NO. 10-1139

In the
Supreme Court of the United States

FACULTY SENATE OF FLORIDA INTERNATIONAL UNIVERSITY, et al.,

Petitioners,

v.

STATE OF FLORIDA

Respondent.

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

BRIEF FOR THE NATIONAL FOREIGN TRADE COUNCIL, USA*ENGAGE, CHAMBER OF COMMERCE OF THE UNITED STATES, AND EMERGENCY COMMITTEE FOR AMERICAN TRADE AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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INTERESTS OF THE *AMICI CURIAE* [1]

The National Foreign Trade Council ("NFTC") is the premier business organization advocating a rules-based world economy. NFTC and its affiliates serve more than 250 member companies. USA*Engage is a broad-based coalition representing organizations, companies and individuals from all regions, sectors, and segments of our society concerned about the proliferation of unilateral foreign policy sanctions at the federal, state, and local level. NFTC and USA*Engage participated as *amici* in this case before the court of appeals.

The Chamber of Commerce of the United States of America ("the Chamber") is the world's largest business federation. The Chamber directly represents 300,000 members and indirectly

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[1] Pursuant to this Court's Rule 37.6, *amici* state that no counsel for any party authored this brief in whole or in part, and that no person or entity other than *amici* or their counsel made a monetary contribution to the preparation or submission of this brief. The parties were given a ten-day notice, have consented to the filing of this brief, and letters evidencing such consent have been filed with the Clerk of this Court, pursuant to this Court's Rule 37.2(a).

represents the interests of over three million business, trade, and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus* briefs that raise issues of vital concern to the nation's business community.

The Emergency Committee for American Trade ("ECAT") is an organization of the heads of leading U.S. international business enterprises representing all major sectors of the American economy. ECAT promotes economic growth through the expansion of international trade and investment, including through global, regional and bilateral trade and investment agreements.

Amici have substantial shared interests in the creation and maintenance of clear and fair legal regimes affecting international trade and investment, as well as in policies that secure for their members and the Nation the benefits of a global economy. *Amici* have filed *amicus* briefs in numerous Supreme Court cases addressing federal preemption of inconsistent state laws and issues affecting international trade. Indeed, the Chamber participated as an *amicus* in *Crosby v. NFTC*, 530 U.S. 363 (2000), the seminal Supreme Court case addressing the preemptive effect of federal trade sanctions — and NFTC was the Respondent.

The panel decision harms *amici*'s interests by eviscerating *Crosby*, a victory that NFTC and the

Chamber fought long and hard to obtain. It also undermines legal predictability by adding unnecessary complexity to an already complex and comprehensively regulated area of the law.

INTRODUCTION AND SUMMARY OF ARGUMENT

The panel's holding warrants this Court's review because it conflicts with *Crosby v. NFTC*, 530 U.S. 363 (2000), and undermines the President's ability to craft and fine-tune a uniform foreign policy on one of the most important international issues of our time: state sponsorship of terrorism. *Crosby* held that a State cannot use its spending powers to impose sanctions on foreign countries that are subject to federal sanctions, as the addition of state-law sanctions into the mix "compromise the very capacity of the President to speak for the Nation with one voice in dealing with other governments." *Id.* at 381, 373 n.7. In a *per curiam* ruling below, the United States Court of Appeals or the Eleventh Circuit held that Florida evaded *Crosby* through the simple expedient of piggybacking on a pre-existing federal regime and imposing its additional, harsher sanctions on a federally-created list of countries — the State Department's terrorism list — rather than targeting those same countries by name. Pet. App. 6a–8a. This is manifestly erroneous and turns *Crosby* into an easily-evaded technicality rather than what it is and should remain: a critical precedent preventing States from adopting their own foreign policies that conflict with the foreign policy of the Nation as a whole.

Florida's choice to pile on the preexisting federal sanctions makes Florida's Travel Act more — not less — offensive than the Massachusetts Act at issue in *Crosby*, as it nakedly states Florida's view that the federal sanctions against state sponsors of terrorism (including Cuba) are insufficiently hardline. *Crosby* holds that States cannot do federal foreign sanctions one better, and the panel decision is in direct conflict with that holding. This Court's review is therefore needed to protect *Crosby*'s continuing validity in the Eleventh Circuit. S. Ct. Rule 10(c).

The need for this Court's review is pressing, as the decision below allows Florida to go on record as having a foreign policy towards certain foreign countries — particularly Cuba — that is harsher than the federal government's. It throws a wrench into our Nation's foreign policy at a time when that policy is in flux, especially towards Cuba. This violates the bedrock principle of our constitutional structure that "[p]ower over external affairs is not shared by the States; it is vested in the national government exclusively." *United States v. Pink*, 315 U.S. 203, 233 (1942). The federal government, not the states, determines the force and tenor of our Nation's foreign policy. *Cf. Am. Ins. Ass'n v. Garamendi*, 539 U.S. 396, 427 (2003) (a state cannot "use an iron fist where the President has consistently chosen kid gloves"). In violating this principle, the decision below enables Florida and other states to meddle with a sanctions regime that Congress and the President have carefully calibrated to respond to state sponsorship of terrorism.

To prevent such undue interference with our Nation's foreign affairs, this Court should grant certiorari here. At a minimum, this Court should call for the views of the Solicitor General, as it has frequently done in other petitions that similarly implicate foreign policy concerns.

ARGUMENT

I. THE DECISION BELOW CONFLICTS WITH *CROSBY*

This Court's review is warranted because the panel decision directly conflicts with *Crosby*, the landmark Supreme Court case litigated and won by *amicus* NFTC. In *Crosby*, the federal government and Massachusetts each enacted sanctions against Burma in response to its deplorable human rights record, and the Court unanimously held that the Massachusetts sanctions were preempted because they "st[ood] as an obstacle" to the federal plan for addressing Burma. 530 U.S. at 373 (quotation marks omitted).[2] *Crosby* ultimately stands for a clear principle: "Sanctions are drawn not only to bar what they prohibit but to allow what they permit. . . ." *Id.* at 380. In the uniquely federal realm of foreign affairs, "'[c]onflict is imminent' when 'two separate remedies are brought to bear on the same activity.'" *Id.* (*quoting Wisc. Dep't of Indus. v. Gould Inc.*, 475 U.S. 282, 286 (1986)). States thus cannot upset the federally-struck balance by imposing their own sanctions on foreign nations.

The Eleventh Circuit below nonetheless allowed Florida to do just that. To prevent states from unduly interfering with the national government's exercise of its foreign affairs powers — and to reverse a panel

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[2] Justices Scalia and Thomas concurred in judgment, but disagreed only with the majority's reliance on legislative history. *Crosby*, 530 U.S. at 388–91 (Scalia, J., concurring in judgment).

decision that undermines *Crosby* itself — this Court's review is warranted.

A. The Decision Below Conflicts with *Crosby* by Allowing Florida to Impose Its Own Foreign Sanctions on Countries Already Subject to Federal Sanctions

The conflict with *Crosby* is square. With the Travel Act, Florida has used its spending powers to impose its own economic sanctions on countries because the United States is already sanctioning them — and because Florida deems those sanctions to be insufficiently harsh. The Travel Act thus brings "two separate remedies . . . to bear" on listed countries and disrupts the federal Government's choice "not only to bar what [the federal sanctions] prohibit but to allow what they permit." *Id.* (quotation marks omitted). The Travel Act is therefore preempted.

Indeed, the conflict with *Crosby* is unusually stark. In *Crosby*, the Court identified three particular ways in which Massachusetts had obstructed the federal scheme. First, Congress had granted the President "flexible and effective authority" to modify or terminate the sanctions, but the President could not modify or terminate Massachusetts' rigid law. *Id.* at 374, 376–77. Second, Massachusetts had "undermine[d] the congressional calibration of force" by burdening conduct that the federal sanctions did not. *Id.* at 377–80. While Congress had chosen to allow pre-existing investment to continue and to permit trade in goods, services, and technology, Massachusetts made no such exceptions.

See id. Third, by adding an additional, inflexible sanction to the mix, Massachusetts compromised the President's capacity "to speak for the Nation with one voice" and to "bargain effectively with other nations." *Id.* at 380–86. Florida's Travel Act obstructs the federal sanctions here in the same three ways identified in *Crosby*, and thus the Travel Act is clearly invalid.

1. As in *Crosby*, Congress granted the President "flexible and effective authority" to tailor sanctions on listed countries. Indeed, Congress expressly granted the President the flexibility to ratchet up — or tone down — the penalties imposed by the federal statutes that sanction states that sponsor terrorism. For example, the Arms Export Control Act ("AECA") imposes an arms embargo on listed countries. 22 U.S.C. § 2780(a), (b), (d). But it permits the President and Secretary of State to waive aspects of that embargo in "unusual and compelling circumstances." *Id.* § 2780(a)(5), (g). The Foreign Assistance Act ("FAA") terminates foreign aid, but permits the President to make exceptions to the ban on foreign assistance, including if "national security interests or humanitarian reasons justify" it. 22 U.S.C. § 2371(a), (c), (d). The Export Administration Act ("EAA") imposes a partial trade embargo, prohibiting the export of "goods or technology" without a license, but confers discretion on the President to grant a "general license" to export, eliminating the need for further executive approval. *See* 50 U.S.C. app. §§ 2405(j)(1), 2403(a)(3). Flexibility is thus a central component of Congress's plan for responding to listed states.

By contrast, the President cannot tailor Florida's additional burdens; they are fixed. Irrespective of the President's judgment, Florida will impose its own sanctions on listed countries by restricting state universities from using "state or nonstate funds" — that is, any money from any source — to "implement, organize, direct, coordinate, or administer, or to support the implementation, organization, direction, coordination, or administration of, activities related to or involving travel to" countries on the federal list. Fla. Stat. §§ 1011.90(6), 112.061(3)(e). As in *Crosby*, the Travel Act thus conflicts with the federal regime by depriving the President of the power to fine-tune or terminate Florida's additional penalties. *See Crosby*, 530 U.S. at 374.

2. As in *Crosby*, the Travel Act also "undermines the congressional calibration of force" by burdening conduct — travel to sanctioned countries — that Congress chose to leave unfettered. *Id*. at 380. Florida's Travel Act significantly impedes travel, and particularly academic travel, to listed countries. Indeed, the Act bars state universities from using any money from any source to do virtually anything indirectly related to such travel. Fla. Stat. §§ 1011.90(6), 112.061(3)(e).

Congress and the President made a different choice. Although Congress has imposed significant penalties on listed countries, Congress has chosen not to restrict travel — academic or otherwise. To the contrary, even when a nation is subject to a trade embargo, "[i]t is the policy of the United States to sustain vigorous scientific enterprise" through, *inter alia*, "scholarly exchange." 50 U.S.C. app. § 2402(12).

Indeed, Congress has determined that the President should have authority to sanction "transactions ordinarily incident to travel" only under the most extreme circumstance: during "time of war." 50 U.S.C. app. § 5(b)(1); *see also* 50 U.S.C. §§ 1701(a), 1702(b)(4). Accordingly, the Terrorism List Governments Sanctions Regulations do not reach transactions incident to travel. *See* 31 C.F.R. § 596.201; 18 U.S.C. § 1956(c)(4). Similarly, the federal regulations that detail the sanctions specifically targeted at Iran, Sudan and Syria expressly exempt transactions "ordinarily incident to travel." 31 C.F.R. §§ 560.210(d), 538.212(d), 542.206(c).

The lone exception is Cuba. The United States restricts travel to Cuba not because Cuba is a sponsor of terrorism; Congress has not authorized this harsh sanction. Rather, the President restricted travel to Cuba during "time of war" under the Trading With the Enemy Act, 50 U.S.C. app. § 5(b)(1). Needless to say, States do not share this same expansive authority. And even as to the Cuba travel sanctions — the United States' strictest embargo — the President has crafted broad exceptions for travel for "research . . . of a noncommercial, academic nature." 31 C.F.R. § 515.564(a)(1), (b).

Recent amendments to the Cuban Assets Control Regulations underscore how starkly Florida's policy towards academic travel conflicts with the United States' policy on this same subject. "[T]o continue efforts to reach out to the Cuban people in support of their desire to freely determine their country's future" — rather than to isolate Cuba, as Florida would

prefer — the United States has essentially lifted the Cuban embargo for academic travel. Office of Foreign Assets Control, Cuban Assets Control Regulations, Final Rule, 76 Fed. Reg. 5072, 5073 (Jan. 28, 2011). The amendments expressly authorize "faculty, staff, and students" at accredited universities to engage in "travel-related transactions" that would otherwise be barred. 31 C.F.R. § 515.565(a) (2011). Indeed, universities now may even open bank accounts in Cuba to fund transactions incident to academic travel. *Id.* § 515.565 (note). The United States has thus crafted targeted regulations to facilitate academic travel to Cuba by university faculty and students, based on the President's determination that this open-door approach will help encourage Cuba's people to push forward on the road towards democracy. By contrast, Florida has enacted a targeted law setting precisely the opposite policy — effectively prohibiting academic travel to Cuba — and the President is powerless to fine-tune or terminate Florida's additional penalties.

3. As in *Crosby*, by imposing its own sanctions, Florida has undermined "the very capacity of the President to speak for the Nation with one voice" and to "bargain effectively with other nations." 530 U.S. at 381–82. The Travel Act is avowedly targeted at states the federal government is already sanctioning, but Florida does the federal government one better: Florida burdens conduct the federal government chose to leave unsanctioned. Indeed, Florida burdens conduct the federal government chose to specifically encourage with respect to Cuba.

The "mixed messages" problem is serious indeed. The United States recently shifted towards broadly permitting academic travel to Cuba, based on the determination that such travel furthers our national interest. *See* 76 Fed. Reg. at 5073, 5076. Florida has taken the opposite approach, effectively prohibiting Florida faculty or students from engaging in academic travel to Cuba. Florida is the closest State to Cuba, with by far the largest Cuban-American population and the largest public academic institutes for studying Cuba. Florida's decision to impose its own sanctions on academic travel thus significantly dilutes the impact of the message that the President intended to send by lifting the Cuba embargo as to academic travel. *Crosby* establishes that States cannot use their own foreign policies to prevent the President's voice from being heard loud and clear: The President's "maximum power to persuade" requires him to be able to speak for the Nation as a whole "without exception for enclaves fenced off willy-nilly by inconsistent political tactics." *Crosby*, 530 U.S. at 381.

In sum, the Travel Act is invalid under *Crosby* because a State cannot impose its own sanctions on a country that is subject to federal sanctions. Congress and the President draw sanctions "not only to bar what they prohibit but to allow what they permit. . . ." *Id*. at 380. And the conflict here is unusually clear, as the Travel Act suffers from the very same defects that the Supreme Court highlighted in *Crosby* as making the Massachusetts Act invalid. It follows *a fortiori* that the Florida Act should have been struck down as well.

B. The Decision Below Conflicts with *Crosby* By Insulating From Preemption State Sanctions Enacted Pursuant to a State's Spending Powers

The panel opinion further conflicts with *Crosby* by imposing a legal standard *Crosby* rejected. The panel demanded proof that the Travel Act "clash[ed] sharply with federal law or policy" because the Act regulated Florida's spending on education, "issues of traditional and legitimate state concern." Pet. App. 4a. But *Crosby* did not demand a "sharp" conflict even though it too involved preemption of a state spending law.

Indeed, Massachusetts made the same argument that the panel accepted below — that state spending laws are only preempted on a heightened showing of conflict — and the Supreme Court dismissed it in a footnote. "The fact that the State ha[s] chosen to use its spending power rather than its police power d[oes] not reduce the potential for conflict with the federal statute." *Crosby*, 530 U.S. at 373 n.7 (quotation marks omitted). And *Crosby* struck down Massachusetts' sanctions without demanding that the "potential for conflict" be either fully realized or "sharp."[3] The Massachusetts and federal sanctions

[3] In requiring a "sharp" conflict, the panel decision is also contrary to *Boyle v. United Techs. Corp.*, 487 U.S. 500 (1988). *Boyle* holds that preemption applies even absent a "sharp" conflict when states intrude "in a field that has been traditionally occupied solely by the federal government." *Id.* at 507. Thus what matters is not the form of the *State's* law, as the panel found, but the field in which *Congress* chose to act.

each put similar economic pressure on Burma for the same laudable purpose, but the Massachusetts' sanctions were still infirm. In the realm of foreign affairs, "'[c]onflict is imminent' when 'two separate remedies are brought to bear on the same activity.'" *Crosby*, 530 U.S. at 380 (*quoting Gould,* 475 U.S. at 286). So too here.

In short, the panel opinion reached a result that *Crosby* foreclosed by applying a legal standard that *Crosby* rejected. It therefore warrants this Court's review. S. Ct. Rule 10(c).

C. The Panel's Efforts to Distinguish *Crosby* Show that Florida's Travel Act Is Even More Clearly Preempted than the Law at Issue in *Crosby*

Notwithstanding that Florida's Travel Act falls squarely within *Crosby* as an invalid state sanction, the panel distinguished *Crosby* on two grounds. According to the panel, the fate of the Travel Act was different because (1) it singled out foreign countries for additional burdens not "by name," but by reference to the list of countries the federal government sanctioned for sponsoring terrorism; and (2) its impact on the federal sanctions regime was merely "incidental." Pet. App. 4a, 6a. The panel's efforts to distinguish *Crosby* are patently unsound. Florida's unabashed choice to impose its own

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International sanctions are a uniquely federal field, and thus the conflict need not be "sharp" here. *See Crosby*, 530 U.S. at 380. Rather, it is enough that the conflict be "imminent" because both State and federal sanctions exist. *Id*. (quotation marks omitted).

heightened sanctions on foreign countries because they have been singled out for federal sanctions makes the Florida Act more — not less — problematic than the Massachusetts Act at issue in *Crosby*.

1. The panel first emphasized that, while Massachusetts selected Burma "by name" for sanctions, Florida had not selected any country "by name"; instead, Florida burdens travel to countries "determined by the federal government" to sponsor terrorism. *Id*. at 6a–8a. This clearly mistakes form for substance. It is inconceivable that the result in *Crosby* would have been different if Massachusetts had targeted its sanctions at the list of countries the federal government sanctioned for human rights abuses in 1996 — a list consisting solely of Burma — rather than referring to Burma "by name."

Indeed, Florida's approach is even more nakedly impermissible than Massachusetts'. Massachusetts imposed its sanctions on Burma without regard to the federal sanctions; Massachusetts acted first, sanctioning Burma three months before the federal government followed suit. *Crosby*, 530 U.S. at 368. But Florida imposes burdens on travel to a foreign country only after, *and precisely because*, the federal government has sanctioned that country as a state that sponsors terrorism. *See* Fla. Stat. §§ 1011.90(6), 112.061(3)(e). By piling on the federal penalties, the Travel Act avowedly and inescapably expresses Florida's judgment that the federal penalties are not harsh enough; no matter what Congress or the President thinks, academic travel to those nations should be discouraged. The Travel Act thus could be accurately renamed the "Augmentation of Federal

Sanctions Act." This is manifestly invalid. If *Crosby* establishes anything, it is that when the federal government sanctions foreign nations, a State cannot trump that judgment by imposing additional burdens that are more rigid and hardline. *Crosby*, 530 U.S. at 380.

2. The panel also emphasized that this case was different from *Crosby* because the foreign impact of Florida's decision not to fund travel was merely "incidenta[l]." Pet. App. 7a–9a; *see also id.* at 4a (the foreign impact is "indirect, minor, incidental, and peripheral"). But there is nothing "incidental" or "indirect" about the impact of the Travel Act on the federal sanctions regime.

When a law expressly targets a particular subject for disfavored treatment, that impact is not "incidental"; it is direct and purposeful. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 533, 542 (1993); *Employment Division v. Smith*, 494 U.S. 872, 878 (1990); *City of Erie v. Pap's A.M.*, 529 U.S. 277, 293 (2000); *Zschernig v. Miller*, 389 U.S. 429, 432–33 (1968). The Travel Act is not a facially neutral statute governing state spending that happens to have a differential impact on countries that the federal government has sanctioned for sponsoring terrorism — it expressly and purposefully singles out foreign countries for additional burdens *because they have been sanctioned by the federal government*. Fla. Stat. §§ 1011.90(6), 112.061(3)(e).

The panel's misunderstanding of what constitutes an "incidental" impact pervades its opinion. The panel observed, for example, that "a State's decision

to use its money to fund academic work in country 'A' but not country 'B' is not an impermissible sanction against 'B'." Pet. App. 9a. That commonsense observation is generally correct, although it is subject to an important limitation: The choice between A and B must not have "more than [an] incidental" impact on a federal sanctions regime. *Garamendi*, 539 U.S. at 420; *see also Crosby*, 530 U.S. at 363, 380. The panel was undoubtedly correct that States have broad leeway to make "choices about how best to spend limited resources for education." Pet. App. 8a. Such decisions generally have no more than an indirect and attenuated impact on federal foreign policy. Florida is thus free to fund study of A rather than B if it "give[s] the most value for the money," if study of A should be "cut back to let [study of B] grow," or for virtually any other reason. *Id.*

Here, however, Florida has passed a law that facially discriminates between A and B in the one way *Crosby* clearly forbids: Florida has expressly singled out countries that the federal government has sanctioned — state sponsors of terrorism — and it has decided to impose its own sanctions on those countries as well. *See Crosby*, 530 U.S. at 380. There may be cases where it is difficult to determine whether a law's impact on foreign affairs is incidental or purposeful. But there is no difficulty here. "[T]his wolf comes as a wolf." *Morrison v. Olson*, 487 U.S. 654, 699 (1988) (Scalia, J., dissenting).

II. THE DECISION BELOW SIGNIFICANTLY INTERFERES WITH THE EXECUTIVE'S ABILITY TO CONDUCT THE NATION'S FOREIGN AFFAIRS

The panel decision warrants this Court's review not only because it conflicts with *Crosby*, but also because it allows Florida to go on record as having a harsher foreign policy towards Cuba and other state sponsors of terrorism than the federal government. The panel itself viewed its decision as relatively minor, finding that the "*economic* impact" of the law was "not big enough to be of serious concern on the world stage." Pet. App. 8a n.10 (emphasis added). But the panel's narrow focus on dollars and cents misses the critical point. In *Crosby*, the evidence similarly showed that the economic impact on Burma was limited. 530 U.S. at 370 (three companies "withdrew from Burma" and one had a "bid for a procurement contract increased by 10 percent"). But the magnitude of the economic impact did not even factor into the Court's analysis. It was sufficient to strike down the Massachusetts law that Massachusetts had set its own sanctions upon Burma that were more hardline than the federal sanctions. Florida's Travel Act does the same thing and it deserves the same fate.

The panel also missed the forest for the trees. Foreign affairs — and the federal terrorism sanctions — are not just about economics. The detrimental impact of allowing States to conduct their own separate foreign policies is not measured in dollars and cents. Symbolism is critical in foreign policy. There are reasons diplomats argue over the shapes of

negotiating tables and the size of delegations. Here, Congress and the President have each adjudged that the door should be left open for travel (and particularly academic travel) to listed countries because *non-economic* benefits to the United States outweigh whatever economic impact would result from injecting a modest amount of United States dollars into the foreign country. *See, e.g.,* Office of Foreign Assets Control, Cuban Assets Control Regulations, Final Rule, 64 Fed. Reg. 25,808, 25,809 (May 13, 1999) (academic travel is relatively unfettered even to Cuba because it "strengthen[s] independent civil society" through "expansion of people-to-people contact through two-way exchanges among academics"). Florida's Travel Act conflicts with federal foreign policy not because it prevents a few extra dollars from flowing to listed nations, but because it contradicts the federal judgment and adopts a consciously harder line. *Cf. Garamendi*, 539 U.S. at 427 (states cannot "use an iron fist where the President has consistently chosen kid gloves").

Our Nation's history is replete with examples of acts that had significant international repercussions not because of dollars and cents but because of their symbolic power. This history runs from the Boston Tea Party, to the headline-topping Elián González affair, to the recent actions of a Florida pastor burning the Koran, provoking a tragic, violent reaction abroad. It is a serious matter indeed that Florida, of all states, is on international public record as having a more hardline foreign policy towards Cuba and other state sponsors of terrorism than the federal government.

Crosby holds that States do not have this power — even when they couch their sanctions as mere restrictions on state spending from its own fisc. The panel held that a State can avoid this holding through the simple expedient of singling out countries for sanctions by reference rather than by name. This is manifestly erroneous, directly conflicts with *Crosby*, and warrants this Court's review. *See* S. Ct. Rule 10(c).

III. AT A MINIMUM, THIS COURT SHOULD CALL FOR THE VIEWS OF THE SOLICITOR GENERAL

For the reasons set forth above, this Court should grant certiorari because the petition here satisfies Rule 10(c). At a minimum, however, this Court should invite the Solicitor General to file a brief expressing the views of the United States.

This Court has frequently called for the Solicitor General's views on certiorari petitions implicating foreign affairs.[4] The Solicitor General is uniquely

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[4] *E.g., Kingdom of Spain v. Estate of Cassirer*, No. 10-786, ___ S. Ct. ___, 2011 WL 940882 (Mar. 21, 2011); *City of New York v. Permanent Mission of India to United Nations*, No. 10-627, ___ S. Ct. ___, 2011 WL 588828 (Feb.22, 2011); *Placer Dome, Inc. v. Provincial Gov't of Marinduque*, 130 S. Ct. 2139 (2010); *Pfizer Inc. v. Abdullahi*, 130 S. Ct. 534 (2009); *Holy See v. Doe*, 130 S. Ct. 659 (2009); *Fed. Ins. Co. v. Kingdom of Saudi Arabia*, 129 S. Ct. 1400 (2009); *Republic of Iraq v. Beaty*, 553 U.S. 1063 (2008); *Ministry of Def. & Support for the Armed Forces of the Islamic Republic of Iran v. Elahi*, 552 U.S. 1176 (2008); *Exxon Mobil Corp. v. Doe*, 552 U.S. 1020 (2007); *Empresa Cubana del Tabaco v. Gen. Cigar Co.*, 546 U.S. 1088 (2006).

positioned to inform the Court regarding the extent to which Florida's Travel Act impedes the President's ability to craft a measured response to state sponsorship of terrorism, and particularly Cuba's role therein. Indeed, in both *Crosby* and *Garamendi*, this Court relied on the United States' views as evidence demonstrating that state law stood as an obstacle to Congress's scheme. *Crosby*, 530 U.S. at 384–85 & n.22; *see Garamendi*, 539 U.S. at 413–27. And in the decision below, the panel itself recognized that the United States' participation would be valuable, noting that "[t]he United States, although invited early on to take part in the case, is not a party to the case or otherwise involved in the litigation." Pet. App. 2a. Accordingly, if this Court does not grant certiorari outright, at a minimum it should call for the views of the Solicitor General.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for certiorari or call for the views of the Solicitor General.

RESPECTFULLY SUBMITTED

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