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No. SC2023-1392

IN THE SUPREME COURT OF FLORIDA

ADVISORY OPINION TO THE ATTORNEY GENERAL RE:

LIMITING GOVERNMENT INTERFERENCE WITH ABORTION

On Petition for an Advisory Opinion
to the Attorney General

ANSWER BRIEF
of
FLORIDIANS PROTECTING FREEDOM, SPONSOR

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Identity and Interest of the Sponsor Floridians Protecting Freedom

Floridians Protecting Freedom ("FPF") is the sponsor of the citizen initiative "Amendment to Limit Government Interference with Abortion" (the "Proposed Amendment"). FPF has gathered more than 491,890 valid signatures from registered voters in Florida.[1]

Statement of the Case and Facts

To date, the State has verified nearly half-a-million petitions from Floridians who want the opportunity to vote on the Proposed Amendment in November 2024. These voters seek to exercise their "paramount" right "to decide whether to accept or reject a change of their own making in their own organic law" via the ballot initiative process. *Advisory Op. to Att'y Gen. re Right to Treatment & Rehab.*, 818 So. 2d 491, 498 (Fla. 2002) (emphasis omitted). They request a vote on whether to add the below amendment as a new section in Article I of the Florida Constitution:

> **Limiting government interference with abortion.—** Except as provided in Article X, Section 22, no law shall prohibit, penalize, delay, or restrict abortion before

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[1] Fla. Div. of Elections, *Amendment to Limit Government Interference with Abortion*, https://dos.elections.myflorida.com/initiatives/initdetail.asp?account=83927&seqnum=1.

> viability or when necessary to protect the patient's health, as determined by the patient's healthcare provider.

When casting their ballot, voters would see a ballot title and summary essentially identical to the proposed constitutional text, with an additional explanation of article X, section 22:

> **Amendment to Limit Government Interference with Abortion**
>
> 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 Attorney General ("AG"), Florida Conference of Catholic Bishops ("FCCB"), Florida political committee Florida Voters Against Extremism ("FVAE"), and out-of-state advocacy groups Susan B. Anthony Pro-Life America ("SBA") and National Center for Life and Liberty ("NCCL") (collectively, "Opponents") filed briefs in opposition to the initiative.

Summary of Argument

When deciding whether voters can vote on a citizen initiative, the Court's role is to apply the familiar standards for ballot initiative review in article XI, section 3 of the Florida Constitution and section

101.161(1) of the Florida Statutes. In doing so, the Court does not consider the proposed amendment's wisdom or merits—those are political questions for the voters. The Court withholds a proposed amendment from the voters only when it finds the amendment is clearly and conclusively defective, *i.e.*, when it violates the single-subject rule or its ballot title and summary affirmatively mislead voters. This amendment does neither. It is ready for a popular vote.

As the Attorney General all but admits, the Proposed Amendment pertains to only one subject: limiting government interference with abortion. Its ballot title and summary fairly inform voters of the amendment's chief purpose, and do not affirmatively mislead under section 101.161(1).

There can be no serious question that the ballot summary, which is nearly identical to the language of the Proposed Amendment, fairly informs voters of the Proposed Amendment's chief purpose—to limit government interference with abortion. Unable to avoid that conclusion, Opponents attempt to create ambiguity where there is none. Words like "health," "healthcare provider," and "viability" have common-sense meanings and cannot be said to mislead voters. In fact, "health" and "healthcare provider" have previously been used in

ballot summaries this Court approved. As for "viability," its ordinary meaning reflects how it has always been used in the abortion context. For nearly fifty years—until last year—government interference with abortion before viability was limited. Voters can be trusted to know what it would mean to live in a world limiting government interference with abortion before viability.

Lacking colorable legal arguments against the Proposed Amendment's fitness for the ballot, the Attorney General argues the term "viability" has lost its meaning in the abortion context, notwithstanding the countless sources consistently defining it in line with common understanding. Knowing they cannot prevail under current law, the Attorney General and SBA also suggest this Court alter its standards of review or change its single-subject test to prevent the ballot initiative from reaching voters. AG Br. at 10 (arguing for an entirely new standard of review); SBA Br. at 22–25 (calling for a new, unworkably narrow formulation of the single-subject test). In parallel, the Opponents catastrophize about the amendment's application. These are fundamentally political arguments about the Proposed Amendment's merits that have no bearing on the task before the Court.

Despite Opponents' attempts to mischaracterize the Proposed Amendment, the amendment would merely do what its ballot summary plainly states: provide 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," without disturbing the Constitution's parental-notification provision.

Argument

The Court reviews proposed citizen initiatives for two narrow requirements: (1) article XI, section 3's mandate that an initiative "embrace but one subject and matter directly connected therewith," and (2) "the accuracy requirement implicit in article XI, section 5 of the Florida Constitution," statutorily codified at section 101.161(1), Florida Statutes.[2] *Advisory Op. to Att'y Gen. re Referenda Required for Adoption & Amend. of Loc. Gov't Comprehensive Land Use Plans*,

[2] A recently enacted provision of section 16.061(1), Florida Statutes, also directs the Attorney General to request an advisory opinion regarding "whether the proposed amendment is facially invalid under the United States Constitution[.]" As *Dobbs* recently affirmed, "[t]he Constitution does not prohibit the citizens of each State from regulating or prohibiting abortion." *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2239 (2022).

902 So. 2d 763, 770 (Fla. 2005). In undertaking this review, this Court "has long explained that [its] duty is to uphold the proposal unless it can be shown to be 'clearly and conclusively defective.'" *Advisory Op. to Att'y Gen. re All Voters Vote in Primary Elections for State Legislature, Governor, & Cabinet*, 291 So. 3d 901, 908 (Fla. 2020). The Proposed Amendment unambiguously clears both of this Court's requirements.

I. The Proposed Amendment complies with the single-subject requirement.

There is no question that the Proposed Amendment pertains to one subject: limits on government interference with abortion. Even the Attorney General does not seriously dispute this point. *See* AG Br. at 9 (explaining that "the Attorney General is chiefly concerned here with . . . compliance with § 101.161"); *see also* SBA Br. at 22–25 (proposing a new, unworkably narrow test where "'subject' means a distinct proposition that can be presented for an up or down vote").

A. The Proposed Amendment maintains a logical oneness of purpose.

The Florida Constitution reserves to the People the power to "propose the revision or amendment of any portion or portions of this constitution by initiative[,]" provided such amendments "embrace

but one subject and matter directly connected therewith." Art. XI, § 3, Fla. Const. "In evaluating whether a proposed amendment violates the single-subject requirement, the Court must determine whether it has a logical and natural oneness of purpose." *In re Advisory Op. to Att'y Gen. re Use of Marijuana for Debilitating Med. Conditions* (*Med. Marijuana II*), 181 So. 3d 471, 477 (Fla. 2015) (quotations omitted). "[T]he purpose of the single-subject requirement is to prevent logrolling, pairing a popular measure with an unpopular one in order to enhance the likelihood of passing the less-favored measure." *Fine v. Firestone*, 448 So. 2d 984, 995–96 (Fla. 1984) (Ehrlich, J., concurring). This does not prevent a "proposed amendment [from] delineat[ing] a number of guidelines consistent with the single-subject requirement as long as these components possess a natural relation and connection as component parts or aspects of a single dominant plan or scheme." *In re Advisory Op. to Att'y Gen. re Use of Marijuana for Certain Med. Conditions* (*Med. Marijuana I*), 132 So. 3d 786, 796 (Fla. 2014) (quotation omitted).

Here, the Proposed Amendment maintains a "logical and natural oneness of purpose," *Fine*, 448 So. 2d at 990—limiting government interference with abortion—by identifying the types of

government interference with abortion that are disallowed (laws that "prohibit, penalize, delay, or restrict") and in what circumstances such interference is disallowed.[3]

Opponents FVAE and SBA mistakenly argue that the Proposed Amendment violates single-subject because voters may support some of the amendment's applications but not others. *See, e.g.*, FVAE Br. at 24–26; SBA Br. at 19–36. But that is not the inquiry under the single-subject rule. Instead, the prohibition on "logrolling refers to a practice whereby an amendment is proposed which contains *unrelated* provisions, some of which electors might wish to support, in order to get an otherwise disfavored provision passed." *Advisory Op. to Att'y Gen. re Rts. of Elec. Consumers Regarding Solar Energy Choice* (*Solar Energy Choice*), 188 So. 3d 822, 827–28 (Fla. 2016) (emphasis added). Here, there can be no question that the Proposed

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[3] The Proposed Amendment thus tracks the Florida Constitution's overall structure and purpose: "unlike the federal constitution, our state constitution is a limitation upon the power of government rather than a grant of that power." *Bush v. Holmes*, 919 So. 2d 392, 414 (Fla. 2006) (Bell, J., dissenting) (citing *Chiles v. Phelps*, 714 So. 2d 453, 458 (Fla. 1998), for its proposition that "[t]he Constitution of this state is not a grant of power to the Legislature, but a limitation only upon legislative power").

Amendment relates to a singular purpose—limiting government interference with abortion. Since the provisions "embrace but one subject and matter directly connected therewith," the amendment satisfies article XI, section 3.

The Court rejected an argument similar to the one Opponents make here in *Advisory Opinion to the Attorney General re Florida Marriage Protection Amendment*, 926 So. 2d 1229 (Fla. 2006). The *Marriage Protection* amendment restricted "legal union that is treated as marriage" to marriages of different-sex couples. The Court found no logrolling, even though the proposal addressed two different categories of relationships (marriage and civil unions), combining one then-popular topic ("limiting the right to marry to opposite-sex couples") with a less popular one ("prohibiting alternative forms of legal recognition and protection for relationships of same-sex couples"). *Id.* at 1234. Instead, the Court found that "the voter is merely being asked to vote on the singular subject of whether the concept of marriage and the rights and obligations traditionally embodied therein should be limited to the union of one man and one woman." *Id.* Here too, the voter is being asked to vote on a singular subject: whether to limit government interference with abortion as

specified.

SBA simply misunderstands this Court's precedent. For example, SBA relies on *In re Advisory Opinion to the Attorney General—Restricts Laws Related to Discrimination*, 632 So. 2d 1018 (Fla. 1994), where the Court held a proposed initiative violated single-subject because "it enumerate[d] ten classifications of people that would be entitled to protection from discrimination if the amendment were passed." 632 So. 2d at 1020 ("[A] voter may want to support protection from discrimination for people based on race and religion, but oppose protection based on marital status and familial status."). Here, unlike the "expansive generality" and "disparate" classifications at issue in *Laws Related to Discrimination*, *id.*, the Proposed Amendment concerns a single medical intervention—abortion.

SBA asserts that the Proposed Amendment engages in 256 instances of logrolling, SBA Br. at 33–34. Under SBA's excessively narrow interpretation of the single-subject test, most cases would have to come out differently. Take *Medical Marijuana II*, for example. There, this Court unanimously held that the proposal satisfied single-subject, even though—just by way of quick example—it provided that "a qualifying patient or caregiver" or "a physician" shall

not be "subject to criminal or civil liability or sanctions" under certain circumstances. 181 So. 3d at 473. Under SBA's interpretation, this Court was unanimously wrong and instead should have found that those excerpts of the much larger text engaged in impermissible logrolling because—for example—some voters might wish physicians and caregivers, but not patients, to face civil liability and sanctions, but not criminal liability. On SBA's view, this was logrolling because those small examples created at least twenty-seven permutations "on how a voter might slice the onion in a world where all these separate subjects were presented separately instead of being shoehorned into a single initiative." SBA Br. at 34. Instead, the Court simply found that the law "ha[d] a logical and natural oneness of purpose, specifically, whether Floridians wish to include a provision in our state constitution permitting the medical use of marijuana." *Med. Marijuana II*, 181 So. 3d at 477. The Proposed Amendment is no different.

Instead of such "onion slicing," the Court looks for "*unrelated* provisions," *Solar Energy Choice*, 188 So. 3d at 827–28, that would require a voter to "choose all or nothing," *In re Advisory Op. to Att'y Gen. re Fairness Initiative Requiring Legis. Determination that Sales*

Tax Exemptions & Exclusions Serve a Pub. Purpose, 880 So. 2d 630, 635 (Fla. 2004). Those circumstances are not present here. Rather than logrolling, as Opponents allege, the Proposed Amendment "encompasse[s] a single plan"—limiting government interference with abortion—"and merely enumerate[s] various elements necessary to accomplish that plan." *Advisory Op. to Att'y Gen. re Standards for Establishing Legis. District Boundaries* (*Fair Districts*), 2 So. 3d 175, 182 (Fla. 2009); *see also Advisory Op. to Att'y Gen. re: Voluntary Universal Pre-Kindergarten Educ.* (*Universal Pre-K*), 824 So. 2d 161, 165 (Fla. 2002); *Advisory Op. to Att'y Gen. re Funding of Embryonic Stem Cell Rsch.*, 959 So. 2d 195, 198 (Fla. 2007).

B. The amendment does not substantially alter or perform the functions of multiple aspects of government.

As part of the single-subject analysis, the Court may ask if an amendment would "substantially alter[] or perform[] the functions of multiple aspects of government." *Solar Energy Choice*, 188 So. 3d at 827; *see also Evans v. Firestone*, 457 So. 2d 1351, 1354 (Fla. 1984). This is because the single-subject rule empowers citizens "to propose and vote on singular changes in the functions of our governmental structure," not multiple. *Fine*, 448 So. 2d at 988. Opponents SBA and

FVAE argue that the Proposed Amendment substantially alters the functions of the legislative, executive, and judicial branches. SBA Br. at 36–40; FVAE Br. 28–30.

As this Court has made clear, the test is not whether an amendment merely "alters the functions of multiple branches of state government." SBA Br. at 36. "Although a proposal may *affect* several branches of government and still pass muster, no single proposal can *substantially* alter or perform the functions of multiple branches." *In re Advisory Op. to Att'y Gen.—Save Our Everglades*, 636 So. 2d 1336, 1340 (Fla. 1994) (emphasis added). The Proposed Amendment does nothing of the sort. *Contra* SBA Br. at 36–40; FVAE Br. 28–30. Rather, it "maintains the regulatory authority of [the] State . . . , but limited such that it does not violate the constitutional right that the proposed amendment seeks to establish." *Solar Energy Choice*, 188 So. 3d at 830.

All the Proposed Amendment would do is require "the government to comply with a provision of the Florida Constitution." *Id.* The Proposed Amendment does not "usurp the function of" the "judiciary," "legislature," and "executive" because "the amendment leaves the prime function of the[se branches] intact[.]" *Right to*

Treatment, 818 So. 2d at 496 (explaining each function). The Legislature would continue to enact "policies and programs" on any topic, so long as those laws did not violate the Florida Constitution. § 20.02(1), Fla. Stat. The executive would continue to execute "the programs and policies adopted by the Legislature," *id.*, and require an enabling statute from the Legislature to exercise rulemaking, *id.* § 120.536(1). The judiciary would continue "determining the constitutional propriety of the policies and programs and of adjudicating any conflicts arising from the interpretation or application of the laws." *Id.* § 20.02(1). This raises no issue under the multiple-functions-of-government analysis. *See Right to Treatment*, 818 So. 2d at 492–93 (approving proposed amendment that limited "the discretion of the court" to disallow alternatives to sentencing and mandated the "Legislature shall enact such laws as necessary to implement this section"); *Advisory Op. to Att'y Gen.—Ltd. Marine Net Fishing*, 620 So. 2d 997, 999 (Fla. 1993) (finding the amendment "functionally . . . unified" even though it deprived the Legislature of the power to designate certain behavior as criminal and to punish violations in any way other than the way prescribed in the amendment).

In contrast, this Court has found that an amendment usurps multiple government functions where it establishes a new authority over a particular issue that siphons away functions that would otherwise be carried out by the three branches of government. *See Save Our Everglades*, 636 So. 2d at 1340 (striking an amendment for creating "a virtual fourth branch of government with authority to exercise the powers of the other three on the subject of remedying Everglades pollution"). Similarly, the Court has invalidated amendments that would dramatically impede the government's ability to operate as a whole. *See Advisory Op. to Att'y Gen. re Requirement for Adequate Pub. Educ. Funding*, 703 So. 2d 446, 449 (Fla. 1997) (rejecting a proposed amendment that required the State to expend forty percent of its appropriations for education, "arbitrarily relegat[ing] the percentage of appropriations for *all other functions of government* to the remaining sixty percent of appropriations and thereby substantially affect[ing] *all of those other functions*.") (emphasis added).

In contrast, the Proposed Amendment impacts the operation of government "only in the general sense that any constitutional provision does." *Solar Energy Choice*, 188 So. 3d at 830. "[R]equiring

State and local governments to comply with a provision of the Florida Constitution . . . does not cause the 'precipitous' or 'cataclysmic' changes to the government structure indicative of substantially altering or performing the functions of multiple branches of government." *Id.* (citation omitted). As a result, the Proposed Amendment does not run afoul of the single-subject test.[4]

II. The Proposed Amendment complies with § 101.161.

The ballot title and summary unambiguously present the voter with the substance of the Proposed Amendment. Both the title and summary use ordinary, familiar words to convey the Proposed Amendment's chief purpose.

Under section 101.161(1), an initiative's ballot title and summary must provide voters "with fair notice of the contents of the

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[4] The Attorney General summarily argues that the Proposed Amendment would "substantially alter[] or perform[] the functions of multiple branches" because the measure would prohibit government restrictions on "abortion before viability," which is a determination made by a healthcare provider. AG Br. at 33 & n.3. But, as detailed in Part II.B.3, viability has always been determined by healthcare providers—and not by the Legislature or judiciary. The Proposed Amendment would not alter that longstanding framework, *see infra* Part II.B.3, so the Attorney General's argument that it would work a "substantial" "usurpation of government functions" is wrong.

proposed initiative so that the voter will not be misled as to its purpose and can cast an intelligent and informed ballot." *Advisory Op. to Att'y Gen. re People's Prop. Rts. Amends. Providing Comp. for Restricting Real Prop. Use May Cover Multiple Subjects*, 699 So. 2d 1304, 1307 (Fla. 1997). "[I]n determining whether the ballot information properly informs the voters," the "ballot title and summary must be read together." *Universal Pre-K*, 824 So. 2d at 166.[5]

Under this inquiry, the Court "consider[s] two questions: (1) whether the ballot title and summary, in clear and unambiguous language, fairly inform the voters of the chief purpose of the amendment; and (2) whether the language of the ballot title and summary, as written, will be affirmatively misleading to voters." *Advisory Op. to Att'y Gen. re Adult Use of Marijuana*, 315 So. 3d 1176, 1180 (Fla. 2021) (citation omitted). This is so a "ballot title and summary [do not] either 'fly under false colors' or 'hide the ball' as to the amendment's true effect." *Armstrong v. Harris*, 773 So. 2d 7, 16 (Fla. 2000). The heart of the inquiry under section 101.161(1) is

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[5] The inquiry is therefore not a comparison of the ballot title alone against the ballot text, nor of the ballot title against the ballot summary. *Contra* NCLL Br. at 13–14; FCCB Br. at 10–11.

whether the ballot summary misrepresents to voters the content of the amendment text.

A. The ballot summary properly discloses the Proposed Amendment's chief purpose.

The ballot title and summary fairly inform voters of the Proposed Amendment's chief purpose, that is, its "principal or most important objective, goal, or end." *All Voters Vote*, 291 So. 3d at 908 (Lawson, J., concurring) (citing *Black's Law Dictionary* (11th ed. 2019)). As the ballot title states, its objective is to "[l]imit[] government interference with abortion." The ballot summary mirrors the language of the amendment itself and provides 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 amendment's principal goal—to limit government interference with abortion—is plain.

Unable to seriously dispute that the ballot summary and title fairly disclose the amendment's chief purpose, Opponents attempt to transform the "chief purpose" requirement into an obligation to disclose all theoretical legal effects of a proposed amendment. *See, e.g.*, FCCB Br. at 17–25; FVAE Br. at 13. But Opponents' argument

is foreclosed both by the statutory text, § 101.161(1), Fla. Stat. ("The ballot summary of the amendment . . . shall be an explanatory statement . . . of the chief purpose of the measure."), and by this Court's precedent explicitly rejecting such an expansive reading of the "chief purpose" requirement. In fact, the Court has made clear, repeatedly, that the chief-purpose requirement does *not* require "an exhaustive explanation of the interpretation and future possible effects of the amendment." *Advisory Op. to Att'y Gen. ex rel. Amend. to Bar Gov't from Treating People Differently Based on Race in Pub. Educ.* (*Race in Pub. Educ.*), 778 So. 2d 888, 899 (Fla. 2000). This Court has thus rejected "the contention that the omission of certain details could reasonably be expected to mislead the voters." *Advisory Op. to Att'y Gen. re Ltd. Casinos*, 644 So. 2d 71, 75 (Fla. 1994). Furthermore, "[s]ome onus falls upon voters to educate themselves about the substance of the proposed amendment." *Fair Districts*, 2 So. 3d at 186; *see also Advisory Op. to Att'y Gen. re: Voter Control of Gambling*, 215 So. 3d 1209 (Fla. 2017). Because the title and summary need only describe the amendment's *chief* purpose, this Court has rejected arguments that the title and summary were misleading for not disclosing that "the amendment effectively

invalidates existing statutory law" and therefore "has a significant collateral effect." *Advisory Op. to Att'y Gen. re: Prohibiting Pub. Funding of Pol. Candidates' Campaigns*, 693 So. 2d 972, 975–76 (Fla. 1997).

As long as the title and summary are "sufficient to communicate the chief purpose of the measure," the first step of the section 101.161(1) inquiry is satisfied. *In re Advisory Op. to Att'y Gen. re Med. Liab. Claimant's Comp. Amend.*, 880 So. 2d 675, 679 (Fla. 2004). Any further parsing of the amendment's effects is "better left to subsequent litigation, should the amendment pass." *Id.*[6]

B. The ballot language is not misleading.

1. The ballot language does not mislead voters as to the amendment's content.

The second question is "whether the language of the ballot title and summary, as written, will be affirmatively misleading to voters."

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[6] Unlike in *Save Our Everglades*, here the amendment uses neutral, emotionless language. *Contra* SBA Br. at 51–52; FVAE Br. at 7–9. The neutral and descriptive terms "interference" and "limit" are more akin to the term "restricts" in *Patients' Right to Know*, which the Court found permissible. *In re Advisory Op. to Att'y Gen. re Patients' Right to Know About Adverse Med. Incidents*, 880 So. 2d 617, 623 (Fla. 2004).

Advisory Op. to Att'y Gen. re Citizenship Req. to Vote in Fla. Elections, 288 So. 3d 524, 529 (Fla. 2020). The section 101.161 requirements "serve to ensure that the ballot summary and title 'provide fair notice of the content of the proposed amendment' to voters so that they 'will not be misled as to [the proposed amendment's] purpose, and can cast an intelligent and informed ballot.'" *All Voters Vote*, 291 So. 3d at 906 (quoting *Advisory Op. to Att'y Gen. re Right of Citizens to Choose Health Care Providers*, 705 So. 2d 563, 566 (Fla. 1998)); *see also Med. Liab. Claimant's Comp.*, 880 So. 2d at 679 (assessing whether there are "material or misleading discrepancies between the summary and the amendment").

The Attorney General attempts to recast this question as whether there are potential ambiguities in the amendment's legal effect, speculating about how it might be interpreted in future litigation.[7] Putting to the side that the terms the Attorney General

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[7] *See, e.g.*, AG Br. at 4–6, 15, 20, 27, 29 (asserting that legal arguments *could* later give the proposed amendment "a much broader meaning than voters would have ever thought"); (voters not "made aware of the *possibility*" that amendment "*could* be used to justify a much larger number of abortions"); ("health exception *could* be made essentially to swallow the rule"); (voters "*unlikely* to be aware

points to have meanings that are clearly understood by voters, *see infra* at Part II.B.2.a.–b., the Attorney General's inquiry is the wrong one. The question is not whether the proposed constitutional language itself is free of any ambiguity, but whether the ballot title and summary affirmatively mislead voters as to the new constitutional language voters are asked to adopt. Even if some ambiguity existed as to the amendment's future applications, "this Court has held that it will not strike a proposal from the ballot based upon an argument concerning 'the ambiguous legal effect of the amendment's text rather than the clarity of the ballot title and summary.'" *Dep't of State v. Hollander*, 256 So. 3d 1300, 1311 (Fla. 2018) (quoting *Voter Control of Gambling*, 215 So. 3d at 1216); *Voter Control of Gambling*, 215 So. 3d at 1216 (Court "review[ed] the clarity of only the ballot title and summary to determine whether the Initiative may be placed on the ballot," declining to adjudicate

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. . . that healthcare providers *could* have unreviewable discretion"); (healthcare providers "*could* have unilateral authority"); ("the term *could* apply to nearly any staff"); ("*might* have license"); ("*might* license abortion providers") (summary does not warn voters that it "*might* be considerably more protective of late-term abortions") (emphases added).

whether the amendment would apply retroactively if placed on the ballot and passed by the voters); *Med. Liab. Claimant's Comp.*, 880 So. 2d at 679 ("Although the opponents argue that the efficacy of the amendment is at issue because of the vague . . . term, the issue as to the precise meaning of this term is better left to subsequent litigation, should the amendment pass."); *Marriage Prot.*, 926 So. 2d at 1238 (alleged ambiguity of amendment itself does not render ballot summary misleading).

Under this inquiry, it is abundantly clear that the summary at issue here accurately describes the Proposed Amendment, because the two are *effectively identical*. The ballot summary differs from the Proposed Amendment in only one way: it explains that the Proposed Amendment would not affect article X, section 22, which authorizes the Legislature to require parental notification for minors seeking an abortion. It clearly communicates to voters what is in the amendment's text, since it *contains* that very text.

Ballot summaries that "recite the language of the amendment almost in full" "do not mislead voters with regard to the actual content of the proposed amendment" except in one inapposite circumstance the Attorney General identifies. *See Advisory Op. to*

Att'y Gen. Re: Voting Restoration Amend., 215 So. 3d 1202, 1208 (Fla. 2017); *Citizenship Req. to Vote*, 288 So. 3d at 529–30 ("Far from being 'affirmatively misleading,' the ballot summary largely recites in full what would be the entirety of article VI, section 2, as amended.") (citation omitted); *Advisory Op. to Att'y Gen. re Raising Fla.'s Minimum Wage*, 285 So. 3d 1273, 1277 (Fla. 2019) (upholding ballot summary where "the ballot summary is nearly identical to the language of the proposed amendment itself"). The Proposed Amendment at issue here reiterates *the entirety* of the constitutional text in the ballot summary and explains how it interacts with another constitutional provision relating to abortion that voters might not be familiar with by article and section number alone. It cannot, therefore, possibly conceal the constitutional text.

The State chooses to entirely ignore this case law and instead invokes a single, entirely distinguishable case to suggest that uniformity of an amendment and its ballot summary is irrelevant. *See* AG Br. at 22–23 (citing *Askew v. Firestone*, 421 So. 2d 151 (1982)). The amendment rejected in *Askew* did not disclose its chief purpose, *i.e.*, abolishing an existing two-year ban on lobbying in the Constitution, instead only disclosing that, under the amendment,

former government officials would have to file certain financial disclosures in order to lobby. *Id.* at 155. Thus, the ballot summary left the impression that it would *impose* additional restrictions on lobbying by ex-officials—when, in fact, it would have *repealed* a more onerous requirement. *Id.* at 155–56. *Askew* stands only for the unremarkable proposition that a summary that obfuscates the chief purpose of an amendment will not be saved by the fact that the amendment and the summary are similar. *Id.*; *see also Armstrong*, 773 So. 2d at 15 (ballot summary at issue in *Askew* "failed to tell voters [what] the amendment was intended to" accomplish).

That problem simply does not exist here, where the chief purpose is readily apparent from, and consistent across, the title, summary, and amendment text.[8] Unlike in *Askew*, the Proposed Amendment creates a completely new constitutional provision, which would have likely saved the proposed amendment in *Askew*. 421 So. 2d at 156 (explaining that, "[h]ad [the amendment] not been an

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[8] In fact, here, the amendment goes out of its way to remove any doubt as to its effect. The amendment clearly states that it will not displace another constitutional provision—article X, section 22. The summary reiterates that point in plain English.

amendment to an existing provision, if it had been a totally new provision, its ballot summary and title would probably have been permissible"). The Attorney General's citation of *Askew* thus in no way undermines this Court's repeated holdings that a "ballot summary [that] largely recites in full what would be the entirety of [a constitutional provision], as amended," is "[f]ar from . . . 'affirmatively misleading.'" *Citizenship Req. to Vote*, 288 So. 3d at 529.[9]

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[9] The instant case also bears no resemblance to cases where ballot summaries were struck for misleading voters as to the scope of their amendments. The Attorney General relies on *Regulate Marijuana Similar to Alcohol* to argue that a summary can be misleading if it "hides . . . potentially far-reaching consequence[s] of the amendment." AG Br. at 30. But in that case, the Court was faced with a summary that described the amendment as regulating marijuana "for limited use . . . by persons twenty-one years of age or older," while the amendment text established only a "quantity floor . . . , while at the same time authorizing the state and local governments to permit unlimited personal use." *Advisory Op. to Att'y Gen. re Regulate Marijuana in a Manner Similar to Alcohol to Establish Age, Licensing, and Other Restrictions*, 320 So. 3d 657, 668 (Fla. 2021). There, the "ballot summary plainly t[old] voters that the proposed amendment 'limit[s]' the personal use—i.e., consumption—of recreational marijuana by age-eligible persons. But the proposed amendment itself d[id] not do so." *Id.* There is no such disparity between ballot summary and proposed amendment here.

2. The ballot summary is not misleading because the plain meaning of its terms accurately reflects the amendment.

The Attorney General attempts to conjure ambiguity out of the straightforward language of the amendment text. As detailed below, the words used in the ballot summary, including "viability," "health," and "healthcare provider" reflect those used in the amendment and have clear meanings. "Viability" in the summary's phrase, "abortions before viability," will be plainly understood to voters as the point at which a fetus could survive outside the womb. And whereas the Attorney General speculates about the future construction of "health" and "healthcare provider[,]" such speculation is entirely inappropriate.

"In construing terms . . . presented to the voters in a proposed constitutional amendment, this Court looks to dictionary definitions of the terms because [it] recognize[s] that, 'in general, a dictionary may provide the popular and common-sense meaning of terms presented to the voters.'" *Med. Marijuana I*, 132 So. 3d at 800 (consulting popular and medical dictionaries to identify the meaning of "debilitating"); *see also Marriage Prot.*, 926 So. 2d at 1237 (quoting dictionary definitions of "substantial" and "equivalent" to find the

expression "substantial equivalent" had a common meaning known to voters); *Advisory Op. to Governor re Implementation of Amend. 4, Voting Restoration Amend.*, 288 So. 3d 1070, 1079 (Fla. 2020) (consulting *The American Heritage Dictionary* to discern voters' understanding of the otherwise undefined word "terms" in the phrase "terms of sentence" at the time of voting).

The "test in determining the validity of the ballot title and summary is not what 'some voters' might believe but rather whether the ballot title and summary provide the voter with 'fair notice of the decision he [or she] must make.'" *Fla. Educ. Ass'n v. Fla. Dep't of State*, 48 So. 3d 694, 704 (Fla. 2010). Here, the ballot summary provides such notice. The ballot summary—like the Proposed Amendment it mirrors—is written in plain and accessible language. As detailed below, the words it uses, including "health," "healthcare provider," and "viability," have clear, common-sense meanings that will be understood by voters, who are "presumed to have a certain amount of common sense and knowledge." *Advisory Op. to Att'y Gen. re Tax Limitation*, 673 So. 2d 864, 868 (Fla. 1996); *accord Fla. Educ. Ass'n*, 48 So. 3d at 704; *see also, e.g.*, *Advisory Op. to Att'y Gen. re Protect People from Health Hazards of Second-Hand Smoke*, 814 So.

2d 415, 419 (Fla. 2002) ("In our view, the argument that Florida citizens cannot understand that a restaurant may be a workplace is contrary to rational analysis.").

a. "Viability"

There is no ambiguity around the meaning of viability in the ballot summary's reference to "abortion before viability": as it always has in the context of abortion, viability means the point at which a fetus could survive outside the womb. As a myriad of dictionaries confirm, this is the popular and common-sense meaning of "viability" that voters will know when they cast their ballot. *Merriam-Webster's Collegiate Dictionary* defines 'viable' as "capable of living; *esp*: having attained such form and development as to be normally capable of surviving outside the mother's womb." *Merriam-Webster's Collegiate Dictionary* 1392 (11th ed. 2003). *Webster's New World Dictionary* similarly defines 'viable' as "having developed sufficiently within the uterus to be able to live and continue normal development outside the uterus." *Webster's New World College Dictionary* (4th ed. 2010). *The Oxford English Dictionary* explains that this definition of viability has been in common use since circa 1860, citing its earliest use as the 1843 *Bouvier's Law Dictionary*, which defined the word as "an

aptitude to live after birth; extra uterine life." *The Oxford English Dictionary* 588 (vol. XIX, 2d ed. 1989) (quoting John Bouvier, *A Law Dictionary* (2nd ed. 1843)).

This case thus bears no resemblance to decisions of this Court striking down ballot measures as affirmatively misleading for hiding the amendment's substance behind "undefined legal terminology." *Marriage Prot.*, 926 So. 2d at 1238 (distinguishing *People's Prop. Rts.*, 699 So. 2d 1304). For example, the Court found the bare mention of the legal phrase, "bona fide qualifications" did not properly inform voters of the amendment's specific exemptions, leaving voters "not informed of its legal significance." *Race in Pub. Educ.,* 778 So. 2d at 898–99.

The Attorney General relies on *People's Property Rights*, *see* AG Br. at 21, 26, but that case is inapposite. In *People's Property Rights*, this Court was "concerned that the legal phrases 'common law nuisance[]' [and] 'loss in fair market value'" were not defined. *Marriage Prot.,* 926 So. 2d at 1237. This undefined legal terminology failed to put voters on "fair notice of the contents of the proposed initiative." *People's Prop. Rts.,* 699 So. 2d at 1307. Without a definition of "common law nuisance," "the voter [was] not informed

as to what restrictions are compensable under the terms of the amendment." *Id.* at 1309. The Court found the phrase "in fairness" misleading because that phrase referred only to "a subjective standard," leaving it up to "the subjective understanding of each voter to interpret the meaning of the 'in fairness' standard." *Id.* Furthermore, "the use of the term 'people' in the title 'People's Property Rights Amendments' [was] confusing because it [was] unclear if 'owner' [was] restricted to people who own the property or also to corporate entities." *Id.* at 1308–09.

There, the potential chasm between the operative legal meaning of the term once in the Florida Constitution and voters' understanding of it from the summary was misleading to voters. When there is no such chasm, the Court has found no issue. *See, e.g., Marriage Prot.*, 926 So. 2d at 1237 ("[T]he terminology challenged by the opponents—'marriage or the substantial equivalent thereof'—is not within the field of undefined legal phrases."); *Fair Districts*, 2 So. 3d at 189 ("The term 'language minorities' is both legally and commonly understood to refer to any language other than English.")

Nothing about the meaning of the term "viability" in the phrase "abortion before viability" is ambiguous or misleading here: it has a

well-understood, commonly accepted meaning amongst the general public that accords with its legal significance. Indeed, for more than four decades, Florida law's understanding of viability has reflected its common meaning. The popular meaning of viability was first adopted in Florida statutes in 1979, ch. 79-302, Laws of Fla., and has remained consistent for the past forty years. Both "viable" and "viability" are defined in Florida statutes as "the stage of fetal development when the life of the fetus is sustainable outside the womb through standard medical measures." § 390.011(15), Fla. Stat. (2023).[10] While the Legislature has recently enacted laws to ban pre-

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[10] Even SB 300 (2023), the six-week ban passed earlier this year, would not disturb section 390.011(15)'s viability definition. And other Florida statutes use the term 'viability' in a manner entirely consistent with its common broad understanding, to delineate:

(1) When a pregnancy can be terminated: state law allows abortions in cases of fatal fetal abnormalities only if "the fetus has not achieved viability." § 390.0111(1)(c), Fla. Stat.

(2) How the procedure must be done: section 797.03(3) requires abortions "during viability" be performed in hospitals.

(3) How to report incidents for injuries to "viable fetuses" during abortion procedures. *Id.* § 390.012(3)(h); *see* 2022 Regulatory Actions: Abortion Clinics, Agency for Health Care Administration. https://ahca.myflorida.com/content/download/20807/file/Abortion_Report_2022_Regulatory_Actions.pdf.

(4) When consent can be restricted in health care directives, § 765.113, Fla. Stat., and when a pregnant patient can refuse

viability abortions, it has made no attempt to redefine viability as the Attorney General suggests.[11] Even the U.S. Supreme Court's decision last year in *Dobbs* decisively reaffirmed the common understanding of "viability" in the abortion context. 142 S. Ct. at 2241. While the *Dobbs* majority questioned the Court's authority to promulgate "the viability line" as a threshold before which abortion is constitutionally protected, *see, e.g.*, *id.* at 2261, 2266, nowhere did the Court question the meaning or significance of that term. To the contrary, the Court treated viability's meaning as utterly straightforward: "'viability,' *i.e.*, the ability to survive outside the womb." *Id.* at 2241. As the Attorney General acknowledges, the cases that have dominated the public discourse on abortion for the half-century leading up to *Dobbs*—*Roe v. Wade*, *Planned Parenthood of*

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treatment. *See, e.g.*, *Burton v. State*, 49 So. 3d 263, 265 (Fla. 1st DCA 2010).

[11] Indeed, even lawmakers opposed to abortion understand what "viability" means and see no reason to explain it further in their public comments. *See, e.g.*, Press Release, Gov. Ron DeSantis, What They Are Saying: Governor Ron DeSantis Signs Bill to Protect the Lives of Florida's Most Vulnerable (Apr. 14, 2022) (Sen. Kelli Stargel arguing, in support of a 15-week, pre-viability abortion ban, "an unborn baby rapidly develops the functions and form of a child long before viability").

Southeastern Pennsylvania v. Casey, and *In re T.W.*—each limited government interference before "viability," the point at which a fetus could survive outside the womb. AG Br. at 4–5, 14, 18 & n.2.[12] The voters will read the Proposed Amendment in the voting booth in this context.

The Attorney General, nevertheless, argues that "many voters" will misconstrue "abortion before viability" to refer to abortion performed in "a very early stage of pregnancy, if there are no indications that the baby will be miscarried or stillborn." *Id.* at 19; *accord id.* at 17 (pregnancy is viable if it is a "normally developing pregnancy," and nonviable when there is "early pregnancy loss or miscarriage"). Ignoring the uniform dictionary and statutory definitions of viability and dismissing the 50 years of precedent (including *Dobbs*) relying on the same meaning, the Attorney General rests her theory primarily on a single source:[13] a statement by the

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[12] Black's Law Dictionary defines 'viable' similarly as "[c]apable of living, esp. outside the womb." *Black's Law Dictionary* (11th ed. 2019).

[13] The Attorney General selectively quotes from two journal articles to give the impression that there is a "multitude of approaches" among states to define viability and that the definition

American College of Obstetricians and Gynecologists ("ACOG"), which the State distorts to serve its ends. *See* AG Br. at 17 (citing ACOG Statement).

This statement simply does not do what the Attorney General suggests. The ACOG Statement states that in the context of early pregnancy, a pregnancy is deemed nonviable if it "will not result in a live birth regardless of intention" and cites "ectopic pregnancies" and "[e]arly pregnancy loss or miscarriage" as illustrations of nonviable pregnancies. Voters would simply not understand viability in the ballot summary as meaning "whether a pregnancy is expected to

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is "inherently impossible." AG Br. at 18 n.1. In fact, as one of the articles explains, while states have approached "quantifying" viability in different ways, every state that does so maintains the core meaning of "the ability of a developing fetus to survive independent of a pregnant woman's womb." Elizabeth Chloe Romanis, *Is 'Viability' Viable? Abortion, Conceptual Confusion and the Law in England and Wales and the United States*, 7 J.L. & Biosciences, at 2, 7–9 (2020). These articles stress the individualized nature of a viability determination but provide no support for the notion that "viability" could mean anything other than the ability to survive outside the womb.

The Attorney General also cites a handful of sources for the proposition that some voters care about the trimester of pregnancy at which abortion is permitted. AG Br. at 20. But those citations do not speak to the only question here: whether voters are "fairly inform[ed]" about the purpose of the ballot measure. *Med. Marijuana I*, 132 So. 3d at 797.

continue developing normally." AG Br. at 17. First, whether a pregnancy is "normally developing" is assessed each time a pregnant patient is examined by their healthcare provider. It would be impossible to tie a durational limit to when a pregnancy normally develops such that there would be a distinct period "before viability" during which laws could not interfere with abortion. Miscarriages can occur any time before the 20th week of pregnancy, and stillbirths any time after. Ctrs. for Disease Control & Prevention, *What Is Stillbirth?*, https://www.cdc.gov/ncbddd/stillbirth/facts.html. In the context of the ballot summary's phrase "abortion before viability," this hypothetical meaning simply makes no sense.

Second, even if this hypothetical period existed, under this misreading the amendment would protect abortion against government interference *only* when a pregnancy has failed, rendering an abortion moot. That Floridians could think this constitutional amendment "To *Limit* Government Interference with Abortion" would only limit such interference when the pregnancy is already doomed defies common sense. "[V]oters may be presumed to have the ability to reason and draw logical conclusions from the information they are given." *Dep't of State v. Fla. Greyhound Ass'n, Inc.*, 253 So. 3d 513,

520 (Fla. 2018) (quotation omitted); *Fla. Educ. Ass'n*, 48 So. 3d at 704.[14]

Whether and in what cases abortions should be legal up to and after viability is the subject of decades-long debate. But that is the very point of permitting the People to vote on the matter. It is the "paramount" right of voters "to decide whether to accept or reject" it via the ballot initiative process. *Right to Treatment,* 818 So. 2d at 498. Far from being imposed on the People by the Court—as was the viability line by the *Roe* court, per the *Dobbs* Court—the viability line in the Proposed Amendment would be *chosen* by the People. The U.S. Supreme Court itself was clear that "the authority to regulate abortion must be returned to the *people* and their elected representatives." *Id.* at 2279 (emphasis added). The People of Florida seek to use precisely that authority here.

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[14] The Attorney General's brief does precisely what the ACOG Statement sought to prevent: it "misrepresent[s]" "[t]he concept of viability of a fetus" to serve an "ideological" goal. ACOG Statement. Contrary to the Attorney General's briefing, ACOG's statement does not call into question how an average member of the public would understand "viability."

b. "Health and "Healthcare Provider"

After arguing that "viability" lacks a clear meaning, the Attorney General changes tactics with "health" and "healthcare provider"—presumably conceding that voters do "not require special training" to comprehend such kitchen-table terms. *Marriage Prot.*, 926 So. 2d at 1237. Instead, the Attorney General's argument that "health" and "healthcare provider" are misleading is based not on a lack of clarity in the terms' meanings but on speculation about *potential future arguments* over the amendment's legal effect. *See* AG Br. at 24–26. As a matter of law, such speculation about ambiguity in the amendment's effect is irrelevant to this Court's inquiry under section 101.161(1). *See supra* Part II.B.1.

First, the Attorney General's predictions about how these terms hypothetically might be construed find no footing in the "context of the broad phrase" from which their meaning must be "drawn." *Advisory Op. to Governor re Amend. 4*, 288 So. 3d at 1078, 1079, 1082 (citing *Advisory Op. to Governor—1996 Amend. 5*, 706 So. 2d 278, 283 (Fla. 1997)). For instance, the ballot summary provides that abortion after viability is protected only where "*the patient's* healthcare provider"—*i.e.*, the provider responsible for the patient's

healthcare—"*determine[s]*" that an abortion "is *necessary* to protect the patient's health." The Attorney General's strenuous suggestion that this language might allow for "regular employees of a corporate 'healthcare provider'" to arbitrarily make this determination of health-necessity without exercising appropriate "informed, professional judgment," AG Br. 27, is untethered to the context in which "healthcare provider" is used in the summary.

Moreover, this Court's "affirmatively misleading" standard does not require that a ballot summary include definitions for such familiar terms. To the contrary, the Court has upheld ballot summaries containing undefined terms that are far *less* commonplace than "health" or "healthcare provider." *See, e.g.*, *Ltd. Casinos*, 644 So. 2d at 75 (rejecting an argument that the summary was misleading for failing to define, *inter alia*, "pari-mutuel facilities").[15]

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[15] Florida law currently defines "pari-mutuel" as "a system of betting on races or games in which the winners divide the total amount bet, after deducting management expenses and taxes, in proportion to the sums they have wagered individually and with regard to the odds assigned to particular outcomes," § 550.002(22), Fla. Stat.—hardly an everyday term for most voters.

Indeed, recognizing that these terms are commonly understood by voters absent further clarification, this Court has repeatedly approved the use of the words "health," "health care provider," and related terms in ballot summaries without additional definition. *See, e.g.*, *Advisory Op. to Att'y Gen. re: Protect People, Especially Youth, from Addiction, Disease, & Other Health Hazards of Using Tobacco,* 926 So. 2d 1186 (Fla. 2006) ("ballot summary clearly and unambiguously sets forth the initiative's primary purpose" even when summary referred to "health hazards" and several words were only defined in the amendment's text, including "youth," which was defined to include minors and young adults); *Patients' Right to Know*, 880 So. 2d at 622 (upholding summary providing, in part, that the "amendment would give patients the right to review, upon request, records of health care facilities' or providers' adverse medical incidents"); *Universal Pre-K,* 824 So. 2d at 167 (finding that summary providing that pre-K program could not be funded by taking funds from "existing education, health and development programs" was not misleading). Against the backdrop of this precedent, Opponents cannot establish that the summary's use of these terms renders it "clearly and conclusively defective." *Regulate Marijuana in a Manner*

Similar to Alcohol, 320 So. 3d at 667.

3. It is common sense that viability is determined by a healthcare provider.

Next, the Attorney General argues that, despite the clarity of the summary's terms, the placement of a comma before the phrase "as determined by the patient's healthcare provider" somehow obscures the fact that whether a fetus is viable will be determined by a healthcare provider, thereby transforming an otherwise appropriate summary into one that will affirmatively mislead voters. AG Br. at 6, 28–30. This argument fails.

The Attorney General suggests that the fact that viability is determined by a healthcare provider under the Proposed Amendment—as it is under current long-standing Florida law, § 390.01112(1), Fla. Stat.—is somehow "hidden" from voters, is "hugely significant," and marks "a potentially dramatic shift in lawmaking power from the legislature and the judiciary to private parties." AG Br. at 29, 32. This belies common sense. Putting aside the fact that this reading is a matter of "conventional rules of

grammar," *Facebook, Inc. v. Duguid*, 141 S. Ct. 1163, 1169 (2021),"[16] only a healthcare provider has the skills necessary to determine whether a pregnancy has advanced to the point of viability. As the Opponents of the measure readily admit, viability is an individualized determination that varies from patient to patient. *See* AG Br. at 18–19; SBA Br. at 13. It is based on various considerations, including gestational age, available medical measures, fetal health, fetal weight, and maternal health. Viability can *only* be determined by a healthcare provider—and has always been. As the U.S. Supreme Court has repeatedly explained, the viability determination is made by a "physician determining a particular fetus's odds of surviving

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[16] Contrary to the Attorney General's argument, understanding that a healthcare provider will determine viability does not require "immers[ion] . . . in scholarly treatises on grammar and syntax[.]" AG Br. at 29. As noted above, the fact that a healthcare provider will determine viability accords with both common sense and long-standing Florida and federal law. Moreover, "[*u*]*nder conventional rules of grammar*, '[w]hen there is a straightforward, parallel construction that involves all nouns or verbs in a series,' a modifier at the end of the list 'normally applies to the entire series.'" *Facebook, Inc.*, 141 S. Ct. at 1169 (quoting A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts* 147 (2012) (emphasis added). The Eleventh Circuit describes this rule as "a matter of grade-school grammar." *United States v. Gumbs*, 964 F.3d 1340, 1347 (11th Cir. 2020); *cf. also id.* at 1348 ("Assuming that jurors understand the rules of grammar is not an abuse of discretion.").

outside the womb [and] must consider 'a number of variables,' including 'gestational age,' 'fetal weight,' a woman's 'general health and nutrition,' the 'quality of the available medical facilities,' and other factors." *Dobbs,* 142 S. Ct. at 2270 (quoting *Colautti v. Franklin*, 439 U.S. 379, 395–96 (1979), *abrogated by Dobbs*, 142 S. Ct. 2228).[17] Far from marking a shift in decision-making authority, Florida statutes have long recognized that healthcare providers, not the Legislature, are responsible for making the viability determination. § 390.01112(1), Fla. Stat. (providing that "the physician determines that, in reasonable medical judgment, the fetus has achieved viability").

Thus, with or without a voter's application of "conventional rules of grammar," *Facebook*, 141 S. Ct. at 1169, the ordinary meaning of the Proposed Amendment is the same—viability will be,

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[17] The *Dobbs* Court surmised that it "did not have the authority to impose the viability line. "Nothing in the Constitution or in our Nation's legal traditions authorizes the Court to adopt that theory of life." *Dobbs*, 142 S. Ct. at 2261 (quotations omitted). This is because, as Justice Kavanaugh asserted, the "Constitution is neutral [on abortion] and leaves the issue for the people and their elected representatives." *Id.* at 2305 (Kavanaugh, J., concurring). But there is no question that the People of Florida can choose to inscribe that line in our Florida Constitution.

as it always has been, determined by the patient's healthcare provider.

4. Opponents mischaracterize what the Proposed Amendment does.

Unlike what Opponents would have the Court believe, the Proposed Amendment does exactly what the title and summary state: establish 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." Laws that do not "penalize, delay, or restrict abortion before viability or when necessary to protect the patient's health" would clearly *not* be prohibited by the proposed constitutional amendment. Voters will not be misled by this language as it is stated in the plain text of the ballot summary.

Opponents misrepresent the legal effects of the amendment, arguing that it prohibits the State from restricting abortion under any circumstances or from imposing any regulations necessary to protect patient health and safety—and then argue that not disclosing those "facts" to voters is misleading. *See, e.g.*, FVAE Br. at 15, 18–19 (arguing that the amendment will lead to the "removal of the State's

police power to . . . regulate healthcare"); FCCB Br. at 4–5, 8–17 (arguing that "the Proposed Amendment effectively prohibits all government regulation pre-viability" and "leave[s] pre-viability abortion providers completely or largely unregulated"); SBA Br. at 2, 41–43 (arguing that the proposed amendment would "invalidate all existing abortion regulation in Florida"); NCLL Br. at 15 (arguing "health-and-safety type regulations . . . would be wiped out by the enactment of the Proposed Amendment"); AG Br. at 31–32 (arguing that "the idea that the amendment 'limit[s] government interference with abortion' could . . . prove largely illusory").

Opponents' fears about the Proposed Amendment's potential application are not germane to this Court's review. As explained *supra*, the question of how specific laws would be construed under the Proposed Amendment must, as a matter of law, be "left to subsequent litigation, should the amendment pass." *Med. Liab. Claimant's Comp.,* 880 So. 2d at 679. The ballot summary accurately conveys that the amendment would bar the State from "prohibiting, penaliz[ing], delay[ing], or restrict[ing] abortion before viability or when necessary to protect the patient's health, as determined by the patient's healthcare provider." And it specifically clarifies that

parental-notification requirements for minors seeking abortion would *not* be affected. That is more than sufficient to convey to voters "fair notice of the content of the proposed amendment so that the voter will not be misled as to its purpose.'" *Advisory Op. to Att'y Gen. re Term Limits Pledge*, 718 So. 2d 798, 803 (Fla. 1998) (quotations omitted).

The Proposed Amendment limits laws that "prohibit, penalize, delay, or restrict," but neither the amendment, nor the ballot summary, purport to ban *all* "government interference." It is difficult to see how Opponents can even read the amendment to foreclose government interference with—or indeed a complete ban on—abortions that are post-viability and not necessary to protect the patient's health, as determined by the patient's healthcare provider. The Opponents' fantastical contentions that the Proposed Amendment annuls the State's police power or otherwise completely removes abortion from the subject of regulation are simply false.

5. The ballot summary does not mislead voters about federal law.

Finally, the Attorney General argues that the ballot summary is affirmatively misleading because it does not tell voters that a federal

law restricts a specific method of abortion. AG Br. at 33–38. As such, she argues, the amendment "will not deliver to the voters of Florida what it says it will." AG Br. at 33 (quoting *Advisory Op. to Att'y Gen. re Stop Early Release of Prisoners*, 642 So. 2d 724, 727 (Fla. 1994)). This argument is meritless. First, no voter would understand the Proposed Amendment—a limit on state law—as overturning federal law. *Contra* AG Br. at 33. Second, "[t]his Court has . . . never required that a ballot summary inform voters as to the current state of federal law and the impact of a proposed state constitutional amendment on federal statutory law as it exists at this moment in time." *Med. Marijuana I*, 132 So. 3d at 808.

Instead, "[t]his Court presumes that the average voter has a certain amount of common understanding and knowledge." *Fla. Educ. Ass'n*, 48 So. 3d at 701. It is a basic tenet of our system of government—learned in civics class—that state law cannot override federal law. U.S. Const., art. VI, cl. 2; *see* § 1003.4156(1)(c), Fla. Stat. Nothing in section 101.161(1) requires a ballot summary to re-teach voters this bedrock principle. Rather than requiring that a summary educate voters, "the law very simply requires . . . that the ballot give the voter fair notice of the question he must decide so that he may

intelligently cast his vote." *Right to Treatment*, 818 So. 2d at 498 (citations omitted). When casting their votes on the Proposed Amendment to the Florida Constitution—where the summary and text specifically reference "the *Legislature*'s" authority—voters would understand they are placing limits only on *state* law. *Contra* FVAE Br. at 22.

Past amendments to the Florida Constitution have interacted with federal law in a variety of ways, yet the Court has never required ballot summaries to identify those interactions. For example, one ballot summary explained that the proposed amendment "[l]imits or prevents government . . . imposed barriers to supplying local solar electricity." *In re Advisory Op. to Att'y Gen. re Limits or Prevents Barriers to Loc. Solar Elec. Supply* (*Solar Elec. Supply*), 177 So. 3d 235, 241 (Fla. 2015). Yet the Court imposed no additional duty to specify the amendment's interaction with federally imposed barriers on "the transmission and sale of electric energy" and electricity generation and transmission facilities. 42 U.S.C. § 7172(a)(1)(B); *see generally* 18 C.F.R., ch. 1 (detailed regulatory scheme on electricity transmission, sale, and generation). The ballot title and summary did enough: "[b]y reading the ballot title and summary, the voter will be

informed that government regulations—by both local government and state government—which would impede or impair the provision of local solar electricity will be limited, and that some such regulations will be completely prevented." *Solar Elec. Supply*, 177 So. 3d at 246.

Nor was there any claimed confusion or fundamental error in *Right to Treatment*, where the summary stated that "Individuals charged or convicted of possessing or purchasing controlled substances or drug paraphernalia may elect appropriate treatment as defined, instead of sentencing or incarceration." 818 So. 2d at 492. The Court did not strike the proposal on the grounds that it purported to alter federal criminal law.

Likewise, the Court permitted a ballot initiative that purported to "[r]aise[] minimum wage to $10.00 per hour," without mentioning *both* that federal employees in Florida could be paid a *lower* wage, *and* that the federal Davis-Bacon Act mandates a *higher* minimum wage in Florida under certain circumstances.[18] *Advisory Op. to Att'y*

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[18] For example, six days before this Court issued *Minimum Wage*, the U.S. Department of Labor set a particular minimum wage

Gen. re Raising Fla.'s Minimum Wage, 285 So. 3d 1273, 1277 (Fla. 2019); 40 U.S.C. § 3142 (2019); *see* U.S. Off. of Personnel Mgmt., Memorandum re Inapplicability of a State or Local Minimum Wage to Federal Employees (Nov. 27, 2019), https://www.chcoc.gov/content/inapplicability-state-or-local-minimum-wage-federal-employees. The ballot summary failed to specify that the measure would not apply to federal employees and would not authorize or immunize violations of the Davis-Bacon Act, but nevertheless this Court "f[ou]nd no basis to reject the proposed ballot title and summary under section 101.161(1)." *Minimum Wage*, 285 So. 3d at 1277; *see also Universal Pre-K*, 824 So. 2d at 162 (approving initiative that mandated "[e]very four-year-old child in Florida shall be offered a high quality pre-kindergarten learning opportunity" despite directly conflicting with federal-government authority to detain undocumented minors without providing any specific education mandated by Florida law). Simply put, this Court has never required

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covering certain Florida workers at $30.01 per hour. U.S. Dep't of Lab., Davis-Bacon Act Wage Det'n No. FL20190170 (Dec. 13, 2019), https://sam.gov/wage-determination/fl20190170/1. The Court did not suggest that the minimum-wage initiative either conflicted with federal law or was affirmatively misleading because of federal law.

a ballot summary to exhaustively ponder the ways in which Congress's commerce power, or the detailed regulations of the U.S. Department of Energy, or Health and Human Services, or Homeland Security, for example, might bear in some way upon the ultimate effects of a ballot measure.

Nor would such an onerous federal-law-identification requirement be workable. Under the Attorney General's test, this Court would take it upon itself—for every future proposed ballot initiative—to comb through all fifty-seven titles of the U.S. Code, plus all fifty titles of the Code of Federal Regulations, to search for mere interactions with the tens of thousands of federal statutes and regulations. The Court need not accept the overwhelming burden to examine—and opine upon—the federal-law implications of every proposed amendment, as the Attorney General proposes. Neither the Florida Constitution nor section 101.161 require this.

To support this newly imagined requirement, the Attorney General relies solely on *Adult Use of Marijuana*, where the *ballot summary* informed voters that the amendment would "permit[]" people over the age of 21 to use or carry limited quantities of marijuana for personal use, whereas the *amendment text* specified

that this permission would only apply under state law. 315 So. 3d at 1180. Importantly, all of "the activities contemplated by the proposed amendment [were] criminal offenses under federal law," yet the ballot summary "unqualifiedly inform[ed] voters that the amendment '[p]ermits' the contemplated activities." *Id.* There, the initiative failed because of a discrepancy between the ballot summary and proposed constitutional text.

This contrasts with *Medical Marijuana I*, where the amendment contained language about federal law that was "substantially similar in meaning" to language in the ballot summary. 132 So. 3d at 808. Thus, even though "th[o]se statements, standing alone, d[id] not explicitly inform voters" about specific marijuana prohibitions under federal law, the ballot summary was not misleading because it accurately represented the amendment. *Id.* "By asserting that the ballot summary should include language informing the voters that marijuana possession and use is currently prohibited under federal law, the opponents are actually asserting that the ballot summary should include language that is not in the proposed amendment itself. This [was] not required" in *Medical Marijuana I*, and it is not required here. *Id.*; *see also id.* at 820–21 (Canady, J., dissenting)

(disagreeing with the majority that the summary and text were "substantially similar in meaning" but stating that "[i]f the statement in the summary had paralleled the statement in the text of the amendment that nothing in the amendment 'purports to give immunity under federal law,' there would have been no deception"). Here, the ballot summary parrots the text of the amendment.

Opponents identify nothing in the ballot summary's plain text that would mislead voters into thinking they are nullifying 18 U.S.C. § 1531. Rather, the Proposed Amendment, like a myriad of other provisions of our Florida Constitution, prevents the State from enforcing laws it prohibits. *See supra*, Part II.B.4. There can be no serious suggestion that, in following this commonly used formulation, the ballot summary affirmatively misleads voters into thinking that the amendment would somehow turn a basic precept of our government on its head by allowing a state constitutional provision to impose limits on the federal government's power. "There are no hidden meanings and no deceptive phrases. The summary says just what the amendment purports to do." *Grose v. Firestone*, 422 So. 2d 303, 305 (Fla. 1982).

Conclusion

The Proposed Amendment complies with all constitutional and statutory requirements. A plain reading of the amendment text shows that it pertains to one subject under article XI, section 3 of the Florida Constitution, and its ballot summary is "clear and unambiguous" under section 101.161(1) of the Florida Statutes. It is ready to go to the People for a vote.

Respectfully submitted,

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I certify that this brief complies with the font and word count requirements of Fla. R. App. 9.045(b) and 9.210(a). This filing contains 10,856 words (excluding sections permitted to be excluded).

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