

In the Supreme Court of the United States

EVA LOCKE, PATRICIA ANNE LEVENSON,
BARBARA VANDERKOLK GARDNER, NATIONAL
FEDERATION OF INDEPENDENT BUSINESS,
Petitioners,

v.

JOHN EHRIG, E. WENDELL HALL, WARREN EMO,
J. EMORY JOHNSON, JOYCE SHORE,
AIDA BAO-GARCIGA, AND WANDA GOZDZ,
Respondents.

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

**BRIEF OF THE INTERIOR DESIGN PROTECTION COUNCIL,
ALABAMA DECORATORS, ARTISTS, AND DESIGNERS, INC.,
ASSOCIATION OF DESIGN EDUCATION, DECORATING DEN
SYSTEMS, INC., DESIGNER SOCIETY OF AMERICA,
FOODSERVICE CONSULTANTS SOCIETY INTERNATIONAL –
THE AMERICAS DIVISION, FOODSERVICE EQUIPMENT
DISTRIBUTORS ASSOCIATION, INTERIOR REDESIGN
INDUSTRY SPECIALISTS, NATIONAL ASSOCIATION OF
FOOD EQUIPMENT DEALERS, INC., NORTH AMERICAN
ASSOCIATION OF FOOD EQUIPMENT MANUFACTURERS,
AND REAL ESTATE STAGING ASSOCIATION AS
AMICI CURIAE IN SUPPORT OF PETITIONERS**

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AMICI CURIAE IN SUPPORT OF PETITIONERS**

INTEREST OF *AMICI CURIAE*

Amici are eleven organizations representing a broad array of interior designers and allied professionals.¹

¹ The parties have consented to the filing of this brief, and their letters of consent have been filed with the Clerk of the Court. *Amici* state that no counsel for a party authored this brief in whole or in

Amici include some of the Nation’s leading design societies and trade associations, and collectively represent many thousands of individual designers, decorators, suppliers, and other professionals. They are committed to protecting interior designers’ right to practice their profession free from unnecessary and counterproductive government regulation.

Amici submit this brief because they are gravely concerned about the impact the Eleventh Circuit’s decision will have on the practices of their members and other design professionals. Many of those individuals perform services that could be deemed “interior design.” If allowed to stand, the Eleventh Circuit’s decision would not only threaten their livelihoods, but also harm the public by denying them a full range of choices.

Amici include the following eleven organizations:

The Interior Design Protection Council (“IDPC”) is a national, non-partisan interior design business league. IDPC has approximately 25,000 members or supporters, including interior designers, decorators, educators, students, and other professionals. IDPC strives to preserve diversity, vision, and creativity in interior design by opposing anticompetitive, unnecessary regulation.

Alabama Decorators, Artists, and Designers, Inc., is a non-profit organization representing interior designers, decorators, and artists. Its goal is to prevent the enactment of unnecessary and restrictive legislation that

part, that no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief, and that no person other than *amici*, their members, and their counsel made such a monetary contribution. *Amicus* Interior Design Protection Council (“IDPC”) discloses that two petitioners are members of IDPC and that one of petitioners’ counsel is currently a member of (and chair of) IDPC’s five-person board.

would inhibit its members' right to practice and maintain a thriving business.

The Association of Design Education was formed to promote excellence in the field of specialized design education. It offers continuing education and ongoing support to professionals. Its members include interior designers, redesigners, real estate stagers, and others.

Decorating Den Systems, Inc., is a franchisor of nearly 400 interior decorators who provide residential and commercial decorating services and related products, including draperies, hardware, fabric, furnishings, accessories, decorative shades, wallpaper, and carpet.

The Designer Society of America is a society of interior design professionals. Many of its members have been hurt by licensing laws and have come together to focus on the continuation of their careers.

Foodservice Consultants Society International – The Americas Division promotes professionalism in foodservice and hospitality consulting. It has over 700 members in North and South America. Its members offer a wide range of consulting services, including concept development, design, and marketing.

The Foodservice Equipment Distributors Association is the national trade association for food service equipment dealers. Founded in 1933, it provides a strong advocacy voice in the food service equipment industry.

Interior Redesign Industry Specialists is an international non-profit organization of professional redesigners and stagers. It seeks to establish high industry standards, promote public awareness, expand the fields of redesign and staging, and empower its members through education and business development.

The National Association of Food Equipment Dealers, Inc., is a cooperative buying organization made up of food service equipment dealers. It seeks to promote the in-

terests of its members through cooperative advertising programs, educational programs, and other means.

The North American Association of Food Equipment Manufacturers is a trade association of more than 625 food equipment and supplies manufacturers. Its biennial trade show attracts approximately 20,000 professionals.

The Real Estate Staging Association is the trade association for professional home stagers. It works to bring legitimacy and excellence to home staging in addition to protecting the rights of home stagers.

SUMMARY OF ARGUMENT

The Eleventh Circuit held that, because Florida’s interior design licensing statute regulates only “direct, personalized speech with clients,” it merely “governs ‘occupational conduct’” and “does not implicate constitutionally protected activity under the First Amendment.” Pet. App. 7. The court thus exempted the statute from First Amendment scrutiny entirely, without regard to the amount of expression it affects, the burdens it imposes, or the strength of the State’s asserted interests.

That holding has broad ramifications for professionals of all sorts. Like several other lower courts, the Eleventh Circuit extrapolated its novel and unjustified First Amendment exception for “direct, personalized” professional speech from Justice White’s concurrence in *Lowe v. SEC*, 472 U.S. 181 (1985). That concurrence has never been endorsed by this Court and conflicts with this Court’s precedents. Moreover, it undermines core First Amendment values by giving the government free rein to impose prior restraints and other burdensome regulations on expressive activity. This Court’s guidance is needed on that important legal issue.

For several reasons, this case is a particularly appropriate vehicle for addressing the issue. The interior design profession, and Florida’s attempt to license it, pow-

erfully illustrate the extent to which the Eleventh Circuit’s approach undermines First Amendment values. The whole point of interior design is to create an artistic vision that communicates a message—not just to the designer’s client but to all who experience the final product. When the government restricts interior design, it restricts artistic expression. The Eleventh Circuit allowed the State to impose severe burdens on that expression without showing the slightest government interest justifying them. Accordingly, the Court should grant review.

REASONS FOR GRANTING THE PETITION

I. INTERIOR DESIGN LICENSING REGIMES LIKE FLORIDA’S IMPOSE SEVERE AND UNJUSTIFIED BURDENS ON ARTISTIC EXPRESSION

Florida’s licensing statute restricts core artistic expression, imposes severe burdens on that expression, and serves no meaningful state interest. Those features of the statute make this a particularly good case in which to address the existence and scope of any professional speech exception to the First Amendment.

A. Interior Design Is Fundamentally Expressive Activity

The expressive nature of interior design is indisputable. As one leading text explains, “[t]he designer’s aim is to make the realities of a designed space—its form, materials, furnishings, accessories, and so on—express in an appropriate way a set of ideas that the designer wishes to communicate.” John F. Pile, *Interior Design* 49 (4th ed. 2007). “The fundamental concern of interior design is to resolve how space can be used as an expressive medium.” *Id.* at 65. Because “[a] company reveals something about itself by the interior design decisions it makes and the image its interiors portray,” “[t]he interior designer must attempt to express that image when selecting the products, colors, textures, and styles that

create the final interior design of the facilities.” Christine M. Piotrowski & Elizabeth A. Rogers, *Designing Commercial Interiors* 47-48 (2d ed. 2007).

Leading designers thus consistently emphasize their artistry, not their functional know-how. One famous designer compares himself to a still-life painter: “Interior Design has always been for me a hybrid between fine art and applied art. I think of interiors as a walk-in still life, not unlike a painter who gathers objects on a table to paint, but more precisely chosen and arranged.” John Saladino, *Interiors*, http://www.saladinostyle.com/#/section/sdg%20interiors/sdg_picture_id/13. Another is compared to a movie director: “Philippe Starck designs his hotels and restaurants in the same way a director makes a film. He develops scenarios that will lift people out of the everyday and into an imaginative and creative mental world.” Jasper Eder, *Philippe Starck: Biography*, http://www.starck.com/en/philippe_starck/biography. A third invokes both metaphors:

Trained at San Francisco’s Academy of Art College, Ms. Barry suffuses her work with a painterly touch. Her artist’s eye conjures a subtle range of hues—sage, ochre, seafoam, taupe—within a restrained color scheme. Texture, line, and pattern harmonize in pleasing visual rhythms. But cinema may be a more apt metaphor for the Los Angeles based designer’s work * * *. Akin to a set designer, Ms. Barry composes feature-length productions, overseeing every variable of the mise-en-scene from the upholstery to the water decanters to, in some cases, how the linens are folded.

Interior Design, *Barbara Barry*, http://www.interiordesign.net/hof/11244-Barbara_Barry.php. Famous designers describe themselves as artists because they are artists. What separates the truly great designers from the

mediocre is artistic vision, not a superior ability to place fixtures where they will not obstruct wheelchair access.

Artistic expression falls squarely within the First Amendment's protections. See, *e.g.*, *Abood v. Detroit Bd. of Educ.*, 431 U.S. 209, 231 (1977) (“[E]xpression about * * * artistic * * * matters” is “entitled to full First Amendment protection.”); *Miller v. California*, 413 U.S. 15, 34-35 (1973). The dangers of allowing the government to pick and choose who may express themselves are no less alarming here than in any other context. “[W]hat is good art[] varies with individuals as it does from one generation to another. * * * [A] requirement that literature or art conform to some norm prescribed by an official smacks of an ideology foreign to our system.” *Hannegan v. Esquire, Inc.*, 327 U.S. 146, 157-58 (1946).

Laws restricting the practice of interior design suppress expression, not just because they prevent designers from communicating with their clients, but because they suppress the artistic and expressive end product that designers and clients together create. When the government licenses interior design, it licenses art.

B. Professional Licensing Statutes Impose Severe Burdens on Expression

Licensing statutes like Florida's are prior restraints—laws that require citizens to obtain the government's permission before expressing themselves. “[P]rior restraints on speech and publication are the most serious and least tolerable infringement on First Amendment rights.” *Neb. Press Ass'n v. Stuart*, 427 U.S. 539, 559 (1976). They are onerous; they confer enormous discretion on state officials; and they suppress an inordinate amount of expression relative to the evils they seek to prevent. See *Freedman v. Maryland*, 380 U.S. 51, 57-58 (1965); Thomas I. Emerson, *The Doctrine of Prior Restraint*, 20 Law & Contemp. Probs. 648 (1955).

Obtaining an interior design license in Florida is particularly arduous. Would-be designers must have a total of six years of specialized post-secondary education at a board-approved design school and “diversified interior design experience.” Fla. Stat. § 481.209(2). Regulations define “design experience” to require “training and experience under the direct supervision of a registered interior designer or registered architect performing interior design services” in five different areas of practice. Fla. Admin. Code R. 61G1-22.001(1)(a)-(e).

The costs are enormous. A four-year post-secondary degree in interior design can cost more than \$80,000 for tuition and books alone (plus, of course, the lost income forgone in the meantime). See, *e.g.*, Fla. State Univ., *Cost of Attendance: Fall 2011/Spring 2012*, http://financialaid.fsu.edu/apply/cost_ungrad.html. And because few practicing designers are both financially able to hire an apprentice and willing to train their future competitors, the limited number of positions available to satisfy the training requirement are typically unpaid internships. See Interior Design Prot. Council, *The Truth About IDAF's False Statements: Interior Design Associations Foundation Talking Points 2/10/09*, at 1, http://www.idpcinfo.org/IDPC_Rebuttal_IDAF_Talking_Points.pdf. Those burdens are daunting for any aspiring young designer. But they are essentially insurmountable for individuals already formally trained in another field (such as fine art, fashion, or textile design) who might otherwise enter the profession.

Statutes like Florida's also suppress expression by professionals in related fields who are unsure whether their conduct is covered. Even as written, the statutory terms are hardly self-defining. But the district court's narrowing construction in this case has spawned utter confusion. As construed, the statute now “ordinarily” covers “fixtures” but “ordinarily” does not cover “[a] ta-

ble or other piece of stand-alone furniture.” Pet. App. 29. But there is an entire spectrum between those extremes. (What about a carpet or wall-mounted art?) And the word “ordinarily” implies that even standalone furniture might not always be exempt.

Unlicensed practice is punishable by up to a year in prison, Fla. Stat. §§ 481.223(2), 775.082(4)(a), plus fines and civil penalties, *id.* §§ 455.228(2), 775.083(1)(d). Florida has been extremely aggressive enforcing the act, pursuing about 600 cases since 2001. See *Florida Interior Design FOIA Index*, http://www.idpcinfo.org/FL_Disciplinary_Actions.pdf (listing actions). A number of those cases were brought against nationally recognized luminaries such as Los Angeles designer Kelly Wearstler and New York designer Juan Montoya. See *id.* at 11, 60. Enforcement actions have also routinely targeted persons who were not interior designers at all but merely happened to incorporate some aspect of design practice in their work—including office furniture dealers, restaurant equipment suppliers, flooring companies, wall covering companies, fabric vendors, builders, real estate developers, remodelers, accessories retailers, antique dealers, drafting services, lighting companies, kitchen designers, workrooms, carpet companies, art dealers, stagers, yacht designers, and even a florist. See, *e.g.*, *id.* at 31. The statute has thus had—and continues to have—a severe chilling effect on all sorts of expression.

C. Interior Design Licensing Statutes Serve No Countervailing Public Interest

Having exempted Florida’s statute from First Amendment scrutiny, the Eleventh Circuit did not examine the strength of the State’s interests. Those interests could not survive any meaningful standard of review.

Typically, the clamor for professional licensing comes not from aggrieved consumers but from professionals

themselves. Their arguments invoke the need to protect the public, but their motives are often the economic and status-based benefits licensure confers by restricting competition. See, *e.g.*, Morris M. Kleiner, *Licensing Occupations: Ensuring Quality or Restricting Competition?* (2006); S. David Young, *The Rule of Experts: Occupational Licensing in America* (1987).

Interior design is no exception. Professional groups routinely urge their members to support licensure. The International Interior Design Association “promote[s] licensure/registration and/or certification for interior designers” and “encourages its members to seek enforceable legislation.” Int’l Interior Design Ass’n, *Position Statement on Licensing/Registration/Certification* 1 (Mar. 2001), http://www.iida.org/resources/content/1/0/1/documents/IIDAPolicy_Licensure.pdf. The National Council for Interior Design Qualification publishes model licensing legislation for States to enact. See Nat’l Council for Interior Design Qualification, *Core Provisions of Interior Design Registration: Model Legislation* (Jan. 2010), <http://www.ncidq.org/pdf/ModelLegislation.pdf>. And the American Society of Interior Designers offers resources “to assist state interior design coalitions with legislative initiatives.” Am. Soc’y of Interior Designers, *Grassroots Motivation and Fundraising Resources*, <http://www.asid.org/legislation/resources/grassroots>.

Despite those intense efforts, “only two other states” besides Florida have adopted licensing requirements. Pet. App. 25.² One reason most States reject such stat-

² The other two States are Louisiana and Nevada. See La. Rev. Stat. § 37:3176(A)(1); Nev. Rev. Stat. § 623.360(1)(c). Alabama formerly had a licensing statute but it was struck down. See *State v. Lupo*, 984 So. 2d 395 (Ala. 2007). The District of Columbia and Puerto Rico also have licensing statutes. See D.C. Code § 47-2853.102; P.R. Laws tit. 20, § 2232.

utes is that the health and safety claims urged to support them do not withstand scrutiny. On about a dozen occasions, state agencies have investigated whether interior design regulation is necessary to protect the public (often under state “sunrise” statutes that require such review before enacting occupational regulations). Without exception, they have found no meaningful evidence of threatened or actual harm.

In 2008, for example, a Colorado agency “researched all the jurisdictions (26) that regulate Interior Designers in an attempt to identify harm to consumers.” Colo. Dep’t of Regulatory Agencies, Office of Policy, Research & Regulatory Reform, *2008 Sunrise Review: Interior Designers* 20 (Dec. 16, 2008), <http://www.dora.state.co.us/opr/archive/2008InteriorDesigners.pdf>. Examining enforcement records, it found that—practically without exception—complaints concerned mere administrative matters rather than actual threats of harm. See *id.* at 20-24. Its research “failed to identify [any] Interior Design practice that resulted in harm to consumers.” *Id.* at 26.

Washington State reached similar conclusions in 2005. Surveying data from several jurisdictions, it found that “[c]urrent evidence does not suggest the public is being harmed by non-regulation.” Wash. State Dep’t of Licensing, *Sunrise Review of Interior Designers: Report to House Committee on Commerce and Labor* 12 (Dec. 2005), <http://www.dol.wa.gov/about/reports/SunriseInteriorDesigners.pdf>. It recommended against licensure because “there was no clear evidence that unregulated practice can clearly harm or endanger the health, safety, or welfare of the citizens of the state.” *Id.* at 13.

More recently, a Texas committee examined whether that State should retain certain regulations governing interior designers. It concluded that the claims of public harm were essentially pretextual:

The state's regulation of interior designers indicates protectionist practices that favor a certain industry segment to the exclusion of others. * * * Advocates for these regulations, notably the American Society of Interior Designers (ASID), claim that such regulation is necessary for public health, safety, and welfare. * * * [T]hese claims ring hollow under close scrutiny.

House Comm. on Gov't Reform, Tex. House of Representatives, *Interim Report 2008: A Report to the House of Representatives, 81st Texas Legislature* 49-50 (Jan. 13, 2009). The report noted that "[s]ince 1907 only 52 lawsuits have been filed against interior designers in the entire United States," and that "[t]he majority of these cases involved contract disputes, and not damages that represented a menace to public health, safety, and welfare." *Id.* at 50.

Many other state studies have reached similar conclusions. See, e.g., Md. Dep't of Legislative Servs., Office of Policy Analysis, *Sunset Review: Evaluation of the State Board of Certified Interior Designers*, at ix (Oct. 2002) ("Regulation of interior designers is not needed to protect the health, safety, and welfare of the public * * * ."); Cal. Joint Legislative Sunset Review Comm., *Review and Evaluation of the Interior Design Certification Program* 11 (Feb. 1996) (finding "no evidence that the unregulated practice of interior design would endanger the health, safety or welfare of the public" (emphasis omitted)); S.C. State Reorg. Comm'n, *The Sunrise Review Process: Review of Occupational Registration and Licensing for Interior Designers* 14 (Dec. 4, 1991); Ga. Occupational Regulation Review Council, *Review of Senate Bill 305 Which Proposes To License Interior Designers in Georgia* 19 (Dec. 1989); *Report of the Virginia Board of Commerce on the Study of the Need for Certifying Interior Designers*, House Doc. No. 6, at 17 (1988).

That overwhelming consensus of expert state agencies makes this case a particularly good vehicle for addressing the legal question presented. In professions such as medicine that implicate obvious health or safety risks, the question presented may not make any difference to the outcome: Even if licensing requirements are subject to First Amendment scrutiny, they may well pass muster. Not so for interior design. Given the utter lack of empirical support for the claim that licensing interior designers is necessary to protect health and safety, the *only* standard of review such restrictions could survive is the one the Eleventh Circuit applied: no review at all. This case thus starkly presents the consequences of categorically exempting professional speech from the First Amendment.

II. THE ELEVENTH CIRCUIT’S HOLDING CONFLICTS WITH THIS COURT’S PRECEDENTS AND UNDERMINES CORE FIRST AMENDMENT VALUES

The Eleventh Circuit held that, because Florida’s interior design licensing statute regulates only “direct, personalized speech with clients,” it merely “governs ‘occupational conduct’” and “does not implicate constitutionally protected activity under the First Amendment.” Pet. App. 7. That holding conflicts with a number of this Court’s cases and underscores the need for this Court’s guidance.

A. This Court’s Precedents Foreclose the Claim That “Direct, Personalized Speech with Clients” Is Exempt from the First Amendment

The Eleventh Circuit’s holding that “direct, personalized speech with clients” is exempt from First Amendment scrutiny is impossible to square with this Court’s precedents. “[O]n several occasions, [this] Court has ruled that [professional] speech was protected by the First Amendment despite the fact that it was * * * per-

son-to-person,” because “the substance of the speech involved values that are particularly important in the First Amendment hierarchy.” Robert Kry, *The “Watchman for Truth”: Professional Licensing and the First Amendment*, 23 Seattle U. L. Rev. 885, 919 (2000). The Eleventh Circuit ignored those cases.

In *NAACP v. Button*, 371 U.S. 415 (1963), for example, the Court rejected an attempt to regulate the NAACP’s legal staff. The Court did not apply a “personalized speech” standard—a test the regulation clearly would have survived. Instead, it held the activities protected because they implicated important First Amendment values. “[T]he activities of the NAACP,” it explained, “are modes of expression and association protected by the First and Fourteenth Amendments * * *.” *Id.* at 428-29. The Court has applied *Button* to permit challenges to professional regulations in several other cases. See *Bhd. of R.R. Trainmen v. Virginia ex rel. Va. State Bar*, 377 U.S. 1 (1964); *United Mine Workers v. Ill. State Bar Ass’n*, 389 U.S. 217 (1967); *United Transp. Union v. State Bar of Mich.*, 401 U.S. 576 (1971).

This Court has similarly refused to apply a “personalized speech” standard in cases involving professional charitable fundraisers. See *Village of Schaumburg v. Citizens for a Better Env’t*, 444 U.S. 620 (1980); *Sec’y of State of Md. v. Joseph H. Munson Co.*, 467 U.S. 947 (1984); *Riley v. Nat’l Fed’n of the Blind of N.C., Inc.*, 487 U.S. 781 (1988); see also *Meyer v. Grant*, 486 U.S. 414 (1988) (professional petition circulators). Instead, the Court has invalidated the challenged restrictions because the professionals’ conduct was “characteristically intertwined with informative and perhaps persuasive speech seeking support for particular causes or for particular views.” *Schaumburg*, 444 U.S. at 632. Even though the professionals engaged in personal interactions, the Court was not “persuaded by the * * * assertion that this stat-

ute merely licenses a profession” or that “licensure was devoid of all First Amendment implication.” *Riley*, 487 U.S. at 802 n.13.

Another area where the Court has refused to apply a “personalized speech” test is professionals’ personal solicitation of clients. In *In re Primus*, 436 U.S. 412 (1978), the Court sustained a challenge to a statute prohibiting personal solicitation by a public-interest lawyer, and in *Edenfield v. Fane*, 507 U.S. 761 (1993), the Court sustained a similar challenge by an accountant. The Court rejected a challenge by a non-public-interest lawyer in *Ohralik v. Ohio State Bar Ass’n*, 436 U.S. 447 (1978), but only after carefully weighing the State’s interest against the burdens on expression. Those cases are inexplicable if, as the Eleventh Circuit held, “personalized speech” is exempt from the First Amendment. Indeed, because solicitation is commercial speech subject to *reduced* First Amendment protection, it makes no sense to give States unbounded authority to regulate professional expression but only limited authority to regulate personalized solicitation *about* that expression.

The Eleventh Circuit’s “personalized speech” theory is also hard to square with this Court’s decision in *Milavetz, Gallop & Milavetz, P.A. v. United States*, 130 S. Ct. 1324 (2010). *Milavetz* involved a statute regulating what advice bankruptcy lawyers could give their clients. Although this Court upheld the statute, it did so only after full consideration of whether the statute was so vague as to “chill protected speech.” See *id.* at 1338-1339. Finally, as the petition notes (at 8-11), the Eleventh Circuit’s test also conflicts with this Court’s recent decision in *Holder v. Humanitarian Law Project*, 130 S. Ct. 2705 (2010). That case upheld restrictions on “instruction or teaching designed to impart a specific skill” only after concluding that the restrictions satisfied rigorous scrutiny. *Id.* at 2715, 2722-2730.

The Eleventh Circuit disregarded all those precedents. Instead, it followed Justice White's concurrence in *Lowe v. SEC*, 472 U.S. 181 (1985), and concluded that the First Amendment simply does not apply to this type of personalized expression. In doing so, it joined a number of other circuits that have embraced Justice White's concurrence despite its incompatibility with this Court's precedents. See Pet. 15-16. If a new exception to the First Amendment is to be created for personalized expression by professionals, it should not be done without this Court's careful review.

B. The “Personalized Speech” Test Lacks Any Foundation in First Amendment Principles

Justice White's standard makes little sense as a matter of First Amendment principle. The First Amendment is designed to foster “free trade in ideas,” on the ground that “the best test of truth is the power of the thought to get itself accepted in the competition of the market.” *Abrams v. United States*, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting); see Kent Greenawalt, *Free Speech Justifications*, 89 Colum. L. Rev. 119, 135-136 (1989). That rationale explains why, for example, the government can proscribe demonstrably false statements of fact (which do not advance the search for truth); why disclosure requirements are more tolerable than prohibitions; and why content-neutral regulations (which typically do not distort debate) are more tolerable than content-based ones.

The Eleventh Circuit's “personalized speech” standard bears no relation to that rationale. “When the government restricts the number of potential sources of * * * information, whether from impersonal publishers or personal advisors, the recipient's ability to weigh competing points of view is hampered.” Kry, *supra*, at 960. Indeed, because a personalized relationship often helps the

speaker convey the most relevant information, burdens on that form of expression are particularly damaging to the free trade in ideas. Conversely, the government's interest in regulating such speech is, if anything, weaker. "While a personal counselor can deceive or mislead only the person he advises, an impersonal publisher's false advice potentially harms all of his readers." *Ibid.*

In no other context is "personalized speech" thought to be exempt from constitutional scrutiny. The First Amendment protects the lonely "sidewalk counselor" who persuades her fellow citizens through personal dialogue no less than the pamphleteer or the newspaper magnate. See, *e.g.*, *Schenck v. Pro-Choice Network of W. N.Y.*, 519 U.S. 357 (1997); *Madsen v. Women's Health Ctr., Inc.*, 512 U.S. 753 (1994); cf. *Hill v. Colorado*, 530 U.S. 703 (2000). The "personalized speech" test is unfounded in principle and should not be elevated to a universal standard governing all professional speech.

This case is a matter of great importance both to First Amendment principles and to the many professionals who seek to pursue expressive callings free from arbitrary and unjustified state regulation. *Amici* accordingly urge the Court to grant the petition.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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