." Pet'r's Br. at 13 n. 5. The portion of the *McConnell* opinion referenced by Petitioner, however, was not discussing section 323(e) at all. It was referring to section 323(d) of the Act, a portion of the opinion with which Justices Kennedy and Rehnquist dissented. Nothing in the majority opinion or the concurring opinion by Justices Kennedy and Rehnquist suggests that the decision to uphold section 323(e) was limited to the circumstances discussed with respect to section 323(d). To the contrary, the opinions make clear that the solicitation of a contribution by a candidate is, like the contribution

itself, part of the *quid*, which creates both the opportunity for corruption and the appearance of corruption. Other than the footnote, Petitioner makes no effort to explain why the reasoning that led to the Court's upholding of section 323(e) would not apply to Canon 7C(1).

Petitioner argues that in states that elect judges but do not regulate personal solicitation of contributions, there is no evidence that judges lack impartiality or that citizens lack confidence in their judicial system. The Court has recognized the difficulty of determining actual bias. *See Caperton*, 556 U.S. at 883 ("The difficulties of inquiring into actual bias, and the fact that the inquiry is often a private one, simply underscore the need for objective rules.") However, even in the absence of evidence of the occurrence of actual corruption, the Court has found a sufficient governmental interest arising from the *quid pro quo* potential for corruption and the appearance of corruption "inherent" in certain contributions and solicitation of contributions directly to candidates:

> [*Buckley*] stated that even if actual corrupt contribution practices had not been proved, Congress had an interest in regulating the appearance of corruption that is 'inherent in a regime of large individual financial contributions.' The *quid pro quo* nature of candidate contributions justified the conclusion that the contributions pose inherent corruption potential; and this in turn justified the conclusion that their regulation would stem the appearance of real corruption.

McConnell, 540 U.S. at 298 (Kennedy, J., concurring) (citation omitted).

Moreover, there is abundant evidence that the public perceives campaign contributions to judicial candidates as having an undue influence on judges' decisions. *See White,* 536 U.S. at 790 (O'Connor, J., concurring); The Annenberg Public Policy Center, *Public Understanding and Support for the Courts* (Oct. 2007) (available at www.annenbergpublicpolicy.org) (indicating that 69 percent of the public think that raising money for elections affects a judge's rulings to a moderate or great extent); Zogby International, *Attitudes and Views of American Business Leaders on State Judicial Elections and Political Contributions to Judges* (May 2007) (available at www.justiceatstake.org) (poll finding that four in five business leaders worry that financial contributions have a major influence on decisions rendered by judges and that there is "near-universal" concern among business leaders that campaign contributions will make judges accountable to other interests rather than the law and the Constitution); National Center for State Courts, *How the Public Views the State Courts: A 1999 National Survey* (May 1999) (available at www.ncsc.org) (indicating that 75 percent of the public believe that elected judges are influenced by having to raise campaign funds); Supreme Court of Pennsylvania, *Report of the Special Commission to Limit Campaign Expenditures* (March 1998) (available at www.pacourts.us) (reporting that an independent survey of registered voters in Pennsylvania indicated a belief that campaign contributions lead to special treatment, including from judges); Supreme Court of Ohio, *Report of the Citizens' Committee on Judicial Elections* (Jan. 1995) (reporting that nine out of ten Ohioans believe that judicial decisions are influenced by contributions to political campaigns).

Significantly, a survey of 2,428 state judges, those in the best position to know, found that 26 percent believe that campaign contributions made to judges influence their decisions from some to a great deal, and another 20 percent believe that campaign contributions have "just a little influence." Greenberg Quinlan Rosner Research, Inc., and American Viewpoint, *National State Judges Frequency Questionnaire* (2002) (available at http://www.justiceatstake.org/files/JASJudgesSurveyResults.pdf).

Both common sense and this Court's consistent precedent establish that public confidence in the integrity of the judiciary is essential to the maintenance of a free, stable, and just democracy. Accordingly, the Court has found that states have a compelling interest in avoiding the actuality and appearance of corrupt influence.

II. CANON 7C(1) EFFECTIVELY SERVES THE STATE'S INTEREST BY REMOVING THE *QUID PRO QUO* LINK BETWEEN THE CONTRIBUTOR AND THE CANDIDATE.

Canon 7C(1) strikes at the core of the perceived problem created by *quid pro quo* campaign financing. The Court has recognized that there is a significant distinction between contributions to third persons on behalf of a candidate and contributions directly to the candidate. It is the direct link between the contributor and the candidate that creates the potential for *quid pro quo* corruption and the appearance of corruption. The Court discussed the distinction in *McCutcheon:*

> As an initial matter, there is not the same risk of *quid pro quo* corruption or its appearance when money flows through independent actors to a candidate, as when a donor contributes

> to a candidate directly. When an individual contributes to a candidate, a party committee, or a PAC, the individual must by law cede control over the funds. The Government admits that if the funds are subsequently re-routed to a particular candidate, such action occurs at the initial recipient's discretion – not the donor's. As a consequence, the chain of attribution grows longer, and any credit must be shared among the various actors along the way. For those reasons, the risk of *quid pro quo* corruption is generally applicable only to "the narrow category of money gifts that are directed, in some manner, to a candidate or officeholder."

McCutcheon, 134 S. Ct. at 1452 (citations omitted).

In *McConnell*, the Court, in holding that the solicitation provision of section 323(e) was constitutional, found that:

> By severing the most direct link between the soft-money donor and the federal candidate, § 323(e)'s ban on donations of soft money is closely drawn to prevent the corruption or the appearance of corruption of federal candidates and officeholders.[1]

---

1. In *Buckley* and *McConnell,* the Court applied the less rigorous "closely drawn" scrutiny to contributions as contrasted with the exacting scrutiny applied to restrictions on expenditures. That lesser standard would apply to Canon 7C(1) as well. However, as noted above, the Court has found a compelling interest in avoiding the potential for and appearance of corruption occasioned by a candidate's direct solicitation of contributions and, as noted below, Canon 7C(1) is narrowly tailored to meet even the stricter exacting scrutiny standard.

McConnell, 540 U.S. at 182. Canon 7C(1) severs the direct link between the judicial candidate and the contributor by prohibiting the candidate from personally soliciting contributions. The Florida Supreme Court, quoting the Oregon Supreme Court, cogently summarized the significance of the manner in which the Canon severs the link:

> 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.
>
> [The 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.

The Fla. Bar v. Williams-Yulee, 138 So. 3d 379, 387 (2014) (quoting *In re Fadeley*, 802 P.2d 31, 41 (1990)).

Petitioner asserts that Canon 7C(1) is underinclusive, and therefore ineffective, for three reasons: (1) it does not apply to non-judicial candidates; (2) it does not prohibit judicial candidates from learning the identity of persons who contribute to their campaigns; (3) it does not prohibit candidates from requesting non-monetary help from supporters. Pet'r's Br. at 18-21. As discussed below, none of these factors render Canon 7C(1) unconstitutional.

(1) Petitioner argues that Canon 7C(1) does not apply to non-judicial candidates –

The Court has not declared regulations unconstitutional on First Amendment grounds simply because they failed to cover every aspect of a problem or every class of tangentially related persons. Rather, the doctrine has been applied to invalidate statutes or regulations when they contain a loophole that renders them ineffective and, therefore, casts suspicion on the true legislative motive. The two cases cited by Petitioner on this point are illustrative. In *White*, the Court invalidated a regulation that prohibited judicial candidates from announcing their views on disputed legal or political issues. In the portion of the opinion cited by Petitioner, the Court noted that the provision allowed judicial candidates to make the exact same statements "up until the very day before he declares himself a candidate, and may say it repeatedly (until litigation is pending) after he is elected." *White*, 536 U.S. at 779-780. The second case cited by Petitioner was *Fla. Star v. B.J.F.*, 491 U.S. 524 (1989). In *White*, the Court quoted Justice Scalia's concurring opinion in *Fla. Star*, that a speech restriction cannot be justified when it "leaves appreciable damage to that supposed vital interest unprohibited." *White,* 536 U.S. at 780. Here, Canon 7C(1)

does not contain such a loophole. By prohibiting judicial candidates from soliciting funds, the Canon effectively serves the State's interest in avoiding the potential for corruption and the appearance of corruption that this Court found was inherent in a direct linkage between contributors and candidates.

Also, contrary to the suggestion of Petitioner, there is no reason for suspicion that there were ulterior motives for adoption of the Canon. The Canon was adopted by the Florida Supreme Court as part of the Florida Code of Judicial Ethics. Under Florida's constitutional separation of powers provision, the Florida Supreme Court has exclusive authority to regulate the ethical conduct of judges and lawyers, but has no authority to impose ethical regulations in either of the other two branches. Fla. Const. art. V, § 3. In any case, "reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind." *McConnell*, 540 U.S. at 207-208; *Buckley*, 424 U.S. at 105. Florida may reasonably conclude that the problem of undue influence and appearance of corruption in the case of judges is a more acute problem than in the case of executive and legislative branch officers.

> (2) Petitioner argues that Canon 7C(1) does not prohibit judicial candidates from learning the identity of persons who contribute to their campaigns –

The ability of the candidate to learn the identities of contributors does not undercut the effectiveness of the Canon. Pursuant to the plain language of the Canon, the relationship is between the contributor and the third

party money-raiser, not the candidate, and the money contributed is managed by an independent committee of responsible persons, not the candidate. Fla. Code of Jud. Conduct, Canon 7C(1). While the candidate may learn the identity of a contributor, the contributor does not know at the time the contribution is made whether the candidate will learn of the contribution. Moreover, the candidate does not know whether the contribution was actually attributable to a relationship between the contributor and the third party money-raiser. Canon 7C(1) breaks the link between the contributor and the candidate even more effectively than contribution limits.

> (3) Petitioner argues that Cannon 7C(1) does not prohibit candidates from requesting non-monetary help from supporters –

This same argument could have been made with respect to the statutory provisions upheld in *Buckley* and *McConnell*, all of which were related to monetary contributions to candidates, but made no effort to restrict non-monetary assistance. *See Buckley,* 424 U.S. at 36-37. If the Canon had applied to requests for non-monetary assistance, it is likely Petitioner would have argued that it was overinclusive. The State could reasonably have concluded that the probability of corruption and the appearance of corruption in *quid pro quo* relationships was more pronounced in the case of monetary contributions than voluntary labor. It is not unreasonable to believe that a judge is more likely to be influenced by a contribution of money than by holding signs and licking envelopes.

Petitioner poses a series of questions designed to show that Canon 7C(1) creates a judicially unmanageable standard.[2] The questions are based upon the mistaken assumption that Canon 7C(1) requires a judge to determine on a case-by-case basis whether there is an appearance of bias. Canon 7C(1) does not require any such determination. Appearance of bias is simply one of the legitimate justifications for the regulation. A finding is not necessary because, as this Court has already determined, the possibility of corruption and resulting appearance of bias is inherent in the *quid pro quo* relationship engendered by contributions directly to, or solicitations directly from a judicial candidate. Furthermore, Canon 7C(1) has existed in Florida since 1973, *see In re The Fla. Bar Code of Judicial Conduct*, 281 So. 2d 21 (Fla. 1973), and the same or similar codes have been adopted in over 30 other states. *See Williams-Yulee*, 138 So. 3d at 386 n.2. Yet, there is no evidence that it has been judicially unmanageable.

---

2. "Appearance of bias to whom—participants in the legal system or citizens at large?; Must the appearance of bias be based on the views of the relevant audience in possession of all of the pertinent facts (*e.g.*, other protections against biased decisionmaking) or would it suffice if there were an appearance of bias based on uninformed or erroneous views of the pertinent facts?; How widely must the perception of bias be held within the target 'audience' for its prevention to qualify as a compelling interest?; How would courts undertake the 'appearance' inquiry—based on their own perceptions or based on evidence such as public opinion polls?" Pet'r's. Br. at 16.

III. CANON 7C(1) IS SUFFICIENTLY NARROWLY DRAWN TO MEET FIRST AMENDMENT REQUIREMENTS.

Canon 7C(1) places no restriction on the ability of the candidate or the candidate's supporters to engage in free expression. Moreover, the burden on the candidate's ability to raise money is minimal. The Canon expressly permits the candidate to "establish committees of responsible persons to secure and manage the expenditure of funds for the candidate's campaign," and specifies that, "[s]uch committees are not prohibited from soliciting campaign contributions and public support from any person or corporation authorized by law." Fla. Code of Judicial Conduct, Canon 7C(1). Presumably, any viable candidate will have sufficient support to be able to establish such a committee. In *Buckley*, the Court found the existence of similar opportunities for free expression and association to be evidence of narrow tailoring:

> The Act's $1,000 contribution limitation focuses precisely on the problem of large campaign contributions the narrow aspect of political association where the actuality and potential for corruption have been identified while leaving persons free to engage in independent political expression, to associate actively through volunteering their services, and to assist to a limited but nonetheless substantial extent in supporting candidates and committees with financial resources. Significantly, the Act's contribution limitations in themselves do not undermine to any material degree the potential for robust and

> effective discussion of candidates and campaign issues by individual citizens, associations, the institutional press, candidates, and political parties.

Buckley, 424 U.S. at 28-29; *see also McConnell*, 540 U.S. at 139-140 (similar discussion). The statement applies as well to Canon 7C(1).

Petitioner argues that Canon 7C(1) is overinclusive because it prohibits solicitations by judicial candidates even when they are by "mass mailing" or through speeches to "large gatherings." Petitioner fails to suggest a more narrow workable standard than Canon 7C(1), no doubt because anything other than a prophylactic ban on solicitation would create the very unmanageability that Petitioner decries. At what point does a mailing become sufficiently "mass" to eliminate *quid pro quo* concerns? How many persons make an audience "large" enough to eliminate those concerns? There is no way to draw a meaningful line, and the Florida Supreme Court's decision to simply prohibit all direct solicitations by judicial candidates is a reasonable resolution.

In *Buckley*, the Court rejected a similar argument that a $1,000 limit on campaign contributions was overinclusive because much more would be necessary to result in improper influence:

> Congress' failure to engage in such fine tuning does not invalidate the legislation. As the Court of Appeals observed, "(i)f it is satisfied that some limit on contributions is necessary, a court has no scalpel to probe, whether, say, a $2,000

> ceiling might not serve as well as $1,000." Such distinctions in degree become significant only when they can be said to amount to differences in kind.

Buckley, 424 U.S. at 30 (citation omitted).

Petitioner makes the conclusory statement that Canon 7C(1) does not entail only a marginal restriction on contributors' free expression, as the Court in *McConnell* found to be the case with contribution limits. But Petitioner makes no effort to explain why this is so. As discussed above, Canon 7C(1) allows judicial candidates the same freedom of expression as was noted in *McConnell*.

Petitioner argues that recusal and contribution limits would be reasonable substitutes for the ban on solicitations. The problem with recusal for bias resulting from a campaign contribution is that the determination is highly subjective and the decision is largely left to the judge who received the contribution and is subject to constitutional challenge in only "rare instances." *Caperton*, 556 U.S. at 890. The potential for corruption and the appearance of corruption remains. In addition, a recusal requirement would place lawyers in the unreasonable position of having to desist from financially supporting the campaigns of judges they consider the most worthy or disqualifying those judges from presiding over their cases.

The decision by Congress to utilize contribution limits in the statutes upheld in *Buckley* and *McConnell* does not mean that such limits are the only constitutionally permissible approach, particularly when the restrictions in Canon 7C(1) tread no more heavily on the candidates'

freedom of expression than do the contribution limits. Here, again, *Buckley* disposed of a materially equivalent argument:

> Appellants contend that the contribution limitations must be invalidated because bribery laws and narrowly drawn disclosure requirements constitute a less restrictive means of dealing with "proven and suspected quid pro quo arrangements." But laws making criminal the giving and taking of bribes deal with only the most blatant and specific attempts of those with money to influence governmental action. And while disclosure requirements serve the many salutary purposes discussed elsewhere in the opinion, Congress was surely entitled to conclude that disclosure was only a partial measure, and that contribution ceilings were a necessary legislative concomitant to deal with the reality or appearance of corruption inherent in a system permitting unlimited financial contributions, even when the identities of the contributors and the amounts of their contributions are fully disclosed.

Buckley, 424 U.S. at 27-28.

* * * * *

Over the past 38 years, this Court has fashioned a body of jurisprudence on a case-by-case basis that sets the parameters of government regulations intended to balance competing constitutional interests in the field of campaign finance. Through all of those cases, one principle has

remained constant. In the field of campaign finance, states may pass narrowly tailored provisions to regulate both ends of the *quid pro quo* equation. Canon 7C(1) embraces that principle and complies with the First Amendment jurisprudence in all respects. The Canon was designed to balance two fundamental constitutional rights: the right of a candidate to free speech; and the right of a litigant to due process, which would be threatened by corruptly influenced judges or by the loss of public confidence in the integrity of the judiciary. Canon 7C(1) effectively serves the latter interest while placing minimal burden on the former.

CONCLUSION

The judgment of the Florida Supreme Court should be affirmed.

Respectfully submitted,

BARRY RICHARD
Counsel of Record
M. HOPE KEATING
GREENBERG TRAURIG PA
101 East College Avenue
Tallahassee, Florida 32301
(850) 222-6891
richardb@gtlaw.com

GREGORY WILLIAM COLEMAN
CRITTON, LUTTIER & COLEMAN, LLP
303 Banyan Blvd., Suite 400
West Palm Beach, Florida 33401

RAMÓN A. ABADIN
SEDGWICK LLP
One Biscayne Tower, Suite 1500
Two South Biscayne Blvd.
Miami, Florida 33131

Counsel for Respondent