No. 13-1499

IN THE

Supreme Court of the United States

LANELL WILLIAMS-YULEE,

Petitioner,

v.

THE FLORIDA BAR,

Respondent.

On Writ of Certiorari to the Supreme Court of Florida

BRIEF OF *AMICI CURIAE* AMERICAN CIVIL LIBERTIES UNION AND AMERICAN CIVIL LIBERTIES UNION OF FLORIDA IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Whether a rule of judicial conduct that prohibits candidates for judicial office from personally soliciting campaign funds violates the First Amendment.

TABLE OF CONTENTS

QUESTION PRESENTED i

TABLE OF AUTHORITIES iv

INTERESTS OF *AMICI CURIAE* 1

STATEMENT 1

SUMMARY OF ARGUMENT 4

ARGUMENT 6

PROHIBITING JUDICIAL CANDIDATES FROM MAKING MASS FUNDRAISING APPEALS VIOLATES THE FIRST AMENDMENT 6

A. Selecting Judges by Election Requires the Exercise of Free Expression 6

1. Most States Use Some Form of Judicial Elections 6

2. Regulation of Electoral Speech Entails First Amendment Scrutiny 8

B. Canon 7C(1) of the Florida Code of Judicial Conduct Does Not Serve to Protect Judicial Integrity as Applied Here 10

1. Strict Scrutiny Applies to First Amendment Review of Canon 7C(1) ... 11

2. Canon 7C(1) is Unconstitutional As Applied Here Under Any Standard of First Amendment Review 13

C. Judicial Integrity Could Have Been Served By Less Restrictive and More Efficient Means Than By Punishment Under Canon 7C(1) 16

CONCLUSION 19

TABLE OF AUTHORITIES

Page(s)

Cases

ACLU v. The Florida Bar,
744 F. Supp. 1094 (N.D. Fla. 1990) 9

Arizona Free Enterprise Club's Freedom Club PAC v. Bennett,
131 S. Ct. 2806 (2011) 10

Bates v. Arizona State Bar,
433 U.S. 350 (1977) 16

Bauer v. Shepard,
620 F.3d 704 (7th Cir. 2010) 15

Bracy v. Gramley,
520 U.S. 899 (1997) 18

Brown v. Entertainment Merchants Ass'n,
131 S. Ct. 2729 (2011) 13

Brown v. Socialist Workers '74 Campaign Comm.,
459 U.S. 87 (1982) 17

Buckley v. Valeo,
424 U.S. 1 (1976) 12

Butler v. Michigan,
352 U.S. 380 (1957) 19

Caperton v. A.T. Massey Coal Co.,
556 U.S. 868 (2009) 18

Carey v. Wolnitzek,
614 F.3d 189 (6th Cir. 2010).....14, 15, 16, 17

Citizens United v. FEC,
558 U.S. 310 (2010).....17, 18

City of Cincinnati v. Discovery Network, Inc.,
507 U.S. 410 (1993).....13

City of Ladue v. Gilleo,
512 U.S. 43 (1994).....13

Concerned Democrats of Florida v. Reno,
458 F. Supp. 60 (S.D. Fla. 1978).....9

Davis v. FEC,
554 U.S. 724 (2008).....10

Eu v. San Francisco Cnty. Democratic Cent. Comm.,
489 U.S. 214 (1989).....12

Florida Bar v. Went For It, Inc.,
515 U.S. 618 (1995).....16

McCutcheon v. FEC,
134 S. Ct. 1434 (2014).....12, 17

Meyer v. Grant,
486 U.S. 414 (1988).....8

Monitor Patriot Co. v. Roy,
401 U.S. 265 (1971).....8

Randall v. Sorrell,
548 U.S. 230 (2006).....10

Renne v. Geary,
501 U.S. 312 (1991) 8

Republican Party of Minn. v. White,
416 F.3d 738 (8th Cir. 2005) 17, 18

Republican Party of Minnesota v. White,
536 U.S. 765 (2002) ..... *passim*

Riley v. National Fed'n of the Blind,
487 U.S. 781 (1988) 11, 12, 15

Rubin v. Coors Brewing Co.,
514 U.S. 476 (1995) 13

Schaumburg v. Citizens for a Better Env't,
444 U.S. 620 (1980) 11, 12

Siefert v. Alexander,
608 F.3d 974 (7th Cir. 2010) 15

Snyder v. Phelps,
131 S. Ct. 1207 (2011) 12

Stretton v. Disciplinary Bd. of the Supreme Ct. of Penn.,
944 F.2d 137 (3d Cir. 1991) 15

Tumey v. Ohio,
273 U.S. 510 (1927) 18

United States v. Playboy Entm't Group, Inc.,
529 U.S. 803 (2003) 11

Weaver v. Bonner,
309 F.3d 1312 (11th Cir. 2002) 15

Wolfson v. Concannon,
750 F.3d 1145 (9th Cir. 2014) 14, 15, 17

Zeller v. The Florida Bar and Florida Judicial Qualifications Comm'n.,
909 F. Supp. 1518 (N.D. Fla. 1995) 9, 10, 11

Constitutional Provisions

U.S. Const. amend. I ..... *passim*

U.S. Const., Art II, Sec. 2, cl. 2 7

Fla. Const., Art. V., Sec. 10 ..... 6, 7

Statutes and Codes

ABA Model Code of Judicial Conduct
Canon 4.1(A)(8) 3

ABA Model Code of Judicial Conduct
Canon 4.4 3

Florida Code of Judicial Conduct
Canon 7C(1) ..... *passim*

Fla. St. § 106.08(1)(a) 19

Other Authorities

ABA, *Judicial Selection: The Process of Choosing Judges* (June 2008) 6

ABA Commisssion on the 21st Century Judiciary, JUSTICE IN JEOPARDY (July 2003) 7

American Judicature Society, Methods of Judicial Selection: Florida (http://www.judicialselection.us/judicial_selection/index.cfm?state=FL) 6, 7

American Judicature Society, History of Reform Efforts: Florida (http://www.judicialselection.us/judicial_selection/reform_efforts/formal_changes_since_inception.cfm?state=FL) 6

Charles Gardner Geyh, *Why Judicial Elections Stink*, 64 OHIO ST. L. J. 43 (2003) 7

Chris Bonneau and Melinda Gan Hall, IN DEFENSE OF JUDICIAL ELECTIONS 2 (2009) 8

Michael DeBow, Diane Brey, Erick Kaardal, John Soroko, Frank Strickland, and Michael B. Wallace, THE CASE FOR PARTISAN JUDICIAL ELECTIONS (Jan. 1, 2003) 7, 8

INTERESTS OF *AMICI CURIAE*[1]

The American Civil Liberties Union (ACLU) is a nationwide, nonprofit, nonpartisan organization with approximately 500,000 members dedicated to the principles embodied in the Bill of Rights. Since its founding in 1920, the ACLU has been deeply involved in securing the free speech rights embodied in the First Amendment. In support of that central organizational goal, the ACLU has appeared before this Court in numerous free speech cases both as direct counsel and as *amicus curiae*. The ACLU of Florida is a statewide affiliate of the national ACLU.

The ACLU takes no position on the propriety of an elected as opposed to an appointed judiciary. However, it strongly believes that if a state does provide for popular election of judges, campaign speech by candidates for judicial office, like campaign speech by candidates for other offices, is entitled to the highest degree of First Amendment protection.

STATEMENT

Florida, like 39 other States, has chosen to select judges by popular vote, and like nearly every such State, enforces a rule prohibiting judicial candidates from personally soliciting campaign contributions. Specifically, Florida Code of Judicial Conduct Canon 7C(1) prohibits candidates for judicial offices filled by election (including incumbent judges) from "person-

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[1] All parties have consented to this *amici curiae* brief and letters of consent have been filed with the Clerk. No counsel for a party authored this brief in whole or in part, and no person or entity other than *amici* and its counsel made a monetary contribution to the preparation or submission of this brief.

ally" soliciting campaign funds, or publicly stated support from attorneys, while allowing instead the establishment of committees of responsible persons to secure and manage expenditures of funds for the candidate's campaign and/or to obtain public statements of support.

Petitioner Lanell Williams-Yulee, a judicial candidate in Hillsborough County, Florida, drafted and signed a mass-mail letter announcing her candidacy and seeking campaign contributions shortly after registering as a candidate. Pet. App. 31a-32a. Above the candidate's signature, the letter sought an "early contribution of $25, $50, $100, $250, or $500, made payable to 'Lanell Williams-Yulee Campaign for County Judge'" to "help raise the initial funds needed to launch the campaign and get our message out to the public." *Id.* 32a. This letter drew a complaint against petitioner in the Supreme Court of Florida, alleging a violation of Canon 7C(1). *Id.* 2a.

Upon referral to a referee, a recommended finding of guilt was entered, *id.* 19a-30a, though with recognition that Williams-Yulee's violation arose from a good-faith mistake interpreting the Canon. *Id.* 28a. The referee recommended a public reprimand and payment of costs of the disciplinary proceedings. This was based on Williams-Yulee's lack of prior disciplinary history and the absence of dishonest or selfish motives in sending the letter, and on timely and good faith efforts to rectify the misconduct, and full cooperation with the disciplinary board. *Id.* at 22a-24a.

The Florida Supreme Court upheld the referee's findings of fact and recommendation of guilt, as well

as its recommended discipline. *Id.* 15a, 18a. In doing so, it rejected Williams-Yulee's contention that such application of Canon 7C(1) violated her rights to free speech as a judicial candidate. *Id.* 7a-15a. Though the court acknowledged the Canon "clearly restricts a judicial candidate's speech" and therefore "must be narrowly tailored to serve a compelling state interest," it found a compelling state interest in preserving the integrity of, and maintaining public confidence in, an impartial judiciary. *Id.* 7a. The court found the Canon narrowly tailored as "personal solicitation of campaign funds, even by mass mailing, raises an appearance of impropriety and calls into question, in the public's mind, the judge's impartiality." It also found that separate fundraising committees provide "ample alternative means for candidates to raise the resources necessary to run." *Id.* at 11a, 15a.

The court observed that Canon 7C(1) is similar to Canons 4.1(A)(8) and 4.4 of the ABA Model Code of Judicial Conduct, that a majority of states have similar provisions, and that "every state supreme court that has examined" the issue held these types of provisions constitutional. *Id.* 11a-13a. At the same time, it acknowledged, federal courts, "whose judges have lifetime appointments and thus do not have to engage in fundraising," "are split." *Id.* 13a n.3. Specifically, the Sixth, Eighth, Ninth, and Eleventh Circuits have held such Canons violate the First Amendment, while the Third and Seventh Circuits have held them to be constitutional, as have the highest courts of Arkansas, Oregon and, now, Florida.

SUMMARY OF ARGUMENT

While *Amici* take no position on the use of elections to seat state court judges, once a state chooses elections, it must honor this Court's admonition that: "If the State chooses to tap the energy and legitimizing power of the democratic process, it must accord [] participants in that process … the[ir] First Amendment rights[.]" *Republican Party of Minn. v. White*, 536 U.S. 765, 788 (2002). States "cannot opt for an elected judiciary and then assert that its democracy, in order to work as desired, compels the abridgment of speech." *Id.* at 795 (Kennedy, J., concurring).

By prohibiting candidates for judicial offices filled by election from personally soliciting campaign funds or publicly stated support of attorneys, Canon 7C(1) of Florida's Code of Judicial Conduct directly limits candidate speech. While this invites strict scrutiny, Canon 7C(1) is unconstitutional as applied to the facts of this case – regardless of what standard of First Amendment review applies – because the fit between the state's objective and the means selected to achieve it unnecessarily abridges free speech. In *Amici*'s view, it is unnecessary to go any further to reverse the decision below.

Canon 7C(1) is a poor instrument for furthering substantial government interests in preserving the reality (or appearance) of judicial integrity as applied to the facts of this case. It over-inclusively prohibits a broad array of solicitations presenting no legitimate cause for concern of undue influence such as Petitioner's mass mailing here. At the same time, it is under-inclusive in permitting solicitation by committee proxies while still allowing (a) candidates to

know who contributes (and who balks) and (b) the electorate to know who benefits from contributions. There is no logical fit, let alone narrow tailoring, between the government's interest behind the restriction on Petitioner's speech and the means the Florida Bar selected to further it.

Judicial integrity can meanwhile be advanced less restrictively and more efficiently than under Canon 7C(1). A state can, for example, enact narrowly tailored bans on solicitation focused on one-on-one solicitation of parties in cases pending or imminently before the court, where risks of undue influence may be more present. An adequate system of public financing can replace a system of private fund-raising. Absent public financing, contribution limits have been adopted in Florida and elsewhere and can be enforced. Disclosure mandates can also deter corruption and avoid the appearance of corruption by exposing contributions to public scrutiny. A recusal rule can similarly ensure impartiality, without infringing a judge's or judicial candidate's right to free speech.

ARGUMENT

PROHIBITING JUDICIAL CANDIDATES FROM MAKING MASS FUNDRAISING APPEALS VIOLATES THE FIRST AMENDMENT

A. Selecting Judges by Election Requires the Exercise of Free Expression

1. Most States Use Some Form of Judicial Elections

Methods of selecting state court judges vary widely among the states but generally fall within five broad categories – executive appointment, legislative appointment, nonpartisan election, partisan election, and merit selection. ABA, *Judicial Selection: The Process of Choosing Judges* (June 2008) ("*Judicial Selection*") at 5. Most states use some form of election to select and/or retain judges. *Id.* at 7.

Like many states, Florida uses more than one system of judicial selection. It uses a form of merit selection, the "Missouri Plan," for appointment of judges to the state Supreme Court and the District Courts of Appeal,[2] while vacancies to circuit and

[2] Under the "Missouri Plan," the governor appoints candidates to the bench who have been recommended by a nonpartisan commission. Judges selected by this method periodically stand for retention elections. *See* American Judicature Society, Methods of Judicial Selection: Florida (http://www.judicialselection.us/judicial_selection/index.cfm?state=FL); American Judicature Society, History of Reform Efforts: Florida (http://www.judicialselection.us/judicial_selection/reform_efforts/formal_changes_since_inception.cfm?state=FL).

county courts are filled by popular election. Fla. Const., Art. V., Sec. 10.

Although most states use some form of judicial elections, this practice runs counter to the federal system in which judges are appointed by the President and confirmed for lifetime tenure by the Senate. U.S. Const., Art II, Sec. 2, cl. 2. The federal system is predicated on insulating judges from the electoral process. Arguments for this form of selection or for other types of merit-based appointment include the need to distance judges from popular passions, to provide a check on majoritarian excesses, and to protect judges from both the reality and perception of favoritism that may arise from political campaigning. *See, e.g.*, *Judicial Selection* at 8-9; Charles Gardner Geyh, *Why Judicial Elections Stink*, 64 OHIO ST. L. J. 43 (2003). *See generally* Report of the ABA Commission on the 21st Century Judiciary, JUSTICE IN JEOPARDY (July 2003).

Beginning in the Nineteenth Century, most states moved toward some form of judicial elections. *White*, 536 U.S. at 787 ("By the time of the Civil War, the great majority of States elected their judges."). Arguments supporting judicial elections include providing a more democratic check on the judiciary and adding a measure of popular accountability for its decisions. Advocates of elections reject the notion that appointment of judges or merit selection removes political influence from the process but merely replaces electoral politics "with *a somewhat subterranean process of bar and bench politics*, in which there is little popular control." *E.g.*, Michael DeBow, Diane Brey, Erick Kaardal, John Soroko, Frank

Strickland, and Michael B. Wallace, THE CASE FOR PARTISAN JUDICIAL ELECTIONS (Jan. 1, 2003) (emphasis in original); Chris Bonneau and Melinda Gan Hall, IN DEFENSE OF JUDICIAL ELECTIONS 2 (2009) ("elections generally are one of the most powerful legitimacy-conferring institutions in American democracy").

2. Regulation of Electoral Speech Entails First Amendment Scrutiny

The purpose of this discussion is not to advocate for or against using the electoral process to select state court judges. That is a matter for the states to decide, and *Amici* take no position on that question. But once made, the choice to have judges stand for election necessarily implicates the right of free expression. Indeed, the First Amendment "has its fullest and most urgent application precisely to the conduct of campaigns for political office." *E.g.*, *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 272 (1971). Thus, "[i]f the State chooses to tap the energy and legitimizing power of the democratic process, it must accord the participants in that process … the First Amendment rights that attach to their roles." *White*, 536 U.S. at 788 (quoting *Renne v. Geary*, 501 U.S. 312, 349 (1991) (Marshall, J., dissenting)). *See also Meyer v. Grant*, 486 U.S. 414, 424-25 (1988) (the greater power to end voter initiatives does not include the lesser power to prohibit paid petition-circulators).

Like every other state, Florida may decide whether or not to elect all or some of its judges. Subject to basic requirements of due process, it may define those characteristics that it believes exemplify

judicial excellence and codify those definitions in its code of judicial conduct. And to protect judicial integrity it may adopt other measures, such as recusal standards more rigorous than due process requires. *White*, 536 U.S. at 794 (Kennedy, J., concurring). But the state does not have a free hand to limit candidate speech without satisfying First Amendment scrutiny. Simply put, "[t]he State cannot opt for an elected judiciary and then assert that its democracy, in order to work as desired, compels the abridgment of speech." *Id.* at 795.

The proposition that a system of judicial elections inherently brings the First Amendment into play has been well-tested in Florida. In *Concerned Democrats of Florida v. Reno*, 458 F. Supp. 60 (S.D. Fla. 1978), the court enjoined a law that barred political parties from supporting, endorsing, or assisting judicial candidates. A little more than a decade later, in *ACLU v. The Florida Bar*, 744 F. Supp. 1094 (N.D. Fla. 1990), the district court enjoined a provision of the judicial code that barred judicial candidates from announcing their views on disputed legal or political issues – a proposition this Court addressed in *White*. And in *Zeller v. The Florida Bar and Florida Judicial Qualifications Comm'n.*, 909 F. Supp. 1518 (N.D. Fla. 1995), the district court voided other provisions of Canon 7C(1) that prohibited judicial candidates from spending funds or establishing committees to solicit contributions or support earlier than one year before the general election.

These same constitutional principles govern the resolution of this case. In the nearly two decades since *Zeller* was decided, this Court repeatedly has

made clear that the government cannot limit speech by candidates – including judicial candidates – without satisfying rigorous First Amendment scrutiny. *White*, 536 U.S. at 781 ("the notion that the special context of electioneering justifies an *abridgment* of the right to speak out on disputed issues sets our First Amendment jurisprudence on its head") (emphasis in original). *See Arizona Free Enterprise Club's Freedom Club PAC v. Bennett*, 131 S. Ct. 2806, 2817-18 (2011); *Davis v. FEC*, 554 U.S. 724, 737-39 (2008); *Randall v. Sorrell*, 548 U.S. 230, 241 (2006).

B. Canon 7C(1) of the Florida Code of Judicial Conduct Does Not Serve to Protect Judicial Integrity as Applied Here

This case tests the constitutionality of a different restriction in Canon 7C(1) that was not addressed in *Zeller*: the prohibition on direct fundraising appeals by judicial candidates.[3] But if the district court at that time had been presented with the application of Canon 7C(1) presented here – a mass fundraising appeal – it likely would have held application of that restriction unconstitutional as well, and for the same reason: the government "wholly failed to establish a sufficient nexus between the interest [it] is trying to further – preventing the actuality or appearance of corruption – to the blanket prohibition on solicitation

[3] The district court in *Zeller* described the prohibition on candidate solicitation at issue here as less restrictive than the provisions it struck down. *Zeller*, 909 F. Supp. at 1527. But the court neither analyzed nor ruled on the constitutionality of the candidate solicitation ban.

and collection of judicial campaign contributions." *Zeller*, 909 F. Supp. at 1526.

1. Strict Scrutiny Applies to First Amendment Review of Canon 7C(1)

Because Canon 7C(1) imposes a direct restriction on Petitioner's speech, the appropriate standard of First Amendment review is strict scrutiny. The Court applies that demanding test in cases involving the solicitation of funds, *see, e.g., Riley v. National Fed'n of the Blind*, 487 U.S. 781, 789, 792 (1988), and the same standard logically applies here. Just like "[c]haritable appeals for funds, on the street or door to door," the type of mass appeal in this case "involve[s] a variety of speech interests – communication of information, the dissemination and propagation of views and ideas, and the advocacy of causes – that are within the protection of the First Amendment." *Schaumburg v. Citizens for a Better Env't,* 444 U.S. 620, 632 (1980). Accordingly, Canon 7C(1) can survive only if it serves a compelling interest and employs the least restrictive means to do so. *United States v. Playboy Entm't Group, Inc.*, 529 U.S. 803, 813 (2003).

There is no question that judicial integrity is "a state interest of the highest order." *White*, 536 U.S. at 793 (Kennedy, J., concurring). But it is not enough for the state to identify an abstract interest that all may agree is compelling. It must demonstrate that its speech restriction directly advances that interest in a narrowly tailored way – without unduly sacrificing free expression.

"[S]peech on public issues occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection." *Snyder v. Phelps*, 131 S. Ct. 1207, 1215 (2011) (citation omitted). That includes speech that furthers a campaign for political office. *Eu v. San Francisco Cnty. Democratic Cent. Comm.*, 489 U.S. 214, 223 (1989). Under those circumstances, the decision of the Florida Bar to discipline Petitioner for a mass mailing that sought campaign contributions well below the statutorily prescribed limits can and should be analyzed under a standard of review that is as protective of First Amendment values as that applied in the *Riley* and *Schaumburg* line of solicitation cases.

Ultimately, though, the question whether strict scrutiny applies does not matter on these facts because Canon 7C(1) is unconstitutional as applied to this case under any standard of First Amendment review. As the Court recently explained, "regardless of whether we apply strict scrutiny or *Buckley's* 'closely drawn' test, we must assess the fit between the state government objective and the means selected to achieve that objective." *McCutcheon v. FEC*, 134 S. Ct. 1434, 1445 (2014) (citing *Buckley v. Valeo*, 424 U.S. 1 (1976)). "[I]f a law that restricts political speech does not 'avoid unnecessary abridgement' of First Amendment rights … it cannot survive 'rigorous' review." *Id.* at 1446.

2. Canon 7C(1) is Unconstitutional As Applied Here Under Any Standard of First Amendment Review

In a wide variety of contexts involving different standards of review, this Court has consistently rejected speech restrictions that do little to advance the government's asserted interest – whether in the context of regulating advertising, *e.g.*, *Rubin v. Coors Brewing Co.*, 514 U.S. 476 (1995), entertainment, *Brown v. Entertainment Merchants Ass'n*, 131 S. Ct. 2729 (2011), or expressive activity on public property. *City of Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410 (1993). Regulations that have little more than a symbolic value "diminish the credibility of the government's rationale for restricting speech." *City of Ladue v. Gilleo*, 512 U.S. 43, 52-53 (1994).

In the context of this case, Canon 7C(1) is a poor instrument for furthering the substantial government interest in preserving the reality (or appearance) of judicial integrity. This is underscored by both its over-inclusiveness and its under-inclusiveness.

First, the rule was invoked in this case to punish a solicitation by the Petitioner that was far removed from the special contexts (such as in-chambers or other in-person solicitations of litigants) in which there is legitimate cause for concern about undue influence.[4] More generally, Canon 7C(1) categori-

[4] Petitioner apparently received no contributions in response to her mass mailing, Pet. Br. 23, highlighting the attenuated nature of any claim of coercion or undue influence on these facts.

cally prohibits a broad array of solicitations, including "speeches to large groups and signed mass mailings" that "present little or no risk of undue pressure or the appearance of a quid pro quo." *Carey v. Wolnitzek*, 614 F.3d 189, 205 (6th Cir. 2010).

Second, the rule is woefully under-inclusive because it would have permitted Petitioner to solicit via proxies and agents. For example, Petitioner remains free to "establish committees of responsible persons" to secure and to manage funds and to "obtain public statements of support for … her candidacy." Pet. App. 7a. As the Ninth Circuit explained, "if impartiality or absence of corruption is the concern, what is the point of prohibiting judges from personally asking for solicitations or signing letters, if they are free to know who contributes and who balks at their committee's request?" *Wolfson v. Concannon*, 750 F.3d 1145, 1157-58 (9th Cir. 2014).

Similarly, a campaign manager can sign a solicitation letter or place her name on a fundraising website, while Petitioner is barred from doing so. But how does removing her signature advance the interest in judicial integrity when it is no secret that Petitioner benefits from the campaign contributions? There is simply no basis for concluding that judicial integrity will suffer any more from allowing Petitioner to do *directly* what Florida allows her to do *indirectly* (via committees acting as their fundraising agents).

Third, Canon 7C(1) also is under-inclusive because, to the extent it is animated by a concern that judicial candidates may feel pressure to favor contributors in litigation that may come before them

(an obvious abuse of power independently prohibited by the Code of Judicial Conduct), nothing prevents the Petitioner from learning who donated or otherwise provided support for her campaign in response to the mass mailing at issue here (or to any similar solicitation). Nor is she prevented from expressing gratitude for those contributions. Like the rule before the Sixth Circuit in *Carey*, Canon 7C(1) "prevents judicial candidates from saying 'please, give me a donation,'" but inexplicably "does *not* prevent them from saying 'thank you' for a donation given." 614 F.3d at 205 (emphasis added). Again, there is no logical fit – much less narrow tailoring – between the relevant government interest behind the speech restriction and the restrictions imposed on Petitioner to further that interest.

Circuits that have invalidated analogous provisions appropriately recognized this. *See Wolfson*, 750 F.3d 1145; *Carey*, 614 F.3d 189; *Weaver v. Bonner*, 309 F.3d 1312 (11th Cir. 2002). By contrast, the Seventh and Third Circuits emphasized abstract interests in judicial integrity – an interest nobody disputes – while failing to come to grips with serious shortcomings of the means chosen to advance that laudable goal. *See Bauer v. Shepard*, 620 F.3d 704 (7th Cir. 2010); *Siefert v. Alexander*, 608 F.3d 974 (7th Cir. 2010); *Stretton v. Disciplinary Bd. of the Supreme Ct. of Penn.*, 944 F.2d 137 (3d Cir. 1991). This failure ignores the Court's command that "the government, even with the purest of motives, may not substitute its judgment as to how best to speak for that of speakers and listeners; free and robust debate cannot thrive if directed by the government." *Riley*, 487 U.S. at 791.

In sum, Canon 7C(1) as applied in this case violated the First Amendment because the Florida Bar penalized Petitioner's speech without serving any of the rule's stated purposes.

C. Judicial Integrity Could Have Been Served By Less Restrictive and More Efficient Means Than By Punishment Under Canon 7C(1)

Nothing here suggests that Florida is powerless to adopt measures to uphold judicial integrity in the context of the electoral process. This case involved direct solicitation by a candidate in the context of a mass fundraising appeal. A different concern may apply in the context of a personal fundraising appeal, where the risk of undue influence may be more present. *Compare*, *e.g.*, *Bates v. Arizona State Bar*, 433 U.S. 350, 384 (1977) (holding state may not "prevent the publication in a newspaper of [attorneys'] truthful advertisement concerning the availability and terms of routine legal services" through a disciplinary rule), *with Florida Bar v. Went For It, Inc.*, 515 U.S. 618, 635 (1995) (holding Florida Bar's 30-day restriction on targeted direct-mail solicitation of accident victims and their relatives withstood intermediate scrutiny). At least four less restrictive – and more effective – means would protect judicial integrity better than punishing Petitioner's mass-solicitation.

First, a less restrictive means to protect judicial integrity is for a state to enact a narrowly tailored solicitation clause focused on one-on-one solicitation of parties in cases pending or imminently before the court. *See Carey*, 614 F.3d at 206 ("No less impor-

tantly, we do not decide today whether a State *could* enact a narrowly tailored solicitation clause – say one focused on one-on-one solicitation or solicitation from individuals with cases pending before the court – only that this clause does not do so narrowly."); *Wolfson*, 750 F.3d at 1158 (same); *Republican Party of Minn. v. White*, 416 F.3d 738, 765 (8th Cir. 2005) (*en banc*) (ban prohibiting "candidates, who may be elected judges, from directly soliciting money from individuals who may come before them certainly addresses a compelling state interest in impartiality as to parties to a particular case").

Second, "disclosure is a less restrictive alternative to more comprehensive regulations of speech" by candidates for judicial office who, like Petitioner, seek to personally solicit funds through mass appeals. *Citizens United v. FEC*, 558 U.S. 310, 369 (2010). This Court has long recognized that a rule requiring disclosure of significant contributions to candidates for elected office can "deter actual corruption and avoid the appearance of corruption by exposing large contributions … to the light of publicity." [5] And "[w]ith modern technology, disclosure now offers a particularly effective means of arming the voting public with information." *McCutcheon*, 134 S. Ct. at 1460. Thus, "[t]oday, given the Internet, disclosure offers much more robust protections against corruption." *Id.* (citing *Citizens*

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[5] *Citizens United*, 558 U.S. at 67. This Court has also recognized the necessity of providing a safe harbor in situations where disclosure may create an unconstitutional chill on the support of unpopular candidates or causes. *Brown v. Socialist Workers '74 Campaign Comm.*, 459 U.S. 87 (1982).

United, 558 U.S. at 370-71). "Because massive quantities of information can be accessed at the click of a mouse, disclosure is effective to a degree not possible" ever before. *Id.*

For judicial elections, specifically, disclosure rules can illuminate financial interests that may raise due process concerns requiring recusal. *See*, *e.g.*, *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009) (holding due process required recusal "when a person with a personal stake in a particular case had a significant and disproportionate influence in placing the judge on the case by raising funds or directing the judge's election campaign when the case was pending or imminent"); *Bracy v. Gramley*, 520 U.S. 899, 905 (1997) ("[T]he floor established by the Due Process Clause clearly requires a fair trial in a fair tribunal, before a judge with no actual bias against the defendant or interest in the outcome of his particular case."); *Tumey v. Ohio*, 273 U.S. 510, 523 (1927) (parties have a due process right to a trial with a judge who lacks any "direct, personal, substantial pecuniary interest" in the outcome). An "impartial" judge under the due process clause is one who lacks bias for or against either party in the action. *White*, 536 U.S. at 776.

Thus, *third*, "recusal is [a] least restrictive means of accomplishing the state's interest in impartiality articulated as a lack of bias for or against parties to the case." *White*, 416 F.3d at 755. "Through recusal, the same concerns of bias or the appearance of bias" that Florida seeks to alleviate through non-solicitation "are thoroughly addressed without," *id.*,

"burn[ing] the house to roast the pig." *Butler v. Michigan,* 352 U.S. 380, 383 (1957).

Fourth, Florida and other states are free, if they choose, to adopt a system of public financing for judicial or other elections. Even in the absence of public financing, Florida has enacted contribution limits, Fla. Stat. § 106.08(1)(a), that provide (or could provide) a more straightforward path to addressing the State's legitimate concerns about bias and corruption that purportedly formed the basis for Petitioner's disciplinary sanction in this case.[6]

CONCLUSION

A citizen's advocacy of his or her own fitness for public office is speech that lies at the core of the First Amendment. This is no less true of candidates for the bench such as Petitioner here, notwithstanding the strong interest in avoiding even appearances of impropriety. Punishing Petitioner for signing a mass appeal soliciting campaign funds trenches far too deeply on these bedrock rights. This is especially the case where the prohibition applied to Petitioner does not effectively safeguard judicial integrity that can be equally if not better served by less restrictive alternatives. For these and the reasons set forth above, *Amici* respectfully ask this Court to reverse

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[6] The Court has never addressed, and this case does not present, the independent question of whether contribution limits for judicial elections can be set lower than contribution limits for political posts because of the unique nature of the judicial role and the due process significance of judicial impartiality.

the Florida Supreme Court's decision upholding Canon 7C(1) as applied in this case.

Respectfully submitted,

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