No. _____

In The
Supreme Court of the United States

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

Petitioners,

vs.

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

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

THOMAS R. JULIN
Counsel of Record
JAMIE Z. ISANI & PATRICIA ACOSTA
HUNTON & WILLIAMS LLP
1111 Brickell Avenue – Suite 2500
Miami, FL 33131
305.810.2516 Fax 1601
tjulin@hunton.com

Counsel for Petitioners

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED

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

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

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

PARTIES TO THE PROCEEDING & CORPORATE DISCLOSURE STATEMENT

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

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INTRODUCTION

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

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

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

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

CITATIONS OF OPINIONS & ORDERS IN THE CASE

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

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

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

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

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

JURISDICTION

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

CONSTITUTIONAL PROVISIONS & STATUTES INVOLVED

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

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

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

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

STATEMENT OF THE CASE

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

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

Factual Background

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

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

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

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

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

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

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

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

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

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

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

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

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

Proceedings in the District Court

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

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

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

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

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

The Eleventh Circuit's Disposition of the Federal Issues

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

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

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

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

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

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

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

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

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

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

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

The Florida Supreme Court's Disposition of the State Issues

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

The Eleventh Circuit's Final Judgment

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

REASONS FOR GRANTING THE WRIT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(Continued on following page)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

The petition for a writ of certiorari should be granted.

Dated: August 5, 2009

Respectfully submitted,

THOMAS R. JULIN
Counsel of Record
JAMIE Z. ISANI & PATRICIA ACOSTA
HUNTON & WILLIAMS LLP
1111 Brickell Avenue – Suite 2500
Miami, FL 33131
305.810.2516 Fax 1601
tjulin@hunton.com

United States Court of Appeals
for the Eleventh Circuit

Case No. 07-10435
May 7, 2009.

Appeal from the U.S. District Court for the
Northern District of Florida
(No. 06-00123-CV-4-SPM-WCS)

FLORIDA ASSOCIATION OF PROFESSIONAL LOBBYISTS INC., a Florida not for profit corporation, SPEARMAN MANAGEMENT COMPANY, a Florida corporation, GUY M. SPEARMAN, III, a natural person, RONALD L. BOOK, PA, a Florida professional association, RONALD L. BOOK, a natural person,
Plaintiffs-Appellants,
v.
DIVISION OF LEGISLATIVE INFORMATION SERVICES OF THE FLORIDA OFFICE OF LEGISLATIVE SERVICES, a Florida state agency, THE FLORIDA COMMISSION ON ETHICS, an independent constitutional commission, TOM LEE, as president of the Florida Senate, ALLAN BENSE, as speaker of the Florida House of Representatives, Defendants-Appellees..

(Before EDMONDSON, Chief Judge, DUBINA, Circuit Judge and MARTIN,* District Judge.)

(PER CURIAM.) In the light of our earlier opinion in this case and the opinion of the Supreme Court of Florida on questions of Florida law that we had certified to that honorable Court, we affirm the judgment of the district court. For background, see Fla. Ass'n of Prof'l Lobbyists v. Div. of Legislative

Info. Servs., 525 F.3d 1073 (11th Cir. 2008), and Fla. Ass'n of Prof'l Lobbyists v. Div. of Legislative Info. Servs., No. 08-791, 2009 WL 702854 (Fla. Mar. 19, 2009).

AFFIRMED.

United States Court of Appeals
for the Eleventh Circuit

Case No. 07-10435.

April 23, 2008.

Appeal from the U.S. District Court
for the Northern District of Florida

(No. 06-00123-CV-4SPM-WCS).

FLORIDA ASSOCIATION OF PROFESSIONAL LOBBYISTS, INC., a Florida not for profit corporation, SPEARMAN MANAGEMENT COMPANY, a Florida corporation, GUY M. SPEARMAN, III, a natural person, RONALD L. BOOK, PA, a Florida professional association, RONALD L. BOOK, a natural person, Plaintiffs-Appellants,

v.

DIVISION OF LEGISLATIVE INFORMATION SERVICES OF THE FLORIDA OFFICE OF LEGISLATIVE SERVICES, a Florida state agency, THE FLORIDA COMMISSION ON ETHICS, an independent constitutional commission, TOM LEE, as president of the Florida Senate, ALLAN BENSE, as speaker of the Florida House of Representatives, Defendants-Appellees.

Before EDMONDSON, Chief Judge, DUBINA, Circuit Judge, and MARTIN,* District Judge.

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* Honorable Beverly B. Martin, United States District Judge for the Northern District of Georgia, sitting by designation.

(PER CURIAM.) *CERTIFICATION FROM THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT TO THE SUPREME COURT OF FLORIDA, PURSUANT TO FLA. R. APP. P. 9.150(a). TO THE SUPREME COURT OF FLORIDA AND ITS HONORABLE JUSTICES:*

In this case, we are asked to assess the constitutionality of legislation enacted by the Florida Legislature that regulates legislative and executive lobbying in the State of Florida. The Florida Association of Professional Lobbyists, Inc., et al., ("Plaintiffs") assert that the legislation – Chapter 2005-359, Laws of Florida ("the Act") – is facially unconstitutional under both the Florida and United States Constitutions. They challenge the Act on four grounds, three of which involve questions of Florida constitutional law and one of which involves a question of federal constitutional law. Because our resolution of the state law questions in this case is a matter of Florida constitutional law to which the Florida Supreme Court has not definitively spoken, we certify these questions to the Florida Supreme Court. For the remaining federal law question, we affirm the district court's decision that the Act was not unconstitutionally vague or overbroad.

I. Background

At a special session in December 2005, the Florida Legislature passed the Act, now codified at sections 11.045 and 112.3215 of the Florida Statutes,

which regulates legislative and executive lobbying activities in the State of Florida. According to the Act, "no lobbyist or principal shall make, directly or indirectly, *and* no member or employee of the legislature," Fla. Stat. § 11.045(4)(a) (emphasis added), nor any "agency official, member, or employee shall knowingly accept, directly or indirectly, any expenditure," *id.* § 112.3215(6)(a).[1] Given the use of the conjunctive "and," the Act does not bar all lobbying expenditures; instead, it bars only those expenditures that are made for lobbying purposes *and* are accepted by an official.

The Act also includes a disclosure provision that requires lobbying firms to file quarterly statements reporting the total compensation paid or owed by their "principals" – that is, their clients. *Id.* §§ 11.045(3)(a)1.c, 112.3215(5)(a)1.c. Lobbying firms must also disclose the full name, business address, and telephone number of each principal, as well as the total compensation that each principal paid or owed to the lobbying firm. *Id.* §§ 11.045(3)(a)2, 112.3215(5)(a)2.

In addition to the disclosure provision, the Act has enforcement provisions that allow for audits as well as for the filing of sworn complaints. *Id.*

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[1] The term "expenditure" is defined as "a payment, distribution, loan, advance, reimbursement, deposit, or anything of value made by a lobbyist or principal for the purpose of lobbying." Fla. Stat. §§ 11.045(1)(d), 112.3215(1)(d).

§§ 11.045(7)-(8), 112.3215(8)-(10). For legislative lobbying, every sworn complaint or audit indicating a possible violation (with the exception of an untimely report) is subject to investigation by designated committees of either house of the Legislature. *Id.* § 11.045(7). If a violation is found, the committee must report its findings, together with a recommended penalty, to either the President of the Senate or Speaker of the House, as appropriate. *Id.* The President of the Senate or Speaker of the House then submits the committee report and recommendation to their respective chamber; and a final determination is made by a majority vote of the members. *Id.* Authorized penalties include "a fine of not more than $5,000, reprimand, censure, probation, or prohibition from lobbying for a period of time not to exceed 24 months." *Id.*

For executive lobbying, every sworn complaint or audit indicating a possible violation (with the exception of an untimely report) is subject to investigation by the Commission on Ethics. *Id.* § 112.3215(8)(a), (c). If the Commission finds probable cause of a violation, then it submits a report to the Governor and the Cabinet for a determination of the penalty. *Id.* § 112.3215(9), (10). Authorized penalties include reprimand, censure, or a prohibition on lobbying any agency for a period not to exceed two years. *Id.* § 112.3215(10). But, "[i]f the violator is a lobbying firm, the Governor and Cabinet may also assess a fine of not more than $5,000." *Id.*

In the district court, Plaintiffs sought a declaration that the Act was facially unconstitutional. They also sought preliminary and permanent injunctions against the Act's enforcement. Plaintiffs argued that the Act was not validly passed by the legislature because it was not read three times after it was introduced by the House. They argued that the Act infringed upon the Florida Supreme Court's authority to regulate the practice of law; and they argued that the Act contravened Florida's separation of powers doctrine. Plaintiffs also argued that the Act's expenditure restrictions, disclosure requirements, and enforcement provisions violated their rights to free speech, due process, equal protection, and privacy under both the United States and Florida Constitutions.[2] The district court denied Plaintiffs' motions for preliminary injunction and summary judgment, concluding that Plaintiffs were unlikely to succeed on their claims. The district court then granted summary judgment to the Division of Legislative Information Services, et al., ("Defendants") on all of Plaintiffs' claims. Plaintiffs now appeal.

II. Discussion

On appeal, Plaintiffs raise four issues. Three involve questions of state constitutional law: (1)

[2] This lawsuit was originally filed in state court but was then removed to federal district court on the basis of federal question jurisdiction with supplemental jurisdiction over the state law claims.

whether the Act violates Florida's separation of powers doctrine; (2) whether the Act was improperly enacted under the Florida Constitution; and (3) whether the Act infringes upon the Florida Supreme Court's regulatory authority over the practice of law. The fourth issue involves a question of federal constitutional law: whether the Act is unconstitutionally vague or overbroad.[3]

A. State Law Issues

"Substantial doubt about a question of state law upon which a particular case turns should be resolved by certifying the question to the state supreme court." *Jones v. Dillard's, Inc.,* 331 F.3d 1259, 1268 (11th Cir. 2003). Here, substantial doubt exists about the three issues in this case that relate solely to matters of Florida constitutional law.

First, Plaintiffs assert that the Act, or at least certain parts of it, violate Florida's separation of

[3] To the extent that Plaintiffs also contend that the Act is vague and overbroad under the Florida Constitution, we note that the Florida Supreme Court applies the same principles as exist under the United States Constitution. *See Dep't of Educ. v. Lewis,* 416 So. 2d 455, 461 (Fla. 1982) ("The scope of the protection accorded to freedom of expression in Florida under article I, section 4 is the same as is required under the First Amendment."); *State v. Wershow,* 343 So. 2d 605, 608-09 (Fla. 1977) (applying the same test for vagueness to a challenge brought under both article I, section 9 of the Florida Constitution and the Fifth and Fourteenth Amendments to the United States Constitution).

powers doctrine. They specifically challenge provisions in section 11.045 that authorize designated committees of the Legislature (1) to provide advisory opinions on the applicability and interpretation of relevant provisions of the Act, (2) to investigate any person or lobbying firm alleged to have violated the Act, and (3) to make findings and a recommendation of punishment for ultimate decision by their respective houses. Plaintiffs contend that these provisions, by assigning to the Legislature the power to interpret and enforce the Act as well as the power to adjudicate violations of the Act, unconstitutionally encroach upon powers belonging to the judicial and executive branches of the state government.

On the second issue, Plaintiffs claim that the Act was not validly enacted pursuant to state constitutional provisions governing special sessions.[4] They argue that the Act is invalid because it was not read three times after it was properly introduced by a two-thirds vote; instead, it was read twice before introduction and only once after introduction.

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[4] The relevant provisions of the Florida Constitution are: (1) Article III, Section 3(c)(1), which provides that in a special session convened by the Governor's proclamation, "only such legislative business may be transacted as is within the purview of the proclamation . . . or is introduced by consent of two-thirds of the membership of each house"; and (2) Article III, Section 7, which provides that, to be validly enacted, a bill "shall be read in each house on three separate days, unless this rule is waived by two-thirds vote."

The third issue is whether the Act infringes the Florida Supreme Court's authority to regulate the practice of law in Florida. Relying upon Article V, Section 15 of the Florida Constitution,[5] Plaintiffs contend that the Act, especially its compensation reporting provisions, invades the exclusive jurisdiction of the Florida Supreme Court to regulate the admission of persons to the practice of law and to discipline those admitted. According to Plaintiffs, lobbying by lawyers constitutes the practice of law. Thus, because the Act requires lawyers who lobby on behalf of a client to report the compensation they received, Plaintiffs argue that the Act runs afoul of the rules regulating the Florida Bar. Bar rules forbid lawyers from disclosing confidential client information, including compensation paid by the client, without the client's consent.

Having reviewed all the arguments and the case law, we conclude that the law in Florida is not sufficiently well-established for us to determine with confidence whether the Act is unconstitutional under the state's constitution. In particular, we are uncertain about whether the provisions of the Act authorizing designated committees of the Legislature to issue advisory opinions, to investigate violations of the Act, and to recommend penalties to the Legislature for violations of the Act contravene the Florida

[5] This provision states, "The supreme court shall have exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted."

Constitution's separation of powers. We are also uncertain about whether the Florida House of Representatives properly waived the constitutional requirement that a proposed bill be read on three separate days after it has been introduced. In addition, we are uncertain about whether the Act, by regulating lawyer lobbyists, unconstitutionally infringes the Florida Supreme Court's exclusive jurisdiction to regulate the practice of law in the state.

Under the Florida Constitution, this court may certify a question to the Florida Supreme Court if it "is determinative of the cause and for which there is no controlling precedent of the supreme court of Florida." Fla. Const. art. V, § 3(b)(6). Because we have found no such controlling precedent, we certify the following questions to the Florida Supreme Court:[6]

(1) Whether the provisions of section 11.045 that authorize designated committees of the Legislature to issue advisory opinions, to investigate violations of the Act, and to recommend punishment

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[6] Our statement of the certified questions is not intended to restrict the issues considered by the Florida Supreme Court. *Stevens v. Battelle Mem'l Inst.,* 488 F.3d 896, 904 (11th Cir. 2007); *see also Miller v. Scottsdale Ins. Co.,* 410 F.3d 678, 682 (11th Cir. 2005) ("Our phrasing of the certified question is merely suggestive and does not in any way restrict the scope of the inquiry by the Supreme Court of Florida."). We are mindful that "latitude extends to the Supreme Court's restatement of the issue or issues and the manner in which the answers are given." *Stevens,* 488 F.3d at 904 (internal quotation marks omitted).

for approval by the full Legislature violate Florida's separation of powers doctrine.

(2) Whether the Florida House of Representatives validly passed the Act under Article 3, Section 7 of the Florida Constitution, notwithstanding that the bill was not read on three separate days after it was properly introduced.

(3) Whether the Act violates the exclusive jurisdiction of the Florida Supreme Court under Article V, Section 15 of the Florida Constitution by regulating the lobbying activities of lawyers.

B. Federal Law Issue

The remaining issue in this case is whether the Act – on its face – is vague or overbroad in violation of the United States Constitution. Plaintiffs contend that the Act's provisions banning expenditures as well as its compensation reporting provisions are unconstitutionally vague and overbroad. On the issue of vagueness, Plaintiffs argue that statutory terms such as "expenditure" or "direct" and "indirect" are so inadequately defined that a person of common intelligence must guess at their meaning and that, as a result, the Act allows for unbridled discretion in its enforcement.

To overcome a vagueness challenge, a statute must "give the person of ordinary intelligence a reasonable opportunity to know what is prohibited"; and it must "provide explicit standards for those who

apply them" to avoid arbitrary and discriminatory enforcement. *Grayned v. City of Rockford,* 92 S. Ct. 2294, 2298-99 (1972).

We conclude that the Act does not violate due process standards about vagueness. For instance, it clearly provides that an expenditure – which is separately defined in sections 11.045(1)(d) and 112.3215(1)(d) – is unlawful only if it is made by a lobbyist or principal *and* accepted by a government official. Contrary to Plaintiffs' suggestion, the Act cannot reasonably be read to bar all expenditures for lobbying purposes (for example, a cab fare to the capitol). Instead, it only bars those lobbying expenditures that are accepted by a government official. *See* Fla. Stat. §§ 11.045(4)(a), 112.3215(6)(a) (stating that "no lobbyist or principal shall make, directly or indirectly, *and* no member or employee of the legislature" nor any "agency official, member, or employee shall knowingly accept, directly or indirectly, any expenditure" (emphasis added)). In a similar way, we do not regard the term "indirect" as vague: a person of common intelligence would understand that it applies to expenditures or compensation paid through a third party.

In short, the statutory language at issue "provide[s] explicit standards for those who apply them" and "give[s] the person of ordinary intelligence a reasonable opportunity to know what is prohibited." *Grayned,* 92 S. Ct. at 2298-99. As the Supreme Court observed, "we can never expect mathematical certainty from our language." *Id.* at 2300. With this

observation in mind, we cannot conclude that the statutory language Plaintiffs challenge is so vague as to violate the Constitution.

Plaintiffs also contend that the Act's compensation reporting provision is unconstitutionally overbroad because it requires "disclosure of compensation paid to a lobbyist even where that compensation has not been paid for expressly advocating passage or defeat of legislation." A law is overbroad that "does not aim specifically at evils within the allowable area of State control but, on the contrary, sweeps within its ambit other activities that in ordinary circumstances constitute an exercise of freedom of speech." *Thornhill v. State of Alabama,* 60 S. Ct. 736, 742 (1940). The First Amendment doctrine of overbreadth is an exception to the normal rules governing facial challenges. *Virginia v. Hicks,* 123 S. Ct. 2191, 2196 (2003).[7] For the First Amendment, a law is facially invalid if it "punishes a 'substantial' amount of protected free speech, 'judged in relation to the statute's plainly legitimate sweep.'" *Hicks,* 123 S. Ct. at 2196 (quoting *Broadrick v. Oklahoma,* 93 S. Ct. 2908, 2918 (1973)). We note, however, the Supreme Court's admonition that application of the overbreadth doctrine is "strong medicine" that should be

[7] In general, to challenge a statute facially, "the challenger must establish that no set of circumstances exists under which the Act would be valid." *United States v. Salerno,* 107 S. Ct. 2095, 2100 (1987).

used "sparingly and only as a last resort." *Broadrick,* 93 S. Ct. at 2916.

Plaintiffs do not deny the Legislature's legitimate interest in the public disclosure of compensation paid to a lobbying firm for the purpose of lobbying. They instead contend that the statute sweeps too broadly by requiring the reporting of all compensation paid to lobbyists "irrespective of how the funds are spent." We agree with the district court that Plaintiffs have misconstrued the Act. Contrary to their claim that the Act requires the disclosure of all compensation paid to lobbyists regardless of how the funds are used, the Act actually only requires the reporting of compensation that lobbyists receive "for any lobbying activity." Fla. Stat. §§ 11.045(1)(b), 112.3215(1)(c).

That the compensation reporting provision is limited to compensation received "for any lobbying activity" does not end the matter, however. The Act defines "lobbying" as "influencing or attempting to influence legislative action or nonaction through oral or written communication or an attempt to obtain the goodwill of a member or employee of the Legislature." *Id.* § 11.045(1)(f); *see also id.* § 112.3215(1)(f) (defining "lobbies" as "seeking, on behalf of another person, to influence an agency with respect to a decision of the agency in the area of policy or procurement or an attempt to obtain the goodwill of an agency official or employee"). Plaintiffs argue that lobbying activity, as defined in the Act, encompasses not only direct communications from lobbyists to legislators and state officials (which is undoubtedly a

legitimate object of regulation[8]), but also indirect communications – such as opinion articles, issue advertisements, and letterwriting campaigns – from lobbyists on behalf of their clients to the press and public at large for the purpose of influencing legislation or policy.

We have made clear that the state has a compelling interest "in 'self-protection' in the face of coordinated pressure campaigns" directed by lobbyists. *Fla. League of Prof'l Lobbyists, Inc. v. Meggs,* 87 F.3d 457, 460, 461 (11th Cir. 1996). Also, lobbyist disclosure laws of the sort at issue here allow voters to appraise "the integrity and performance of officeholders and candidates, in view of the pressures they face." *Id.* at 460. We have said that these interests are compelling not only when the pressures to be

[8] In *United States v. Harriss,* 74 S. Ct. 808 (1954), the Supreme Court upheld the disclosure requirements in the Federal Regulation of Lobbying Act of 1946, which applied to persons who solicit, collect, or receive money or any other thing of value to aid "'[t]he passage or defeat of any legislation by the Congress of the United States'" or "'[t]o influence, directly or indirectly, the passage or defeat of any legislation by the Congress of the United States.'" *Id.* at 812-13 (quoting Section 307 of the Lobbying Act). To avoid constitutional infirmity, the Court construed the disclosure requirements narrowly to cover only those "contributions and expenditures having the purpose of attempting to influence legislation through *direct communication with Congress.*" *Id.* at 815 (emphasis added). In doing so, the Court upheld the statute against First Amendment challenge on the ground that Congress was "not constitutionally forbidden to require the disclosure of lobbying activities" for the purpose of "self-protection." *Id.* at 816.

evaluated by voters and officeholders are "direct," but also when they are "indirect." *See id.* at 461 ("[T]he government interest in providing the means to evaluate these pressures may in some ways be stronger when the pressures are indirect, because then they are harder to identify without the aid of disclosure requirements."); *see also Minn. State Ethical Practices Bd. v. Nat'l Rifle Ass'n of Am.,* 761 F.2d 509, 511-13 (8th Cir. 1985) (upholding a state's interest in applying its reporting requirements to indirect communications between a lobbyist and members of an association for the purpose of influencing specific legislation).

Because 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. *See Meggs,* 87 F.3d at 461. Instead, we leave "whatever overbreadth may exist [to] be cured through case-by-case analysis of the fact situations to which [the Act's] sanctions, assertedly, may not be applied." *Broadrick,* 93 S. Ct. at 2918.

III. Conclusion

After reviewing Florida case law, we are uncertain whether the Act violates Florida's separation of powers doctrine, was properly enacted under Florida law, or infringes upon the Florida Supreme Court's jurisdiction. Because these questions are solely issues of state law that should be decided by the Florida

Supreme Court, we certify these questions to the Florida Supreme Court. We do, however, affirm the district court's ruling that the Act is not vague or overbroad under the United States Constitution.

AFFIRMED in part, and QUESTIONS CERTIFIED.

Supreme Court of Florida.

Case No. SC08-791.

March 19, 2009.

FLORIDA ASSOCIATION OF PROFESSIONAL LOBBYISTS, INC., etc., et al. Appellants,

v.

DIVISION OF LEGISLATIVE INFORMATION SERVICES, etc., et al. Appellees.

Certified Question of Law from the United States Court of Appeals for the Eleventh Circuit Case No. 07-10435.

Counsel: Mark Herron, Thomas M. Findley, and Robert J. Telfer, III of Messer, Caparello and Self, P.A., Tallahassee, for Appellants. Bill McCollum, Attorney General, Scott D. Makar, Solicitor General, Louis F. Hubener, Chief Deputy Solicitor General, Tallahassee, and Kenneth W. Sukhia and David P. Healy of the Sukhia Law Group, PLC, Tallahassee, for Appellees.

POLSTON, J.) This case is before the Court for review of questions of Florida law certified by the United States Court of Appeals for the Eleventh Circuit that are determinative of a cause pending in that court and for which there appears to be no controlling precedent.[1]

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[1] We have jurisdiction. *See* art. V, § 3(b)(6), Fla. Const.

Background

The instant case arose after Appellants, the Florida Association of Professional Lobbyists ("FAPL"), initiated a facial challenge of chapter 2005-359, Laws of Florida, currently codified at sections 11.045 and 112.3215, Florida Statutes (2008), which regulates and disciplines lobbyists.[2]

The case was originally filed in circuit court, Second Circuit, Leon County, but was removed to federal district court in the Northern District of Florida. The Northern District granted summary judgment to the defendants, Division of Legislative Information Services, et al. (the "Division"), on all counts, and FAPL appealed to the Eleventh Circuit. The Eleventh Circuit affirmed the Northern District on the federal question presented and held that the Act is not unconstitutionally vague or overly broad under federal constitutional standards. *Fla. Ass'n of Prof'l Lobbyists v. Div. of Legislative Info. Servs.,* 525 F.3d 1073, 1080-81 (11th Cir. 2008). However, it also stated that "the law in Florida is not sufficiently well-established for us to determine with confidence whether the act is unconstitutional under the state's constitution." *Id.* at 1077. Consequently, it certified three questions of Florida law to this Court, specifically:

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[2] The challenged legislation came about through the introduction and passage of Senate Bill 6-B during the 2005 special legislative session. Hereinafter, it will be referred to as "the Act" or "SB 6-B."

> (I) WHETHER THE ACT VIOLATES FLORIDA'S SEPARATION OF POWERS DOCTRINE;
>
> (II) WHETHER THE ACT WAS VALIDLY PASSED BY THE LEGISLATURE ACCORDING TO THE REQUIREMENTS OF THE FLORIDA STATE CONSTITUTION; and
>
> (III) WHETHER THE ACT INFRINGES ON THE FLORIDA SUPREME COURT'S EXCLUSIVE JURISDICTION TO REGULATE LAWYERS AND THE PRACTICE OF LAW.

The Eleventh Circuit set out the particulars of the Act as follows:

> According to the Act, "no lobbyist or principal shall make, directly or indirectly, *and* no member or employee of the legislature," Fla. Stat. § 11.045(4)(a) (emphasis added), nor any "agency official, member, or employee shall knowingly accept, directly or indirectly, any expenditure." *Id.* § 112.3215(6)(a).[n.1] Given the use of the conjunctive "and," the Act does not bar all lobbying expenditures; instead, it bars only those expenditures that are made for lobbying purposes *and* are accepted by an official.
>
> [n.1] The term "expenditure" is defined as "a payment, distribution, loan, advance, reimbursement, deposit, or anything of value

made by a lobbyist or principal for the purpose of lobbying." Fla. Stat. §§ 11.045(1)(d), 112.3215(1)(d).

The Act also includes a disclosure provision that requires lobbying firms to file quarterly statements reporting the total compensation paid or owed by their "principals" – that is, their clients. *Id.* §§ 11.045(3)(a)1.c, 112.3215(5)(a)1.c. Lobbying firms must also disclose the full name, business address, and telephone number of each principal, as well as the total compensation that each principal paid or owed to the lobbying firm. *Id.* §§ 11.045(3)(a)2, 112.3215(5)(a)2.

In addition to the disclosure provision, the Act has enforcement provisions that allow for audits as well as for the filing of sworn complaints. *Id.* §§ 11.045(7)-(8), 112.3215(8)-(10). For legislative lobbying, every sworn complaint or audit indicating a possible violation (with the exception of an untimely report) is subject to investigation by designated committees of either house of the Legislature. *Id.* § 11.045(7). If a violation is found, the committee must report its findings, together with a recommended penalty, to either the President of the Senate or Speaker of the House, as appropriate. *Id.* The President of the Senate or Speaker of the House then submits the committee report and recommendation to their respective chamber; and a final determination is made by a majority vote of the members. *Id.* Authorized penalties include "a fine of not

> more than $5,000, reprimand, censure, probation, or prohibition from lobbying for a period of time not to exceed 24 months." *Id.*
>
> For executive lobbying, every sworn complaint or audit indicating a possible violation (with the exception of an untimely report) is subject to investigation by the Commission on Ethics. *Id.* § 112.3215(8)(a), (c). If the Commission finds probable cause of a violation, then it submits a report to the Governor and the Cabinet for a determination of the penalty. *Id.* § 112.3215(9), (10). Authorized penalties include reprimand, censure, or a prohibition on lobbying any agency for a period not to exceed two years. *Id.* § 112.3215(10). But, "[i]f the violator is a lobbying firm, the Governor and Cabinet may also assess a fine of not more than $5,000." *Id.*

Fla. Ass'n of Prof'l Lobbyists v. Div. of Legislative Info. Servs., 525 F.3d 1073, 1075-76 (11th Cir. 2008).

Analysis

For the following reasons, we find that the Act (I) does not violate Florida's separation of powers doctrine; (II) was validly enacted by the Florida Legislature; and (III) does not infringe on the Florida Supreme Court's jurisdiction to regulate lawyers or the practice of law.

I. The Act Does Not Violate Florida's Separation of Powers Doctrine

FAPL argues that, in enacting SB 6-B and thereby giving itself the power to issue advisory opinions, investigate violations, and recommend punishment for infractions of the Act that it alone can approve, the Legislature has directly encroached on the powers of the judicial and executive branches. We disagree.

"The [separation of powers] doctrine encompasses two fundamental prohibitions. The first is that no branch may encroach upon the powers of another. The second is that no branch may delegate to another branch its constitutionally assigned power." *Chiles v. Children A, B, C, D, E, & F,* 589 So. 2d 260, 264 (Fla. 1991) (citation omitted). Because improper delegation of powers is not implicated here, we only address the issue of encroachment.

The Florida Constitution does not explicitly prohibit any of the functions set out in the Act. Although the constitution does not give the Legislature the exclusive power to discipline lobbyists, it also does not prevent it from doing so. As this Court has noted, "the state constitution does not exhaustively list each branch's powers." *Fla. House of Representatives v. Crist,* 990 So. 2d 1035, 1045 (Fla. 2008). Rather,

> the powers of the respective branches "are those so defined . . . or such as are inherent or so recognized by immemorial governmental usage, and which involve the exercise of primary and independent will, discretion,

> and judgment, subject not to the control of another department, but only to the limitations imposed by the state and federal Constitutions." [Each branch has] "the inherent right to accomplish all objects naturally within the orbit of that department, not expressly limited by the fact of the existence of a similar power elsewhere or the express limitations in the constitution."

Id. at 611 (citation omitted) (quoting *State v. Atlantic Coast Line R.R.,* 47 So. 969, 974 (Fla. 1908); *Sun Ins. Office v. Clay,* 133 So. 2d 735, 742 (Fla. 1961)). Therefore, since the regulation, discipline, and licensing of lobbyists is not subject to the control of any branch or office, the Legislature is not prohibited from using its own discretion and judgment to accomplish the task. *See State v. Palmer,* 791 So. 2d 1181, 1183 (Fla. 1st DCA 2001) ("[A] branch of government is prohibited from exercising a power only when that power has been constitutionally assigned exclusively to another branch; and the separation of powers doctrine does not contemplate that every governmental activity must be classified as belonging exclusively to a single branch."). Accordingly, we answer the first question in the negative and find that the Act does not violate Florida's separation of powers doctrine.

II. The Act Was Validly Enacted by the Florida Legislature

FAPL also claims that the Act was not validly enacted by the Legislature according to the procedural

requirements of the Florida Constitution. We disagree.

Two constitutional provisions are relevant here. First, article III, section 3 provides in part that, during a special session, the only legislative business that may be transacted is that business which is within the purview of the governor's proclamation or that which is introduced by consent of two-thirds of the membership of each house. *See* Art. III, § 3(c)(1), Fla. Const. Also relevant is article III, section 7, which provides the procedure for valid enactment of a bill. It states:

> Any bill may originate in either house and after passage in one may be amended in the other. It shall be read in each house on three separate days, unless this rule is waived by two-thirds vote; provided the publication of its title in the journal of a house shall satisfy the requirement for the first reading in that house. On each reading, it shall be read by title only, unless one-third of the members present desire it read in full. On final passage, the vote of each member voting shall be entered on the journal. Passage of a bill shall require a majority vote in each house. Each bill and joint resolution passed in both houses shall be signed by the presiding officers of the respective houses and by the secretary of the senate and the clerk of the house of representatives during the session or as soon as practicable after its adjournment sine die.

Art. III, § 7, Fla. Const.

After reviewing the journals of both chambers, we find that all the rules and requirements for enacting a bill during special session were followed. On December 5, 2005, SB 6-B was formally introduced in the Florida Senate after it received the required two-thirds vote of the membership. It was also read for the first time. *Fla. S. Jour.* 2 (Spec. Sess. 2005). Then, on December 7, 2005, the rules were waived and it was read for the second and third times. Thereafter, SB 6-B was passed, the vote was recorded, it was ordered engrossed, and it was certified to the House. *Fla. S. Jour.* 33, 42 (Spec. Sess. 2005). In the Florida House, on December 5, 2005, House Bill 63-B, a bill relating to the registration and reporting requirements for lobbyists, was formally introduced after receiving the required two-thirds vote. *See Fla. H.R. Jour.* 3 (Spec. Sess. 2005). Then, on December 8, 2005, SB 6-B was read three times in the House after the rules were waived; it was also formally introduced in the House by a two-thirds vote after the bill's second reading; its passing vote was properly recorded in the House Journal; and it was enrolled, signed, and filed. *Fla. H.R. Jour.* 45 (Spec. Sess. 2005); *see also State v. Kaufman,* 430 So. 2d 904, 905 (Fla. 1983) ("[W]hen enrolled, signed, and filed, acts of the legislature are prima facie valid.").

FAPL claims that the Act was not properly enacted because SB 6-B was read twice in the House before its formal introduction and only once afterwards. It asserts that the three-readings requirement, when executed in this manner, is insufficient to

satisfy the constitutional requirements for enacting legislation. We find FAPL's argument unpersuasive because SB 6-B did not require a formal introduction in the House. Rather, since HB 63-B, a similar subject bill, had already been formally introduced in the House by the requisite two-thirds vote, no further introduction of SB 6-B was necessary because it fell within the purview of the subject matter of HB 63-B. Therefore, the passage of SB 6-B constituted the transaction of "legislative business" which was "introduced by consent of two-thirds of the membership of each house." Art. III, § 3(c)(1), Fla. Const.[3] Accordingly, we answer the second question affirmatively and find that SB 6-B was validly enacted by the Florida Legislature.

III. The Act Does Not Infringe on the Florida Supreme Court's Jurisdiction to Regulate Lawyers or the Practice of Law

FAPL also argues that lobbying is part of the general practice of law and that the Act is unconstitutional because it regulates and disciplines lawyers who work as lobbyists and thereby encroaches on the jurisdiction of this Court. We disagree.

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[3] We need not address, and specifically do not rule on, whether the two-thirds vote with respect to SB 6-B after its second reading in the House would have been independently sufficient to satisfy the constitutional requirement.

Section 112.3215, Florida Statutes (2008), which pertains to lobbying before the executive branch, defines "lobbies" and "lobbyist" as follows:

> (f) "Lobbies" means seeking, on behalf of another person, to influence an agency with respect to a decision of the agency in the area of policy or procurement or an attempt to obtain the goodwill of an agency official or employee. "Lobbies" also means influencing or attempting to influence, on behalf of another, the Constitution Revision Commission's action or nonaction through oral or written communication or an attempt to obtain the goodwill of a member or employee of the Constitution Revision Commission.
>
> . . . .
>
> (h) "Lobbyist" means a person who is employed and receives payment, or who contracts for economic consideration, for the purpose of lobbying, or a person who is principally employed for governmental affairs by another person or governmental entity to lobby on behalf of that other person or governmental entity. "*Lobbyist" does not include a person who is:*
>
> 1. *An attorney,* or any person who represents a client in a judicial proceeding or in a formal administrative proceeding conducted pursuant to chapter 120 or any other formal hearing before an agency, board, commission, or authority of this state.

(Emphasis added.)

Similarly, section 11.045(1)(f), Florida Statutes (2008), defines legislative lobbying as "influencing or attempting to influence legislative action or nonaction through oral or written communications or an attempt to obtain goodwill of a member or employee of the Legislature." *See also Black's Law Dictionary* 845 (5th ed. 1979) (defining "lobbying" as "[a]ll attempts including personal solicitation to induce legislators to vote in a certain way or to introduce legislation").

On the other hand, this Court has explained that "the performance of services in representing another before the courts is the practice of law." *State ex rel. Fla. Bar v. Sperry,* 140 So. 2d 587, 591 (Fla. 1962), *vacated on other grounds,* 373 U.S. 379 (1963). Additionally, as the Act expressly acknowledges, the practice of law includes representing clients in administrative proceedings under chapter 120, Florida Statutes, and representing clients in formal hearings before agencies, boards, and commissions. *See* § 112.3215(1)(h)(1), Fla. Stat. (2008). The practice of law also includes "the giving of legal advice" and "the preparation of legal instruments." *Sperry,* 140 So. 2d at 591; *see also Fla. Bar v. Neiman,* 816 So. 2d 587, 596 (Fla. 2002).

Given the differences between the two activities, we conclude that lobbying as defined by the Act does not constitute the practice of law. Accordingly, we find that lobbyists, who may also be lawyers when engaged in lobbying activities, may be regulated and disciplined for their actions or inactions as prescribed

by the Act. We also find that those regulations and disciplinary actions described in the Act do not infringe on this Court's jurisdiction to regulate and discipline lawyers, who may also be lobbyists, in matters relating to their practice of law.

Conclusion

For the reasons stated above, we answer the first and third questions in the negative and the second question affirmatively and hold that the Act (I) does not violate Florida's separation of powers doctrine; (II) was validly enacted by the Florida Legislature; and (III) does not infringe on the Florida Supreme Court's jurisdiction to regulate lawyers or the practice of law. (QUINCE, C.J., and PARIENTE, LEWIS, CANADY, and LABARGA, JJ., concur.)

United States District Court, N.D. Florida,
Tallahassee Division.

FLORIDA ASSOCIATION OF PROFESSIONAL LOBBYISTS, INC., a Florida not for profit corporation; Spearman Management Company, a Florida corporation; Guy M. Spearman III, a natural person; Ronald L. Book, P.A., a Florida professional association; and Ronald L. Book, a natural person, Plaintiffs,

v.

DIVISION OF LEGISLATIVE INFORMATION SERVICES OF the FLORIDA OFFICE OF LEGISLATIVE SERVICES, a Florida state agency; The Florida Commission on Ethics, an independent constitutional commission; Tom Lee, as President of the Florida Senate; and Allan Bense, as Speaker of the Florida House of Representatives, Defendants.

No. 4:06cv123-SPM/ WCS.

Dec. 28, 2006.

Barry Rodney Davidson, Jamie L. Zysk, Thomas R. Julin, Hunton & Williams LLP, Miami, FL, Mark Herron, Thomas Marshall Findley, Messer Caparello & Self PA, Tallahassee, FL, for Plaintiffs.

Louis F. Hubener, Denis Allen Dean, Attorney General State of FL, Michael Pearce Dodson, Micheal Pearce Dodson Esq, Kenneth Wayne Sukhia, Conwell Sukhia & Kirkpatrick PA, Tallahassee, FL, for Defendants.

ORDER GRANTING SUMMARY JUDGMENT

STEPHAN P. MICKLE, United States District Judge.

Plaintiffs are a lobbying organization, lobbying firms, and individuals who engage in lobbying activities. They are challenging the facial validity of an Act passed by the Florida Legislature during the December 2005 special session. The Act, chapter 2005-359, Laws of Florida, codified at sections 11.045 and 112.3215, regulates legislative and executive lobbying.

One of the main features of the Act is an expenditure[1] provision that prohibits gifts and payments by lobbyists to officials. The Act provides that "no lobbyists or principal shall make, directly or indirectly, and no member or employee of the of the legislature" nor "any agency official, member or employee shall knowingly accept, directly or indirectly, an expenditure." § 11.045(4)(a) and § 112.3215(6)(a), Fla. Stat. (emphasis supplied). The use of the conjunctive "and" in the Act makes clear that the prohibition on expenditures is not a general prohibition on all lobbying expenditures. The prohibition applies only to expenditures that are made for lobbying purposes and accepted by an official.

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[1] The term "expenditure" is defined as "a payment, distribution, loan, advance, reimbursement, deposit, or anything of value made by a lobbyist or principal for the purpose of lobbying." § 11.045(4)(a) and § 112.3215(6)(a), Fla. Stat.

Another feature of the Act is a disclosure provision that requires lobbying firms to file quarterly reports designating the total compensation owed to the lobbying firm from principals. § 11.045(3)(a)1.c. and § 112.3215(5)(a)1.c., Fla. Stat. In addition, lobbying firms must disclose the compensation owed by each principal. The reports must include the full name, business address, and telephone number of each principal, and the total compensation that each principal provided or owed to the lobbying firm. § 11.045(3)(a)2.b. and § 112.3215(5)(a)2.b., Fla. Stat.

The Act contains enforcement provisions that allows for audits and the filing of sworn complaints. § 11.040(6), § 11.045, and § 112.3215, Fla. Stat. For legislative lobbying, every sworn complaint or audit indicating a possible violation (other than a late filed report) is subject to investigation by designated committees for each house. § 11.045(7), Fla. Stat. A committee's recommendation for penalty is reported to the President of the Senate or Speaker of the House and submitted to the majority of the appropriate house for a final determination. § 11.045(7), Fla. Stat. Authorized penalties include "a fine of not more than $5,000, reprimand, censure, probation, or prohibition of lobbying for a period of time not to exceed 24 months." § 11.045(7), Fla. Stat. For executive lobbying, every sworn complaint or audit indicating a possible violation (other than a late filed report) is subject to investigation by the Commission on Ethics. §§ 112.3215(8)(a) and (c), Fla. Stat. If the Commission on Ethics finds probable cause that a

violation occurred, it submits a report to the Governor and Cabinet for a determination and imposition of a penalty. §§ 112.3215(9) and (10), Fla. Stat. Authorized penalties include reprimand, censure, or a prohibition on lobbying all agencies for a period not to exceed 2 years. § 112.3215(9), Fla. Stat. "If the violator is a lobbying firm, the Governor and Cabinet may also assess a fine of not more than $5,000." § 112.3215(10), Fla. Stat.

Plaintiffs challenge the Act on several fronts. They contend that the Act was not validly passed by the legislature because the Act was not read three times after it was introduced by the House at the special session. Plaintiffs contend that the Act usurps the constitutional authority of the Florida Supreme Court to regulate the practice of law. Plaintiffs content that expenditure restrictions, disclosure requirements, and enforcement provisions violate constitutional guarantees of free speech and petition, due process, equal protection, privacy, and separation of powers. Through this lawsuit, Plaintiffs seek an injunction to prevent enforcement of the Act. They also seek a declaration of their obligations under the Act in the event the Court finds that the Act is constitutional.

In a prior order (doc. 80), the Court denied Plaintiffs' motion for preliminary injunction and motion for summary judgment. Defendants have since filed a motion for summary judgment (docs. 85, 89, and 90). There are no disputed issues of material fact

and Defendants are entitled to judgment as a matter of law.

1. Valid Enactment

Contrary to Plaintiffs' arguments, the Act was properly introduced as a topic for the December 2005 special session[2]. The three-day reading rule[3] was properly waived.

On the opening day by two-thirds vote, the legislature introduced HB 63-B, an "act relating to lobbying," dealing expressly with compensation reporting and expenditure limitations, and "any companion measures that may be passed by the Senate." Journal of the House, Special Session B, 2005 at 3. From that point forward, the House could have introduced and considered any bill relative to the legislative business of lobbying regulation, not just HB 63-B. A separate introduction was not necessary.

Thereafter, when the House went on to consider the bill that became the Act, SB 6B, "the rules were waived and SB 6B was read a third time by title." *Id.*

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[2] The Florida Constitution, Article III, section 3(c)(1) provides that in a special session convened by the Governor's proclamation, "only such legislative business may be transacted as within the purview of the proclamation . . . or is introduced by consent of two-thirds of the membership of each house."

[3] The Florida Constitution, Article III, section 7 provides that a bill "must be read in each house on three separate days, unless this rule is waived by two-thirds vote."

It was not necessary to read the bill on three separate days, or even to read the title three times thereafter, because the rules were waived.

"[W]hen enrolled, signed, and filed, acts of the legislature are prima facie valid." *State v. Kaufman,* 430 So.2d 904, 905 (Fla.1983). "Courts have no substantive power to review and nullify legislative proceedings but can determine whether the legislative journals show that a statute has been duly enacted." *Id.* (citations omitted). The Journal of the House shows that two-thirds membership voted to consider lobbying regulation as a matter of legislative business during the special session. The Journal of the House also shows that the three-day reading rule for SB 6B was waived. The Act was thus passed in accordance with constitutional requirements. Defendants are entitled to judgment as a matter of law on these claims.

2. Regulation of the Practice of Law

Although the Florida Constitution, Article V, section 15, vests the Florida Supreme Court with "exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted[,]" the Florida Supreme Court has recognized that the legislature may enact a law "'that affects the legal profession just as it can with regard to other occupations and professions." *Pace v. State,* 368 So.2d 340, 345 (Fla.1979). The Act does not overstep the legislature's authority as recognized in

Pace. Any impact that the Act has on the practice of law is incidental to legitimate lobbying regulation. Defendants are entitled to judgment as a matter of law on these claims.

3. Limited Nature of Expenditure Restriction

Contrary to Plaintiffs' argument, the Act does not impose an absolute ban on all lobbying expenditures. The Act provides that "no **lobbyists** or principal shall make, directly or indirectly, and no member or employee of the of the legislature" nor "any agency official, member or employee shall knowingly accept, directly or indirectly, an expenditure." § 11.045(4)(a) and § 112.3215(6)(a), Fla. Stat. (emphasis supplied). The use of the conjunctive "and" in the Act makes clear the prohibition on expenditures applies only to expenditures that are made and accepted. The Act's plain language shows that it amounts to no more than a ban on gifts and payments to officials.

Plaintiffs cannot show that the Act's expenditure restrictions are facially unconstitutional. Accordingly, Defendants are entitled to judgment as a matter of law on these claims.

4. Vagueness and Overbreadth

A regulation is void on its face if persons "of common intelligence must necessarily guess at its meaning and differ as to its application." *Connally v. Gen. Constr. Co.,* 269 U.S. 385, 391 (1926). Terms

used in the Act are defined with reasonable clarity. The enforcement provisions in the Act, furthermore, provide adequate standards. Discretion under the act to waive a requirement or penalty is tied to a good cause standard. See §§ 11.045(3)(e)5. and 6. and §§ 112.3215(5)(e)5., Fla. Stat. "'[G]ood cause' is a reasonable and intelligible standard that does not force people of general intelligence to guess at its meaning and therefore is not 'void for vagueness.'" *McCallum v. City of Biddeford,* 551 A.2d 452, 453 (Me.1988).

"[E]ven though marginal cases could be put where doubts might arise[,]" the Act should not be struck down for vagueness. *United States v. Harriss,* 347 U.S. 612, 618 (1954). Administrative interpretation and enforcement is relevant to Plaintiffs' facial challenge of the Act. *Ward v. Rock Against Racism,* 491 U.S. 781, 795-96 (1982). Plaintiffs may obtain an advisory opinion to address specific questions about the applicability and interpretation of the Act. § 11.045(5) and § 112.3215(11), Fla. Stat. The availability of an advisory opinion weighs against a finding of vagueness. *See Comm'n on Indep. Colleges and Universities v. New York Temp. State Comm'n on Regulating of Lobbying,* 534 F.Supp. 489, 502-03 (N.D.N.Y.1982). Plaintiffs may also make as applied challenges to the Act or challenge any part of the Act that "factual development shows can never be applied constitutionally." *Florida League of Professional Lobbyists, Inc. v. Meggs,* 87 F.3d 457, 461 (11th Cir.1996). At this point, however, the Court finds no basis to strike the Act down as void for vagueness.

Plaintiffs also argue that the Act is overbroad[4] because it requires lobbying firms to report all compensation, irrespective of whether the compensation is related to lobbying activities. Plaintiffs' overbreadth argument is based on a flawed reading of the Act. The Act specifies that the compensation required to be reported is "for any lobbying activity." § 11.045(1)(b) and § 112.3214(1)(c), Fla. Stat. Lobbying firms need only report compensation earned for lobbying activity.[5] Moreover, the Act does not constitute an overbroad restriction on the Plaintiffs' exercise of freedom of speech because " '[a]pplication of the burdens of registration and disclosure of receipts and expenditures to lobbyists does not substantially interfere with the ability of the lobbyist to raise his

[4] A law will be struck down as overbroad if "it does not aim specifically at evils within the allowable area of government control . . . but sweeps within its ambit other activities that constitute an exercise of freedom of speech. . . ." *Thornhill v. Alabama,* 310 U.S. 88, 97 (1940).

[5] For legislative branch lobbying, the term "lobbying" is defined as "influencing or attempting to influence legislative action or nonaction through oral or written communication or an attempt to obtain the goodwill of a member or employee of the Legislature." § 11.045(1)(f), Fla. Stat. For executive branch lobbying, the term " '[l]obbies' means seeking on behalf of another person, to influence an agency with respect to a decision of the agency in the area of policy or procurement or an attempt to obtain the goodwill of an agency official or employee. 'Lobbbies' also means influencing or attempting to influence, on behalf of another, the Constitution Revision Commission's action or nonaction through oral or written communication or attempt to obtain the goodwill of a member or employee of the Constitution Revision Commission." § 112.3215(1)(f), Fla. Stat.

voice.'" *Meggs,* 87 F.3d at 460 (quoting *Fair Political Practices Comm'n v. Superior Ct. of Los Angeles,* 599 P.2d 46, 54 (1979)). Defendants are entitled to judgment as a matter of law on Plaintiffs' overbreadth and vagueness claims.

5. Equal Protection

Plaintiffs cannot reasonably argue "that those who for hire attempt to influence legislation or who collect or spend funds for that purpose," *Harriss,* 347 U.S. at 625, are similarly situated with other citizens who petition the government. The state has a compelling interest in imposing regulations on paid lobbyists. *Meggs,* 87 F.3d at 462 (recognizing compelling interest of state of Florida in lobbying regulation). "[T]o maintain the integrity of a basic governmental process[,]" the government is entitled to collect information about "who is being hired, who is putting up the money, and how much." *Harriss,* 347 U.S. at 625. The burdens imposed by the Act on paid lobbyists do not violate equal protection principals. Defendants are entitled to judgment as a matter of law on Plaintiffs' equal protection claims.

6. Privacy

Plaintiffs's privacy arguments under Article I, section 23 of the Florida Constitution and the right to privacy recognized in the United States Constitution fail as a matter of law because the privacy rights protect natural persons.

The compensation disclosure requirement of the Act applies only to "lobbying firms." § 11.045(3) and § 112.3214(5), Fla. Stat. A lobbying firm is a "business entity." § 11.045(1)(g) and § 112.3214(1)(g), Fla. Stat. The individual plaintiffs in this case conduct their lobbying activity through lobbying firms. Plaintiff Book is an attorney and lobbyist whose firm is a professional association. Plaintiff Spearman's lobbying firm is a corporation. Lobbying firms have no right to privacy under the Florida Constitution because the right to privacy "is a personal one, inuring solely to individuals." *Alterra Healthcare Corp. v. Estate of Francis Shelley,* 827 So.2d 936, 941 (Fla.2002). Under the United States Constitution, the right to privacy extends only to such fundamental interests as marriage, procreation, family relationships, and the rearing and education of children. *Carey v.. Population Serv. Int'l,* 431 U.S. 678, 684-85 (1977). "[C]orporations can claim no equality with individuals in the enjoyment of a right to privacy." *California Bankers Ass'n v. Shultz,* 416 U.S. 21, 65 (1974). Defendants are entitled to judgment as a matter of law on Plaintiffs' privacy claims.

7. Enforcement Provisions

Plaintiffs' arguments that the Act's enforcement provisions violates the right to a jury trial and due process and the separation of powers must fail. Courts have routinely held that no right to jury trial exists in civil administrative proceedings, including professional disciplinary proceedings akin to this

case. *See State ex rel. Kehoe v. McRae,* 38 So. 605 (Fla.1905) (disbarment); *State ex rel. De Gaetani v. Driskell,* 190 So. 461 (Fla.1939) (revoking medical license). Due process is satisfied in proceedings before boards or commissions "if the accused is informed with reasonable certainty of the nature and cause of the accusation against him, has reasonable opportunity to defend against attempted proof of such charges, and the proceedings are conducted in a fair and impartial manner." *Hadley v. Dep't. of Admin., Career Serv. Comm'n,* 411 So.2d 184, 187 (Fla.1982). The Act satisfies these requirements.

With regard to Plaintiffs' separation of powers argument, the Florida Constitution provides that "[c]ommissions established by law, or administrative officers or bodies may be granted quasi-judicial power in matters connected with the function of their offices." Art. V, § 1, Fla. Const. The Act does not unlawfully delegate "the uniquely legislative power of determining the nature and extent of [civil penalties] which may be assessed," *Florida League of Cities, Inc. v. Administration Comm'n,* 586 So.2d 405, 410 (Fla. 1st Dist.Ct.App.1991), because it constrains the final decisionmaker to choose between available sanctions if a violation is found. Furthermore, to the extent the Act fails to provide for judicial review, a declaration concerning the constitutionality of the Act as applied or some other form of review may nevertheless be available. *See Nelson v. Lindsey,* 151 So.2d 131 (Fla.1942) (recognizing authority of the court to conduct appropriate judicial review, regardless of any

specifically provided method of appeal). Accordingly, the Act does not violate Plaintiffs' rights to jury trial, due process, or principles of separation of powers. Defendants are entitled to judgment as a matter of law on these claims.

8. Declaration of Rights

As their final claim, Plaintiffs seek a declaration of their obligations under the Act in the event the Court rejects their facial challenge. Before Plaintiffs may properly seek a declaratory judgment, they should seek an advisory opinion regarding the Acts' applicability to differing factual scenarios, as provided by § 11.045(5) and § 112.3215(11), Fla. Stat. *Florida Marine Fisheries Comm'n v. Pringle,* 736 So.2d 17, 20 (Fla. 1st Dist.Ct.App.1999). Administrative interpretation and enforcement is relevant to the facial validity of the Act. *Ward v. Rock Against Racism,* 491 U.S. 781, 795-96 (1982). "[H]ypothetical borderline situations" are not an appropriate basis for ruling on the constitutionality of fact-based challenges that may arise in the future. *Meggs,* 87 F.3d at 461 (quoting *Harriss,* 347 U.S. at 626).

9. Conclusion

Plaintiffs are not entitled to relief on their various challenges to the Act. There are no disputed issues of material fact and Defendants are entitled to judgment as a matter of law. Accordingly, it is

ORDERED AND ADJUDGED:

1. Defendants' motions for summary judgment (docs. 85, 89, and 90) are granted.

2. The clerk shall enter judgment in favor of Defendants and against Plaintiffs on all claims.

DONE AND ORDERED.

United States District Court, N.D. Florida,
Tallahassee Division.

FLORIDA ASSOCIATION OF PROFESSIONAL LOBBYISTS, INC., a Florida not for profit corporation; Spearman Management Company, a Florida corporation; Guy M. Spearman III, a natural person; Ronald L. Book, P.A., a Florida professional association; and Ronald L. Book, a natural person, Plaintiffs,

v.

DIVISION OF LEGISLATIVE INFORMATION SERVICES OF THE FLORIDA OFFICE OF LEGISLATIVE SERVICES, a Florida state agency; the Florida Commission on Ethics, an independent constitutional commission; Tom Lee, as President of the Florida Senate; and Allan Bense, as Speaker of the Florida House of Representatives, Defendants.

No. 4:06CV123-SPM/WCS.

May 12, 2006.

Barry Rodney Davidson, Jamie L. Zysk, Thomas R. Julin, Hunton & Williams LLP, Miami, FL, Mark Herron, Messer Caparello & Self Pa, Tallahassee, FL, for Plaintiffs.

Michael Pearce Dodson, General Counsel-Office of Legislative Svcs., The Florida Legislature, Christopher M. Kise, Attorney General State of FL, Kenneth Wayne Sukhia, Conwell Sukhia & Kirkpatrick PA, Tallahassee, FL, for Defendants.

ORDER DENYING MOTION FOR PRELIMINARY INJUNCTION AND FOR SUMMARY JUDGMENT

MICKLE, District Judge.

"Florida, like every other state in the union, has enacted legislation regulating the conduct of those who 'lobby' the state's legislative or executive officials." *Florida League of Professional Lobbyists, Inc. v. Meggs,* 87 F.3d 457, 458 (11th Cir.1996). This case presents a challenge to a new lobbying law, chapter 2005-359, Laws of Florida, codified at sections 11.045 and 112.3215, Florida Statutes (the "Act"). The Florida Legislature passed the Act in a special session in December 2005.

The Act contains parallel provisions regulating legislative branch lobbying (§ 11.045, Fla.Stat.) and executive branch lobbying (§ 112.3215, Fla.Stat.). Two main features of the Act concern expenditure restrictions and disclosure requirements.

With regard to expenditures restrictions, the Act provides that "no lobbyists or principal shall make, directly or indirectly, and no member or employee of the of the legislature" nor "any agency official, member or employee shall knowingly accept, directly or indirectly, an expenditure." § 11.045(4)(a) and § 112.3215(6)(a), Fla. Stat. "'Expenditure' means a payment, distribution, loan, advance, reimbursement, deposit, or anything of value made by a lobbyist or principal for the purpose of lobbying." § 11.045(4)(a) and § 112.3215(6)(a), Fla. Stat.

With regard to the disclosure requirements, lobbying firms are required by the Act to file quarterly reports designating the total compensation owed to the lobbying firm from principals in "the following categories: $0, $1 to $49,999; $50,000 to $99,999; $100,000 to $249,999; $250,000 to $499,999; $500,000 to $999,999; $1 million or more." § 11.045(3)(a)1.c. and § 112.3215(5)(a)1.c., Fla. Stat. In addition, lobbying firms must also break down the total compensation amount by each principal. The reports must include the full name, business address, and telephone number of each principal, and the total compensation that each principal provided or owed to the lobbying firm in "the following categories: $0; $1 to $9,999; $10,000 to $19,900; $20,000 to $29,999; $30,000 to $39,999; $40,000 to $49,999; or $50,000 or more. If the category '$50,000 or more' is selected, the specific dollar amount of compensation must be reported, rounded up or down to the nearest $1,000." § 11.045(3)(a)2.b. and § 112.3215(5)(a)2.b., Fla. Stat.

Lobbying firms' compensation records may be subpoenaed for audit, "and such subpoena may be enforced in circuit court." § 11.045(2)(e) and § 112.3215(5)(g), Fla. Stat. A Legislative Auditing Committee, composed of five members of the Senate and five members of the House, are required to oversee an annual random audit, to be conducted by an independent audit contractor, of three percent of all legislative branch lobbying firms and a random sample of three percent of all executive branch lobbying firms. § 11.040(6), Fla. Stat. "All audit

reports of legislative lobbying firms . . . [must be] delivered to the President of the Senate and Speaker of the House of Representatives for their respective review and handling." § 11.040(6)(i), Fla. Stat. "All audit reports of executive branch lobbyists . . . [must be] delivered by an auditor to the Commission on Ethics." § 11.040(6)(i), Fla. Stat.

For legislative lobbying, every sworn complaint or audit indicating a possible violation, other than a late filed report, is subject to investigation by designated committees for each house. § 11.045(7), Fla. Stat. A committee's recommendation for penalty is reported to the President of the Senate or Speaker of the House and submitted to the majority of the appropriate house for a final determination. § 11.045(7), Fla. Stat. Authorized penalties include "a fine of not more than $5,000, reprimand, censure, probation, or prohibition of lobbying for a period of time not to exceed 24 months." § 11.045(7), Fla. Stat.

For executive lobbying, every sworn complaint or audit indicating a possible violation, other than a late filed report, is subject to investigation by the Commission on Ethics. §§ 112.3215(8)(a) and (c), Fla. Stat. If the Commission on Ethics finds probable cause that a violation occurred, it submits a report to the Governor and Cabinet for a determination and imposition of a penalty. §§ 112.3215(9) and (10), Fla. Stat. Authorized penalties include reprimand, censure, or a prohibition on lobbying all agencies for a period not to exceed 2 years. § 112.3215(9), Fla. Stat. "If the violator is a lobbying firm, the Governor and Cabinet

may also assess a fine of not more than $5,000." § 112.3215(10), Fla. Stat.

Plaintiffs are a lobbying organization, lobbying firms, and individuals who engage in lobbying activities. As their first argument, Plaintiffs contend that the Act was not validly enacted because it was not read three times after it was introduced by the House at the special session. Next Plaintiffs contend that the Act usurps the constitutional authority of the Florida Supreme Court to regulate the practice of law. Plaintiffs then allege that expenditure restrictions, disclosure requirements, and enforcement provisions are unconstitutional on a multitude of grounds, including free speech and petition, due process, equal protection, privacy, and separation of powers. They seek a preliminary injunction to enjoin enforcement of the Act. They also seek entry of final summary judgment in their favor.

I. Plaintiffs' Burden

Plaintiffs have the burden to demonstrate that they are entitled to a preliminary injunction by showing (1) a substantial likelihood of success on the merits, (2) irreparable injury if the injunction were not granted, (3) that the threatened injury outweighs any harm an injunction may cause the defendant, and (4) that granting the injunction will not be adverse to the public interest. *Johnson & Johnson Vision Care, Inc. v. 1-800 Contacts, Inc.,* 299 F.3d 1242, 1246-47 (11th Cir.2002). The burden on

summary judgment is even higher. Plaintiffs must demonstrate that "as a matter of law" final judgment in the case should be entered in their favor. Fed.R.Civ.P. 56(c).

II. No Substantial Likelihood of Success on the Merits

A. Valid enactment

Plaintiffs contend that the Act was not validly enacted because it was not read three times after it was introduced by the House at the special session. Their argument implicates two constitutional provisions. First, Article III, section 3(c)(1) provides that in a special session convened by the Governor's proclamation, "only such legislative business may be transacted as within the purview of the proclamation . . . or is introduced by consent of two-thirds of the membership of each house." Art. III, § 3(c)(1), Fla. Const. Second, to be validly enacted, Article III, section 7 provides that a bill "must be read in each house on three separate days, unless this rule is waived by two-thirds vote."

A review of the legislative journal[1] shows compliance with both of the constitutional requirements.

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[1] "[W]hen enrolled, signed, and filed, acts of the legislature are prima facie valid." *State v. Kaufman,* 430 So.2d 904, 905 (Fla.1983). "Courts have no substantive power to review and nullify legislative proceedings but can determine whether the legislative journals show that a statute has been duly enacted." *Id.* (citations omitted).

The House of Representatives, on the opening day of the special session, introduced by two-thirds vote the legislative business of lobbying regulation by introducing HB 63-B, an "act relating to lobbying," dealing expressly with compensation reporting and expenditure limitations, and "any companion measures that may be passed by the Senate." Journal of the House, Special Session B, 2005 at 3. From that point forward, the House could have introduced and considered any bill relative to the legislative business of lobbying regulation, not just HB 63-B.

When the House went on to consider the bill that became the Act, SB 6-B, the House was not required to again introduce the legislative business of lobbying by two-thirds vote. They did so anyway. Journal of the House, Special Session B, 2005, at 48. After the vote to introduce SB 6-B, "the rules were waived and SB 6B was read a third time by title." *Id.* Article III, section 7, requires that a bill "be read in each house on three separate days, *unless this rule is waived by two-thirds vote.*" (emphasis supplied). Because the rule was waived it was not necessary to read the bill on three separate days.

Based on the foregoing, it appears that the House validly enacted SB 6-B. Plaintiffs have not demonstrated a substantial likelihood of success on this ground; nor have they shown that they are entitled to judgment as a matter of law.

B. No regulation of the practice of law

Plaintiffs contend that for lawyers who are lobbyists, lobbying takes the form of practicing law. Lawyer lobbyists provide legal analysis of legislation to their clients, draft legislation, determine the procedures to pass legislation, and appear before legislative committees and executive agencies to analyze the legislation. Plaintiffs argue that by imposing compensation disclosure requirements upon lawyer lobbyists, the Act regulates the practice of law, in violation of the exclusive constitutional authority of the Florida Supreme Court to regulate the practice of law.

The Florida Constitution, Article V, section 15, vests the Florida Supreme Court with "exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted." The Florida Supreme Court has rejected the argument that its exclusive jurisdiction precludes the legislative branch from enacting laws "to punish conduct deemed harmful to the public welfare if the conduct also falls within the purview of [the] Court's authority to discipline lawyers for violating the Code of Professional Responsibility in the course of their practice of law." *Pace v. State,* 368 So.2d 340, 345 (Fla.1979). The Court recognized the legislature's authority to enact a law "'that affects the legal profession just as it can with regard to other occupations and professions.'" *Id.*

Although the Act, by imposing obligations on lawyer lobbyists, may have an impact on the practice of law, it does not appear that the legislature overstepped its authority as recognized in *Pace*. Plaintiffs have failed to demonstrate a substantial likelihood of success on the merits on this issue; nor have they shown that they are entitled to judgment as a matter of law.

C. Expenditure restriction[2]

Plaintiffs contend that the Act, by imposing an absolute ban on direct and indirect expenditures for lobbying, violates their rights to freedom of speech and association, and to petition the government for redress. Plaintiffs' arguments rest, however, on an unreasonable construction of the Act.

The Act provides that "no lobbyists or principal shall make, directly or indirectly, *and* no member or employee of the of the legislature" nor "any agency official, member or employee shall knowingly accept,

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[2] Plaintiffs argued in count four of their complaint that to the extent the expenditure restriction prohibits them from making campaign contributions to political candidates, the Act is unconstitutional. The Florida Legislature has recently passed SB 2000, which amends the definition of expenditure to exclude contributions. Therefore, Plaintiffs' argument as to this issue will likely become moot. Even if not moot, Plaintiffs do not need an injunction as to this provision to avoid irreparable injury. In making this determination, the Court has considered Plaintiffs' response (doc. 78), which the Court grants leave to file.

directly or indirectly, an expenditure." § 11.045(4)(a) and § 112.3215(6)(a), Fla. Stat. (emphasis supplied). The use of the conjunctive "and" in the Act makes clear the prohibition on expenditures applies only to expenditures that are made and accepted. The Act's plain language shows that it amounts to no more than a ban on gifts and payments to officials.

Plaintiffs explain that they "do not challenge the authority of the Legislature to impose a prohibition on lobbyists' buying food and beverage for legislators, executive branch members, or giving other gifts or things of value to such persons to influence their use of government authority." Although Plaintiffs contend that the expenditure prohibitions of the Act go far beyond what they agree would be appropriate, their position is not supported by the plain language of the Act. A statute written in the conjunctive must be construed as it is plainly written unless doing so yields absurd results or is contrary to legislative intent. *Florida Birth-Related Neurological Injury Compensation Ass'n v. Florida Div. Of Admin. Hearings,* 686 So.2d 1349, 1356 (Fla.1997).

Based on the foregoing, Plaintiffs have not demonstrated a substantial likelihood of success on their constitutional arguments regarding the expenditure restriction; nor have they demonstrated that they are entitled to judgment as a matter of law.

D. Disclosure requirements

Plaintiffs argue that the disclosure requirements are vague and standardless, thus unlawfully burdening their rights to free speech and association and to petition the government for redress. Plaintiffs further argue that the disclosure requirements violate their rights to equal protection and privacy.

1. the Act is not vague or standardless

A regulation is void on its face if persons "of common intelligence must necessarily guess at its meaning and differ as to its application." *Connally v. Gen. Constr. Co.,* 269 U.S. 385, 391, 46 S.Ct. 126, 70 L.Ed. 322 (1926). Plaintiffs cannot reasonably argue that they must guess at the meaning of the Act and their obligations to make disclosures.

Terms used in the Act are defined with reasonable clarity. Furthermore, Plaintiffs may obtain an advisory opinion to address specific questions about the applicability and interpretation of the Act. § 11.045(5) and § 112.3215(11), Fla. Stat. The availability of an advisory opinion weighs against a finding of vagueness. *See Comm'n on Indep. Colleges and Universities v. New York Temp. State Comm'n on Regulation of Lobbying,* 534 F.Supp. 489, 502-03 (N.D.N.Y.1982).

The Act, furthermore, provides sufficient standards to prevent arbitrary enforcement. Discretion under the act to waive a requirement or penalty is

tied to a good cause standard. See §§ 11.045(3)(e)5. and 6. and §§ 112.3215(5)(e)5., Fla. Stat. "'[G]ood cause' is a reasonable and intelligible standard that does not force people of general intelligence to guess at its meaning and therefore is not 'void for vagueness.'" *McCallum v. City of Biddeford,* 551 A.2d 452, 453 (Me.1988).

Plaintiffs also argue that the Act is overbroad because it requires lobbying firms to report all compensation, irrespective of whether the compensation is related to lobbying activities. A law will be struck down for overbreadth when "it does not aim specifically at evils within the allowable area of government control . . . but sweeps within its ambit other activities that constitute an exercise of freedom of speech. . . ." *Thornhill v. Alabama,* 310 U.S. 88, 97, 60 S.Ct. 736, 84 L.Ed. 1093 (1940).

Plaintiffs' overbreadth argument is based on a flawed reading of the Act. The Act specifies that the compensation required to be reported is "for any lobbying activity." § 11.045(1)(b) and § 112.3214(1)(c), Fla. Stat. Lobbying firms need only report compensation earned for lobbying activity.[3] Moreover,

[3] For legislative branch lobbying, the term "lobbying" is defined as "influencing or attempting to influence legislative action or nonaction through oral or written communication or an attempt to obtain the goodwill of a member or employee of the Legislature." § 11.045(1)(f), Fla. Stat. For executive branch lobbying, the term "'[l]obbies' means seeking on behalf of another person, to influence an agency with respect to a decision of the agency in the area of policy or procurement or an attempt

(Continued on following page)

"[a]pplication of the burdens of registration and disclosure of receipts and expenditures to lobbyists does not substantially interfere with the ability of the lobbyist to raise his voice." *Meggs,* 87 F.3d at 460 (quoting *Fair Political Practices Comm'n v. Superior Ct. of Los Angeles,* 25 Cal.3d 33, 157 Cal.Rptr. 855, 599 P.2d 46, 54 (1979)).

Plaintiffs have not demonstrated a substantial likelihood of success on these issues; nor have they shown that they are entitled to judgment as a matter of law.

2. equal protection

Plaintiffs argue that the Act imposes special unjustifiable burdens targeting lobbyists, in violation of the government's duty to avoid favoring some speakers over others. Plaintiffs apparently argue that lobbyists are similarly situated to private citizens, disregarding the fact that unlike private citizens, lobbyists are paid to present a point of view. Often the services of lobbyists are deemed valuable because of the influence lobbyists have developed with public officials to shape the exercise of duties that should be exercised in the public interest. Plaintiffs cannot

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to obtain the goodwill of an agency official or employee. 'Lobbbies' also means influencing or attempting to influence, on behalf of another, the Constitution Revision Commission's action or nonaction through oral or written communication or attempt to obtain the goodwill of a member or employee of the Constitution Revision Commission." § 112.3215(1)(f), Fla. Stat.

reasonably argue "that those who for hire attempt to influence legislation or who collect or spend funds for that purpose," *United States v. Harriss,* 347 U.S. 612, 625, 74 S.Ct. 808, 98 L.Ed. 989 (1954), are similarly situated with other citizens who petition the government.

The state has a compelling interest in imposing regulations on paid lobbyists which are not imposed on other citizens. *See Meggs,* 87 F.3d at 462 (recognizing compelling interest of state of Florida in lobbying regulation). Plaintiffs have not demonstrated a substantial likelihood of success on their equal protection issue; nor have they shown that they are entitled to judgment as a matter of law.

3. privacy

Plaintiffs contend that the disclosure of information relating to lobbyists' compensation under the Act violates the right to privacy under Article I, section 23 of the Florida Constitution and the right to privacy recognized in the United States Constitution. Plaintiffs' argument is unavailing because privacy rights protect natural persons.

The compensation disclosure requirement of the Act applies only to "lobbying firms." § 11.045(3) and § 112.3214(5), Fla. Stat. A lobbying firm is a "business entity." § 11.045(1)(g) and § 112.3214(1)(g), Fla. Stat. The individual plaintiffs in this case conduct their lobbying activity through lobbying firms. Plaintiff Book is an attorney and lobbyist whose firm is a

professional association. Plaintiff Spearman's lobbying firm is a corporation. Lobbying firms have no right to privacy under the Florida Constitution because the right to privacy "is a personal one, inuring solely to individuals." *Alterra Healthcare Corp. v. Estate of Francis Shelley,* 827 So.2d 936, 941 (Fla.2002). Under the United States Constitution, the right to privacy extends only to such fundamental interests as marriage, procreation, family relationships, and the rearing and education of children. *Carey v. Population Serv. Int'l,* 431 U.S. 678, 684-85, 97 S.Ct. 2010, 52 L.Ed.2d 675 (1977). "[C]orporations can claim no equality with individuals in the enjoyment of a right to privacy." *California Bankers Ass'n v. Shultz,* 416 U.S. 21, 65, 94 S.Ct. 1494, 39 L.Ed.2d 812 (1974).

Plaintiffs have not demonstrated a substantial likelihood of success on their privacy issues; nor have they shown that they are entitled to judgment as a matter of law.

E. Enforcement provisions

Plaintiffs argue that the investigation and enforcement provisions of the Act violate the rights to a jury trial and due process. Plaintiffs also contend that the provisions of the Act relating to fact finding and adjudication violates separation of powers.

A jury trial is guaranteed "in those cases in which the right was enjoyed at the time this state's first constitution became effective in 1845." *Dep't of*

Revenue v. Printing House, 644 So.2d 498, 500 (Fla.1994). Courts have routinely held that no right to jury trial exists in civil administrative proceedings, including professional disciplinary proceedings akin to this case. *See State ex rel. Kehoe v. McRae,* 49 Fla. 389, 38 So. 605 (1905) (disbarment); *State ex rel. De Gaetani v. Driskell,* 139 Fla. 49, 190 So. 461 (1939) (revoking medical license).

In certain proceedings, such as those before boards or commissions, "it is sufficient if the accused is informed with reasonable certainty of the nature and cause of the accusation against him, has reasonable opportunity to defend against attempted proof of such charges, and the proceedings are conducted in a fair and impartial manner." *Hadley v. Dep't. of Admin.,* 411 So.2d 184, 187 (1982). Indeed, the Florida Constitution provides that "[c]ommissions established by law, or administrative officers or bodies may be granted quasi-judicial power in matters connected with the function of their offices." Art. V, § 1, Fla. Const.

Contrary to Plaintiffs' argument the Act does not necessarily allow the final decisionmaker to determine whether or not to impose a sanction at all, but rather constrains the final decisionmaker to choose between available sanctions if a violation is found. The Act, therefore, does not unlawfully delegate "the uniquely legislative power of determining the nature and extent of [civil penalties] which may be assessed." *Florida League of Cities, Inc. v. Administration Comm'n,* 586 So.2d 397, 410 (Fla.App. 1st Dist.1991).

Furthermore, to the extent the Act fails to provide for judicial review, a declaration concerning the constitutionality of the Act as applied or some other form of review may nevertheless be available. *See Nelson v. Lindsey,* 151 Fla. 596, 10 So.2d 131 (1942) (recognizing authority of the court to conduct appropriate judicial review, regardless of any specifically provided method of appeal).

F. Declaration of rights

As their final claim, Plaintiffs seek a declaration of their obligations under the law in the event the Court finds that the law is constitutional. Before Plaintiffs may properly seek a declaratory judgment, they should seek an advisory opinion regarding the Acts' applicability to differing factual scenarios, as provided by § 11.045(5) and § 112.3215(11), Fla. Stat. *Florida Marine Fisheries Comm'n v. Pringle,* 736 So.2d 17, 20 (Fla.App. 1st Dist.1999).

III. CONCLUSION

Plaintiffs have failed to meet their burden to obtain a preliminary injunction and summary judgment. Many of Plaintiffs' positions are contrary to the plain language of the Act. Plaintiffs, furthermore, have not sufficiently demonstrated that the Act is unconstitutional on its face. Accordingly, it is

ORDERED AND ADJUDGED that Plaintiffs' Motion for Preliminary Injunction and for Final Summary Judgment (doc. 15) is denied.

DONE AND ORDERED.

The First Amendment to the Constitution of the United States provides:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

11.045 Lobbying before the Legislature; registration and reporting; exemptions; penalties. –

(1) As used in this section, unless the context otherwise requires:

(a) "Committee" means the committee of each house charged by the presiding officer with responsibility for ethical conduct of lobbyists.

(b) "Compensation" means a payment, distribution, loan, advance, reimbursement, deposit, salary, fee, retainer, or anything of value provided or owed to a lobbying firm, directly or indirectly, by a principal for any lobbying activity.

(c) "Division" means the Division of Legislative Information Services within the Office of Legislative Services.

(d) "Expenditure" means a payment, distribution, loan, advance, reimbursement, deposit, or anything of value made by a lobbyist or principal for the purpose of lobbying. The term "expenditure" does not include contributions or expenditures reported pursuant to chapter 106 or federal election law, campaign-related personal services provided without compensation by individuals volunteering their time, any other contribution or expenditure made by or to a political party, or any other contribution or expenditure made by an organization that is exempt from taxation under 26 U.S.C. s. 527 or s. 501(c)(4).

(e) "Legislative action" means introduction, sponsorship, testimony, debate, voting, or any other

official action on any measure, resolution, amendment, nomination, appointment, or report of, or any matter which may be the subject of action by, either house of the Legislature or any committee thereof.

(f) "Lobbying" means influencing or attempting to influence legislative action or nonaction through oral or written communication or an attempt to obtain the goodwill of a member or employee of the Legislature.

(g) "Lobbying firm" means any business entity, including an individual contract lobbyist, that receives or becomes entitled to receive any compensation for the purpose of lobbying, where any partner, owner, officer, or employee of the business entity is a lobbyist.

(h) "Lobbyist" means a person who is employed and receives payment, or who contracts for economic consideration, for the purpose of lobbying, or a person who is principally employed for governmental affairs by another person or governmental entity to lobby on behalf of that other person or governmental entity.

(i) "Principal" means the person, firm, corporation, or other entity which has employed or retained a lobbyist.

(2) Each house of the Legislature shall provide by rule, or may provide by a joint rule adopted by both houses, for the registration of lobbyists who lobby the Legislature. The rule may provide for the payment of a registration fee. The rule may provide

for exemptions from registration or registration fees. The rule shall provide that:

(a) Registration is required for each principal represented.

(b) Registration shall include a statement signed by the principal or principal's representative that the registrant is authorized to represent the principal. The principal shall also identify and designate its main business on the statement authorizing that lobbyist pursuant to a classification system approved by the Office of Legislative Services.

(c) A registrant shall promptly send a written statement to the division canceling the registration for a principal upon termination of the lobbyist's representation of that principal. Notwithstanding this requirement, the division may remove the name of a registrant from the list of registered lobbyists if the principal notifies the office that a person is no longer authorized to represent that principal.

(d) Every registrant shall be required to state the extent of any direct business association or partnership with any current member of the Legislature.

(e) Each lobbying firm and each principal shall preserve for a period of 4 years all accounts, bills, receipts, computer records, books, papers, and other documents and records necessary to substantiate compensation. Any documents and records retained pursuant to this section may be subpoenaed for audit by legislative subpoena of either house of the

Legislature, and the subpoena may be enforced in circuit court.

(f) All registrations shall be open to the public.

(g) Any person who is exempt from registration under the rule shall not be considered a lobbyist for any purpose.

(3) Each house of the Legislature shall provide by rule the following reporting requirements:

(a)1. Each lobbying firm shall file a compensation report with the division for each calendar quarter during any portion of which one or more of the firm's lobbyists were registered to represent a principal. The report shall include the:

a. Full name, business address, and telephone number of the lobbying firm;

b. Name of each of the firm's lobbyists; and

c. Total compensation provided or owed to the lobbying firm from all principals for the reporting period, reported in one of the following categories: $0; $1 to $49,999; $50,000 to $99,999; $100,000 to $249,999; $250,000 to $499,999; $500,000 to $999,999; $1 million or more.

2. For each principal represented by one or more of the firm's lobbyists, the lobbying firm's compensation report shall also include the:

a. Full name, business address, and telephone number of the principal; and

b. Total compensation provided or owed to the lobbying firm for the reporting period, reported in one of the following categories: $0; $1 to $9,999; $10,000 to $19,999; $20,000 to $29,999; $30,000 to $39,999; $40,000 to $49,999; or $50,000 or more. If the category "$50,000 or more" is selected, the specific dollar amount of compensation must be reported, rounded up or down to the nearest $1,000.

3. If the lobbying firm subcontracts work from another lobbying firm and not from the original principal:

a. The lobbying firm providing the work to be subcontracted shall be treated as the reporting lobbying firm's principal for reporting purposes under this paragraph; and

b. The reporting lobbying firm shall, for each lobbying firm identified under subparagraph 2., identify the name and address of the principal originating the lobbying work.

4. The senior partner, officer, or owner of the lobbying firm shall certify to the veracity and completeness of the information submitted pursuant to this paragraph.

(b) For each principal represented by more than one lobbying firm, the division shall aggregate the reporting-period and calendar-year compensation reported as provided or owed by the principal.

(c) The reporting statements shall be filed no later than 45 days after the end of each reporting

period. The four reporting periods are from January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31, respectively. The statements shall be rendered in the identical form provided by the respective houses and shall be open to public inspection. Reporting statements must be filed by electronic means as provided in s. 11.0455.

(d) Each house of the Legislature shall provide by rule, or both houses may provide by joint rule, a procedure by which a lobbying firm that fails to timely file a report shall be notified and assessed fines. The rule shall provide for the following:

1. Upon determining that the report is late, the person designated to review the timeliness of reports shall immediately notify the lobbying firm as to the failure to timely file the report and that a fine is being assessed for each late day. The fine shall be $50 per day per report for each late day, not to exceed $5,000 per report.

2. Upon receipt of the report, the person designated to review the timeliness of reports shall determine the amount of the fine due based upon the earliest of the following:

a. When a report is actually received by the lobbyist registration and reporting office.

b. When the electronic receipt issued pursuant to s. 11.0455 is dated.

3. Such fine shall be paid within 30 days after the notice of payment due is transmitted by the Lobbyist Registration Office, unless appeal is made to the division. The moneys shall be deposited into the Legislative Lobbyist Registration Trust Fund.

4. A fine shall not be assessed against a lobbying firm the first time any reports for which the lobbying firm is responsible are not timely filed. However, to receive the one-time fine waiver, all reports for which the lobbying firm is responsible must be filed within 30 days after notice that any reports have not been timely filed is transmitted by the Lobbyist Registration Office. A fine shall be assessed for any subsequent late-filed reports.

5. Any lobbying firm may appeal or dispute a fine, based upon unusual circumstances surrounding the failure to file on the designated due date, and may request and shall be entitled to a hearing before the General Counsel of the Office of Legislative Services, who shall recommend to the President of the Senate and the Speaker of the House of Representatives, or their respective designees, that the fine be waived in whole or in part for good cause shown. The President of the Senate and the Speaker of the House of Representatives, or their respective designees, may concur in the recommendation and waive the fine in whole or in part. Any such request shall be made within 30 days after the notice of payment due is transmitted by the Lobbyist Registration Office. In such case, the lobbying firm shall, within the 30-day period, notify the person designated to review the

timeliness of reports in writing of his or her intention to request a hearing.

6. A lobbying firm may request that the filing of a report be waived upon good cause shown, based on unusual circumstances. The request must be filed with the General Counsel of the Office of Legislative Services, who shall make a recommendation concerning the waiver request to the President of the Senate and the Speaker of the House of Representatives. The President of the Senate and the Speaker of the House of Representatives may grant or deny the request.

7. All lobbyist registrations for lobbyists who are partners, owners, officers, or employees of a lobbying firm that fails to timely pay a fine are automatically suspended until the fine is paid or waived, and the division shall promptly notify all affected principals of any suspension or reinstatement.

8. The person designated to review the timeliness of reports shall notify the director of the division of the failure of a lobbying firm to file a report after notice or of the failure of a lobbying firm to pay the fine imposed.

(4)(a) Notwithstanding s. 112.3148, s. 112.3149, or any other provision of law to the contrary, no lobbyist or principal shall make, directly or indirectly, and no member or employee of the Legislature shall knowingly accept, directly or indirectly, any expenditure, except floral arrangements or other celebratory

items given to legislators and displayed in chambers the opening day of a regular session.

(b) No person shall provide compensation for lobbying to any individual or business entity that is not a lobbying firm.

(5) Each house of the Legislature shall provide by rule a procedure by which a person, when in doubt about the applicability and interpretation of this section in a particular context, may submit in writing the facts for an advisory opinion to the committee of either house and may appear in person before the committee. The rule shall provide a procedure by which:

(a) The committee shall render advisory opinions to any person who seeks advice as to whether the facts in a particular case would constitute a violation of this section.

(b) The committee shall make sufficient deletions to prevent disclosing the identity of persons in the decisions or opinions.

(c) All advisory opinions of the committee shall be numbered, dated, and open to public inspection.

(6) Each house of the Legislature shall provide by rule for keeping all advisory opinions of the committees relating to lobbying firms, lobbyists, and lobbying activities. The rule shall also provide that each house keep a current list of registered lobbyists along with reports required of lobbying firms under

this section, all of which shall be open for public inspection.

(7) Each house of the Legislature shall provide by rule that a committee of either house investigate any person upon receipt of a sworn complaint alleging a violation of this section, s. 112.3148, or s. 112.3149 by such person; also, the rule shall provide that a committee of either house investigate any lobbying firm upon receipt of audit information indicating a possible violation other than a late-filed report. Such proceedings shall be conducted pursuant to the rules of the respective houses. If the committee finds that there has been a violation of this section, s. 112.3148, or s. 112.3149, it shall report its findings to the President of the Senate or the Speaker of the House of Representatives, as appropriate, together with a recommended penalty, to include a fine of not more than $5,000, reprimand, censure, probation, or prohibition from lobbying for a period of time not to exceed 24 months. Upon the receipt of such report, the President of the Senate or the Speaker of the House of Representatives shall cause the committee report and recommendations to be brought before the respective house and a final determination shall be made by a majority of said house.

(8) Any person required to be registered or to provide information pursuant to this section or pursuant to rules established in conformity with this section who knowingly fails to disclose any material fact required by this section or by rules established in conformity with this section, or who knowingly

provides false information on any report required by this section or by rules established in conformity with this section, commits a noncriminal infraction, punishable by a fine not to exceed $5,000. Such penalty shall be in addition to any other penalty assessed by a house of the Legislature pursuant to subsection (7).

(9) There is hereby created the Legislative Lobbyist Registration Trust Fund, to be used for the purpose of funding any office established for the administration of the registration of lobbyists lobbying the Legislature, including the payment of salaries and other expenses, and for the purpose of paying the expenses incurred by the Legislature in providing services to lobbyists. The trust fund is not subject to the service charge to general revenue provisions of chapter 215. Fees collected pursuant to rules established in accordance with subsection (2) shall be deposited into the Legislative Lobbyist Registration Trust Fund.

* * *

11.0455 Electronic filing of compensation reports and other information. –

(1) As used in this section, the term "electronic filing system" means an Internet system for recording and reporting lobbying compensation and other required information by reporting period.

(2) Each lobbying firm that is required to file reports with the Division of Legislative Information Services pursuant to s. 11.045 must file such reports

with the division by means of the division's electronic filing system.

(3) A report filed pursuant to this section must be completed and filed through the electronic filing system not later than 11:59 p.m. of the day designated in s. 11.045. A report not filed by 11:59 p.m. of the day designated is a late-filed report and is subject to the penalties under s. 11.045(3).

(4) Each report filed pursuant to this section is considered to meet the certification requirements of s. 11.045(3)(a)4., and as such subjects the person responsible for filing and the lobbying firm to the provisions of s. 11.045(7) and (8). Persons given a secure sign-on to the electronic filing system are responsible for protecting it from disclosure and are responsible for all filings using such credentials, unless they have notified the division that their credentials have been compromised.

(5) The electronic filing system developed by the division must:

(a) Be based on access by means of the Internet.

(b) Be accessible by anyone with Internet access using standard web-browsing software.

(c) Provide for direct entry of compensation report information as well as upload of such information from software authorized by the division.

(d) Provide a method that prevents unauthorized access to electronic filing system functions.

(6) Each house of the Legislature shall provide by rule, or may provide by a joint rule adopted by both houses, procedures to implement and administer this section, including, but not limited to:

(a) Alternate filing procedures in case the division's electronic filing system is not operable.

(b) The issuance of an electronic receipt to the person submitting the report indicating and verifying the date and time that the report was filed.

(7) Each house of the Legislature shall provide by rule that the division make all the data filed available on the Internet in an easily understood and accessible format. The Internet website shall also include, but not be limited to, the names and business addresses of lobbyists, lobbying firms, and principals, the affiliations between lobbyists and principals, and the classification system designated and identified by each principal pursuant to s. 11.045(2).

* * *

11.40 Legislative Auditing Committee. –

(1) There is created a standing joint committee of the Legislature designated the Legislative Auditing Committee, composed of 10 members as follows: 5 members of the Senate, to be appointed by the President of the Senate, and 5 members of the House of Representatives, to be appointed by the Speaker of the House of Representatives. The terms of members shall be for 2 years and shall run from the organization of one Legislature to the organization of the next Legislature. Vacancies occurring during the interim period shall be filled in the same manner as the original appointment. The members of the committee shall elect a chair and vice chair. During the 2-year term, a member of each house shall serve as chair for 1 year.

(2) The committee shall be governed by joint rules of the Senate and House of Representatives which shall remain in effect until repealed or amended by concurrent resolution.

(3) The Legislative Auditing Committee may direct the Auditor General or the Office of Program Policy Analysis and Government Accountability to conduct an audit, review, or examination of any entity or record described in s. 11.45(2) or (3).

(4) The Legislative Auditing Committee may take under investigation any matter within the scope of an audit, review, or examination either completed or then being conducted by the Auditor General or the Office of Program Policy Analysis and Government

Accountability, and, in connection with such investigation, may exercise the powers of subpoena by law vested in a standing committee of the Legislature.

(5) Following notification by the Auditor General, the Department of Financial Services, or the Division of Bond Finance of the State Board of Administration of the failure of a local governmental entity, district school board, charter school, or charter technical career center to comply with the applicable provisions within s. 11.45(5)-(7), s. 218.32(1), or s. 218.38, the Legislative Auditing Committee may schedule a hearing. If a hearing is scheduled, the committee shall determine if the entity should be subject to further state action. If the committee determines that the entity should be subject to further state action, the committee shall:

(a) In the case of a local governmental entity or district school board, direct the Department of Revenue and the Department of Financial Services to withhold any funds not pledged for bond debt service satisfaction which are payable to such entity until the entity complies with the law. The committee shall specify the date such action shall begin, and the directive must be received by the Department of Revenue and the Department of Financial Services 30 days before the date of the distribution mandated by law. The Department of Revenue and the Department of Financial Services may implement the provisions of this paragraph.

(b) In the case of a special district, notify the Department of Community Affairs that the special district has failed to comply with the law. Upon receipt of notification, the Department of Community Affairs shall proceed pursuant to the provisions specified in s. 189.421.

(c) In the case of a charter school or charter technical career center, notify the appropriate sponsoring entity, which may terminate the charter pursuant to ss. 1002.33 and 1002.34.

(6)(a) As used in this subsection, "independent contract auditor" means a state-licensed certified public accountant or firm with which a state-licensed certified public accountant is currently employed or associated who is actively engaged in the accounting profession.

(b) Audits specified in this subsection cover the quarterly compensation reports for the previous calendar year for a random sample of 3 percent of all legislative branch lobbying firms and a random sample of 3 percent of all executive branch lobbying firms calculated using as the total number of such lobbying firms those filing a compensation report for the preceding calendar year. The committee shall provide for a system of random selection of the lobbying firms to be audited.

(c) The committee shall create and maintain a list of not less than 10 independent contract auditors approved to conduct the required audits. Each lobbying firm selected for audit in the random audit

process may designate one of the independent contract auditors from the committee's approved list. Upon failure for any reason of a lobbying firm selected in the random selection process to designate an independent contract auditor from the committee's list within 30 calendar days after being notified by the committee of its selection, the committee shall assign one of the available independent contract auditors from the approved list to perform the required audit. No independent contract auditor, whether designated by the lobbying firm or by the committee, may perform the audit of a lobbying firm where the auditor and lobbying firm have ever had a direct personal relationship or any professional accounting, auditing, tax advisory, or tax preparing relationship with each other. The committee shall obtain a written, sworn certification subject to s. 837.06, both from the randomly selected lobbying firm and from the proposed independent contract auditor, that no such relationship has ever existed.

(d) Each independent contract auditor shall be engaged by and compensated solely by the state for the work performed in accomplishing an audit under this subsection.

(e) Any violations of law, deficiencies, or material misstatements discovered and noted in an audit report shall be clearly identified in the audit report and be determined under the rules of either house of the Legislature or under the joint rules, as applicable.

(f) If any lobbying firm fails to give full, frank, and prompt cooperation and access to books, records, and associated backup documents as requested in writing by the auditor, that failure shall be clearly noted by the independent contract auditor in the report of audit.

(g) The committee shall establish procedures for the selection of independent contract auditors desiring to enter into audit contracts pursuant to this subsection. Such procedures shall include, but not be limited to, a rating system that takes into account pertinent information, including the independent contract auditor's fee proposals for participating in the process. All contracts under this subsection between an independent contract auditor and the Speaker of the House of Representatives and the President of the Senate shall be terminable by either party at any time upon written notice to the other, and such contracts may contain such other terms and conditions as the Speaker of the House of Representatives and the President of the Senate deem appropriate under the circumstances.

(h) The committee shall adopt guidelines that govern random audits and field investigations conducted pursuant to this subsection. The guidelines shall ensure that similarly situated compensation reports are audited in a uniform manner. The guidelines shall also be formulated to encourage compliance and detect violations of the legislative and executive lobbying compensation reporting requirements in ss. 11.045 and 112.3215 and to ensure that

each audit is conducted with maximum efficiency in a cost-effective manner. In adopting the guidelines, the committee shall consider relevant guidelines and standards of the American Institute of Certified Public Accountants to the extent that such guidelines and standards are applicable and consistent with the purposes set forth in this subsection.

(i) All audit reports of legislative lobbying firms shall, upon completion by an independent contract auditor, be delivered to the President of the Senate and the Speaker of the House of Representatives for their respective review and handling. All audit reports of executive branch lobbyists, upon completion by an independent contract auditor, shall be delivered by the auditor to the Commission on Ethics.

* * *

112.3215 Lobbying before the executive branch or the Constitution Revision Commission; registration and reporting; investigation by commission. –

(1) For the purposes of this section:

(a) "Agency" means the Governor, Governor and Cabinet, or any department, division, bureau, board, commission, or authority of the executive branch. In addition, "agency" shall mean the Constitution Revision Commission as provided by s. 2, Art. XI of the State Constitution.

(b) "Agency official" or "employee" means any individual who is required by law to file full or limited public disclosure of his or her financial interests.

(c) "Compensation" means a payment, distribution, loan, advance, reimbursement, deposit, salary, fee, retainer, or anything of value provided or owed to a lobbying firm, directly or indirectly, by a principal for any lobbying activity.

(d) "Expenditure" means a payment, distribution, loan, advance, reimbursement, deposit, or anything of value made by a lobbyist or principal for the purpose of lobbying. The term "expenditure" does not include contributions or expenditures reported pursuant to chapter 106 or federal election law, campaign-related personal services provided without compensation by individuals volunteering their time, any other contribution or expenditure made by or to a

political party, or any other contribution or expenditure made by an organization that is exempt from taxation under 26 U.S.C. s. 527 or s. 501(c)(4).

(e) "Fund" means the Executive Branch Lobby Registration Trust Fund.

(f) "Lobbies" means seeking, on behalf of another person, to influence an agency with respect to a decision of the agency in the area of policy or procurement or an attempt to obtain the goodwill of an agency official or employee. "Lobbies" also means influencing or attempting to influence, on behalf of another, the Constitution Revision Commission's action or nonaction through oral or written communication or an attempt to obtain the goodwill of a member or employee of the Constitution Revision Commission.

(g) "Lobbying firm" means a business entity, including an individual contract lobbyist, that receives or becomes entitled to receive any compensation for the purpose of lobbying, where any partner, owner, officer, or employee of the business entity is a lobbyist.

(h) "Lobbyist" means a person who is employed and receives payment, or who contracts for economic consideration, for the purpose of lobbying, or a person who is principally employed for governmental affairs by another person or governmental entity to lobby on behalf of that other person or governmental entity. "Lobbyist" does not include a person who is:

1. An attorney, or any person, who represents a client in a judicial proceeding or in a formal administrative proceeding conducted pursuant to chapter 120 or any other formal hearing before an agency, board, commission, or authority of this state.

2. An employee of an agency or of a legislative or judicial branch entity acting in the normal course of his or her duties.

3. A confidential informant who is providing, or wishes to provide, confidential information to be used for law enforcement purposes.

4. A person who lobbies to procure a contract pursuant to chapter 287 which contract is less than the threshold for CATEGORY ONE as provided in s. 287.017(1)(a).

(i) "Principal" means the person, firm, corporation, or other entity which has employed or retained a lobbyist.

(2) The Executive Branch Lobby Registration Trust Fund is hereby created within the commission to be used for the purpose of funding any office established to administer the registration of lobbyists lobbying an agency, including the payment of salaries and other expenses. The trust fund is not subject to the service charge to General Revenue provisions of chapter 215. All annual registration fees collected pursuant to this section shall be deposited into such fund.

(3) A person may not lobby an agency until such person has registered as a lobbyist with the commission. Such registration shall be due upon initially being retained to lobby and is renewable on a calendar year basis thereafter. Upon registration the person shall provide a statement signed by the principal or principal's representative that the registrant is authorized to represent the principal. The principal shall also identify and designate its main business on the statement authorizing that lobbyist pursuant to a classification system approved by the commission. The registration shall require each lobbyist to disclose, under oath, the following information:

(a) Name and business address;

(b) The name and business address of each principal represented;

(c) His or her area of interest;

(d) The agencies before which he or she will appear; and

(e) The existence of any direct or indirect business association, partnership, or financial relationship with any employee of an agency with which he or she lobbies, or intends to lobby, as disclosed in the registration.

(4) The annual lobbyist registration fee shall be set by the commission by rule, not to exceed $40 for each principal represented.

(5)(a) 1. Each lobbying firm shall file a compensation report with the commission for each calendar quarter during any portion of which one or more of the firm's lobbyists were registered to represent a principal. The report shall include the:

a. Full name, business address, and telephone number of the lobbying firm;

b. Name of each of the firm's lobbyists; and

c. Total compensation provided or owed to the lobbying firm from all principals for the reporting period, reported in one of the following categories: $0; $1 to $49,999; $50,000 to $99,999; $100,000 to $249,999; $250,000 to $499,999; $500,000 to $999,999; $1 million or more.

2. For each principal represented by one or more of the firm's lobbyists, the lobbying firm's compensation report shall also include the:

a. Full name, business address, and telephone number of the principal; and

b. Total compensation provided or owed to the lobbying firm for the reporting period, reported in one of the following categories: $0; $1 to $9,999; $10,000 to $19,999; $20,000 to $29,999; $30,000 to $39,999; $40,000 to $49,999; or $50,000 or more. If the category "$50,000 or more" is selected, the specific dollar amount of compensation must be reported, rounded up or down to the nearest $1,000.

3. If the lobbying firm subcontracts work from another lobbying firm and not from the original principal:

a. The lobbying firm providing the work to be subcontracted shall be treated as the reporting lobbying firm's principal for reporting purposes under this paragraph; and

b. The reporting lobbying firm shall, for each lobbying firm identified under subparagraph 2., identify the name and address of the principal originating the lobbying work.

4. The senior partner, officer, or owner of the lobbying firm shall certify to the veracity and completeness of the information submitted pursuant to this paragraph.

(b) For each principal represented by more than one lobbying firm, the commission shall aggregate the reporting-period and calendar-year compensation reported as provided or owed by the principal.

(c) The reporting statements shall be filed no later than 45 days after the end of each reporting period. The four reporting periods are from January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31, respectively. Reporting statements must be filed by electronic means as provided in s. 112.32155.

(d) The commission shall provide by rule the grounds for waiving a fine, the procedures by which a

lobbying firm that fails to timely file a report shall be notified and assessed fines, and the procedure for appealing the fines. The rule shall provide for the following:

1. Upon determining that the report is late, the person designated to review the timeliness of reports shall immediately notify the lobbying firm as to the failure to timely file the report and that a fine is being assessed for each late day. The fine shall be $50 per day per report for each late day up to a maximum of $5,000 per late report.

2. Upon receipt of the report, the person designated to review the timeliness of reports shall determine the amount of the fine due based upon the earliest of the following:

a. When a report is actually received by the lobbyist registration and reporting office.

b. When the electronic receipt issued pursuant to s. 112.32155 is dated.

3. Such fine shall be paid within 30 days after the notice of payment due is transmitted by the Lobbyist Registration Office, unless appeal is made to the commission. The moneys shall be deposited into the Executive Branch Lobby Registration Trust Fund.

4. A fine shall not be assessed against a lobbying firm the first time any reports for which the lobbying firm is responsible are not timely filed. However, to receive the one-time fine waiver, all reports for which the lobbying firm is responsible

must be filed within 30 days after the notice that any reports have not been timely filed is transmitted by the Lobbyist Registration Office. A fine shall be assessed for any subsequent late-filed reports.

5. Any lobbying firm may appeal or dispute a fine, based upon unusual circumstances surrounding the failure to file on the designated due date, and may request and shall be entitled to a hearing before the commission, which shall have the authority to waive the fine in whole or in part for good cause shown. Any such request shall be made within 30 days after the notice of payment due is transmitted by the Lobbyist Registration Office. In such case, the lobbying firm shall, within the 30-day period, notify the person designated to review the timeliness of reports in writing of his or her intention to bring the matter before the commission.

6. The person designated to review the timeliness of reports shall notify the commission of the failure of a lobbying firm to file a report after notice or of the failure of a lobbying firm to pay the fine imposed. All lobbyist registrations for lobbyists who are partners, owners, officers, or employees of a lobbying firm that fails to timely pay a fine are automatically suspended until the fine is paid or waived, and the commission shall promptly notify all affected principals of each suspension and each reinstatement.

7. Notwithstanding any provision of chapter 120, any fine imposed under this subsection that is

not waived by final order of the commission and that remains unpaid more than 60 days after the notice of payment due or more than 60 days after the commission renders a final order on the lobbying firm's appeal shall be collected by the Department of Financial Services as a claim, debt, or other obligation owed to the state, and the department may assign the collection of such fine to a collection agent as provided in s. 17.20.

(e) Each lobbying firm and each principal shall preserve for a period of 4 years all accounts, bills, receipts, computer records, books, papers, and other documents and records necessary to substantiate compensation. Any documents and records retained pursuant to this section may be subpoenaed for audit by the Legislative Auditing Committee pursuant to s. 11.40, and such subpoena may be enforced in circuit court.

(6)(a) Notwithstanding s. 112.3148, s. 112.3149, or any other provision of law to the contrary, no lobbyist or principal shall make, directly or indirectly, and no agency official, member, or employee shall knowingly accept, directly or indirectly, any expenditure.

(b) No person shall provide compensation for lobbying to any individual or business entity that is not a lobbying firm.

(7) A lobbyist shall promptly send a written statement to the commission canceling the registration for a principal upon termination of the lobbyist's

representation of that principal. Notwithstanding this requirement, the commission may remove the name of a lobbyist from the list of registered lobbyists if the principal notifies the office that a person is no longer authorized to represent that principal.

(8)(a) The commission shall investigate every sworn complaint that is filed with it alleging that a person covered by this section has failed to register, has failed to submit a compensation report, or has knowingly submitted false information in any report or registration required in this section.

(b) All proceedings, the complaint, and other records relating to the investigation are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, and any meetings held pursuant to an investigation are exempt from the provisions of s. 286.011(1) and s. 24(b), Art. I of the State Constitution either until the alleged violator requests in writing that such investigation and associated records and meetings be made public or until the commission determines, based on the investigation, whether probable cause exists to believe that a violation has occurred.

(c) The commission shall investigate any lobbying firm, agency, officer, or employee upon receipt of information from a sworn complaint or from a random audit of lobbying reports indicating a possible violation other than a late-filed report.

(d) Records relating to an audit conducted pursuant to this section or an investigation conducted

pursuant to this section or s. 112.32155 are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, and any meetings held pursuant to such an investigation or at which such an audit is discussed are exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution either until the lobbying firm requests in writing that such investigation and associated records and meetings be made public or until the commission determines there is probable cause that the audit reflects a violation of the reporting laws. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2011, unless reviewed and saved from repeal through reenactment by the Legislature.

(9) If the commission finds no probable cause to believe that a violation of this section occurred, it shall dismiss the complaint, whereupon the complaint, together with a written statement of the findings of the investigation and a summary of the facts, shall become a matter of public record, and the commission shall send a copy of the complaint, findings, and summary to the complainant and the alleged violator. If, after investigating information from a random audit of lobbying reports, the commission finds no probable cause to believe that a violation of this section occurred, a written statement of the findings of the investigation and a summary of the facts shall become a matter of public record, and the commission shall send a copy of the findings and summary to the alleged violator. If the commission

finds probable cause to believe that a violation occurred, it shall report the results of its investigation to the Governor and Cabinet and send a copy of the report to the alleged violator by certified mail. Such notification and all documents made or received in the disposition of the complaint shall then become public records. Upon request submitted to the Governor and Cabinet in writing, any person whom the commission finds probable cause to believe has violated any provision of this section shall be entitled to a public hearing. Such person shall be deemed to have waived the right to a public hearing if the request is not received within 14 days following the mailing of the probable cause notification. However, the Governor and Cabinet may on its own motion require a public hearing and may conduct such further investigation as it deems necessary.

(10) If the Governor and Cabinet finds that a violation occurred, it may reprimand the violator, censure the violator, or prohibit the violator from lobbying all agencies for a period not to exceed 2 years. If the violator is a lobbying firm, the Governor and Cabinet may also assess a fine of not more than $5,000 to be deposited in the Executive Branch Lobby Registration Trust Fund.

(11) Any person, when in doubt about the applicability and interpretation of this section to himself or herself in a particular context, may submit in writing the facts of the situation to the commission with a request for an advisory opinion to establish the standard of duty. An advisory opinion shall be

rendered by the commission and, until amended or revoked, shall be binding on the conduct of the person who sought the opinion, unless material facts were omitted or misstated in the request.

(12) Agencies shall be diligent to ascertain whether persons required to register pursuant to this section have complied. An agency may not knowingly permit a person who is not registered pursuant to this section to lobby the agency.

(13) Upon discovery of violations of this section an agency or any person may file a sworn complaint with the commission.

(14) The commission shall adopt rules to administer this section, which shall prescribe forms for registration and compensation reports, procedures for registration, and procedures that will prevent disclosure of information that is confidential as provided in this section.

* * *

112.32155 Electronic filing of compensation reports and other information. –

(1) As used in this section, the term "electronic filing system" means an Internet system for recording and reporting lobbying compensation and other required information by reporting period.

(2) Each lobbying firm who is required to file reports with the Commission on Ethics pursuant to s. 112.3215 must file such reports with the commission by means of the electronic filing system.

(3) A report filed pursuant to this section must be completed and filed through the electronic filing system not later than 11:59 p.m. of the day designated in s. 112.3215. A report not filed by 11:59 p.m. of the day designated is a late-filed report and is subject to the penalties under s. 112.3215(5).

(4) Each report filed pursuant to this section is considered to meet the certification requirements of s. 112.3215(5)(a)4. Persons given a secure sign-on to the electronic filing system are responsible for protecting it from disclosure and are responsible for all filings using such credentials, unless they have notified the commission that their credentials have been compromised.

(5) The electronic filing system must:

(a) Be based on access by means of the Internet.

(b) Be accessible by anyone with Internet access using standard web-browsing software.

(c) Provide for direct entry of compensation report information as well as upload of such information from software authorized by the commission.

(d) Provide a method that prevents unauthorized access to electronic filing system functions.

(6) The commission shall provide by rule procedures to implement and administer this section, including, but not limited to:

(a) Alternate filing procedures in case the electronic filing system is not operable.

(b) The issuance of an electronic receipt to the person submitting the report indicating and verifying the date and time that the report was filed.

(7) The commission shall make all the data filed available on the Internet in an easily understood and accessible format. The Internet website shall also include, but not be limited to, the names and business addresses of lobbyists, lobbying firms, and principals, the affiliations between lobbyists and principals, and the classification system designated and identified by each principal pursuant to s. 112.3215(3).

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

FLORIDA ASSOCIATION OF PROFESSIONAL LOBBYISTS INC, et al.

VS

DIVISION OF LEGISLATIVE INFORMATION SERVICES OF THE FLORIDA OFFICE OF LEGISLATIVE SERVICES, et al.

CASE NO. 4:06-cv-00123-SPM-WCS

JUDGMENT

This action came to trial or hearing before the Court with the Honorable Stephen P. Mickle presiding. The issues have been tried or heard and a decision has been rendered.

Judgment is entered in favor of Defendants, DIVISION OF LEGISLATIVE INFORMATION SERVICES OF THE FLORIDA OFFICE OF LEGISLATIVE SERVICES, THE FLORIDA COMMISSION ON ETHICS, TOM LEE, ALLAN BENSE, and against the Plaintiffs, FLORIDA ASSOCIATION OF PROFESSIONAL LOBBYISTS INC, SPEARMAN MANAGEMENT COMPANY, GUY M SPEARMAN, III, RONALD L BOOK PA, RONALD L BOOK, on all

claims. This case is closed. Costs are allowed as provided by law.

WILLIAM M. McCOOL,
CLERK OF COURT

December 28, 2006 — s/ Louise Trautman
DATE — Deputy Clerk: Louise Trautman