No. _____

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Florida licenses speech that it has defined as the practice of interior design, including consultations, studies, and drawings relating to the inside of a building or space. This Court has held that even the provision of "expert advice or assistance" is speech that receives heightened scrutiny. *Holder v. Humanitarian Law Project*, 130 S. Ct. 2705, 2723-24 (2010). Further, there is no evidence that the speech regulated by Florida's law has been "historically unprotected," *United States v. Stevens*, 130 S. Ct. 1577, 1585 (2010), or that it presents any risk to the public. Yet the court of appeals found the law wholly exempt from First Amendment scrutiny.

The question presented is whether the licensing of "direct, personalized speech with clients" receives any scrutiny under the First Amendment.

PARTIES TO THE PROCEEDING

The Petitioners are Eva Locke, Patricia Levenson, Barbara Vanderkolk Gardner, and the National Federation of Independent Business.

The Respondents are the members of the Florida Board of Architecture and Interior Design: John Ehrig, E. Wendell Hall, Warren Emo, J. Emory Johnson, Joyce Shore, Aida Bao-Garciga, and Wanda Gozdz, in their official capacities.

CORPORATE DISCLOSURE STATEMENT

Petitioner National Federation of Independent Business (NFIB) is a nonprofit mutual benefit corporation. NFIB is not a publicly traded corporation, issues no stock, and has no parent corporation. There is no publicly held corporation with more than a 10% ownership stake in NFIB.

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OPINIONS BELOW

The opinion of the court of appeals (App. 1-22) is reported at 634 F.3d 1185. The order denying the petition for panel rehearing or rehearing en banc is reprinted at App. 55-56. The decision of the district court (App. 23-50) is reported at 682 F. Supp. 2d 1283.

JURISDICTION

The judgment of the court of appeals was entered on March 1, 2011. The court of appeals denied Petitioners' motion for rehearing on May 3, 2011. On July 14, 2011, Justice Thomas granted Petitioners' motion for an extension of time in which to file their petition for certiorari, extending the deadline for filing through September 15, 2011. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The First Amendment to the United States Constitution provides, in pertinent part, that "Congress shall make no law . . . abridging the freedom of speech." Relevant portions of the Florida Statutes regulating the practice of interior design, Fla. Stat. §§ 481.201-.231, are reprinted in the Appendix. App. 57-78.

STATEMENT

Florida is one of only three states that regulate the practice of interior design. Virtually everything an interior designer does – from consulting with clients regarding their personal goals and tastes, to drawing up space plans, to offering advice about the selection and placement of furnishings – is speech. The State has criminalized that speech under the guise of occupational licensing.

It is illegal to practice interior design in Florida without a license. Fla. Stat. §§ 481.223(1)(a) & (2). "'Interior design' means designs, consultations, studies, drawings, specifications, and administration of design construction contracts relating to nonstructural interior elements [including furnishings] of a building or structure." *Id*. § 481.203(8). According to the State's discovery responses, this covers everything from flooring and wallcoverings to chairs, couches, and file cabinets. App. 79, 81-82 (Nos. 15-16, 20, 25). Purely "residential" design services are exempt from licensure. Fla. Stat. § 481.229(6)(a).

Obtaining an interior design license requires a combined total of six years' post-secondary education at a school approved by Florida's Board of Architecture and Interior Design and an apprenticeship under a state-licensed interior designer. Applicants must also pass a multi-day licensing exam administered by a private testing body. App. 87 ¶ 7.

The State has stipulated it has no evidence that the unregulated practice of interior design presents

any bona fide public welfare concerns or that interior design licensing has improved safety or otherwise benefitted the public in any demonstrable way. *Id*. at 89 ¶¶ 15-16.

The case was tried to the district court on an agreed record, including stipulated facts. App. 85-89. The district court recognized that "practicing interior design involves speech. An interior designer consults with the client and may prepare drawings or studies in the course of the work." App. 35. Relying on Justice White's concurring opinion in *Lowe v. SEC*, 472 U.S. 181 (1985), the district court found that the existence of a "personal nexus" between designer and client rendered the licensing law a "professional regulation" not subject to First Amendment scrutiny. App. 37-38.[1]

The court of appeals affirmed, reasoning that "[t]here is a difference, for First Amendment purposes,

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[1] The district court sought to narrow the scope of the law by expanding the statutory exemption for "interior decorator services" beyond services performed in residences and in connection with retail sales, Fla. Stat. §§ 481.229(6)(a) & (b), and by narrowly construing the term "nonstructural interior elements" within the definition of "interior design." App. 28-32. The district court failed to note that those interpretations contradicted the State's written discovery responses and the testimony of every witness in the case, including two Defendants and their expert witness. Courts are not empowered to rewrite statutes in an attempt to render them constitutional. *United States v. Stevens*, 130 S. Ct. 1577, 1591-92 (2010). In any event, both the district court and the court of appeals agreed that, even as narrowed by the district court, the statute licenses "direct, personalized speech with clients" about interior design.

between regulating professionals' speech to the public at large versus their direct, personalized speech with clients." App. 7. The court characterized the "direct, personalized speech with clients" regulated by Florida's interior design law as "occupational conduct," the regulation of which "does not implicate constitutionally protected activity under the First Amendment." *Id.* (internal quotations and citation omitted).

Petitioners sought rehearing to resolve the open conflict between the panel's conclusion that "direct, personalized *speech* with clients," *id.*, receives no protection under the First Amendment and this Court's ruling in *United States v. Stevens*, 130 S. Ct. 1577, 1586 (2010), that courts do not enjoy "free-wheeling authority to declare new categories of *speech* outside the scope of the First Amendment." (Emphases added.) The petition for rehearing was denied on May 3, 2011. This petition timely followed.

REASONS FOR GRANTING THE PETITION

Florida's interior design licensing law prohibits people from speaking to clients about such mundane subjects as the selection and placement of office furniture without a license. App. 80-81 (Nos. 19-20). The State admits it has no evidence to support that restriction, App. 89 ¶¶ 15-16, which means it would be unconstitutional under any level of First Amendment

scrutiny.[2] The court of appeals avoided that result by characterizing the regulated speech as "occupational conduct." App. 7.

The Court should grant certiorari for three reasons. First, the court of appeals' ruling directly conflicts with precedent, including *Holder v. Humanitarian Law Project*, 130 S. Ct. 2705 (2010), holding that a professional's expression – including even "expert advice" – is "speech" entitled to First Amendment protection. The decision also conflicts with *United States v. Stevens*, 130 S. Ct. 1577, 1585 (2010), which held that a particular category of speech may not be excluded from the First Amendment absent evidence that such speech has historically been considered unprotected. No such evidence was presented by the State or identified by the court of appeals.

Second, the Eleventh Circuit's decision underscores the growing confusion among lower courts about what level of scrutiny applies to the regulation of occupational speech. In particular, lower courts often depart from this Court's precedents in favor of Justice White's concurring opinion in *Lowe v. SEC*,

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[2] "When the Government defends a regulation on speech . . . it must do more than simply 'posit the existence of the disease sought to be cured.' It must demonstrate that the recited harms are real, not merely conjectural, and that the regulation will in fact alleviate these harms in a direct and material way." *United States v. Nat'l Treasury Emps. Union*, 513 U.S. 454, 475 (1995) (quoting *Turner Broad. Sys. v. FCC*, 512 U.S. 622, 664 (1994) (plurality opinion)) (internal citation omitted).

472 U.S. 181 (1985), which reasoned that direct, personalized speech with clients is merely "occupational conduct" to which the First Amendment does not apply. The Court has never embraced that proposition, and it cannot be reconciled with existing precedent.

Finally, the Court should grant review because the question presented is of substantial and recurring importance. Countless Americans – from interior designers and vocational instructors to labor organizers and political consultants – earn their living in occupations that consist primarily of speech, including "direct, personalized speech" with clients. The absence of clear constitutional guidance has led to a proliferation of speech-inhibiting regulations for which no valid purpose can be shown.

I. THE ELEVENTH CIRCUIT'S RULING DIRECTLY CONFLICTS WITH THIS COURT'S PRECEDENT.

The Eleventh Circuit's conclusion that the regulation of interior designers' "direct, personalized speech with clients . . . does not implicate constitutionally protected activity under the First Amendment," App. 7, directly conflicts with relevant decisions of this Court, which have consistently applied ordinary First Amendment principles to regulations of occupational speech. *See* S. Ct. R. 10(c) (noting that certiorari is appropriate where "a United States court of appeals . . . has decided an important

federal question in a way that conflicts with relevant decisions of this Court").

For example, *Milavetz, Gallop & Milavetz, P.A. v. United States*, 130 S. Ct. 1324 (2010), involved a First Amendment challenge to a statute regulating the advice that bankruptcy lawyers may give their clients. This Court carefully examined the scope of the statute to determine whether, as the petitioners in that case argued, the challenged law actually prohibited lawyers from "advising a client to incur any new debt while considering whether to file for bankruptcy." *Id.* at 1334. But that analysis would have been wholly unnecessary if the Eleventh Circuit were correct that the regulation of direct, personalized speech with clients simply "does not implicate constitutionally protected activity under the First Amendment." App. 7.

Contrary to the reasoning of the courts below, this Court has repeatedly held that speakers' First Amendment rights "are not lost merely because compensation is received." *See, e.g.*, *Riley v. Nat'l Fed'n of the Blind*, 487 U.S. 781, 801 (1988). To the contrary, the Court has suggested that occupational speech as diverse as "tutoring, legal advice, and medical consultation" is "fully protected" by the First Amendment. *Bd. of Trs. v. Fox*, 492 U.S. 469, 482 (1989). Simply put, occupational licensure is not "devoid of all First Amendment implications." *Riley*, 487 U.S. at 801 n.13.

The Eleventh Circuit avoided that principle by characterizing the various forms of "direct, personalized

speech" between interior designers and their clients as "occupational conduct." App.7. But that *ipse dixit* is logically unpersuasive,[3] and it directly conflicts with this Court's holding in *Holder v. Humanitarian Law Project*, 130 S. Ct. 2705 (2010).

Humanitarian Law Project concerned the constitutionality of a federal statute that "prohibited the provision of 'material support or resources' to certain foreign organizations that engage in terrorist activity." *Id.* at 2712. "Material support or resources" was defined to include both "training" – defined as "instruction or teaching designed to impart a specific skill, as opposed to general knowledge" – and "expert advice or assistance," defined as "advice or assistance derived from scientific, technical or other specialized knowledge." *Id.* at 2715. The plaintiffs included American citizens and organizations that wished to provide training to members of the Kurdistan Workers' Party

[3] *See, e.g.*, Eugene Volokh, *Speech as Conduct: Generally Applicable Laws, Illegal Courses of Conduct, "Situation-altering Utterances," and the Uncharted Zones*, 90 Cornell L. Rev. 1277, 1346 (2005) ("When the government restricts professionals from speaking to their clients, it's restricting speech, not conduct. And it's restricting the speech precisely because of the message that the speech communicates . . . ."); Robert Kry, *The "Watchman for Truth": Professional Licensing and the First Amendment*, 23 Seattle U. L. Rev. 885, 893 (2000) ("When a professional does no more than render advice to a client, the government's interest in protecting the public from fraudulent or incompetent practice is quite obviously directed at the expressive component of the professional's practice rather than the nonexpressive component (if such a component even exists).").

"on how to use humanitarian and international law to peacefully resolve disputes" and seek assistance from entities like the United Nations. *Id.* at 2713-14, 2716. The plaintiffs challenged on First Amendment grounds the material-support law that prohibited that training. *Id.* at 2722-30.

The government defended the restriction by arguing that it was aimed at conduct, not speech, and therefore only incidentally burdened the plaintiffs' free expression. *Id.* at 2723. The Court emphatically rejected that argument, holding that the material-support prohibition was a content-based regulation of speech subject to heightened scrutiny. "The Government is wrong that the only thing actually at issue in this litigation is conduct . . . ." *Id*. Rather, the material-support prohibition

> regulates speech on the basis of its content. Plaintiffs want to speak to the [Kurdistan Workers' Party] and the [Liberation Tigers of Tamil Eelam], and whether they may do so under the law depends on what they say. If plaintiffs' speech to those groups imparts a "specific skill" or communicates advice derived from "specialized knowledge" – for example, training on the use of international law or advice on petitioning the United Nations – then it is barred. On the other hand, plaintiffs' speech is not barred if it imparts only general or unspecialized knowledge.

Id. (internal citations omitted).

That analysis applies directly to Petitioners' challenge to Florida's interior design law. Petitioners wish to communicate with clients, but whether they may do so without a government-issued license depends on what they say. The State has criminalized a wide variety of expression that "communicates advice derived from 'specialized knowledge,'" *id*. at 2724, about the principles of interior design. Just as in *Humanitarian Law Project*, the "conduct" triggering application of the statute consists, in many instances, of simply communicating a message.[4]

The Eleventh Circuit's conclusion that the State's regulation of speech it has defined as the practice of interior design "does not implicate constitutionally protected activity under the First Amendment," App. 7, cannot be reconciled with this Court's holding that the communication of advice "derived from 'specialized knowledge'" is fully protected speech. *Humanitarian Law Project*, 130 S. Ct. at 2724. If the provision of legal advice to designated terrorist organizations is subject to heightened scrutiny – a point on which this Court was in unanimous agreement – it

[4] Even if "direct, personalized speech with clients" could be considered "conduct," rather than pure speech, a law burdening that conduct would still have an incidental effect on speech, and be subject to review under the intermediate-scrutiny test announced in *United States v. O'Brien*, 391 U.S. 367, 376-77 (1968). *See Humanitarian Law Project*, 130 S. Ct. at 2723-24 (noting that *O'Brien* scrutiny is the appropriate level of review for content-neutral regulations of conduct that impose an incidental burden on speech).

cannot be the case that harmless speech about interior design is totally devoid of First Amendment protection.

The Eleventh Circuit's wholesale exclusion of "direct, personalized speech with clients" from the First Amendment also conflicts with *United States v. Stevens*, 130 S. Ct. 1577 (2010), which the Petitioners cited in their briefing, but which the panel neither discussed nor even acknowledged in its decision.

In striking down a federal law prohibiting certain depictions of animal cruelty, *Stevens* explained that federal courts do not have "freewheeling authority to declare new categories of speech outside the scope of the First Amendment" on the basis of "an ad hoc balancing of relative social costs and benefits." *Id.* at 1585-86. Instead, the proper inquiry is whether the specific category of speech at issue has been historically treated as unprotected. *Id.* Finding no such evidence, the Court applied strict scrutiny and struck down the law as a content-based burden on protected speech. *Id.* at 1586-87.

The Court reaffirmed the central holding of *Stevens* last term in *Brown v. Entertainment Merchants Ass'n*, which invalidated a ban on the sale or rental of violent video games to minors. 131 S. Ct. 2729, 2733-34 (2011). *Entertainment Merchants* emphasized that courts must carefully consider the particular speech at issue in a given case to determine whether it falls within a historical exception to the First Amendment. *Id.* at 2734-38. Thus, for

example, the fact that minors' access to sexual content may permissibly be restricted did not mean that minors' access to violent content could be restricted as well. *Id.* at 2735-36.

Had the Eleventh Circuit performed the historical inquiry required by *Stevens*, it would have found that Florida's interior design law regulates protected speech. The State produced no evidence that occupational speech generally – or, under the more specific inquiry required by *Entertainment Merchants*, speech that Florida has defined as the practice of interior design – has been considered historically unprotected. Indeed, no state or territory licensed interior design until 1986, when the District of Columbia adopted the nation's first such law. Besides Florida, only three states have enacted interior design licensing laws, one of which was struck down on state constitutional grounds.[5] Simply put, there is no evidence that advice by non-fiduciaries in expressive occupations like interior design is – like defamation, incitement, obscenity, fighting words, and child pornography – one of the "historic and traditional categories" of unprotected speech that are "long familiar to the bar." *Stevens*, 130 S. Ct. at 1584.

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[5] La. Rev. Stat. Ann. § 37:3176(A)(1); Nev. Rev. Stat. § 623.360(1)(c); *State v. Lupo*, 984 So. 2d 395 (Ala. 2007) (declaring unconstitutional the Alabama Interior Design Consumer Protection Act, Ala. Code §§ 34-15B-1, *et seq*.).

The Eleventh Circuit's failure to apply the constitutional analysis mandated by *Stevens* is sharply out of step with other circuits, which have universally applied *Stevens* in identifying new categories of unprotected speech. *See Carey v. Wolnitzek*, 614 F.3d 189, 199 (6th Cir. 2010) (citing *Stevens*' discussion of unprotected speech to support conclusion that Minnesota judicial canons "implicate a core area of free-speech protection"); *281 Care Comm. v. Arneson*, 638 F.3d 621, 635 (8th Cir. 2011) (citing *Stevens* as grounds for declining to "recognize knowingly false speech as a category of unprotected speech"); *United States v. Alvarez*, 617 F.3d 1198, 1207-09 (9th Cir. 2010) (citing *Stevens* as grounds for not expanding the First Amendment's exclusion of defamatory speech to false statements in general).

By contrast, the Missouri Supreme Court recently cited the decision below in upholding restrictions on "rental advisors" who refer prospective tenants to property owners for a fee. *Kan. City Premier Apartments, Inc. v. Mo. Real Estate Comm'n*, No. SC91125, 2011 WL 2848191, at *5 (Mo. July 19, 2011). Like the Eleventh Circuit, the Missouri Supreme Court endorsed the proposition that there should be no meaningful review of laws that restrict speech in the context of occupational licensing. *See id*. at *4-5.[6]

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[6] Unlike the Eleventh Circuit, the Missouri Supreme Court recognized that the government "does not have unlimited power to directly restrict speech through the regulation of a profession," *id*. at *5, but then misapplied the *Central Hudson* test for

(Continued on following page)

The Court should grant certiorari because the decision below directly conflicts with the relevant decisions of this Court on an important and recurrent point of First Amendment doctrine.

II. THE ELEVENTH CIRCUIT'S RULING ILLUSTRATES THE CONFUSION IN THE LOWER COURTS CAUSED BY JUSTICE WHITE'S CONCURRING OPINION IN *LOWE v. SEC*, 472 U.S. 181 (1985).

Under this Court's reasoning in *Stevens*, *Entertainment Merchants*, and *Humanitarian Law Project*, "direct, personalized speech with clients" is plainly entitled to some level of protection under the First Amendment. The Eleventh Circuit departed from that rule in favor of a different rule articulated in Justice White's concurring opinion in *Lowe v. SEC*, 472 U.S. 181 (1985), and a series of lower-court decisions adopting the proposed rule as law. The *Lowe* concurrence has engendered substantial confusion among lower courts, leading several to misapply or even disregard controlling decisions of this Court, as the court of appeals did in this case.

Lowe involved an effort by the Securities and Exchange Commission to regulate publishers of investment newsletters as "investment advisors." The

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commercial speech "proposing a transaction." *Cent. Hudson Gas & Elec. Corp. v. Public Serv. Comm'n of N.Y.*, 447 U.S. 557, 561 (1980).

majority concluded that newsletter publishers were not covered by the statute's registration requirement, *id*. at 183-84, but Justice White, writing for himself and two others, disagreed and found it was necessary to determine the constitutionality of requiring newsletter publishers to register with the SEC. *Id*. at 212-13. Concluding the newsletters in question were fully protected speech, Justice White went on to suggest that the First Amendment would not apply in settings where a professional "takes the affairs of a client personally in hand and purports to exercise judgment on behalf of the client in the light of the client's individual needs and circumstances . . . ." *Id*. at 232.

Justice White's concurrence has never been cited or endorsed by a majority of this Court, and his suggestion that the restriction of personalized advice does not implicate the First Amendment conflicts with the Court's subsequent precedent. *See supra* at 7-12. The opinion has nevertheless spawned a series of lower-court decisions completely excluding a variety of occupational speech from First Amendment protection. Indeed, the three circuit court decisions cited by the court of appeals in rejecting Petitioners' First Amendment argument all flow from Justice White's concurrence in *Lowe*. *See Accountant's Soc'y of Va. v. Bowman*, 860 F.2d 602, 604 (4th Cir. 1988) (citing *Lowe* to uphold regulation of accountants); *Lawline v. Am. Bar Ass'n*, 956 F.2d 1378, 1386 (7th Cir. 1992) (citing *Bowman* to uphold regulation of lawyers); *Wilson v. State Bar*, 132 F.3d 1422, 1429-30

(11th Cir. 1998) (citing *Lawline* to uphold regulation of lawyers).

By contrast, other courts have eschewed Justice White's concurrence when it conflicts with precedent and have applied heightened First Amendment scrutiny to restrictions on occupational speech. For example, in *State v. Niska*, 380 N.W.2d 646, 649 (N.D. 1986), the Supreme Court of North Dakota evaluated a prohibition on non-lawyers offering legal advice under the intermediate-scrutiny standard announced in *United States v. O'Brien*, 391 U.S. 367 (1968). The Eighth Circuit in *Argello v. City of Lincoln*, 143 F.3d 1152 (8th Cir. 1998), applied strict scrutiny to a municipal ban on fortunetelling, as did the Maryland Court of Appeals in *Nefedro v. Montgomery County*, 996 A.2d 850, 856-57 (Md. 2010). *Cf. Bd. of Trs. v. Fox*, 492 U.S. 469, 482 (1989) ("[S]ome of our most valued forms of fully protected speech are uttered for a profit.").

The latter cases are more consistent with this Court's treatment of occupational speech than ones applying Justice White's *Lowe* concurrence to denude such speech of First Amendment protection. Nonetheless, as the decision below demonstrates, Justice White's concurrence exerts significant influence on the development of case law in this area and has engendered substantial doctrinal confusion among the lower courts.

III. THIS CASE RAISES AN ISSUE OF EXCEPTIONAL NATIONAL IMPORTANCE IN A NARROW SETTING WITH STIPULATED FACTS.

The level of First Amendment protection afforded to direct, personalized speech with clients remains "one of the least developed areas of First Amendment doctrine." David T. Moldenhauer, *Circular 230 Opinion Standards, Legal Ethics and First Amendment Limitations on the Regulation of Professional Speech by Lawyers*, 29 Seattle U. L. Rev. 843, 843 (2006). Commentators have repeatedly noted the need for clarification in this area of law.[7] As the preceding discussion illustrates, despite this Court's recent decisions in cases like *Humanitarian Law Project* and *Stevens* emphasizing the broad protection the First Amendment affords to various speakers – including those who provide expert advice or who speak for pay – further guidance is still needed.

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[7] *E.g.*, Robert Post, *Informed Consent to Abortion: A First Amendment Analysis of Compelled Physician Speech*, 2007 U. Ill. L. Rev. 939, 944 (2007) (describing the "complex and difficult relationship between the First Amendment and the regulation of professional speech" as "obscure and controversial"); Eugene Volokh, *Little-discussed free speech question*, The Volokh Conspiracy (May 28, 2004, 3:37 p.m.), http://volokh.com/posts/1085773062.shtml (noting that the regulation of direct, personalized speech with clients is a "very important [topic that] has gotten much less attention than it deserves"); Daniel Halberstam, *Commercial Speech, Professional Speech, and the Constitutional Status of Social Institutions*, 147 U. Pa. L. Rev. 771, 772 (1999) ("Current First Amendment analysis lacks a coherent view of speech in the professions").

This case presents an ideal vehicle to provide such guidance, both because it involves speech within a historically unregulated occupation and because the government has stipulated it has no evidence that the regulated speech poses any genuine public welfare concerns. App. 89 ¶ 15. As a result, this case provides the opportunity for a narrow ruling that the First Amendment applies to – but certainly does not preclude – the regulation of occupational speech. Exactly what level of scrutiny should apply to an occupational speech restriction that presents some demonstrable public welfare concern may be left for another day because Florida's interior design law fails under any level of First Amendment scrutiny. *Cf. United States v. Playboy Entm't Group*, 529 U.S. 803, 816 (2000) ("When the Government restricts speech, the Government bears the burden of proving the constitutionality of its actions."); *Nixon v. Shrink Mo. Gov't PAC*, 528 U.S. 377, 392 (2000) ("We have never accepted mere conjecture as adequate to carry a First Amendment burden . . . .").

The decision below is especially troubling given the steadily increasing number of laws restricting entry into historically unregulated occupations that, like interior design, consist mostly of speech. For example:

- The City of Philadelphia recently enacted an ordinance requiring private tour guides to pass a subject-matter exam before they may describe historical points of interest to their customers, Phila., Pa.,

Bill No. 080024-A (Apr. 16, 2008) (codified at Phila., Pa., Code § 9-214);

- Virginia recently imposed licensing on individuals who instruct others on how to teach yoga classes, Matthew Barakat, *Va. instructors: Yoga regulations unconstitutional*, Associated Press (Dec. 1, 2009);[8]
- Illinois recently adopted a licensing requirement for hair-braiding instructors, H.B. 5783, 96th Gen. Assemb., Reg. Sess. (Ill. 2010) (codified at Ill. Comp. Stat. 410/3E-3);
- A bill was recently introduced in the North Carolina legislature to license the practice of "music therapy," H.B. 429, 2011-12 Sess. (N.C. 2011); and
- In Raleigh, North Carolina, a political activist was investigated by the engineer licensing board for submitting to city officials a traffic study that a state transportation official considered to be "engineering-quality work." Bruce Siceloff, *Citizen Activist Grates on State over Traffic Signals*, The News & Observer (Feb. 3, 2011) *available at* http://tinyurl.com/668wyc7.

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[8] This requirement was legislatively repealed in response to a First Amendment lawsuit. *See* H.B. 703, 2010 Sess. (Va. 2010); *Va. Law to Exempt Yoga Teachers from State Regs*, Associated Press (Mar. 10, 2010).

Restrictions on occupational speech will continue to proliferate given the strong incentives for interest groups to erect anticompetitive barriers to entry like Florida's *six-year* licensing track for interior designers. This Court should grant certiorari to ensure that lower courts analyze speech-suppressing licensing laws in a manner that gives appropriate weight to the important First Amendment values at stake. *See* S. Ct. R. 10(c) (noting that certiorari is appropriate where "a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court").

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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