O/a 9-22-86

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IN THE SUPREME COURT OF FLORIDA

SAM FALZONE,

Petitioner,

v. CASE NO. 68,178

STATE OF FLORIDA,

Respondent.

AMENDED AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER

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STATEMENT OF INTEREST OF AMICUS CURIAE

Amicus, Heather Everett, like Petitioner Falzone, was one of a group of four individuals indicted in October, 1984, for violation of Florida's Campaign Financing Act, Chapter 106, Fla. Stats. Unlike Petitioner Falzone, Everett did not plead to the charge. She and the two remaining defendants returned to the trial court after the Second District issued its opinion, where the trial court once again dismissed the charges. The State has taken an appeal from that order, which appeal is pending.

Amicus Everett, therefore, has a vital interest in this Court's determination of the merits of the case.

PRELIMINARY STATEMENT

This case concerns the right of a small group of individuals to assemble spontaneously for the purpose of writing and distributing a single leaflet critical of a state official, without running afoul of the State's campaign financing laws.

References to the parties will be by their surnames. References to Petitioner Falzone's Initial Brief will be designated (Pet. Br.). References to the Respondent's Brief on the merits will be designated as (Resp. Br.). References to the Amicus Curiae's Appendix to her Brief will be designated as (App.), and references to the Record on Appeal will be designated as (R.).

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STATEMENT OF FACTS

Everett adopts the Petitioner's Statement of the Case and Statement of the Facts, and offers the following additional facts.

In late August, 1984, some eleven days before the primary election in which he was a candidate for re-election, Sheriff John Short of Pasco County was indicted by a Grand Jury (App. 1-2). A few days later, after campaigning at a local shopping center, a few of Sheriff Short's supporters went to the home of Ross and Susan Greco, who were likewise supporters of Sheriff Short's re-election. (App. 3; R.18).

This group of approximately ten persons was incensed about the timing of Sheriff Short's indictment and believed the State Attorney for the Sixth Judicial Circuit, James Russell, had manipulated the timing of the indictment to do maximum political damage to Sheriff Short, especially because Russell's investigation had been active for some time. Everett was among those campaigners who went to the Greco residence for cake and coffee that evening, and also to discuss the possibility of running an ad in the local newspaper protesting the timing of the indictment. (App. 3-5)

This group of people, after some preliminary discussion, set about putting their thoughts on paper, and Everett left the Greco home around midnight with the discussion still continuing. (App. 28-29; R.104).

This was the extent of Everett's involvement. As it turned out, the local newspaper rejected the advertisement, and a leaflet bearing the same message was the ultimate product. (R.94). A copy of the leaflet is contained in the Appendix to this Brief (App. 1).

A few days later a story appeared in the local newspaper reporting that the "fliers attacking Russell and the jurors have turned up all over Pasco County in recent weeks" and further reporting that the "group attempting to place the ad also appeared to be in violation of state laws that require registration with elections officials." (App. 2).

On October 16, 1984, Russell himself interrogated Everett in connection with his investigation of the leaflet. Everett had been questioned previously on September 26, 1984 by the Assistant State Attorney in charge of the investigation. Copies of the transcripts of these two interrogations were listed by the State as evidence (R.104) and are included in the Appendix to this

Brief, as are the transcripts of Falzone and Sue Greco. (App. 3-14, 15-33, 34-48, 49-78). On October 24, 1984 the same Grand Jury that had indicted Sheriff Short indicted Amicus Everett, Petitioner Falzone, and Ross and Susan Greco. (R.55-56). With the exception of Mrs. Greco, all were deputies in the Pasco County Sheriff's Department. (R.57-60).

The proposed ad-turned-leaflet was not financed by the Short campaign fund, but rather as a spontaneous, grass-roots, one-shot project. The group preparing the leaflet elected no officers, held no organizational meetings, did not consider itself a political committee, and did not register as a political committee with state elections officials. (App. 49-78; R. 55-56).

SUMMARY OF ARGUMENT

The Defendants' conduct here, the writing, production and distribution of a leaflet critical of the State Attorney, is clearly political speech deserving of the utmost judicial deference. Just as the public official plaintiff in New York Times v. Sullivan, 376 U.S. 254, 84 S.Ct. 710, (1964), could not punish critics of his official conduct in the guise of a libel action, so cannot the State here subject these defendants to criminal prosecution, by stretching and distorting Florida's Campaign Financing Act.

This Court should be guided by the concerns and principles enunciated by the United States Supreme Court in Buckley v. Valeo, 424 U.S. 1, 96 S.Ct. 612 (1976). There, the Court narrowed the federal statutory definition of political committee to extend only to those organizations directly under the control of a candidate or whose major purpose was the election or defeat of a candidate. These defendants formed a group for a one-time purpose, and cannot be said to fall within the definition of political committee according to the constitutional principles announced in Buckley.

This Court in the past has been guided by the concerns articulated by the Buckley Court and similarly here should adopt the narrowed definition of "political committee" in that opinion.

ARGUMENT

ISSUE I.

THE FIRST AMENDMENT PROTECTS CRITICISM OF PUBLIC OFFICIALS WITHOUT FEAR OF CRIMINAL PROSECUTION.

In the early 1960's, a group of national civil rights and religious leaders became concerned about law enforcement's treatment of civil rights demonstrators, and specifically, Dr. Martin Luther King, in the Deep South. This group of well-known individuals paid for a full page ad to run in the New York Times. The ad was headlined "Heed Their Rising Voices;" it detailed instances of abuse and harassment by law enforcement officials in Montgomery, Alabama, among other places. L. B. Sullivan, the chief law enforcement officer in Montgomery, filed a suit against every individual whose name had appeared at the bottom of the ad as well as the New York Times Company itself. He charged that the ad was false and defamatory toward him in the discharge of his duties.

The case eventually was heard by the United States Supreme Court, and in what the intervening years have demonstrated to be a national commitment to uninhibited, robust and wide-open" debate on public issues. New York Times v. Sullivan, 376 U.S. 254, 270, 84 S.Ct. 710, 721 (1964). The Court ruled that a public official landmark decision, the Court reaffirmed this country's "profound could not use a common law libel action as a club to

silence his critics. Instead, the Court ruled the First Amendment required that the public official plaintiff prove that any defamatory statements were made with actual malice. 376 U.S. at 283, 84 S.Ct. at 727.

Regardless of the subsequent development of libel law, the facts in the Sullivan case are strikingly similar to the facts presently before this Court. Here, a group of individuals, supporters of a local sheriff, banded together to run an ad in their local newspaper expressing their concern over the timing of the indictment of the sheriff, shortly before the primary election in which he was a candidate. When the newspaper rejected their ad, the group produced a leaflet which was highly critical of James Russell, the State Attorney for the Sixth Judicial Circuit, who had obtained the Grand Jury indictment. (App. 1) As the State's own investigation demonstrates, the gathering at the Greco home to produce the newspaper ad was not so much a pro-John Short gathering, but rather an anti-James Russell gathering. (App. 3-78) For their efforts, since October, 1984, four members of this group have been prosecuted by the very same prosecutor of whom they were critical. (R.55-56). The State charges that this group was a "political committee" pursuant to Chapter 106, Fla. Stats., and their failure to register as a political committee was a criminal violation of Florida's Campaign Financing Act. (R.55-60).

that evening, and also to discuss the possibility of running an ad in the local newspaper protesting the timing of the indictment. (App. 3-5)

This group of people, after some preliminary discussion, set about putting their thoughts on paper, and Everett left the Greco home around midnight with the discussion still continuing. (App. 28-29; R.104).

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Instead of being subjected to civil sanctions, as in the Sullivan case 25 years ago, these individuals have been subject to criminal prosecution, simply for expressing their critical views of a public official.

a. The defendants engaged in protected political speech.

Unquestionably, these defendants were engaging in activity protected by the First Amendment to the United States Constitution, namely, political speech. Freedom of political speech has come to be known as the "core value" of First Amendment protections. Winn-Dixie Stores, Inc. v. State, 408 So.2d 211, 212 (Fla. 1981). "The First Amendment, said Judge Learned Hand, 'presupposes that right conclusions are more likely to be gathered out of a multitude of tongues, than through any kind of authoritative selection. To many this is, and always will be, folly; but we have staked upon it our all.' United States v. Associated Press, 52 F.Supp 362, 372 (S.D.N.Y. 1943)." New York Times v. Sullivan, supra, 376 U.S. at 270, 84 S.Ct. at 720.

In an election context, the United States Supreme Court struck down an Alabama law that prohibited discussion of candidates or issues on election day. A newspaper editor was being prosecuted for publishing an editorial on election day urging a change in the form of local government.

> Whatever differences may exist about interpretations of the First Amendment, there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs. This of course includes discussions of candidates, structures and forms of government, the manner in which it is operated or should be operated, and all such matters it relating to political processes. The Constitution specifically selected the press, which includes not only newspapers, books, and magazines, but also humble leaflets and circulars, see Lovell v. City of Griffin, 303 U.S. 444, 58 S.Ct. 666, 82 L.Ed. 949, to play an important role in the discussion of public affairs.

Mills v. Alabama, 384 U.S. 214, 218-19, 86 S.Ct. 1434, 1437 (1966) (emphasis supplied).

Alabama, in the Mills case, as Florida in this case, had enacted a statute to promote the noble cause of ensuring free and fair elections. Nevertheless, the Court ruled that "no test of reasonableness can save a state law from invalidation as a violation of the First Amendment" for making criminal the editor's act. 384 U.S. at 220, 86 S.Ct. at 1437. Accord, Town of Lantana v. Pelcznski, 290 So.2d 566, (Fla. 4th DCA 1974).

The Court's holding in Mills is consistent with its earlier ruling in NAACP v. Alabama, 357 U.S. 449, 78 S.Ct. 1163 (1958). In that case, the Alabama attorney general sought disclosure of the membership lists of the state chapter of the NAACP. The Court found that "effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association as this Court has more than once recognized

by remarking upon the close nexus between the freedoms of speech and assembly." 357 U.S. at 460, 78 S.Ct. at 1171. The Court further found that revelation of the membership lists would result in the "likelihood of a substantial restraint upon the exercise by petitioner's members of their right to association," and that the state must show a compelling interest in order to subordinate those constitutionally guaranteed freedoms. 357 U.S. at 462-63, 78 S.Ct. at 1172.

Beyond any reasonable debate, the present defendants were engaging in political, protected speech in writing, producing, and distributing this leaflet. As in Mills and Pelcznski, supra, these defendants were adding their voices-directly-to the informational give-and-take that is the hallmark of American politics. What possible compelling reason can the State have for criminalizing the act of disclosing to the electorate the prosecutor's apparent political motivations and bias?

b. Facially neutral statutes may nevertheless be unconstitutional in their application.

Legislation that is permissible in purpose may nevertheless be found wanting in design, if its application is capable of penalizing constitutionally protected rights. In NAACP v. Button, 371 U.S. 415, 83 S.Ct. 328 (1963), the petitioners attacked Virginia's statutes regulating the legal profession, which prohibited improper solicitation of legal business. The Court found that the state statute, while serving a legitimate end, was ambiguous as it

applied to NAACP's activities.

> If the line drawn by the decree between the permitted and prohibited activities of the NAACP, its members and lawyers is an ambiguous one, we will not presume that the statute curtails constitutionally protected activity as little as possible. For standards of permissible statutory vagueness are strict in the area of free expression.

371 U.S. at 432, 83 S.Ct. at 337 (emphasis supplied). The Court went on to note that even if the specific fact situation before it warranted a finding that the application of the statute was acceptable, the Court in the past "has not hesitated to take into account possible applications of the statute in other factual contexts besides that at bar" 371 U.S. at 432, 83 S.Ct. at 337-38.

Insofar as the First Amendment guarantees may be implicated, a statute must be strictly construed, in order to do as little constitutional damage as possible. This is so because "these freedoms are delicate and vulnerable, as well as supremely precious in our society. The threat of sanctions may deter their exercise almost as potently at the actual application of sanctions." 371 U.S. at 433, 83 S.Ct. at 338.

Here, of course, the defendants are not under any mere threat of criminal sanction, but actually have been prosecuted by the very prosecutor whom they criticized. One can only imagine the deterrent effect this prosecution has had on political involvement by citizens of Pasco County. "Because First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity." Ibid.

Despite the worthiness of the purposes of Florida's Campaign Financing Act, if that statute can be used to punish and to stifle political expression such as this case reflects, the statute leaves too much to the prosecutor's unfettered discretion and is overbroad.

In this particular instance, the statute is contradictory and internally inconsistent, as has been ably demonstrated by petitioner's brief on the merits. Section 106.19(1), Fla. Stats., defines four acts or omissions that constitute criminal violations of the statute. Inexplicably, defendants have been charged with failing to register as a political committee, which omission is not one of the listed four violations. The Second District in its opinion "supplied a missing term," in concluding that the Legislature intended the failure to register as a committee to be included within the prohibited failure to include "any information required" by the statute. State v. Greco, 479 So.2d 786, 790 (Fla. 2d DCA 1985). While this technique of interpretation may be appropriate in a contract case, it is unacceptable and inappropriate in a criminal prosecution fraught with First Amendment concerns and problems. Far from giving the First Amendment its breathing room, this prosecution has strangled these defendants', and others like them, willingness to become involved in local politics, on an ad hoc spontaneous basis.

This Court should take note of the Second District's complete disregard of traditional techniques of First Amendment analysis, as evidenced by its opinion. The Second District noted that "we

need not respond to these [hypothetical applications of the statute] until appellees demonstrate that their conduct is within the purview of such inquiry." 479 So.2d at 788. The problem with this approach, of course, is that it relegates the defendants to trial and possible conviction for protected activities. The clear meaning of the First Amendment guarantees, if they have any meaning at all, is that one need not hope for the somewhat hollow vindication of victory on appeal for expressing ones political beliefs, and, in this case, criticizing a public official.

The Second District cited New York v. Ferber, 458 U.S. 747, 102 S.Ct. 3348 (1982), as support for its decision to decline to consider possible factual contexts other than those before it. Ferber is not a political speech case, but instead deals with child pornography, an area in which "the States are entitled to greater leeway" in statutory regulation. 458 U.S. at 756, 102 S.Ct. at 3354. The use of Ferber by the Second District is inappropriate and insulting in a political speech case. Obscenity and pornography are without First Amendment protection or value, 458 U.S. at 754, 102 S.Ct. 3353, in contrast to political speech, which lies at the very heart of our system of self-governance.

This Court should follow the clear mandate of the Supreme Court in Button, supra, a more analogous case and "not hesitate to take into account possible applications of the statute in other factual contexts besides that at bar." Button, supra, 371 U.S. at 432, 83 S.Ct. at 337. See discussion at Issue II a., infra.

ISSUE II.

THE DEFINITION OF "POLITICAL COMMITTEE" IN CHAPTER 106 VIOLATES THE FIRST AMENDMENT

Everett, Ross Greco, Sue Greco, and Sam Falzone, until he pleaded no contest, were being prosecuted for failing to register as a political committee as required by Chapter 106, Fla. Stats. Florida's Campaign Financing Act is modeled after its federal equivalent, the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. Section 431 et seq. In a massive, 150-page opinion cited by all parties in this case, the United States Supreme Court painstakingly analyzed the federal legislation. Buckley v. Valeo, 424 U.S. 1, 96 S.Ct. 612 (1976). The Court ultimately ruled parts of the Act constitutional and struck down others as being unconstitutional, but for purposes of this case only Part II of the opinion is germane here.

a. The First Amendment prohibits the broad definition of "political commitee" contained in the statute.

In Part II, the Buckley Court was concerned with the potential chilling effect on contributions to political campaigns that compelled disclosure to elections officials might have. "But we have repeatedly found that compelled disclosure, in itself, can seriously infringe on privacy of association and belief guaranteed by the First Amendment." 424 U.S. at 64, 96 S.Ct. at 656. The Court was particularly concerned with Section 434(e) of the Act,

which requires reports to be filed by "every person (other than a political committee or candidate) who makes contributions or expenditures...". The Court found that Congress was intent on closing any loopholes that might have been left open by other parts of the Act. "In its effort to be all-inclusive, however, [section 434(e)] raises serious problems of vagueness, particularly treacherous where, as here, the violation of its terms carries criminal penalties, and fear of incurring these sanctions may deter those who seek to exercise protected First Amendment rights." 424 U.S. at 76, 96 S.Ct. at 662. In discussing the vagueness problem of this section, the Court noted that words "contributions or expenditures" are, in effect, terms of art in this statute, tied to the intention of the individual or group involved.

> The general requirement that "political committees" and candidates disclose their expenditures could raise similar vagueness problems for "political committee" is defined only in terms of amount of "annual contributions" and "expenditures" and could be interpreted to reach groups engaged purely inissue discussion. The lower courts have construed the words "political committee" more narrowly. To fulfill the purposes of the Act they need only encompass organizations that are under thecontrol of a candidate or the major purpose of which is thenomination or election of a candidate.

424 U.S. at 79, 96 S.Ct. at 663 (emphasis supplied). The Court noted at this point in the text in a footnote that "at least two lower courts seeking to avoid questions of unconstitutionality,

have construed the disclosure requirements imposed on 'political committees' by section 434(a) to be non-applicable to nonpartisan organizations," such as the American Civil Liberties Union and the National Committee for Impeachment. 424 U.S. at 79 106, 96 S.Ct. at 663 106.

The federal statutory definition of "political committee" is slightly different than that contained in the Florida statute. In the federal definition, a political committee "means any committee, club, association, or other group of persons which receives contributions or makes expenditures during a calendar year in an aggregate amount exceeding $1,000.00." 2 U.S.C. Section 431 (d); see Appendix to Buckley opinion, 424 U.S. at 145, 96 S.Ct. at 694. The Court, in the above-styled language, has engrafted the additional definitional qualifier that political committees are only those "that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate."

The Buckley opinion is seriously fractured. First, Justice Stevens did not participate. Chief Justice Burger and Justices White, Marshall, Blackmun and Rehnquist all filed separate partial concurrences and dissents. Only Chief Justice Burger may be said to have disagreed with the Court's holdings on disclosure. "No public right to know justifies the compelled disclosure of such contributions, at the risk of discouraging them." 424 U.S. at 239, 96 S.Ct. at 736 (Burger, C.J., concurring and dissenting). Nevertheless, of the remaining four separate opinions, all con-

curred in the Court's narrowing definition of "political committee."

By contrast, Florida's statutory definition of "political committee" is much more inclusive, much more vague, and that much more unconstitutional on its face. (R. 15-16; 25-26; 33-34). According to Section 106.011(1), Fla. Stats., political committee "means a combination of two or more individuals, or a person other than an individual, the primary or incidental purpose of which is to support or oppose any candidate, issue, or political party, which accepts contributions or makes expenditures during a calendar year in an aggregate amount in excess of $500.00...". Taken on its face, this definition includes any group "engaged purely in issue discussion," in the words of the Supreme Court, a result forbidden by the Court's interpretation of the First Amendment.

In the federal definition, the operative words are "contributions and expenditures," which are themselves defined as "influencing" a particular political result, such as the election of a candidate. The corresponding Florida definition, by contrast, is not so simple. By the inclusion of the few extra words, the Florida Legislature crossed over the forbidden line into constitutionally prohibited territory.

In this case, a small group of individuals, incensed at what they perceived to be unfair conduct by the local prosecutor and Grand Jury, assembled for the single purpose of drafting an advertisement critical of that prosecutor and Grand Jury. This was a grass-roots effort, as the transcripts of the State Attorney's

investigation included in the Appendix show. The group was not "under the control of a candidate," and the major purpose of the group was not "the nomination or election of a candidate." The group's major purpose was the protected publication to the public of their views about the Grand Jury's indictment of Sheriff Short eleven days before the primary election. (R. 18-19). This group only met one time, and indisputably elected no officers nor set up any kind of formal structure. The prosecution of these four defendants flies in the face of the clear, unambiguous, controlling language of the Supreme Court in Buckley v. Valeo.

Under the Florida definition, taken on its face, "a combination of two or more individuals...the...incidental purpose of which is to support...an...issue" would include a church whose members support the elimination of adult magazines sales at local convenience stores, if that church decides to contribute to the campaign of a like-minded candidate. (R. 18, 25). In other words, the church becomes a "political committee" on these facts. The absurdity of this result is only underscored by the Respondent's candid and startling admission that a husband and wife can be a political committee, if they make campaign contributions. (Resp. Br. 15; R,26).

b. The statute repeatedly has been found unconstitutional.

This troubling statute was held unconstitutional in Let's Help Florida v. McCrary, 621 F.2d 195 (5th Cir. 1980), where the Fifth Circuit found that ceilings on campaign contributions were unconstitutional when applied to a referendum election. "The

state's interest in preventing the actual or apparent corruption of candidates, which the Supreme Court found so compelling in Buckley, does not justify restrictions upon political contributions in referendum elections." Id. at 199. The Court noted that the particular statutory section in question "cannot be justified as disclosure measures because the statutes are not closely drawn to avoid unnecessary abridgement of associational freedoms." Id. at 200.

This Court recently followed the lead of the Fifth Circuit in Winn-Dixie Stores v. State, 408 So.2d 211 (Fla. 1981) in striking down Chapter 106's $1,000.00 limitation on contributions to political committees. Winn-Dixie had transferred $30,000.00 of its own money to Campaign Fund of Winn-Dixie Stores, Inc., in an effort to fight a Dade County ordinance referendum. "Limitations on the amounts that persons may contribute or spend in campaigns to influence the results of political elections affect activities that are at the core of the First Amendment's protection of freedom of expression and association." Id. at 212. The Court agreed that, on these facts, Winn-Dixie had done no more than make independent expenditures expressing its views, and that the $1,000.00 cap was "not closely drawn to avoid unnecessary abridgement of associational freedoms." Id. at 213.

In an earlier, similar case this Court struck down Chapter 106's ban on pre-qualifying advertising by a candidate. Sadowski v. Shevin, 345 So.2d 330 (Fla. 1977). This Court closely scrutinized the alleged "compelling" governmental interests, and found

them wanting, as they applied to a would-be candidate. "[The people] are entitled to all the information that each candidate can provide about himself, his opponent and their respective positions on the relevant political issues. The entire process is hampered if the information is restricted or unavailable." Id. at 333. Once again, the Court construed Buckley v. Valeo, supra, and Mills v. Alabama, supra, in determining the statutory restriction to be unconstitutional.

This Court has construed the definition of "political committee" only one time. In Richman v. Shevin, 354 So.2d 1200 (Fla. 1977), the Dade County Bar Association had set up a trust fund to support qualified candidates for the judiciary. Lawyers could make contributions to the trust fund, and judicial candidates could receive campaign contributions from the trust fund, only if each agreed the trust fund would be the sole mechanism for campaign contributions. The Florida Elections Commission found probable cause to believe the trust fund had violated Chapter 106, when it distributed more than $1,000.00 to judicial candidates, on several different occasions, despite warnings from the Attorney General. This Court rejected the trust fund's argument that it was not a political committee "since the terms and conditions of the trust agreement as to authorization for contributions to 'Fund Qualified' judicial candidates transposed the Dade County trust fund from the permissible character of one serving as a conduit for contributions to candidates to a 'political committee' which may not contribute in excess of $1,000.00." Id. at 1206.

By this Court's own previous reasoning in the above-cited cases, this group of single individuals, each contributing his or her own ideas or dollars, cannot conceivably be classified as a "political committee" without running afoul of the First Amendment. As in the case of Winn-Dixie, supra, these individuals were making direct contributions to the electoral process. The mere fact that they pooled their resources to purchase the ad, and then to produce the leaflet, does not "transpose" them from the "permissible character of one serving as a conduit for contributions." Richman, supra, 354 So.2d at 1206. Nowhere has the State or Attorney General asserted that the money spent on this leaflet was a contribution to Sheriff Short's campaign fund. As noted above, the "major purpose of this group of individuals was criticism of the State Attorney and the Grand Jury which had indicted Short. On these facts, where the Supreme Court has narrowed the parallel federal definition of "political committee"and where violation of this statute carries criminal penalties, this Court should tread cautiously and give due deference to the important First Amendment rights these individuals were exercising.

In another context, the United States Supreme Court emphasized the importance of political dissent and minority political view:

> Equally manifest as a fundamental principal of a democratic society is political freedom of the individual. Our form of government is built on the premise that every citizen shall have the right to

> engage in political expression and association. This right was enshrined in the First Amendment of the Bill of Rights. Exercise of these basic freedoms in America has traditionally been through the media of political association.

Sweezy v. New Hampshire, 354 U.S. 234, 250, 77 S.Ct. 1203, 1212 (1957). The danger of Chapter 106 to free political expression is self-evident: if a small group of individuals can unwittingly become a "political committee," see Sweezy, supra, 354 U.S. at 247, 77 S.Ct. at 1210, the chilling effect on the exercise of those freedoms is a price this State cannot afford to pay in order to avoid the appearance of corruption in free elections. (R.19-20). Without citizen participation in those elections, the point of the statute and the legislature's intent in enacting the statute lapses into wan irrelevance.

CONCLUSION

If this Court gives the statute the strict scrutiny it must, according to the First Amendment, the State can articulate no compelling reason sufficient to subject critics of a government official to criminal prosecution. The Second District is due to be reversed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER has been delivered by regular U. S. Mail to the following: WILLIAM E. TAYLOR, Assistant Attorney General, 1313 Tampa Street, Suite 804, Park Trammell Building, Tampa, Florida 33602, and to: A. R. MANDER, III, ESQUIRE, Greenfelder, Mander, Hanson, Murphy & Townsend, 103 North Third Street, Dade City, Florida 33525 this 31st day of July, 1986

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