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SC 2023-1392

IN THE SUPREME COURT OF FLORIDA

ADVISORY OPINION TO THE ATTORNEY GENERAL RE: LIMITING GOVERNMENT INTERFERENCE WITH ABORTION

UPON REQUEST FROM THE ATTORNEY GENERAL FOR AN ADVISORY OPINION AS TO THE VALIDITY OF AN INITIATIVE PETITION

INITIAL BRIEF OF FLORIDA CONFERENCE OF CATHOLIC BISHOPS IN OPPOSITION TO THE INITIATIVE

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IDENTITY OF OPPONENT AND STATEMENT OF INTEREST

The Florida Conference of Catholic Bishops, Inc., a Florida not-for-profit corporation, comprises the active Roman Catholic Bishops in the State of Florida, including the Archbishop and Auxiliary Bishop of Miami, and the Bishops of St. Augustine, St. Petersburg, Orlando, Pensacola-Tallahassee, Palm Beach and Venice. The Conference is nonpartisan and promotes integral human development and the common good through its advocacy. With approximately 1.9 million members in Florida, Roman Catholicism is one of the largest religious denominations in the state. The Conference is guided by the Gospel of Jesus Christ and the teachings of the Catholic Church, of which the sanctity and dignity of human life from the moment of conception is a preeminent priority.

The Conference has an interest in this Court's review of this Initiative because the ballot title and summary are misleading and fail to provide voters with fair notice of the decision they are being asked to make. Accordingly, it submits this brief opposing the Initiative.

STATEMENT OF THE CASE AND FACTS

On October 9, 2023, the Attorney General petitioned this Court for a written opinion as to the validity of an initiative petition titled "Amendment to Limit Government Interference with Abortion" (the "Proposed Amendment"). This Court has jurisdiction. Art. V, § 3(b)(10)., Fla. Const.

On October 20, 2023, this Court entered an order setting forth a briefing schedule regarding compliance of the text of the Proposed Amendment with article XI, section 3 of the Florida Constitution, and compliance of the proposed ballot title and summary with section 101.161, Florida Statutes. In compliance with this Court's briefing schedule, the Florida Conference of Catholic Bishops, Inc. submits its initial brief as an interested party opposed to the Proposed Amendment. This brief focuses on whether the ballot title and summary comply with section 101.161, Florida Statutes.

The ballot summary for the Proposed Amendment states:

> No law shall prohibit, penalize, delay, or restrict abortion before viability or when necessary to protect the patient's health, as determined by the patient's healthcare provider. This amendment does not change the Legislature's constitutional authority to require notification to a parent or guardian before a minor has an abortion.

The full text of the Proposed Amendment is set forth below:

> Limiting government interference with abortion.—Except as provided in Article X, Section 22, no law shall prohibit, penalize, delay, or restrict abortion before viability or when necessary to protect the patient's health, as determined by the patient's healthcare provider.

The Legislature has enacted a number of statutes that regulate and restrict abortions. The majority of these statutes are contained in Chapter 390 and Part II of Chapter 408, Florida Statutes. By statute, the Legislature has delegated to the Agency for Health Care Administration ("AHCA" or "Agency") the authority to enact rules governing the licensure and operation of abortion clinics. *See, e.g.,* § 390.012, Fla. Stat. An application for a license to operate an abortion clinic must be filed with AHCA, and AHCA is authorized to inspect abortion clinics, and to fine or even suspend the license of clinics that do not meet the health and safety requirements of the Agency's rules. *See, e.g.,* §§ 408.802(3), .804(1), .811, .813 and .814, Fla. Stat.

The Legislature has also enacted statutes that restrict where second and third trimester abortions can be performed, ensure voluntary and knowing consent of pregnant women before undergoing an abortion, require parental consent before a minor

receives an abortion, and restrict partial-birth abortions and the standard of medical care to be used in third trimester abortions. *See, e.g.,* §§ 390.012(3), .0111(3), .0111(4), .0111(5)(a), and .01114(5)(a), Fla. Stat.

SUMMARY OF THE ARGUMENT

The Court should hold that the Proposed Amendment is invalid because the ballot title and summary omit critical information and would mislead voters in several material respects.

First, the ballot title misleads voters by indicating the Proposed Amendment would "limit" the state from regulating abortion. However, the language of the ballot summary advises the voter that the Proposed Amendment effectively prohibits all government regulation pre-viability. The material discrepancies between the ballot title and summary fail to provide voters with fair notice of the decision they are being asked to make.

Second, the ballot language fails to inform voters that the Proposed Amendment would leave pre-viability abortion providers completely or largely unregulated. Based on the ballot title and summary, voters may vote in favor of the Proposed Amendment without realizing the amendment would largely prohibit the state's

oversight of abortion providers and clinics which limit their operations to pre-viability abortions.

Third, the ballot language fails to provide fair notice of its impact on other statutory protections. The Florida Legislature has enacted several statutory protections including: (1) requiring parental consent for minors considering an abortion; (2) the voluntary and knowing consent of a pregnant woman undergoing an abortion; (3) a ban on partial-birth abortions; and (4) a prohibition of post-viability abortions unless certain limited conditions are met. The ballot language fails to disclose that these existing statutory provisions will be invalidated if the Proposed Amendment passes.

STANDARD OF REVIEW

The issue of whether the ballot language describing a proposed constitutional amendment is deficient presents a pure question of law. *Dep't of State v. Fla. Greyhound Ass'n.*, 253 So. 2d 513, 519 (Fla. 2018). "Florida law requires the ballot language to give the voters 'fair notice' of the decision they must make." *Id.* (quoting *Miami Dolphins, Ltd. v. Metropolitan Dade Cnty.*, 394 So. 2d 981 (Fla. 1981)). In assessing whether a ballot title and summary is clearly and conclusively defective, the Court asks two questions: (1) whether the

ballot title and summary "fairly inform the voter of the chief purpose of the amendment," and (2) "whether the language of the title and summary, as written, misleads the public." *Fla. Dep't of State v. Slough*, 992 So. 2d 142, 147 (Fla. 2008) (quoting *Advisory Opinion to Att'y Gen. re Prohibiting State Spending for Experimentation that Involves the Destruction of a Live Human Embryo*, 959 So. 2d 210, 213-14 (Fla. 2007)). However, the Court does not consider the substantive merit of the proposed amendment. *Id.*

In determining whether the ballot information properly informs the voters, the ballot title and summary must be read together. *See Advisory Opinion to the Att'y Gen. re Voluntary Universal Pre-Kindergarten Educ.*, 824 So. 2d 161, 166 (Fla. 2002). The title and summary must be accurate and informative. *Roberts v. Doyle*, 43 So. 3d 654, 659 (Fla. 2010). "These requirements make certain that the 'electorate is advised of the true meaning, and ramifications, of an amendment.'" *Id. (*quoting *Advisory Opinion to the Att'y Gen. re Tax Limitation*, 644 So. 2d 486, 490 (Fla. 1994)). A proposed amendment must be removed from the ballot when the title and summary do not accurately describe the scope of the text of the amendment, because it has failed in its purpose. *See Advisory Opinion of the Att'y Gen. re*

Term Limits Pledge, 718 So. 2d 798, 804 (Fla. 1998) (ordering a proposed amendment not be placed on the ballot after finding that the ballot summary was silent as to the expansion of power to the Secretary of State).

ARGUMENT

The Initiative to Limit Government Interference with Abortion is Invalid.

The ballot title and summary of the Initiative to Limit Government Interference with Abortion should be stricken because it misleads voters in several significant ways. First, the ballot title misleadingly suggests that the amendment "limits" government interference with abortion when it bans all regulation before viability. Second, the ballot language fails to advise voters that the amendment would leave abortion providers and clinics performing abortions before viability completely unregulated. Third, the ballot language fails to provide fair notice of its impact on other statutory protections.

Any one of these misleading aspects of the summary individually would warrant striking the initiative from the ballot; collectively, even more so.

A. The Ballot Title Misleadingly Suggests that the Amendment "Limits" Government Interference with Abortion When It Bans All Regulation Before Viability.

The ballot title misinforms voters as to the true scope of the Proposed Amendment's restriction on abortion legislation before viability. The ballot title, "Amendment to Limit Government Interference with Abortion," suggesting that the petition initiative only *limits* the state from regulating abortion, conflicts with the ballot summary, which reads as if the proposed amendment would provide a blanket ban on the state regulating abortion before viability. The ballot summary provides in pertinent part: "*No law shall prohibit, penalize, delay, or restrict* abortion before viability or when necessary to protect the patient's health, as determined by the patient's healthcare provider . . . ." (emphasis added). At best, the proposed amendment is ambiguous about the State's ability to regulate pre-viability abortions; at worst, the State would be completely prohibited from enacting any statutes or regulations governing pre-viability abortions.

The Proposed Amendment does not simply *limit* government regulation of abortion; rather, it prohibits all government regulation before viability. The discrepancies between the language used in the

ballot title and in the summary fail to properly advise voters of the extent of the prohibition on laws restricting pre-viability abortions. When read together, the ballot title and summary fail to provide fair notice to voters of what is being proposed.

The material discrepancies between the language used in the ballot title and that used in the summary fail to clearly inform the voter as to the true ramifications of the proposed amendment. *Advisory Opinion to the Att'y. Gen. re Right of Citizens to Choose Health Care Providers*, 705 So. 2d 563, 566 (Fla. 1998) (striking a proposed amendment from the ballot after finding that the discrepancy in terms within the ballot summary were material, vague, and misleading). In *Right of Citizens to Choose Health Care Providers*, this Court found that a divergence in terminology is ambiguous if it leaves voters guessing whether the terms are intended to be synonymous or whether the difference in terms was intentional. *Id.* at 566. The ballot summary in *Right of Citizens to Choose Health Care Providers* asserted that "citizens" had the right to choose health care providers, but the language of the amendment granted the right to "every natural person." *Id.* The Court found the language discrepancy to be both material and overly vague. *Id.*

Applied to our present case, a voter, based on the title, may vote in favor of the Proposed Amendment without realizing the amendment would likely create a blanket ban on the state regulating pre-viability abortions and abortion providers. Merriam-Webster defines "to limit" as "to restrict the bounds or limits of." *Limit*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/limit (last visited Oct. 27, 2023). The use of the word "limit" in the ballot title is misleading because it implies that there will remain some area within which the government will be able to regulate abortion. However, the plain language of the amendment leaves no such area because it bans all pre-viability regulation and makes compliance with post-viability regulation optional.

When discrepancies and omissions in the language of a ballot title and summary fail to clearly inform the voter, the proposed initiative must be stricken. *See, e.g.*, *Askew v. Firestone*, 421 So. 2d 151 (Fla.1982); *Roberts*, 43 So. 3d at 660-61. The conflict between the ballot title and the ballot summary in this case would leave some voters guessing as to the repercussions of their decision. Based on the ballot title, other voters will wrongfully assume that the State will

retain the ability to regulate abortion providers and clinics that limit their operations to pre-viability abortions. The discrepancies between the ballot title and summary require that the proposed initiative be stricken.

B. The Ballot Language Fails to Advise Voters that the Amendment Would Leave Abortion Providers and Clinics Performing Abortions Before Viability Largely Unregulated.

Like many other types of health care providers and facilities, AHCA currently licenses and regulates abortion clinics. Abortion clinics are among the twenty-five health providers listed in section 408.802, Florida Statutes, that are subject to Part II of Chapter 408, titled "Health Care Licensing: General Provisions." Part II of Chapter 408 requires abortion clinics, like the other twenty-four health care providers subject to its provisions, to go through an extensive licensure application process, meet minimum licensure requirements, and obtain a license from AHCA before opening. *See* §§ 408.804–408.806, Fla. Stat. (2023). Included among the licensure requirements is Level II background screening for certain individuals, including any person whose responsibilities may require him or her

to provide personal care or services directly to clients. § 408.809(1)(e), Fla. Stat. (2023).

Further, section 408.811 authorizes AHCA to inspect abortion clinics and sections 408.813-.815 authorize AHCA to impose administrative remedies, including fines, admission moratoria, license suspensions, and license revocations, for violations of rules or licensure requirements, such as a condition which "presents a threat to the health, safety, or welfare of a client." § 408.814(1), Fla. Stat. (2023).

In addition to Part II of chapter 408, chapter 390, Florida Statutes, gives the Agency additional responsibilities with regard to the regulation of abortion clinics, including the authority for AHCA to develop and enforce rules. The Agency is authorized to develop and enforce rules "for the health, care, and treatment of persons in abortion clinics and for the safe operation of such clinics." § 390.012(1), Fla. Stat. Sections 390.012(1)(c)1. and 390.012(1)(c)3. require the Agency's rules to provide for the performance of pregnancy termination procedures only by a licensed physician and annual inspections by AHCA of all clinics licensed under the chapter

to ensure that such clinics are in compliance with the chapter and agency rules.

Section 390.012(2) requires clinics that only perform abortions in the first trimester to have a written patient transfer agreement with a hospital within reasonable proximity to the clinic or physicians who perform abortions at the clinic to have admitting privileges at a hospital within reasonable proximity to the clinic.

For clinics that perform or claim to perform abortions after the first trimester of pregnancy, section 390.012(3) requires AHCA to adopt rules establishing minimum health and safety standards related to: (a) physical facilities; (b) clinic supplies and equipment standards, including supplies and equipment immediately available for use or in an emergency; (c) personnel; (d) patient medical screening and evaluation; (e) the abortion procedure; and (f) minimum recovery room standards.

With regard to abortion clinic personnel, section 390.012(3)(c) requires that AHCA enact rules that require:

> 1. The abortion clinic designate a medical director who is licensed to practice medicine in this state, and all physicians who perform abortions in the clinic have admitting privileges at a hospital within reasonable proximity to the clinic, unless the clinic has a written

> patient transfer agreement with a hospital within reasonable proximity to the clinic which includes the transfer of the patient's medical records held by both the clinic and the treating physician.
>
> 2. If a physician is not present after an abortion is performed, a registered nurse, licensed practical nurse, advanced practice registered nurse, or physician assistant be present and remain at the clinic to provide postoperative monitoring and care until the patient is discharged.
>
> 3. Surgical assistants receive training in counseling, patient advocacy, and the specific responsibilities associated with the services the surgical assistants provide.
>
> 4. Volunteers receive training in the specific responsibilities associated with the services the volunteers provide, including counseling and patient advocacy as provided in the rules adopted by the director for different types of volunteers based on their responsibilities.

In order for the public "to fully comprehend the contemplated changes of a proposed amendment," *In re Term Limits Pledge*, 718 So. 2d at 802, section 101.161(1), Florida Statutes (2023), provides in pertinent part:

> Whenever a constitutional amendment or other public measure is submitted to the vote of the people, a ballot summary of such amendment or other public measure shall be printed in clear and unambiguous language on the ballot . . . .

"This statute requires that the title and summary be accurate and informative," *In re Term Limits Pledge,* 718 So. 2d at 802, and is

designed to "assure that the electorate is advised by the true meaning, and ramifications, of an amendment." *Id.* at 803, quoting *Askew*, 421 So. 2d at 156.

In *In re Term Limits Pledge*, this Court found that a ballot summary did not accurately describe the text of an amendment. 718 So. 2d at 804. Similarly, in *Advisory Opinion to the Attorney General re Fish and Wildlife Conservation Commission*, 705 So. 2d 1351, 1355 (Fla. 1998), this Court struck a ballot summary that did not "sufficiently inform the public" of important aspects of the proposed amendment.

The ballot omissions in this case are more critical. While the ballot title is deceptively worded "Amendment to Limit Government Interference with Abortion," the ballot summary broadly provides in pertinent part: "No law shall prohibit, penalize, delay or restrict abortion before viability . . . ." The ballot language fails to inform voters that enactment of the amendment would largely, if not entirely, prohibit the Agency from continuing to regulate abortion providers and clinics that only perform abortions before viability.

The ballot language fails to convey the devastating impact the amendment would have on AHCA's oversight of abortion providers

and clinics. A pro-choice voter, based on the ballot title and summary, may vote in favor of the amendment without realizing the amendment would bar *all* regulations which may delay or restrict abortion before viability for purposes of ensuring a woman's safety. For example, Section 390.012(1)(c), Florida Statutes, currently limits performance of abortion procedures to physicians.[1] Sections 408.814 and 408.815 authorize AHCA to suspend or revoke the license of an abortion clinic which violates the physician-only requirement, which would prohibit clinic functions and restrict abortions by that provider. Each health and safety standard imposed by current law, and AHCA rules adopted pursuant to it, are called into question by the ballot initiative language, unbeknownst to the voter. Indeed, many pro-choice voters who believe enforceable quality standards are necessary to ensure safe abortions, may, if fully informed of the breadth of the Proposed Amendment, vote to reject the initiative, until a less extreme initiative is proposed. Thus, the

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[1] Even under prior jurisprudence based on *Roe v. Wade*, 410 U.S. 113 (1973), the state may limit performance of first trimester abortion procedures to physicians. *See Florida Women's Medical Clinic, Inc. v. Smith*, 536 F. Supp. 1048 (S.D. Fla. 1982), 1057 (S.D. Fla. 1982), appeal dismissed, 706 F.2d 1172.

ballot language is fatally flawed because it fails to clearly convey to voters that the initiative would result in abortion providers being completely unregulated with respect to pre-viability abortions or the ramifications that such lack of regulation could have on the health of the pregnant woman.

C. The Ballot Language Fails to Provide Fair Notice of Its Impact on Other Statutory Protections.

The Legislature has enacted a number of statutory protections in the area of abortion. Those statutory protections include but are not limited to:

- Parental consent from a parent or legal guardian before performing an abortion on a minor (Section 390.01114(5), Florida Statutes (2023));
- Detailed requirements to ensure voluntary and informed consent of a pregnant woman before an abortion is performed (Section 390.0111(3), Florida Statutes (2023));
- Ban on partial-birth abortions unless the partial-birth abortion is necessary to save the life of a mother whose life is endangered by a physical disorder, illness, or injury, provided that no other medical procedure would suffice for that purpose (Section 390.0111(5), Florida Statutes (2023)); and
- Ban on post-viability abortions unless two physicians certify that termination of the pregnancy is necessary to save the pregnant woman's life or avert a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman other than a psychological condition (or one physician so certifies, in

the case of a medical emergency) (Section 390.01112(1), Florida Statutes (2023)).

The impact of the proposed amendment on each of these statutes is addressed in greater detail below.

1. Parental Consent.

On the issue of a parent's involvement with a minor considering an abortion, the ballot summary provides in pertinent part: "This amendment does not change the Legislature's constitutional authority to require notification to a parent or guardian before a minor has an abortion." The Legislature's constitutional authority to require parental notification is contained in article X, section 22 of the Florida Constitution.

However, in addition to requiring parental notice, in 2020 the Legislature enacted Chapter 2020-147, Laws of Florida, which amended Section 390.0111, Florida Statutes, to require parental consent before a minor obtains an abortion unless certain conditions are met.

The ballot language is misleading because while it accurately states the amendment will not change the Legislature's constitutional authority to require parental notification, it fails to disclose that the

existing statutory provision requiring parental consent will be invalidated by the amendment if it passes.

In *Askew*, this Court reviewed a proposed constitutional amendment which would prohibit former legislators and statewide elected officials from lobbying for two years following vacation of office unless they filed a financial disclosure. 421 So. 2d at 155-56. This Court struck the ballot measure because it neglected to advise voters that there was a currently existing complete two-year ban on lobbying before one's agency. *Id.* at 155. Similarly, the ballot summary in this instance is deficient because it fails to disclose that the initiative would overturn the statutory requirement that a minor obtain parental consent unless certain conditions are met.

2. Voluntary and Informed Consent.

Florida has an informed consent statute specific to abortion, commonly referred to as the "Woman's Right to Know Act." The law requires the physician to inform the patient of "[t]he nature and risks of undergoing or not undergoing" the abortion procedure, "[t]he probable gestational age of the fetus, verified by an ultrasound," and "[t]he medical risks to the woman and fetus of carrying the pregnancy to term." § 390.0111(3)(a)(1)(a)-(c), Fla. Stat. Those provisions were

upheld by this Court in *State v. Presidential Woman's Center*, 937 So. 2d 114 (Fla. 2006).

In June 2015, the Legislature passed and the Governor signed into law an amendment to the Woman's Right to Know Act. Ch. 2015-118, Laws of Florida. Section 1 amends Section 390.0111(3)(a), Florida Statutes, to require that the informed consent disclosures discussed above be made by either the physician who is to perform the abortion or by the referring physician "while [the physician is] physically present in the same room, and at least 24 hours before the procedure . . . ." The Act includes exceptions to the 24-hour waiting requirement for life-threatening emergencies and for documented instances of "rape, incest, domestic violence, or human trafficking." § 390.0111(3)(a), Fla. Stat. The 2015 amendments were challenged and ultimately upheld in an Order Granting Defendants' Motion for Summary Final Judgment entered on April 8, 2022 in *Gainesville Woman Care, LLC v. State of Florida*, No. 2015 CA 1323 (Fla. 2d Cir. Ct. Apr. 8, 2022).

The ballot summary states in pertinent part that "no law shall prohibit, penalize, delay, or restrict abortion before viability or when necessary to protect the patient's health, as determined by the

patient's healthcare provider." The ballot title and summary are defective because they fail to disclose to voters that the 24-hour waiting requirement and other protections in the Woman's Right to Know Act would likely be eliminated by the amendment if enacted.

3. Ban on Partial-Birth Abortions.

The term "partial-birth abortion" is defined in section 390.011(10), Florida Statutes, as "a termination of pregnancy in which the physician performing the termination of pregnancy partially vaginally delivers a living fetus before killing the fetus and completing the delivery." Section 390.0111(5)(a), Florida Statutes, prohibits a physician from knowingly performing a partial-birth abortion. The only exception to the ban on partial-birth abortions is contained in Section 390.0111(5)(c), which provides that the ban "shall not apply to a partial-birth abortion that is necessary to save the life of a mother whose life is endangered by a physical disorder, illness, or injury, provided that no other medical procedure would suffice for that purpose."

Because the proposed amendment would prevent the State from enacting any restrictions on abortion prior to viability, the existing statutory ban on partial-birth abortions would likely be rendered

unconstitutional if the initiative passes. Yet the ballot title and summary fail to inform voters that this particularly gruesome form of abortion would be allowed in Florida if the proposed amendment passes. For many voters, disclosure of this fact may change how they would vote on the amendment. The failure to make this disclosure renders the ballot title and summary materially deficient. In short, "the problem 'lies not with what the summary says, but, rather, with what it does not say.'" *Fish & Wildlife Conservation Comm'n*, 705 So. 2d at 1355 (quoting *Askew*, 421 So. 2d at 156).

4. Restrictions on Post-Viability Abortions.

Section 390.01112, Florida Statutes, is titled "Termination of pregnancies during viability." Section 390.01112(1) prohibits abortions after the fetus has obtained viability unless the termination is necessary to save the pregnant woman's life or avert a serious risk of bodily harm. Moreover, this statute requires that a physician certify in writing that this requirement has been met. It provides:

> (1) No termination of pregnancy shall be performed on any human being if the physician determines that, in reasonable medical judgment, the fetus has achieved viability, unless:
>
> (a) Two physicians certify in writing that, in reasonable medical judgment, the termination of the pregnancy is

> necessary to save the pregnant woman's life or avert a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman other than a psychological condition ; or
>
> (b) The physician certifies in writing that, in reasonable medical judgment, there is a medical necessity for legitimate emergency medical procedures for termination of the pregnancy to save the pregnant woman's life or avert a serious risk of imminent substantial and irreversible physical impairment of a major bodily function of the pregnant woman other than a psychological condition, and another physician is not available for consultation.

In addition, Section 390.01112(3) requires the physician performing a termination of pregnancy during viability to seek to preserve the life and health of the fetus. It provides:

> If a termination of pregnancy is performed during viability, the physician performing the termination of pregnancy must exercise the same degree of professional skill, care, and diligence to preserve the life and health of the fetus that the physician would be required to exercise in order to preserve the life and health of a fetus intended to be born and not aborted. However, if preserving the life and health of the fetus conflicts with preserving the life and health of the woman, the physician must consider preserving the woman's life and health the overriding and superior concern.

The ballot title and summary are misleading because they fail to disclose the proposed amendment would overturn these restrictions and safeguards on post-viability abortions. For example, Section 390.01112(1)(a) currently requires *two physicians* (or *one*

physician in an emergency) to certify in writing that the termination is necessary to save the pregnant woman's life or avert a serious *physical* injury. The proposed amendment would allow any "healthcare provider" of the patient to authorize a post-viability abortion, eliminating the restriction that such a determination be made by a physician.[2] Additionally, it appears to allow authorization of a post-viability abortion if the healthcare provider determined it necessary to protect the patient's non-physical (that is, mental or psychological) health.

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[2] The proposed amendment is also vague because it fails to define the term "healthcare provider" for purposes of the amendment. Indeed, the term implies any type of health care provider could perform this function, regardless of whether their education, experience and licensure scope of practice would safely support such a determination. For purposes of Chapter 408, Florida Statutes, the Legislature chose to define the term "health care providers" to include physicians, optometrists, nurses, pharmacists, dentists and dental hygienists, occupational, respiratory and physical therapists, and psychologists and counselors. § 408.07(25), Fla. Stat. While this definition may not apply to the term used in the proposed amendment, it illustrates how the lack of a definition makes the amendment vague. Additionally, any legislative attempt to execute the proposed amendment by defining "healthcare provider," even if consistent with longstanding law governing practitioner education and scope of practice, could trigger a conflict with the proposed amendment's prohibition on legislative action which would prohibit or restrict post-viability abortions.

Based on the ballot title and summary, a proponent of greater rights to abortion in Florida might vote in favor of the amendment without realizing that it would invalidate critical and humane restrictions on post-viability abortions. On the other hand, a pro-choice voter who is fully informed of how extreme the proposed amendment is might well reject it.

D. The Ramifications of the Misleading and Confusing Language of the Title and Summary.

This Court's precedent requires the ballot title and summary to be accurate and informative, and states "[t]hese requirements make certain that 'the electorate is advised of the true meaning, and ramifications, of an amendment.'" *Roberts*, 43 So. 3d at 659 (quoting. *re Tax Limitation*, 644 So. 2d at 490). Here, the proposed ballot title and summary fail to advise voters of the true meaning and ramifications of the proposed amendment. Abortion is a complex medical procedure that Florida law currently requires to be performed by or under the supervision of a licensed physician. Florida Statutes also impose restrictions on late-term abortions, establish the standard of care for abortions performed during the third trimester, and require physicians to use the same standard of

care to preserve the life of the fetus as they would to preserve the life of a fetus that was intended to be born and not aborted. *See, e.g.*, § 390.0111(4), Fla. Stat. This proposed amendment sweeps away ALL regulation around these and other critical aspects of the procedure. As such it fails the standards set forth by this Court in the above-cited cases.

CONCLUSION

Because the ballot title and summary clearly and conclusively violate the statutory clarity requirements of section 101.161(1), this Court should preclude placement of the initiative on the ballot.

October 31, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served electronically and by U.S. Mail on this 31st day of October 2023 to the following:

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with Florida Rules of Appellate Procedure 9.210(a)(2) and complies with the applicable font and word count limit requirements. It is typed using Bookman Old Style 14 point and consists of 5010 words.

/s/ Stephen C. Emmanuel
Stephen C. Emmanuel