IN THE SUPREME COURT OF FLORIDA

CASE NO. SC2022-1050

PLANNED PARENTHOOD OF SOUTHWEST AND CENTRAL FLORIDA, on behalf of itself, its staff, and its patients, *ET AL.*,

Petitioners,

v.

STATE OF FLORIDA, *ET AL.*,

Respondents.

Discretionary Proceeding to Review Decision of the First District Court of Appeal

Consolidated With Case No. SC2022-1127
Lower Tribunal Nos. 1D22-2034; 2022-CA-912

PETITIONERS' OPENING BRIEF

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INTRODUCTION

For over 40 years, Florida's Constitution has guaranteed Floridians the fundamental right to decide for themselves, based on their individual values, beliefs, and circumstances, whether to carry a pregnancy to term or to have an abortion prior to viability. House Bill 5 ("HB 5"), which bans pre-viability abortions, violates this fundamental right. After an evidentiary hearing, the trial court temporarily enjoined HB 5, based on long-standing Florida case law and extensive factual findings regarding HB 5's likely unconstitutionality and irreparable harm to both Plaintiff-Petitioners—a group of Florida abortion providers ("Plaintiffs")—and their patients. Improperly construing the harms to the providers as only economic and discounting entirely the extraordinary harm to the patients on whose behalf Plaintiffs sued, the appellate court reversed. The appellate court decision rested on legal and factual error. This Court should reverse and reinstate the temporary injunction to prevent the irreparable harms HB 5 continues to cause to Plaintiffs and to their patients' health, well-being, and long-established fundamental rights.

STATEMENT OF THE CASE

A. Abortion Rights Under Florida's Constitution.

In 1980, the people of Florida amended the state Constitution to add a freestanding right of privacy not contained in the U.S. Constitution. Art. I, § 23, Fla. Const. (the "Privacy Clause"). This explicit privacy right "embraces *more* privacy interests, and extends *more* protection to the individual in those interests, than does the federal Constitution." *In re T.W.*, 551 So.2d 1186, 1191-92 (Fla. 1989) (emphasis added); *accord Weaver v. Myers*, 229 So.3d 1118, 1125 (Fla. 2017); *Winfield v. Div. of Pari-Mutuel Wagering*, 477 So.2d 544, 548 (Fla. 1985).

The Privacy Clause expresses Floridians' sovereign will to protect "the autonomy of the intimacies of personal identity" and "a physical and psychological zone within which an individual has the right to be free from intrusion or coercion … by government." *In re Guardianship of Browning*, 568 So.2d 4, 9-10 (Fla. 1990). As this Court repeatedly has held, this fundamental right of privacy encompasses an individual's right to make the profoundly personal decision of whether to terminate a pregnancy before viability. *E.g.*, *Gainesville Woman Care, LLC v. State*, 210 So.3d 1243, 1253-54 (Fla.

2017). In 2012, Floridians rejected a constitutional amendment that would have overruled these precedents and prohibited the state constitution from being interpreted to create broader rights to abortion than those under federal law,[1] thus reaffirming a commitment to independently protecting abortion as a fundamental right under state law.

B. HB 5's Ban on Pre-Viability Abortions.

In direct contravention of Floridians' political will and constitutional rights, the legislature in 2022 passed HB 5, which criminalizes abortions after 15 weeks of pregnancy.[2] Record on Appeal ("ROA") 14-16 (citing HB 5, §§ 3-4 (codified at §§ 390.011, 390.0111, Fla. Stat.)). Florida law separately prohibits abortion after fetal viability, § 390.01112, Fla. Stat., consistent with this Court's precedents holding that abortion is constitutionally protected until that point. Fifteen weeks is months before fetal viability. ROA 17.

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[1] *Prohibition on Public Funding of Abortions; Construction of Abortion Rights*, Fla. Dep't of St., Div. of Elec., https://dos.elections.myflorida.com/initiatives/initdetail.asp?account=10&seqnum=82 (last visited February 26, 2023).

[2] As dated from the first day of the last menstrual period ("LMP").

HB 5 contains only two extremely limited exceptions for circumstances in which "two physicians certify in writing that, in reasonable medical judgment," either: (1) the abortion 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," not including psychological conditions, or (2) the fetus has "a terminal condition" that is "incompatible with life outside the womb and will result in death upon birth or imminently thereafter." ROA 15-16 (citing HB 5, §§ 3(6), 4 (codified at §§ 390.011(6), 390.0111(1)(a)-(c), Fla. Stat.)).

"[A]ny person" who "willfully performs" or "actively participates" in an abortion violating HB 5 can be charged with a third-degree felony, punishable by up to five years' imprisonment and $5,000 in fines for a first offense. ROA 16 (citing §§ 390.0111(10)(a), 775.082(3)(e), 775.083(1)(c), Fla. Stat.). Healthcare professionals who violate HB 5 are also subject to disciplinary action, including revocation of their medical licenses and administrative fines up to $10,000 per violation. ROA 16 (citing §§ 390.0111(13), 390.018, 456.072(2), 458.331(2), 459.015(2), 464.018(2), Fla. Stat.).

Additionally, abortion clinics that violate HB 5 can lose their licenses. ROA 16 (citing Fla. Admin. Code R. 59A-9.020 (2017)).

C. Plaintiffs' Lawsuit and Motion for Temporary Injunction.

Plaintiffs—a group of seven clinics and a physician who provide reproductive healthcare, including (prior to HB 5) abortion after 15 weeks—filed suit on behalf of themselves, their staffs, and their patients, alleging that HB 5 violates fundamental rights under the Privacy Clause and seeking a declaratory judgment, injunctive relief, and expungement of HB 5's unconstitutional language. ROA 11, 375-99. Plaintiffs alleged HB 5 would harm them and their patients absent an injunction because: (1) Plaintiffs would be forced to stop providing pregnant Floridians with critical medical care consistent with their best medical judgment and their patients' needs, ROA 392; and (2) their patients would be denied constitutionally protected medical care and forced to bear the pain and serious health risks of pregnancy and childbirth against their will, ROA 379.

Plaintiffs simultaneously moved for a temporary injunction. ROA 12, 408-47. After briefing and depositions, the trial court held an evidentiary hearing, at which it considered live and written

testimony from four fact and expert witnesses, and oral argument. ROA 8, 12-13.

D. HB 5's Effect on Access to Abortions After 15 Weeks.

On July 1, 2022, HB 5 took effect. Under threat of HB 5's severe criminal and civil penalties, Plaintiffs were forced to cease providing abortions after 15 weeks LMP, abruptly cutting their patients off from essential, constitutionally protected care. *See* ROA 51-52, 466.

E. Circuit Court's Order Granting a Temporary Injunction.

On July 5, 2022, the trial court entered a temporary injunction barring the State from enforcing HB 5. ROA 8-75. The 68-page order contains extensive factual findings and legal conclusions supporting the injunction.

1. Standing.

The trial court first held Plaintiffs had standing because HB 5 would force them to stop providing abortions after 15 weeks LMP or face prosecution and other penalties. ROA 52-57. The court also held Plaintiffs had third-party standing to assert their patients' privacy rights, consistent with this Court's prior decisions. ROA 52-53 (citing cases). Specifically, the trial court found (and the State conceded)

that Plaintiffs had a sufficiently close relationship to their patients. ROA 55. The court further found that Plaintiffs' patients were hindered in protecting their own interests by the "time-limited nature of pregnancy," the risk of imminent mootness, and difficult circumstances such as poverty that impede patients' ability "to litigate the complex matters … individually and on a compressed timeframe." ROA 55-56. Each of these circumstances, the court explained, increased the risk that pregnant patients would be forced to carry a pregnancy to term against their will before being able to secure relief. ROA 55-56.

2. Injunction Factors.

The trial court next concluded that Plaintiffs satisfied all the requirements for a temporary injunction because their evidence showed: (1) substantial likelihood of success on the merits, (2) irreparable harm absent an injunction, (3) lack of an adequate remedy at law, and (4) that an injunction served the public interest. ROA 57-72.

a. Substantial Likelihood of Success.

The trial court found that HB 5 is likely unconstitutional. ROA 57-69. Applying long-standing Florida law, the court held that HB 5

is presumptively unconstitutional and violates Florida's fundamental right to privacy. ROA 11. Given this Court's precedents holding that the Privacy Clause confers a right broader than and independent of any federal right to privacy, the court also held that *Dobbs v. Jackson Women's Health Organization*, 142 S.Ct. 2288 (2022) (overruling *Roe v. Wade*, 410 U.S. 113 (1973), and *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833 (1992)), does not affect the analysis under state law. ROA 10. As the State conceded, the burden therefore shifted to the State to show that HB 5 survived strict scrutiny. ROA 60.

Based on the evidence, the trial court concluded that the State failed to carry its burden to establish that HB 5 advanced a compelling interest by the least restrictive means. ROA 69. The State offered testimony from two witnesses: Dr. Ingrid Skop, an obstetrician/gynecologist and Senior Fellow and Director of Medical Affairs at the pro-life Charlotte Lozier Institute, and Dr. Maureen Condic, Associate Professor of Neurobiology and Anatomy at the University of Utah. ROA 13-14. The trial court found that Dr. Skop's testimony that HB 5 advanced the state's interest in maternal health was not credible and was "unsupported" by evidence. ROA 39-41. Notably, Dr. Skop conceded that her opinions regarding abortion

safety and mental health were "inconsistent" with the conclusions of major medical organizations, and that certain statements in her testimony about abortion risks were "inaccurate," "overstated," or based on outdated data. ROA 36, 39, 41. The court found that, in contrast to Plaintiffs' experts, Dr. Skop also lacked direct experience and knowledge of abortion care and admitted she was not "an expert" in mental health. ROA 36, 39, 41-42. Likewise, the court gave little to no weight to Dr. Condic's testimony on fetal pain, finding that her opinions were "not properly supported" and ran "contrary to credible and scientifically supported evidence." ROA 45-50. Further, the court found, unlike Plaintiffs' witness Dr. Shelly Hsiao-Ying Tien, Dr. Condic is not a medical doctor and lacks any clinical experience caring for pregnant patients or fetuses. ROA 45-48, 50.

In contrast, the trial court credited and gave substantial weight to the testimony of Plaintiffs' experts: Dr. Tien, a plaintiff and board-certified physician who provides abortion care in Florida and is trained in obstetrics, gynecology, and maternal-fetal medicine (a specialty focused on caring for patients with high-risk pregnancies); and Dr. Antonia Biggs, Associate Professor in the Department of Obstetrics, Gynecology, and Reproductive Sciences at the University

of California, San Francisco, who submitted testimony via sworn declaration. ROA 13-14, 18-19. The court found that Dr. Tien's testimony regarding the safety of abortion, maternal health, the doctor-patient relationship, and the fetus's inability to feel pain at gestational ages relevant to this case, were well-supported by evidence and by Dr. Tien's "significant experience" and qualifications as a physician practicing maternal-fetal medicine, including in the context of intra-uterine surgery. ROA 35, 40-41, 50-51. The court also credited Dr. Biggs's "thorough and persuasive analysis of the scientific literature" as demonstrating that abortion does not negatively impact mental health, and noted Dr. Biggs's extensive research and publications on the association between abortion and mental health over 20 years. ROA 42-43, 77-100.

In light of the evidence, the trial court found that the State failed to prove that HB 5 advances either of the State's asserted interests in maternal health or preventing fetal pain through the least restrictive means. *First*, the trial court found HB 5 likely *undermines* maternal health. Based on the evidence, the court found that "abortion after 15 weeks is safe, and is significantly safer than carrying a pregnancy to term"; that abortion does not result in

negative mental health outcomes; and that, to the contrary, "being denied a wanted abortion can have harmful effects" on mental health and well-being. ROA 42-44, 62-63. The court also found that HB 5 would not advance maternal health by encouraging earlier abortions, crediting Dr. Tien's testimony about the numerous and varied reasons that patients need abortions after 15 weeks and cannot obtain them earlier, such as delays in discovering pregnancy, poverty, intimate partner violence, and pregnancy complications or fetal diagnoses that do not arise or cannot be detected before 15 weeks. ROA 22-31, 63-64. The court further found that although abortion is very safe at all gestational ages, patients who are "forced to travel significant distances" to access care because of HB 5 will face "unnecessary delays" that increase risk, and, as the State conceded, at least some pregnant women will be denied abortions altogether due to HB 5, thus "subjecting them to the increased health risks presented by carrying their pregnancies to term." ROA 62-64. The court also found that there were less restrictive means of encouraging earlier abortions, including by "provid[ing] information … or other resources" to facilitate early access to abortion. ROA 64.

Second, the trial court held that the State's asserted interest in preventing fetal pain is "not materially distinct" from its interest in protecting fetal life and, under this Court's binding precedents, does not become compelling until viability. ROA 65. The court further found that the scientific evidence did not support the State's claim that a fetus can feel pain at 15 weeks LMP; instead, the evidence showed "the neural connections necessary for a conscious experience of pain do not develop until at least 24-26 weeks LMP." ROA 65. The trial court noted that Dr. Condic conceded both that the leading professional bodies with specialized knowledge in obstetrics and gynecology and maternal-fetal medicine unanimously disagree with her conclusions about fetal pain, and that her conclusions require "extrapolating … quite a bit" from existing evidence. ROA 49-50.

b. Irreparable Harm and Absence of an Adequate Legal Remedy.

The trial court found that Plaintiffs demonstrated irreparable harm to both their patients and themselves. The court held that Plaintiffs' patients would suffer *per se* irreparable harm because of HB 5's violation of their constitutional rights and other irreparable harm because it would increase health risks by delaying care for

some and forcing others to undergo the "medically riskier path" of continuing pregnancy and giving birth. ROA 63, 64, 69-70.

The trial court found that Plaintiffs themselves would be irreparably harmed because HB 5 would "directly impede[] and interfere[] [with] the physician-patient relationship." ROA 71. This injury, the court explained, was not an economic one. Instead, HB 5 prevents Plaintiffs, on pain of criminal penalty, from providing abortions consistent with their medical judgment and duty to provide care consistent with patient needs. ROA 51-52, 70-71. The court credited Dr. Tien's testimony that even patients with significant pregnancy-related health issues may not satisfy HB 5's limited exceptions, and that requiring a provider to delay intervention until a patient's condition deteriorates to the point of "serious risk of substantial and irreversible physical impairment of a major bodily function" is antithetical to quality patient care. ROA 29-30. The court concluded neither "monetary damages [n]or any other procedure available under Florida law" can remedy these harms. ROA 71.

c. Public Interest.

Based on the same evidence showing likelihood of success on the merits, the trial court concluded that the public interest weighed

in favor of preventing HB 5's likely violation of Floridians' constitutional privacy rights. ROA 72 (citing *Gainesville Woman Care*, 210 So.3d at 1264).

F. Appellate Court's Order Vacating the Injunction, and Plaintiffs' Petition to this Court.

The State immediately appealed the temporary injunction, triggering an automatic stay. Fla. R. App. P. 9.310(b)(2). Plaintiffs moved to vacate the stay, but the trial court denied the motion, even though it concluded that Plaintiffs satisfied all requirements for vacatur. ROA 1549-52.

Plaintiffs next moved to vacate the stay in the appellate court. That court denied relief, holding that Plaintiffs could not "assert the privacy rights of pregnant women necessary to substantiate a showing of irreparable harm, an indispensable requirement of a temporary injunction." ROA 2396. Judge Kelsey dissented, explaining that "precedent compel[led the court] to reverse." ROA 2401 (Kelsey, J., dissenting). Later, relying on its decision refusing to vacate the stay, the appellate court reversed the temporary injunction in a single-paragraph opinion that concluded: "[Plaintiffs] could not

assert irreparable harm on behalf of persons not appearing below." ROA 2421. Judge Kelsey again dissented. ROA 2422.

Plaintiffs filed notices to invoke this Court's discretionary jurisdiction over the appellate court's refusal to vacate the stay and reversal of the injunction, emergency motions to vacate the automatic stay and to stay the appellate court's ruling, and a motion to consolidate the two petitions. ROA 2409-12, 2426-29; Pls.' Emergency Mot. (Aug. 19, 2022); Pls.' Jurisdictional Br. (Aug. 19, 2022); Pls.' Mot. to Consolidate (Aug. 31, 2022).

On January 23, 2023, this Court denied Plaintiffs' emergency motions, granted consolidation, and accepted jurisdiction. Order Den. Emergency Mot. (Jan. 23, 2023); Order Granting Mot. to Consolidate (Jan. 23, 2023); Order Accepting Jurisdiction (Jan. 23, 2023).

SUMMARY OF ARGUMENT

I. The appellate court's sole basis for vacating the temporary injunction was Plaintiffs' purported failure to demonstrate irreparable harm. ROA 2394-96. This conclusion misconstrued the factual record and rested on legal error.

I.A. The appellate court faulted Plaintiffs for not establishing that HB 5 caused Plaintiffs themselves irreparable harm, ROA 2394-96, while wholly ignoring the trial court's factual finding of exactly that: HB 5 harms Dr. Tien and other medical providers by interfering with the doctor-patient relationship and forcing them, under pain of criminal penalty, to act contrary to their best medical judgment and their duty to provide compassionate care consistent with patients' needs and best interests. ROA 51, 70-71. These findings are entitled to deference on appeal. *N. Fla. Women's Health & Counseling Servs. v. State*, 866 So.2d 612, 626-27 (Fla. 2003) (where factual findings are supported by sufficient evidence, they "*must* be sustained" (emphasis added)), *superseded on other grounds as recognized in Gainesville Woman Care*, 210 So.3d at 1262.

I.B. The appellate court also erred in holding that Plaintiffs could not obtain an injunction based on their patients' irreparable harm. The court did not question the trial court's detailed factual findings that HB 5 would subject Plaintiffs' patients to increased and unnecessary health risks and long-term consequences of forced pregnancy and likely would cause *per se* irreparable harm by violating their fundamental right to privacy. ROA 54-56, 62-64.

Instead, the court held that, irrespective of whether Plaintiffs had third-party standing to litigate their patients' rights, they could not rely on harm to their patients to obtain an injunction. ROA 2394-96. There is no support in logic or Florida law for this unprecedented approach divorcing third-party standing from irreparable harm. Under Florida law, if one has standing to sue on behalf of a third party (as the trial court found and established law confirms Plaintiffs do, ROA 53-57), one also can rely on irreparable harm flowing to the third party in seeking an injunction. The entire purpose of third-party standing is to ensure that profound harms like those Plaintiffs' patients continue to suffer daily under HB 5 do not go unremedied. Indeed, this Court has time and again granted or upheld injunctive relief to abortion providers based on irreparable harms to their patients. *See Gainesville Woman Care*, 210 So.3d at 1265; *N. Fla. Women's Health*, 866 So.2d at 615, 636-37.

II. Established law and ample evidence demonstrate that HB 5 likely violates the fundamental right of privacy.

II.A. The trial court correctly concluded that HB 5 implicates the fundamental right of privacy under the Florida Constitution and that, based on the evidence, the State failed to carry its heavy burden

under strict scrutiny to show that it advances a compelling state interest through the least restrictive means. ROA 57-69.

First, under this Court's precedents, neither the asserted interest in maternal health nor in protecting the fetus can justify an outright *ban* on abortion before viability, which HB 5 unquestionably is. *T.W.*, 551 So.2d at 1192-93; ROA 14-15, 60-62; *see also* ROA 60 (State admission that 15 weeks LMP is before fetal viability).

Second, the trial court found as a matter of fact that HB 5 is unlikely to advance either interest. The court found that HB 5 likely *undermines* maternal health because abortion is much safer than childbirth, and, far from encouraging earlier abortions, HB 5 would either delay care by forcing patients to travel out of state or prevent them from obtaining an abortion at all, thus subjecting them to the "medically riskier path." ROA 44-45, 51-52, 63-64. The trial court further found that the State's claim that HB 5 would prevent fetal pain was contradicted by scientific evidence showing that fetal pain is not possible until months after 15 weeks LMP. ROA 45-51. These findings, based on substantial evidence, should be affirmed. *N. Fla. Women's Health*, 866 So.2d at 627.

II.B. Unable to meaningfully challenge the injunction on the law or the facts, the State instead signaled in its filings that it will ask this Court to overrule four decades of Florida law establishing that this State's fundamental right of privacy protects a right to abortion. Resp. Emergency Mot. 23-26 (Sept. 6, 2022); Jurisdictional Ans. 12-13 (Sept. 20, 2022). This Court should refuse.

The U.S. Supreme Court's *Dobbs* decision overruling an implicit, federal constitutional right to abortion in no way undermines this Court's precedents interpreting Florida's explicit Privacy Clause—a broad, freestanding protection with no equivalent in the federal Constitution and rooted in a completely different historical context. To the contrary, the *Dobbs* opinion expressly recognized that states remain free to protect abortion under state law. 142 S.Ct. at 2257. Floridians have twice exercised their sovereign prerogative to do just that: in 1980, when they adopted strong, independent protections for privacy rights, including abortion, under the state Constitution; and in 2012, when they voted against a proposal that would have weakened state abortion protections to be no greater than those under federal law. Both actions affirm the people's will to independently protect abortion as

a fundamental right under the Florida Constitution. The State asks this Court to override the will of the people and do with the stroke of a pen precisely what the people rejected at the ballot box.

Plain text and historical context place beyond doubt that Florida's Privacy Clause protects against governmental interference in *all* aspects of a person's private life, including decisions about pregnancy. The broad language of the Privacy Clause provides no textual basis to exclude a matter so private and central to personal autonomy as whether to continue a pregnancy and have a child. Furthermore, the context of the Privacy Clause's enactment—less than a decade after *Roe v. Wade* recognized abortion as part of a federal privacy right—makes clear that "the ordinary meaning [of the Privacy Clause] that would have been understood by the voters" was that Florida's explicit right of privacy encompassed abortion. *Adv. Op. to Gov't re: Implementation of Amendment 4, the Voting Restoration Amendment*, 288 So.3d 1070, 1078 (Fla. 2020) [hereinafter "*Voting Restoration Amendment*"].

Stare decisis and principles of judicial restraint counsel strongly in favor of adhering to precedent where, as here, those precedents are rooted in a reasonable interpretation that is not

"clearly erroneous" and where a generation of Floridians have relied on Florida's protection for abortion rights. *State v. Poole*, 297 So.3d 487, 506-07 (Fla. 2020).

III. The trial court also properly concluded that Plaintiffs satisfied the final requirement for a temporary injunction. An injunction serves the public interest by preventing violations of Floridians' fundamental rights and upholding the will of the people. ROA 71-72.

ARGUMENT

A temporary injunction preserves the status quo and prevents irreparable harm pending a final determination on the merits. *Planned Parenthood of Greater Orlando, Inc. v. MMB Props.*, 211 So.3d 918, 924 (Fla. 2017); *see also Gainesville Woman Care*, 210 So.3d at 1264. The requirements for a temporary injunction are: (1) a substantial likelihood of success on the merits, (2) lack of an adequate remedy at law, (3) irreparable harm absent an injunction, and (4) that the injunction serve the public interest. *Fla. Dep't of Health v. Florigrown, LLC*, 317 So.3d 1101, 1110 (Fla. 2021). On appeal, a trial court's legal conclusions are reviewed de novo and "factual findings must be sustained" if supported by "competent

substantial evidence." *N. Fla. Women's Health*, 866 So.2d at 626-27; *accord Planned Parenthood of Greater Orlando*, 211 So.3d at 926; *Florigrown*, 317 So.3d at 1110.

I. Plaintiffs Demonstrated Irreparable Harm.

As the trial court correctly held, Plaintiffs' evidence demonstrated that HB 5 will irreparably harm both them and their patients. ROA 69-71.

A. Plaintiffs Demonstrated Irreparable Harm to Themselves.

The appellate court held that Plaintiffs did not show irreparable harm to themselves based on its mistaken belief that Plaintiffs asserted only *economic* injury. ROA 2392-99, 2421. But, in fact, the trial court found that HB 5 irreparably harms physicians like Dr. Tien by "directly interfer[ing] with her relationships with her patients" and by forcing her, under the coercive threat of criminal penalties, "to stop providing abortions past 15 weeks … even when doing so would be contrary to her good-faith medical judgment and her patients' needs and wishes." ROA 54-55; *accord* ROA 378-79, 392, 422, 438. The appellate court did not even mention this factual finding of a non-economic harm to the doctor-patient relationship, much less

provide it meaningful deference, as it was required to do. *See N. Fla. Women's Health*, 866 So.2d at 627 ("factual findings *must be sustained* if supported by legally sufficient evidence" (emphasis added)); *see also Elman v. U.S. Bank, N.A.*, 204 So.3d 452, 455 (Fla. 4th DCA 2016).

Substantial evidence supported this finding of direct, irreparable, non-economic harm to Plaintiffs. As Dr. Tien testified, a significant part of her role as a physician is to diagnose and counsel patients about all their options, including abortion, and to support them in whatever option they choose. ROA 1069-70. Providing "evidence-based scientifically-sound" counseling and care is a physician's "primary duty and professional responsibility," and it is critical to the development of a trusting, compassionate doctor-patient relationship. ROA 1069-70. Indeed, as a maternal-fetal medicine specialist, Dr. Tien routinely cares for patients with high-risk pregnancies, including those who experience health conditions after 15 weeks LMP that "can permanently alter the course of their li[ves]" yet do not meet HB 5's narrow health exception. ROA 1066. As the trial court found based on Dr. Tien's testimony, "waiting until a patient's life is at risk, or until a patient deteriorates to the point

that an abortion is needed to prevent substantial, irreversible physical impairment of a major bodily function, is antithetical to the provision of good medical care." ROA 51.

This is not an economic harm, as the appellate court mistakenly concluded. Forcing Plaintiffs to stop providing medical care under threat of criminal prosecution, notwithstanding their patients' needs or wants, poses "immediate and real" injury, *Lake Carriers' Ass'n v. MacMullan*, 406 U.S. 498, 508 (1972); *accord MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 128-29 (2007),[3] by undermining the doctor-patient relationship and a physician's fundamental duty, in the words of this Court, to "provide medical treatment in accordance with the patient's wishes and best interests," *Matter of Dubreuil*, 629 So.2d 819, 823 (Fla. 1993); *see also* Patients' Bill of Rights, § 381.026, Fla. Stat.; § 456.41(1), Fla. Stat. (reflecting legislative

[3] While Florida courts have held that the prospect of criminal prosecution does not *alone* constitute irreparable harm, *e.g., 3299 N. Fed. Highway, Inc. v. Bd. of Cnty. Comm'rs of Broward Cnty.*, 646 So.2d 215, 220-21 (Fla. 4th DCA 1994); *Palenzuela v. Dade County*, 486 So.2d 12, 13 (Fla. 3d DCA 1986), here, the irreparable harm stems not from prospective penalties but from their effect on the doctor-patient relationship.

intent "that citizens be able to choose from all health care options").[4] Florida courts have long recognized such interference as a distinct injury worthy of a remedy. *See Gainesville Woman Care*, 210 So.3d at 1258 (upholding injunction where law "plac[ed] the State squarely between a woman … and her doctor who has decided that the procedure is appropriate for his or her patient"); *State Bd. of Med. Examiners v. Rogers*, 387 So.2d 937, 939-40 (Fla. 1980) (Board's action improperly curtailed exercise of doctor's professional judgment); *accord Tarantola v. Henghold*, 233 So.3d 508, 510 (Fla. 1st DCA 2017) (finding that "restricting [a doctor] from informing her patients about available … treatment and provider options" constitutes material injury). Accordingly, the trial court correctly found that such harm to Plaintiffs themselves cannot be remedied

[4] While the Patients' Bill of Rights does not "expand[] nor limit[] any rights or remedies provided under any other law," its purpose to "promote the interests and well-being of the patients of health care providers and health care facilities and to promote better communication between the patient and the health care provider" illustrates the importance of the doctor-patient relationship under Florida law. § 381.026, Fla. Stat.; *cf. Humana Med. Plan v. Jacobson*, 614 So.2d 520, 522 (Fla. 3d DCA 1992) ("The doctor/patient relationship is an important and special relationship[.]").

"through monetary damages or any other procedure available under Florida law." ROA 71.

This direct, irreparable harm to Plaintiffs by itself satisfies the irreparable harm requirement for a temporary injunction. The appellate court erred by ignoring it.

B. Plaintiffs Demonstrated Irreparable Harm to Their Patients.

Plaintiffs also demonstrated that their patients would be irreparably harmed by HB 5 and that Plaintiffs have third-party standing to assert and rely on such harms in seeking an injunction. For this independent reason, the appellate court erred, and the injunction should be reinstated.

1. The Appellate Court Erred by Ignoring the Trial Court's Findings of Irreparable Harm.

The trial court correctly found—and the appellate court did not question—that HB 5 causes irreparable harm to Plaintiffs' patients in two respects. *First*, as this Court has held, the threatened or actual loss of a fundamental constitutional right, even temporarily, is *per se* irreparable harm. *See, e.g.*, *Gainesville Woman Care*, 210 So 3d at 1263-64 ("presum[ing] irreparable harm when fundamental rights are violated," including right to privacy, and collecting cases).

Second, the trial court found, based on the evidentiary record, that HB 5 will cause irreparable harm to patients by subjecting them to increased risks to their health and well-being and by forcing some to bear children against their will. As the court found, patients denied an abortion under HB 5 who lack means to travel out of state will be forced to give birth against their will, which poses substantially greater risks of mortality and morbidity than abortion and carries long-term adverse consequences for the patient's health, family stability, and well-being. ROA 45, 62-63; *see also* ROA 25-26, 29-30, 32-35, 62-63 (finding greater risk of pregnancy complications and 12 to 14 times greater risk of death from childbirth as compared to abortion); ROA 42-44 (finding that being denied a wanted abortion negatively impacts, *inter alia*, the likelihood of being able to "afford basic living needs," "make and achieve aspirational life plans," and "exit an abusive relationship"). And even for patients with means to travel substantial distances to access abortion out of state, HB 5 will force them to delay their care, subjecting them to increased risk. ROA 26-27, 34 (finding that, though abortion is safe, delay increases risk and that even uncomplicated pregnancies can cause or exacerbate serious health conditions).

Despite this substantial evidence of HB 5's serious and life-altering impacts, the appellate court held that Plaintiffs could not rely on such harms to obtain a temporary injunction. ROA 2395. Its apparent rationale was that, even if Plaintiffs satisfy third-party standing and thus can assert their patients' rights as a general matter, Plaintiffs cannot rely on irreparable harm to those patients when seeking injunctive relief. ROA 2421 (holding that Plaintiffs could not "assert irreparable harm on behalf of persons not appearing below"); *see also* ROA 2396. Respectfully, this unprecedented conclusion defies common sense and is antithetical to the nature and purpose of third-party standing.

Third-party standing exists to provide a path to vindicate rights that otherwise would go unremedied because of barriers the rights-holder faces in bringing suit. *See Barrows v. Jackson*, 346 U.S. 249, 257 (1953) (third-party standing protects against "a denial of constitutional rights" where "it would be difficult … for the persons whose rights are asserted to present their grievance before any court"); *cf. Kowalski v. Tesmer*, 543 U.S. 125, 130 (2004) (third-party standing inquiry is "quite forgiving" when "enforcement of the challenged restriction against the litigant would result indirectly in

the violation of third parties' rights"). Third-party standing is a way of ensuring the courthouse doors remain open, as it permits those with a close relationship to the right-holders (a relationship the State concedes Plaintiffs have with their patients, ROA 55) both to bring suit ***and*** to seek an appropriate remedy for wrongs that otherwise would go unredressed. *See Powers v. Ohio*, 499 U.S. 400, 412-13 (1991) (finding third-party standing where "the relationship between the litigant and the third party [is] such that the former is fully, or very nearly, as effective a proponent of the right as the latter"); *cf. Rights of Others—Relationship Standing*, 13A Fed. Prac. & Proc. Juris. § 3531.9.3 (3d ed.) (discussing "powerful reasons" to permit assertion of third-party rights when "the interests of parties and nonparties are so intermingled that all rights and interests should be considered together").

It contravenes the purpose of this doctrine to permit a party to raise third-party claims but prohibit a court from awarding injunctive relief when the harms to those third parties are *irreparable* in nature and an injunction is necessary to preserve the status quo pending a merits determination. Indeed, the appellate court did not cite a *single* precedent in which an injunction to prevent irreparable harm to third

parties was denied on this ground. *Contra, e.g.*, *Roman Cath. Diocese of Brooklyn v. Cuomo*, 141 S.Ct. 63, 67-68 (2020) (enjoining enforcement of restrictions on religious worship because of irreparable harm experienced by non-party parishioners who could not attend plaintiffs' worship services). To the contrary, this Court has routinely granted or upheld injunctive relief to abortion providers based on irreparable harms to their patients. *See Gainesville Woman Care*, 210 So.3d 1243; *N. Fla. Women's Health*, 866 So.2d at 615, 636-37; *cf. also State v. Presidential Women's Ctr.*, 937 So.2d 114 (Fla. 2006) (considering the merits of claim brought by providers asserting their patients' privacy rights).

Every patient denied abortion care under HB 5 suffers irrevocable injury and, absent a temporary injunction, forever loses the chance to receive a remedy for that injury. This is precisely the outcome that third-party standing exists to prevent. The appellate court erred by ignoring evidence of these harms.

2. Plaintiffs Have Third-Party Standing to Assert Their Patients' Privacy Rights.

To the extent the appellate court's ruling was rooted in a conclusion that Plaintiffs lacked third-party standing to assert their

patients' rights altogether,[5] such a conclusion should likewise be reversed. As the trial court found, ROA 52-56, Plaintiffs satisfied each requirement for third-party standing: (1) an injury in fact that creates a "sufficiently concrete interest in the outcome"; (2) "a close relation to the third party"; and (3) "some hindrance to a third party's ability to protect his or her own interests."[6] *Alterra Healthcare Corp. v. Est. of Shelley*, 827 So.2d 936, 941-42 (Fla. 2002) (quoting *Powers*, 499 U.S. at 411). The appellate court appeared to take issue only with the hindrance factor, asserting that Plaintiffs failed to show that "pregnant women cannot assert their own rights in court." ROA 2395. The appellate court was wrong on the evidence and the law.

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[5] The appellate court orders are ambiguous on this point. *See* ROA 2396 (reserving question of Plaintiffs' "standing to obtain declaratory relief," but holding they could not obtain an injunction based on third-party harms); ROA 2421 (citing decision denying Plaintiffs' motion to vacate the automatic stay as sole support for reversing the injunction).

[6] The U.S. Supreme Court in *Dobbs* remarked in dictum that *Roe* and *Casey* had "led to the distortion of many important but unrelated legal doctrines," including "third-party standing." *Dobbs*, 142 S.Ct. at 2275. The Court did not, however, hold that abortion providers do not have third-party standing or otherwise overrule any of its third-party standing precedents. *Contra Cameron v. EMW Women's Surgical Ctr., P.S.C.*, No. 22-CI-003225, 2023 WL 2033788, at *12-13 (Ky. Feb. 16, 2023). In fact, *Dobbs* itself was a third-party standing case brought by an abortion provider on behalf of patients.

All that is required to show hindrance is that third parties face a "genuine obstacle" to suing on their own behalf, *Singleton v. Wulff*, 428 U.S. 106, 116 (1976), not an absolute impossibility of doing so, *see also Alterra Healthcare Corp.*, 827 So.2d at 941 (requiring "*some* hindrance" (emphasis added)); *Powers*, 499 U.S. at 414 (fact that individual jurors had on "rare" occasions sued to assert their own equal protection rights did not defeat criminal defendant's third-party standing to assert the same). The appellate court erred by disregarding Plaintiffs' substantial evidence that abortion patients face such obstacles to challenging HB 5.[7]

HB 5 affects pregnant persons who are between 15 weeks LMP and fetal viability. ROA 56, 1049. A pregnant person wishing to challenge HB 5 presumably would have a ripe claim only after the 15-week mark and before the fetus reaches viability. This leaves only a matter of weeks to hire a lawyer, file suit, move for an injunction, retain experts, take and defend depositions, and conduct an evidentiary hearing. That timing presents a real risk that the patient

[7] Contrary to the appellate court's claim, *see* ROA 2395, Plaintiffs alleged facts supporting hindrance in their Complaint, ROA 1607-08, in addition to providing evidence of such facts at the hearing.

would be forced to carry to term, and thus irrevocably lose her constitutional right, before obtaining relief. ROA 55-56, 68. As Dr. Tien testified and the trial court found, these time-based challenges are magnified by significant practical barriers, such as poverty or violence, that those seeking abortions after 15 weeks often face and that make it especially difficult for them to litigate complex challenges to abortion restrictions. ROA 55-56, 1049-57, 1060-62. Again, the appellate court ignored these findings, despite the requirement that they be sustained where, as here, they are supported by substantial evidence. *See N. Fla. Women's Health*, 866 So.2d at 627.

Instead, the appellate court seemed to reject third-party standing based on the mere *possibility* that a pregnant person *might* be able to sue, citing a handful of instances in which pregnant people have been involved in litigation. ROA 2395; *contra Powers*, 499 U.S. at 413-14. But the cases the court cited are at best distinguishable and at worst prove Plaintiffs' point. *Alterra Healthcare Corp.* did not involve pregnancy or abortion. 827 So.2d at 938. *T.W.* involved a minor's challenge to a law requiring parental consent for abortion, but the challenge arose in specialized bypass proceedings that included particularized statutory protection for confidentiality, a 48-

hour deadline for a court decision, and court-appointed counsel—none of which would exist in a challenge to HB 5. 551 So.2d at 1188-89 & nn.1-2. In *Renee B. v. Florida Agency for Health Care*, individuals challenged the denial of Medicaid coverage for abortions and sought reimbursement *after* obtaining such care; thus, the case did not involve a race against the clock or a risk that the plaintiffs would irrevocably lose access to an abortion before obtaining relief. 790 So.2d 1036, 1039 (Fla. 2001). And in *Burton v. State*, which did not involve abortion, the pregnant person did not initiate suit on her own behalf at all; rather, the *State* filed suit to compel her to undergo involuntary treatment related to her pregnancy. 49 So.3d 263, 264 (Fla. 1st DCA 2010). And, by the time an appellate court reversed the lower court and held that involuntary treatment violated her constitutional rights, Ms. Burton had already suffered irrevocable harms including a forced Cesarean section resulting in a stillbirth. *Id.*

Thus, none of the appellate court's cited cases suggest that pregnant people can obtain effective relief against HB 5 through individual litigation or undermine the trial court's conclusion, based on substantial evidence, that pregnant people face genuine obstacles

in doing so. To the contrary, this Court has recognized such obstacles by routinely permitting abortion providers to sue on behalf of their patients in similar circumstances to this case. *See, e.g.*, *Gainesville Woman Care*, 210 So.3d 1243; *Presidential Women's Ctr.*, 937 So.2d 114; *N. Fla. Women's Health*, 866 So.2d at 636-37.

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The appellate court's erroneous irreparable harm holding was the sole basis on which it reversed the injunction. But as the trial court correctly found, Plaintiffs also satisfied the remaining temporary injunction factors.

II. HB 5 Likely Violates the Fundamental Right of Privacy.

A. Plaintiffs Demonstrated That HB 5 is Likely Unconstitutional Under This Court's Binding Precedents.

Under settled Florida law, any statute that impairs the exercise of a fundamental right is "presumptively unconstitutional" and subject to strict scrutiny, and the burden shifts to the State to prove the statute "serves [a] compelling state interest through the least restrictive means." *Gainesville Woman Care*, 210 So.3d at 1243, 1256 (citing *Winfield*, 477 So.2d at 547); *see also State v. J.P.*, 907 So.2d 1101, 1109-10 (Fla. 2004). As this Court has held in an unbroken

line of cases, "laws that place the State between a woman … and her choice to end her pregnancy clearly implicate" Florida's right of privacy, *Gainesville Woman Care*, 210 So.3d at 1254,[8] which—like all rights enumerated in Florida's Declaration of Rights—is fundamental, *Traylor v. State*, 596 So.2d 957, 962-64 (Fla. 1992). Under this established law, HB 5 plainly implicates the fundamental right to privacy by banning abortions prior to viability. ROA 60. Strict scrutiny therefore applies, as the State has conceded. ROA 60.

The trial court found that the State failed to meet this rigorous standard. ROA 60-67. *First*, the State failed to prove that HB 5 advances its asserted interest in promoting maternal health. Under the Privacy Clause's strong protections for abortion as a fundamental right, even a compelling interest in maternal health cannot justify an *outright ban* on abortion before viability, but rather can support only regulations of "the *manner* in which abortions are performed," and even then "only in the least intrusive [way] designed to safeguard the

[8] *Accord N. Fla. Women's Health*, 866 So.2d at 626; *Renee B.*, 790 So. 2d at 1041; *Jones v. State*, 640 So.2d 1084, 1086 (Fla. 1994); *T.W.*, 551 So. 2d at 1192; *cf. Browning*, 568 So.2d at 13 (Privacy Clause "safeguard[s] an individual's right to chart his or her own medical course").

[patient]." *T.W.*, 551 So.2d at 1193 (emphasis added). As a matter of law, because HB 5 bans abortion well before viability (as the State does not contest, ROA 60), the purported interest in maternal health cannot justify it.

Moreover, the record amply supports the trial court's finding that HB 5 does not advance and in fact likely *undermines* maternal health. ROA 64. The court found, based on expert testimony and evidence, that "abortion is safe at all stages of pregnancy" and "serious complications are very rare"; that, although abortion is very safe, including after 15 weeks, delay increases the risks of the procedure; and that, in all cases, abortion is "safer than carrying a pregnancy to term." ROA 32, 62; *see also* ROA 45 (HB 5 forces patients to take the "medically riskier course"). Accordingly, by either forcing patients to continue pregnancies and give birth against their will or delaying their access to care by forcing them to travel out of state, HB 5 hinders rather than advances maternal health. ROA 32, 44-45, 64.

The trial court also properly concluded that the State failed to show that HB 5 would simply encourage patients to have earlier abortions. Credible expert testimony supported the trial court's

finding that many patients are unable to obtain abortions before 15 weeks—for example, due to delay in discovering the pregnancy, financial or logistical barriers, intimate partner violence, or a pregnancy complication or fetal diagnosis that cannot be identified before then. ROA 22-31. Indeed, the State conceded that HB 5 would deny at least some patients abortions altogether. ROA 63. The evidence also supported the court's finding that there are "far less restrictive" ways than a ban to encourage earlier abortions, such as providing patients with information and resources to make it easier to obtain care sooner. ROA 64, 66-68; *see also supra* pp. 10-11.

Second, the trial court properly concluded that the State failed to demonstrate that HB 5 advances a compelling interest in preventing fetal pain. The court held that this interest—"protecting children in utero," in the State's terms, ROA 65—is not "materially distinct" from the interest in protecting potential life and therefore, under binding precedent, does not become compelling until viability. ROA 65 (citing *T.W.*, 551 So.2d at 1192).[9] In any event, substantial

[9] As this Court recognized in *T.W.*, this was the law under the federal Constitution at the time the Privacy Clause was enacted, 551 So.2d at 1193-94; *see also Roe*, 410 U.S. at 163-64, and, as

evidence also supported the trial court's finding that fetal pain is not possible at 15 weeks LMP, ROA 45-51, and that Dr. Condic's opinions to the contrary have been rejected by leading professional organizations with specialized expertise, were unsupported by scientific evidence, and, as Dr. Condic herself admitted, were based on "extrapolating … quite a bit." ROA 49-50; *see also supra* p. 12.

In sum, the trial court's conclusion that the State failed to carry its heavy burden under strict scrutiny was based on substantial evidence and therefore "must be sustained." *N. Fla. Women's Health*, 886 So.2d at 626-27.

B. The Court Should Reject the State's Invitation to Overrule Precedents Establishing That the Privacy Clause Protects the Right to Abortion.

Unable to meaningfully contest the trial court's application of well-established Florida precedents and careful assessment of the evidence, the State has indicated in its filings in this Court that it intends to ask this Court to discard four decades of Florida law. Resp. Emergency Mot. 23-26; Jurisdictional Ans. 12-13. There is no sound basis for doing so.

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discussed *infra* Section II.B.2, the Privacy Clause protects abortion rights at least as strongly as federal law did in 1980.

1. The U.S. Supreme Court's Decision in *Dobbs* Has No Impact on Florida Law That Independently Protects Abortion Rights under the State Constitution.

Nothing in *Dobbs* unsettled the decades of Florida precedents protecting abortion rights as a matter of Florida law.

Dobbs considered whether the U.S. Constitution *implicitly* protects abortion rights, a question wholly distinct from protection for abortion under Florida's *explicit* Privacy Clause. "[W]hen called upon to decide matters of fundamental rights, Florida's state courts are bound under federalist principles to give primacy to our State Constitution," *not* federal law. *Rigterink v. State*, 66 So.3d 866, 888 (Fla. 2011) (quoting *Traylor*, 596 So.2d at 962). This is especially true in areas, like privacy rights, that are "left largely to the law of the individual states," *Katz v. United States*, 389 U.S. 347, 350-51 (1967)—and even more so when considering a state constitutional provision like Florida's Privacy Clause that has no analogue in the federal constitution.

As this Court has repeatedly held, when considering fundamental privacy rights, courts "need not rely on federal law but look only to the Florida Constitution, which *explicitly* provides a right

of privacy." *Weaver*, 229 So.3d at 1125 (original emphasis); *see also Winfield*, 477 So.2d at 548. Tellingly, when recently confronted with a similar argument that *Dobbs* foreclosed protection for abortion rights under its state constitution, the South Carolina Supreme Court concluded that *Dobbs* "does not control, nor even shed light on, [its] decision … since the South Carolina Constitution expressly includes a right to privacy." *Planned Parenthood of S. Atl. v. South Carolina*, 882 S.E.2d 770, 2023 WL 107972, at *4 (S.C. Jan. 5, 2023) (lead opinion) [hereinafter "*PPSA*"].

It is axiomatic that states are at liberty "to accord *greater protection* to individual rights" and "place more rigorous restraints on government intrusion than the federal charter imposes." *Rigterink*, 66 So.3d at 888 (quotation marks omitted). Florida's Privacy Clause does precisely that. An unbroken, decades-long line of cases holds that the Privacy Clause "embraces *more* privacy interests, and extends *more* protection to the individual in those interests, than [did] the federal Constitution," even as federal law stood pre-*Dobbs*. *T.W.*, 551 So.2d at 1191-92 (emphases added); *see also Weaver*, 229 So.3d at 1125 ("[T]he right to privacy in the Florida Constitution is broader, more fundamental, and more highly guarded than any

federal counterpart[.]").[10] In the forty-three years since enactment, this Court has *never* held that the Privacy Clause's scope is limited to the boundaries of privacy rights under federal law.[11] *Cf. T.W.*, 551 So.2d at 1202 (Grimes, J., concurring in part, dissenting in part) ("If the United States Supreme Court were to subsequently recede from *Roe v. Wade*, this would not diminish the abortion rights now provided by the privacy amendment of the Florida Constitution.").

Nothing in *Dobbs* disturbs, let alone overturns, this independent body of state law. To the contrary, *Dobbs* affirmed that states remain free to protect abortion rights "even more extensive[ly] than the right that *Roe* and *Casey* recognized." *Dobbs*, 142 S.Ct. at 2257. "The permissibility of abortion, and the limitations upon it," the Court explained, "are to be resolved like most important

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[10] *Accord Gainesville Woman Care*, 210 So.3d at 1253; *N. Fla. Women's Health*, 866 So.2d at 619; *Renee B.*, 790 So.2d at 1039; *Von Eiff v. Azicri*, 720 So.2d 510, 514 (Fla. 1998); *Beagle v. Beagle*, 678 So.2d 1271, 1275 (Fla. 1996); *City of N. Miami v. Kurtz*, 653 So.2d 1025, 1027 (Fla. 1995); *Shaktman v. State*, 553 So.2d 148, 150 (Fla. 1989); *Winfield*, 477 So.2d at 548.

[11] Notably, other provisions of the state Constitution explicitly indicate when their scope "shall be construed in conformity with" federal law. *E.g.*, Art. I, § 12, Fla. Const. (search and seizure); Art. I, § 17, Fla. Const. (cruel and unusual punishment). The Privacy Clause lacks any such language.

questions in our democracy: by citizens trying to persuade one another and voting." *Id.* at 2243 (quotation marks omitted).

Here, Floridians have already exercised their sovereign will to do just that—not once, but twice. First, in 1980, "the people of this state exercised their prerogative" to amend the state Constitution to "expressly and succinctly provide[] for a strong right of privacy not found in the United States Constitution," *Winfield*, 477 So.2d at 548, thereby "deliberately opt[ing] for substantially more protection than the federal charter provides," *N. Fla. Women's Health*, 866 So.2d at 639; *see also Shaktman*, 553 So.2d at 150 (notwithstanding controversy about implicit privacy rights under federal law, "the people of Florida unequivocally declared for themselves a strong, clear, freestanding, and express right of privacy"). Since then, this Court has held—and affirmed, and reaffirmed—that these broader privacy protections encompass a pregnant person's fundamental right to decide for themselves whether to have an abortion, *and* that this right is independent of federal law. *See Gainesville Woman Care*, 210 So.3d at 1252-54; *N. Fla. Women's Health*, 866 So.2d at 634-35; *T.W.*, 551 So.2d at 1190-92; *cf. Weaver*, 229 So.3d at 1125-26.

Second, in 2012, voters rejected an amendment that would have overruled this body of law and narrowed protection for abortion rights in Florida to be no greater than under federal law.[12] In this referendum on this Court's abortion precedents, Floridians voted decisively *not* to limit the scope of state abortion rights by reference to federal law and instead to retain the state's strong tradition of independent protections for abortion as a fundamental right. *See Gainesville Woman Care*, 210 So. 3d at 1253. To overrule Florida precedents protecting abortion rights now would be to do, by judicial fiat, what Florida voters refused to do at the ballot box.

Finally, even on its own terms, *Dobbs* supports the conclusion that Florida's Privacy Clause protects the right to abortion. *Dobbs*'s conclusion that *Roe* was "egregiously wrong" was based on the Court's application of its "history and tradition" test that asked whether abortion was recognized as a right in 1868 when the Fourteenth Amendment was adopted. *See, e.g.*, *Dobbs*, 142 S.Ct. at 2242, 2248, 2254, 2256, 2260, 2267 (repeatedly looking to state laws in 1868). But applying a similar history and tradition test would lead

[12] *See Prohibition on Public Funding of Abortions; Construction of Abortion Rights*, Fla. Dep't of St., Div. of Elec., *supra* note 1.

to the opposite result here: Whatever the protection for abortion was in 1868, there can be no doubt that, when Floridians adopted the Privacy Clause *in 1980*, seven years *after Roe* was decided, "abortion rights were well established" and widely understood as a core part of fundamental privacy rights. *T.W.*, 551 So.2d at 1202 (Grimes J., concurring in part, dissenting in part); *see infra* Section II.B.2.c.

2. As a Matter of Florida Law, the Fundamental Right of Privacy Unquestionably Protects the Right to Abortion.

The great weight of textual and historical evidence confirms that, as this Court repeatedly held, the Privacy Clause protects as a fundamental right the ability to decide for oneself whether to have a pre-viability abortion or continue a pregnancy to term.

a. Standards of Constitutional Interpretation.

The principal consideration in constitutional interpretation is "the objective meaning of the constitutional text"—that is, the "ordinary meaning that would have been understood by the voters" when adopting the provision. *Voting Restoration Amendment*, 288 So.3d at 1078; *District of Columbia v. Heller*, 554 U.S. 570, 634-35 (2008). If the words are "clear and unambiguous, [this Court]

accord[s] them their plain meaning without resort to external sources." *Florigrown*, 317 So.3d at 1111.

However, "the meaning of a word cannot be determined in isolation, but must be drawn from the context in which it was used." *Voting Restoration Amendment*, 288 So.3d at 1079 (quotation marks omitted). Evidence of "legal and other sources" bearing on the "public understanding" at the time of enactment, *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S.Ct. 2111, 2127-28 (2022) (quoting *Heller*, 554 U.S. at 605), is therefore critical to determining how the text "would have been understood by voters." *Voting Restoration Amendment*, 288 So.3d. at 1078; *see also Bruen*, 142 S.Ct. at 2127 (looking to "text, as informed by history").

Relevant considerations in determining original public meaning include: the amendment's "formative history," *Traylor*, 596 So.2d at 962, and "circumstances leading to its inclusion" in the Constitution, *In re Senate Joint Resol. of Legislative Apportionment*, 83 So.3d 597, 614 (Fla. 2012) (quoting *In re Apportionment of Law—1982*, 414 So.2d 1040, 1048 (Fla. 1982)); "the historical development of the decisional law extant at the time of its adoption," *id.* (quoting *Jenkins v. State*, 385 So.2d 1356, 137 (Fla. 1980)); contemporaneous interpretations

of the text or similar provisions by courts, *Voting Restoration Amendment*, 288 So.3d at 1080, 1082; and public statements made to voters, *id.* at 1078. Furthermore, because the "will of the people in passing the amendment" is paramount, *Graham v. Haridopolos*, 108 So.3d 597, 603 (Fla. 2013) (quoting *Senate Joint Resol.*, 83 So.3d at 599), constitutional provisions should be provided "a broader and more liberal construction" than statutory text and be construed so as not "to defeat their underlying objectives," *Brinkman v. Francois*, 184 So.3d 504, 510 (Fla. 2016) (quoting *Coastal Fla. Police Benevolent Ass'n, Inc. v. Williams*, 838 So.2d 543, 549 (Fla. 2003)).

b. The Privacy Clause's Plain Text Provides a Broad Right Covering All Aspects of Private Life, Including Personal Decision-Making on Abortion.

Section 23, as enacted by Florida voters, reads in full:

> Right of Privacy—Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law.

Art. I, § 23, Fla. Const. The first sentence provides the operative, rights-bestowing language: "to be let alone and free from

governmental intrusion into the person's private life." The second provides an exception confirming that the broad privacy right does not limit "access to public records and meetings." Taken together, the amendment provides a broad right to be free from governmental interference in all aspects of an individual's personal life, relationships, and decisions, limited only by a narrow exception preserving the right of access to public records. As explained below, this broad, ordinary meaning encompasses abortion.

Dictionary definitions confirm this reading. *See Voting Restoration Amendment*, 288 So.3d at 1078. The rights-bestowing language first guarantees restrictions on governmental action—"to be let alone and free from governmental intrusion"—followed by language indicating the protected area—"into the person's private life." Starting with the restriction language, the phrase to "let alone" means to abstain or refrain from interfering with.[13] The phrase "free

[13] *See Let* (18(b) Let alone), Oxford English Dictionary 213 (1978 reprint of 1933 ed.), *available at* https://archive.org/details/in.ernet.dli.2015.271836/page/n216/mode/1up ("to abstain from interfering with or paying attention to (a person or thing), abstain from doing (an action)"); *Let* (--to 1.b [let] alone), Webster's New International Dictionary 1238 (1930 reprint of 1909 ed.), *available at* https://archive.org/details/webstersnewinter00webs/page/1238/mode/1up?view=theater ("to withdraw from; to refrain from

from" means to be unburdened by or not subject to external authority, restraint, or control and to enjoy personal freedom.[14] "Governmental intrusion" refers to unwelcome physical or metaphorical entry or imposition by the government.[15] These phrases carry broad meanings concerning *any* unwelcome interference or impediment. Notably, the meanings of both "let alone" and "free from"

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interfering with"); *Let* (v. let alone), Etymonline.com, https://www.etymonline.com/word/let#etymonline_v_6705 (to "abstain from interfering with").

[14] *Free* (IV, 26(a)), Oxford English, *supra* note 13, at 523, *available at* https://archive.org/details/in.ernet.dli.2015.271841/page/n525/mode/1up ("Not burdened"; "Exempt from, having immunity from, not subject to some circumstances or affection regarded as hurtful or undesirable"); *Free* (adj. (4)(a), (5)), American Heritage Dictionary 531 (2d College ed. 1982) ("Not affected or restricted by a given condition or circumstance"; "Not subject to external restraint"); *Free* (adj. (1)(c)-(d), (2)(a), 3(a)), Webster's Ninth New Collegiate Dictionary 490 (1983) ("enjoying political independence or freedom from outside domination"; "enjoying personal freedom : not subject to the control or domination of another"; "not determined by anything beyond its own nature or being : choosing or capable of choosing for itself"; "exempt, relieved, or released from something unpleasant or burdensome").

[15] *Intrude*, American Heritage, *supra* note 14, at 674 ("To put or force in, esp. without invitation, fitness, or leave : *intruded opinion into a factual report*"; "To come in rudely or inappropriately; enter as an improper or unwanted element"); *Intrude*, Webster's Ninth, *supra* note 14, at 635 ("To thrust oneself in without invitation, permission or welcome").

encompass the state of being undisturbed in matters of personal decision-making.[16]

Turning to the language identifying the protected area, "private" means personal or peculiar to an individual, as opposed to public in nature.[17] "Life" means the totality of mental and physical events that make up human experience.[18] Together, the meaning of "private life" entails the full range of personal or intimate experiences, matters,

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[16] *Let*, Webster's New International, *supra* note 13 (providing as illustrative example the sentence "*Let* me *alone* in choosing my wife"); *Free*, Webster's Ninth, *supra* note 14, at 490 (specifying that the term "free" connotes "the complete absence of external rule and the full right to make all of one's own decisions").

[17] *Private* (adj. (2), (4), (6)), American Heritage, *supra* note 14, at 986 ("Of or confined to one person; personal : *private opinions*"; "Belonging to a particular person or persons, as opposed to the public or the government"; "Not public, intimate"); *Private* (adj. (1)(a)-(b), (2)(a)(2)), Webster's Ninth, *supra* note 14, at 936 ("intended for or restricted to the use of a particular person, group, or class"; "belonging to or concerning an individual person"; "not related to one's official position : personal").

[18] *Life* (III, III(12)), Oxford English, *supra* note 13, at 261, *available at* https://archive.org/details/in.ernet.dli.2015.147248/page/n268/mode/1up?view=theater ("the series of actions and occurrences constituting the history of an individual (esp. a human being) from birth to death"); *Life* (n. (4)), American Heritage, *supra* note 14 ("The physical, mental, and spiritual experiences that constitute a person's existence").

activities, and relationships, without qualification, and there is no basis in the text to exclude decisions about abortion from its scope.

The Privacy Clause thus guarantees "autonomy of the intimacies of personal identity," and a "physical and psychological zone within which an individual has the right to be free from intrusion or coercion … by government." *Browning*, 568 So.2d at 9-10. Such a broad freedom in private and personal matters necessarily extends to the profound and personal decision whether to have an abortion or to bear the substantial pains, risks, and life-altering consequences of pregnancy and childbirth.

"[W]hether, when, and how one's body is to become the vehicle for another human being's creation" is among the most "personal [and] private decisions concerning one's body that one can make in the course of a lifetime." *T.W.*, 551 So.2d at 1192-93; *accord PPSA*, 2023 WL 107972, at *1 ("[T]he decision to terminate a pregnancy rests upon the utmost personal and private considerations imaginable[.]"); *Women of State of Minn. v. Gomez*, 542 N.W.2d 17, 27 (Minn. 1995) (few decisions are "more intimate, personal, and profound than a woman's decision between childbirth and abortion").

The decision to have an abortion is influenced by a wide range of deeply personal considerations, including an individual's circumstances, values, faith, and plans for the future. ROA 20-21. Individuals may decide to terminate a pregnancy because they do not feel financially or emotionally ready or lack a stable, safe environment in which to have and raise a child; because they need to prioritize school, job, or family responsibilities such as caring for existing children; or for other deeply personal reasons. ROA 20-30. Being denied the ability to make that decision for oneself and being forced instead to carry a pregnancy and give birth against one's will can have prolonged, negative effects. Women denied a wanted abortion are more likely to live in poverty, require public assistance, and struggle to make ends meet, and less likely to meet aspirational life goals; they are less likely to escape an abusive relationship; and their children suffer measurable reductions in childhood development. ROA 42-44.

Furthermore, pregnancy and childbirth are serious medical events. Even uncomplicated pregnancies can have profound and painful effects on the body. Pregnancy is a "stress test for human physiology," ROA 26; it can aggravate pre-existing physical or mental

health conditions, or cause new ones, risking long-term morbidity or mortality, ROA 26-27. The risk of death is 12 times higher in childbirth than abortion, and the risk is disproportionately higher for Black women and women of color. ROA 34-35, 1043-44.

Given these serious and prolonged physical, mental, socio-economic, and interpersonal consequences, the decision to have an abortion or carry a pregnancy to term is undoubtedly part of the broad protections for personal decision-making included in the plain terms of the Privacy Clause. Indeed, numerous other courts have recognized as fundamental the ability to make decisions about pregnancy, procreation, and abortion under state law privacy protections. *See, e.g.*, *PPSA*, 2023 WL 107972, at *1; *Wash. Pub. Emps. Ass'n v. Wash. State Ctr. for Childhood Deafness & Hearing Loss*, 450 P.3d 601, 611-12 (Wash. 2019); *Armstrong v. State*, 989 P.2d 364, 376 (Mont. 1999); *Valley Hosp. Ass'n v. Mat-Su Coal. for Choice*, 948 P.2d 963, 969 (Alaska 1997); *Am. Acad. of Pediatrics v. Lundgren*, 940 P.2d 797, 813 (Cal. 1997).

There is no basis in the text of the Privacy Clause to artificially constrain its broad, ordinary meaning to *exclude* a right to decide whether to terminate a pregnancy. As this Court explained in *Voting*

Restoration Amendment, absent an indication in the text itself that broad language "carries a technical meaning restricting its scope, there is no basis to conclude" that such language excludes particular applications. 288 So.3d at 1082 (finding no textual basis to read broad phrase "terms of sentence" to exclude legal financial obligations); *see also PPSA*, 2023 WL 107972, at *35 (Few, J., concurring in result) ("The only way a broad but clear term … may be reasonably read as limited to only some of its forms is when the limitations appear in the text of the provision.").

c. Historical Context in 1980 Confirms That the Original Public Meaning of the Privacy Clause Encompassed Abortion Rights.

The historical context confirms that the voters in 1980 who approved the amendment adding the Privacy Clause to the Florida Constitution would have given the Clause its broad, ordinary meaning and understood it to incorporate, at minimum, the then-existing scope of privacy rights under established law, including abortion. *See Voting Restoration Amendment*, 288 So.3d at 1078.

At the time of the 1980 enactment, it was well-established that the right of privacy included decisional autonomy rights over procreation, contraception, and abortion. Most famously, the U.S.

Supreme Court's landmark ruling in *Roe v. Wade,* holding that the decision to have an abortion was protected under the implicit federal constitutional right of privacy, occurred seven years *before* Florida voters approved the Privacy Clause. Voters thus adopted the amendment at a time when abortion was a "well-established" privacy right. *T.W.*, 551 So.2d at 1202 (Grimes J., concurring in part, dissenting in part); *accord id.* at 1197 (Ehrlich, C.J., concurring) ("It can therefore be presumed that the public was aware that the right to abortion was included under the federal constitutional right of privacy and would therefore certainly be covered by the Florida privacy amendment.").

Furthermore, before 1980, this Court recognized that the federal constitution protected one's right to privacy in "making various kinds of important personal decisions" including those related to "procreation and contraception," but held that Florida lacked a *state* right of privacy that would have incorporated those rights (and others) into state law. *Shevin v. Byron, Harless, Schaffer Reid & Assocs., Inc.*, 379 So.2d 633, 636-37 (Fla. 1980); *accord Laird v. State*, 342 So.2d 962 (Fla. 1977). The historical context reflects that the 1980 amendment was intended to remedy these omissions.

The specific language of the Privacy Clause strongly correlates to the scope of privacy rights that was established at the time. For example, the phrase "right to be let alone" was synonymous at the time with the right of privacy and included decisional autonomy rights like abortion. *See Right of Privacy*, Black's Law Dictionary 1075 (5th ed. 1979) (rights to "privacy" and "to be let alone" were synonyms and included rights against "government interference in personal relationships or activities, freedoms of individual to make fundamental choices involving himself, his family, and his relationship with others"); *Doe v. Bolton*, 410 U.S. 179, 213, 93 S. Ct. 756, 758 (1973) (Douglas, J., concurring) (in case involving abortion, emphasizing that the "right of privacy," also known as "the right to be let alone," was at stake). And the phrase "free from governmental intrusion" directly echoed the language of privacy rights cases involving abortion and contraception. *See Eisenstadt v. Baird*, 405 U.S. 438, 453 (1972) (right of privacy encompassed "the right of the individual, married or single, to be free from unwarranted *governmental intrusion* into matters so fundamentally affecting a person as the decision whether to bear or beget a child" (emphasis added)); *Roe*, 410 U.S. at 169-70 (Stewart, J., concurring) (quoting

Eisenstadt and concluding that the right it described "necessarily includes the right of a woman to decide whether or not to terminate her pregnancy"); *Bolton*, 410 U.S. at 213, 93 S. Ct. at 758 (Douglas, J., concurring) (similar); *Griswold v. Connecticut*, 381 U.S. 479, 483 (1965) (right of privacy means protection from "governmental intrusion").[19]

Furthermore, widespread local news coverage in 1980 linked Florida's privacy amendment to broad privacy rights and privacy rights to abortion. For example, contemporaneous news coverage routinely identified the proposed amendment as creating a broad privacy right under Florida law that (at minimum) incorporated the constellation of privacy rights then-recognized under federal law,[20]

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[19] This then-existing case law offers relevant evidence of how the public would have understood the Privacy Clause's scope. *See Senate Joint Resol.*, 83 So.3d at 614 (looking to "the historical development of the decisional law extant at the time of its adoption"); *Voting Restoration Amendment*, 288 So.3d at 1080, 1082 (looking to case law and legal sources to confirm ordinary meaning). By contrast, subsequent developments—like the *Dobbs* decision 40 years later—cannot affect the public understanding in 1980.

[20] *See, e.g.*, Adam Richardson, *The Originalist Case for Why the Florida Constitution's Right of Privacy Protects the Right to an Abortion*, Stetson L. Rev., at 39-49 (forthcoming), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4187311 (collecting examples of news coverage of 1980 election describing the amendment as providing a broad protection for privacy rights, including decisional autonomy

and routinely identified abortion as part of federal privacy rights.[21]

This Court's post-enactment constructions of the Privacy Clause confirm that the Clause's original public meaning included protection for abortion. *See Heller*, 554 U.S. at 605 (close-in-time interpretations of constitutional text are relevant evidence of "public understanding"). When first construing it, this Court held that the Privacy Clause's plain language and lack of limiting words meant the right was "much broader in scope than that of the Federal Constitution." *Winfield*, 477 So.2d at 548. And when first considering the application of the Privacy Clause to abortion, this Court ruled *unanimously* that it protected abortion rights at least as strongly as

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rights and rights then-protected by federal law, and demonstrating that both opponents and proponents of the amendment highlighted its breadth).

[21] *See, e.g.*, James W. Fox, *An Historical and Originalist Defense of Abortion in Florida*, Rutgers U.L. Rev., at 23-26 (forthcoming), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4224718 (collecting news coverage identifying abortion rights as part of the "right to privacy" in discussions of, *inter alia*, the death of Justice Douglas, author of seminal privacy decisions; court decisions related to abortion; and the anti-abortion movement's campaign to overrule *Roe v. Wade*); Richardson, *supra* note 20, at 26 ("Florida newspapers in 1980 are filled with articles framing abortion as part of a woman's constitutional right to privacy, something understood by both sides.").

under *Roe*. *T.W.*, 551 So.2d 1191-92.[22] In fact, no Justice of this Court has *ever* openly questioned that the Privacy Clause encompasses abortion rights.[23]

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[22] *Id.* at 1197 (Ehrlich, C.J., concurring) ("wholeheartedly concur[ring]" that the right to abortion as recognized in *Roe* was "certainly … covered by the Florida privacy amendment"); *id.* at 1201 (Overton, J., joined by Grimes, J., concurring in part, dissenting in part) (Privacy Clause "effectively codified within the Florida Constitution the principles of *Roe v. Wade*, as it existed in 1980"); *id.* at 1202 (Grimes J., concurring in part, dissenting in part) ("By 1980, abortion rights were well established under the federal Constitution, and I believe the privacy amendment had the practical effect of guaranteeing these same rights under the Florida Constitution."); *id.* at 1205 (McDonald, J., dissenting) (embracing "the rationale of *Roe v. Wade*, particularly when this state has adopted a constitutional right of privacy," but disagreeing only as applied to minors).

[23] *See, e.g.*, *Gainesville Woman Care*, 210 So.3d at 1268-69 (Canady, J., dissenting) (disagreeing with majority on some points, but not challenging that the right to privacy encompasses abortion); *N. Fla. Women's Health*, 866 So.2d at 661 (Lewis, J., concurring in result only) ("It is absolutely clear that adult females have protected liberty and privacy interests to engage in independent private medical and surgical decision processes free from unwarranted government intrusion."); *id.* at 688-73 (Wells, J., dissenting) (disagreeing with majority on whether a minor has the same right of privacy as an adult, but not challenging that the right of privacy encompasses abortion); *Renee B.*, 790 So.2d at 1041 (reaffirming that Privacy Clause protects abortion but holding that it does not "create an entitlement to financial resources"); *id.* at 1042 (Shaw, J., concurring in part, dissenting in part) (agreeing with the majority's right-of-privacy analysis, which affirmed the right to abortion); *cf. also* C. Muñiz, *Parental Notification of a Minor's Termination of Pregnancy*, 29 J. James Madison Inst. 8, 9 (2004) ("[O]ne purpose of the privacy

The overwhelming weight of textual and historical evidence counsels strongly in favor of upholding established case law uniformly concluding that Florida's fundamental right to privacy protects abortion rights. "Constitutional rights are enshrined with the scope they were understood to have when the people adopted them, whether or not future legislatures or (yes) even future judges think that scope too broad." *Heller*, 554 U.S. at 634-35.

3. As a Matter of Stare Decisis, This Court Should Adhere to Precedent.

Principles of stare decisis and judicial restraint also counsel strongly against overruling four decades of Florida law, regardless of whether this Court would have construed the Privacy Clause more narrowly if deciding the question in the first instance.

Overruling precedent is not appropriate unless a prior decision is "clearly erroneous." *Poole*, 297 So.3d at 507. "The later Court must approach precedent presuming that the earlier Court faithfully and competently carried out its duty," and this "searching inquiry" must be "conducted with minds open to the possibility of reasonable

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amendment clearly was to give the abortion right a textual foundation in our state constitution.").

differences of opinion" and "'honest disagreement'" in the law. *Id.* at 506 (quoting *Gamble v. United States*, 139 S.Ct. 1960, 1986 (2019) (Thomas, J., concurring)). "Written laws have a range of indeterminacy, and reasonable people may therefore arrive at different conclusions about the original meaning of a legal text after employing all relevant tools of interpretation." *Gamble*, 139 S.Ct. at 1986 (Thomas, J., concurring). An interpretation is clearly erroneous only when it is "an impermissible interpretation of the text." *Id.* But where a prior interpretation falls within the range of reasonable constructions of the original meaning, stare decisis counsels in favor of adherence to precedent, "even if a later court might have ruled another way as a matter of first impression." *Id.*

The conclusion of this Court's precedent—that Floridians' enactment of a freestanding, fundamental right of privacy in 1980 codified protections for abortion rights under the Florida Constitution independent of federal law—is *at minimum* a reasonable interpretation of the Privacy Clause. Given the wealth of textual and historical evidence supporting that interpretation, *see supra* Section II.B.2.b-c, this Court's precedents interpreting the Privacy Clause to encompass a right to abortion fall far short of a "clearly erroneous,"

Poole, 297 So.3d at 507, or "impermissible" interpretation of the text, *Gamble*, 139 S. Ct. at 1986 (Thomas, J., concurring).

Moreover, in determining whether to set aside the broad, ordinary meaning, the Court also must consider "whether there is a valid reason *why not* to recede from that precedent." *Poole*, 297 So.3d at 507. The "critical consideration" is "reliance," *id.*, that is, the "legitimate expectations of those who have reasonably relied on the precedent," *State v. Maisonet-Maldonado*, 308 So.3d 63, 69 (Fla. 2020). This includes not just traditional reliance interests rooted in contract and property rights but also societal reliance interests. *See Poole*, 207 So.3d at 507 (weighing the interests of "the victims of Poole's crimes and of society's interests").

Here, societal reliance interests weigh decisively against discarding 40 years of Florida precedent. Stare decisis "provides stability to the law and to the society governed by that law." *Brown v. Nagelhout*, 84 So.3d 304, 309 (Fla. 2012). For over four decades, "Floridians have organized their personal and family relationships based on the constitutional right articulated in [*T.W.*]," and have "had an opportunity to participate equally in the social and economic life of this State due in part to the ability to make personal decisions

based on" constitutional protections for abortion. *N. Fla. Women's Health*, 866 So.2d at 638. This widespread and life-altering reliance on the state's longstanding right to make decisions about pregnancy and abortion is a "valid reason" for this Court to adhere to precedent. *Poole*, 297 So.3d at 506.

III. An Injunction is in the Public Interest.

Plaintiffs also demonstrated that a temporary injunction would serve the public interest. ROA 71-72. As shown *supra* in Section II, HB 5 is likely unconstitutional, and it is *always* in the public interest to prevent a violation of a fundamental constitutional right. *See, e.g.*, *Gainesville Woman Care*, 210 So.3d at 1264; *Coal. to Reduce Class Size v. Harris*, No. 02-CA-1490, 2002 WL 1809005, at *2 (Fla. Cir. Ct. July 17, 2002), *aff'd sub nom. Smith v. Coal. To Reduce Class Size*, 827 So.2d 959 (Fla. 2002); *Green v. Alachua County*, 323 So.3d 246, 255 (Fla. 1st DCA 2021), *reh'g denied* (July 16, 2021). That is particularly true here, where enjoining HB 5 would restore the status quo that existed for over 40 years, allowing Floridians to obtain constitutionally-protected care once again and to avoid the irreparable harm of forced pregnancy and childbirth.

The State claimed below that an injunction would override the supposed will of the people reflected in HB 5. *See* ROA 515. But that argument ignores the will of the people as expressed in the Privacy Clause itself. Florida voters "exercised their prerogative and enacted an amendment to the Florida Constitution" that "succinctly provides for a strong right of privacy" and expressly constrains "governmental intrusion" through laws like HB 5. *Winfield*, 477 So.2d at 548. A legislative enactment must fail if it violates the State Constitution, as HB 5 does. *See Bush v. Holmes*, 919 So.2d 392, 398 (Fla. 2006) ("[T]he Constitution must prevail over any enactment contrary to it."); *City of Miami Beach v. Lachman*, 71 So.2d 148, 150 (Fla. 1953) (The "duty of [this Court] to maintain the constitution as the fundamental law of the state is imperative and unceasing and applies as imperatively when properly invoked against a zoning ordinance as it does against an act of the legislature."). Where, as here, "legislative interest balancing" conflicts with the "interest balancing by the people" reflected in the Constitution, it is the balance struck by the "people[] that demands [this Court's] unqualified deference." *Bruen*, 142 S.Ct. at 2131.

CONCLUSION

Every day it remains in effect, HB 5 causes profound, irreparable harm to Plaintiffs, the doctor-patient relationship, and Floridians' health and well-being, in contravention of fundamental privacy rights, the people's sovereign will, and 40 years of established law. To correct this miscarriage of justice, this Court should reverse the appellate court's decisions refusing to vacate the automatic stay and reversing the injunction, and affirm and reinstate the temporary injunction against the enforcement of HB 5 while this case proceeds to the merits.

Respectfully submitted this 27th day of February, 2023.

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of Petitioners' Opening Brief has been furnished by electronic mail to all counsel of record by filing the document with service through the e-Service system, Fla. R. Jud. Admin. 2.516(b)(1), this 27th day of February, 2023.

/s/ Whitney Leigh White

CERTIFICATE OF COMPLIANCE FOR COMPUTER-GENERATED BRIEFS

I certify that this brief complies with the applicable form and font requirements under Florida Rule of Appellate Procedure 9.045. I further certify that this brief complies with the word limit for computer-generated briefs stated in Florida Rule of Appellate Procedure 9.210(a)(2)(A).

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