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Mr. John Ley, Clerk
United States Court of Appeals, Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, GA 30303

Re: No. 12-14009-U, *Wollschlaeger v. Governor, State of Florida* (en banc oral argument scheduled for June 21, 2016)

Dear Mr. Ley:

Under Rule 28(j), we call to the Court's attention *Free Speech Coalition, Inc. v. Attorney General of the United States*, No. 13-3681 (3d Cir. June 8, 2016) ("*FSC*"), attached.

In *FSC*, the Third Circuit held that, under *Reed v. Town of Gilbert, Arizona*, 135 S. Ct. 2218 (2015), certain federal statutes establishing recordkeeping, labeling, and inspection requirements for the production of sexually explicit materials were, on their face, content-based restrictions of speech and therefore subject to strict scrutiny. Slip Op. at 4. The court had previously upheld the statutes under an *intermediate* scrutiny analysis, because it relied on Congress' salutary purpose in passing the statutes—preventing child pornography—to determine that the statutes were content-neutral. *Id.* at 12-13 (citing *Ward v. Rock Against Racism*, 491 U.S. 781 (1989)). However, the Supreme Court's intervening decision in *Reed* forced the Third Circuit to "take another look at our holding that intermediate scrutiny applies to the First Amendment analysis." Slip Op. at 17.

FSC underscores *Reed*'s holding that any facially content-based statute must be evaluated under strict scrutiny. As the Third Circuit noted, under *Reed*, the court's "first step must be to conduct a facial examination" of the statute to determine whether it is content-based. *Id.* at 21 (citing *Reed*, 135 S. Ct. at 2228). The statutes in *FSC* were "clearly content based on [their] face," the court held, because they "appli[ed] only to 'visual depictions'" of "actual" or "simulated" sexually explicit conduct. *Id.* at 21-22 (quoting 18 U.S.C. §§ 2257 and 2257A, respectively). Likewise, Florida's Firearm Owners' Privacy Act (FOPA) is clearly content-based on its face, as it applies only to speech about one subject—firearm ownership. As in *FSC*, such a finding is all that is required to apply strict scrutiny. Slip Op. at 22. Notably, while not required for the application of strict scrutiny here, FOPA is also subject to strict scrutiny for the additional reason that the challenged provisions are speaker-based and viewpoint-discriminatory. See Pls. *En Banc* Br. 50-53.

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Respectfully submitted,

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