SC23-1392

IN THE SUPREME COURT OF FLORIDA

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

INITIAL BRIEF OF FLORIDA VOTERS AGAINST EXTREMISM, PC IN OPPOSITION TO THE INITIATIVE

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IDENTITY OF OPPONENT

Florida Voters Against Extremism ("FLVAE") is a registered Political Committee that was formed pursuant to § 106.011(16)(a), Fla. Stat., for the purpose of organizing opposition to, and opposing, the proposed constitutional "Amendment to Limit Government Interference with Abortion" (the "Proposed Amendment").

As argued below, FLVAE believes that the "Proposed Amendment hides from voters its sponsors' true purpose: to codify unrestricted abortion as a fundamental right in Florida's Constitution and allow abortions for virtually any reason, at any stage of the pregnancy. As an "interested person[]" within the meaning of Fla. R. App. P. 9.510(c)(1), FLVAE thus opposes the Proposed Amendment.

STATEMENT OF THE CASE AND FACTS

This case arises from a request for an advisory opinion by the Attorney General pursuant to Art. IV, § 10 of the Florida Constitution. It concerns a proposed constitutional amendment that implicates the substantial functions of multiple branches of government, and, further, fails to inform Florida voters about the Proposed Amendment's impact.

The Proposed Amendment is sponsored by Floridians Protecting Freedom, Inc., a political committee supported by the Florida Alliance of Planned Parenthood Affiliates, the American Civil Liberties Union, and other groups that support the termination of preborn humans through unrestricted abortion on demand. *See* About, Floridians Protecting Freedom, https://floridiansprotectingfreedom.com/about/ (last accessed Oct. 25, 2023). The ballot title for the Proposed Amendment is "Amendment to Limit Government Interference with Abortion." The full text of the accompanying ballot summary states:

> No law shall prohibit, penalize, delay, or restrict abortion before viability or when necessary to protect the patient's health, as determined by the patient's healthcare provider. This amendment does not change the Legislature's

constitutional authority to require notification to a parent or guardian before a minor has an abortion.

The Proposed Amendment would create a new section in the Florida Constitution titled "Amendment to Limit Government Interference with Abortion." The Proposed Amendment to the Florida Constitution is as follows: "Limiting government interference with abortion.— Except as provided in Article X, Section 22, no law shall prohibit, penalize, delay, or restrict abortion before viability or when necessary to protect the patient's health, as determined by the patient's healthcare provider." *See* Ashley M. Moody, Attorney General, State of Florida, Petition for Advisory Opinion 9 (Oct. 9, 2023) (hereafter "Petition"), https://perma.cc/7MGJ-Y6CL.

SUMMARY OF ARGUMENT

The Proposed Amendment's ballot title and summary are misleading and fail to provide fair notice to voters of the measure's true chief purpose and effect. To begin, the title "Limit Government Interference with Abortion" is inflammatory political rhetoric and has no place on a ballot. At a broader level, the Proposed Amendment would eviscerate the State's compelling interest in protecting preborn life and instead legalize abortion as a matter of state law. Second, the

ballot title falsely suggests that the proposal would limit restrictions and regulations for abortion; but in purpose and effect, the Proposed Amendment would prevent the State altogether from regulating all pre-viability abortions and all abortions that a vague and undefined "healthcare provider" may deem "necessary" to protect the woman's "health." The Proposed Amendment also leaves the terms "necessary" or "health" purposefully undefined and vague, concealing the Proposed Amendment's true purpose to confuse Florida voters and create an unrestricted right to abortion at all stages.

The Proposed Amendment also violates the Florida Constitution's single-subject requirement by addressing multiple subjects in the same proposal. The Proposed Amendment covers both pre-viability abortions and abortions to protect the woman's health. Those are distinct issues that cannot permissibly be lumped into a single ballot initiative. Further, the Proposed Amendment substantially directs and performs the functions of both the legislative and executive branches by upending the State's regulatory oversight of abortion. And the combination of all these subjects into a single proposal results in the logrolling of various issues over which

voters may feel differently, a consequence that this Court has found to violate the single-subject requirement.

For these reasons, the Court should conclude that the Proposed Amendment is invalid and therefore prohibit its placement on the ballot.

LEGAL STANDARD

The Florida Constitution "reserve[s] to the people" the consequential power to amend the State's governing charter through the citizen-initiative process. Art. XI, § 3, Fla. Const. That process "relies on an accurate, objective ballot summary for its legitimacy." *In re Advisory Op. to Att'y Gen. re Additional Homestead Tax Exemption*, 880 So.2d 646, 653 (Fla. 2004). Because voters "never see the actual text of the proposed amendment" and "vote based only on the ballot title and the summary," the accuracy of both the title and summary is paramount. *Id.* Consequently, "an accurate, objective, and neutral summary" of any proposed amendment is the "sine qua non" of the citizen-initiative process for amending the Florida Constitution. *Id.* Without that safeguard, the Constitution becomes "not a safe harbor for protecting all the residents of Florida, but the

den of special interest groups seeking to impose their own narrow agendas." *Id.* at 654.

In assessing a proposed amendment's ballot title and summary, this Court asks two questions: "First, whether the ballot title and summary 'fairly inform the voter of the chief purpose of the amendment,' and second, 'whether the language of the title and summary, as written, misleads the public.'" *Fla. Educ. Ass'n v. Fla. Dep't of State*, 48 So.3d 694, 701 (Fla. 2010) (citation omitted).

ARGUMENT

I. The Ballot Title and Summary are misleading and do not clearly and unambiguously provide fair notice to voters of the Proposed Amendment's chief purposes.

Florida law requires the sponsor of an amendment proposed by an initiative to prepare a ballot summary not exceeding 75 words. § 101.161(1), Fla. Stat. The ballot summary is an explanatory statement in "clear and unambiguous language" of the "chief purpose of the measure." *Id.* The ultimate purpose of the ballot title and summary requirements is "to provide fair notice of the content of the proposed amendment so that the voter will not be misled as to its purpose, and can cast an intelligent and informed ballot." *Adv. Op. to Att'y Gen. re Term Limits Pledge*, 718 So.2d 798, 803 (Fla. 1998)

(citation omitted). "Reduced to colloquial terms, a ballot title and summary cannot 'fly under false colors' or 'hide the ball' with regard to the true effect of an amendment." *Fla. Dep't of State v. Slough*, 992 So.2d 142, 147 (Fla. 2008) (quoting *Armstrong v. Harris*, 773 So.2d 7, 13 (Fla. 2000)). Here, the Proposed Amendment's ballot title and summary fail to satisfy these basic "truth-in-advertising" requirements in numerous ways.

A. The Ballot Title's phrase "government interference with abortion" is a classic example of impermissible political rhetoric.

At the outset, the term "government interference with abortion"—which appears prominently in both the ballot title and the Proposed Amendment—is a classic example of impermissible political rhetoric. Exploited by pro-abortion activists as a pejorative term, its prime function is not to describe their political position in a clear, neutral, and objective way but to evoke emotion and condemnation. The phrase "government interference with abortion" is synonymous with political slogans such as "bans off my body," in that both inflame and arouse a visceral response. Such political rhetoric has no place on the State's official ballot.

Nor is the phrase "limit government interference with abortion" a term of art in the healthcare industry. Instead, it is a judicially created phrase that explained the effect of the Supreme Court's decision in *Roe v. Wade*, 410 U.S. 113 (1973). *See Harris v. McRae*, 448 U.S. 297, 327 (1980) (White, J., concurring) ("The constitutional right recognized in *Roe v. Wade* was the right to choose to undergo an abortion without coercive interference by the government."). But the Supreme Court overruled *Roe* in *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022), finding that the Constitution makes no reference to abortion, and no such right is implicitly protected by any constitutional provision. Thus, the authority to regulate abortion must be returned to the people and their elected representatives. *Id.* at 2243. Because *Dobbs* overruled *Roe* and its progeny and returned the issue of abortion to the People, the *Roe*-connected judicially-invented phrase "government interference with abortion" is no longer relevant or appropriate for a neutral ballot summary or proposed amendment.

In any event, the phrase "government interference with abortion" is a potent rhetorical term because "interference" connotes offensive and aggressive encroachment by the government. Interference means

"the act or process of obstructing normal operations or intervening or meddling in the affairs of others," or "an obstruction or hindrance." *Interference*, Black's Law Dictionary (Brian Garner ed., 11th ed. 2019). "Interference" simply does not communicate the neutral and objective fact, as upheld by the Supreme Court in *Dobbs*, that abortion is not a natural right nor a right protected under the Constitution. Instead, "government interference with abortion" conjures up images of democratically elected officials obstructing or hindering a woman's non-existent "fundamental right" to terminate her pregnancy for any reason at any time. Such phrasing elicits an instantaneous, powerful emotional response from voters of every stripe.

Simply put, the loaded phrase "limit government interference with abortion" is anything but the neutral, objective, informative description that deserves a place on the official ballot. Whether in fundraising emails from Planned Parenthood or on the ballot, the phrase intentionally evokes an emotional response to garner support. A term that serves rhetorical or editorializing purposes rather than an informational function has no place on the ballot. Consequently, the Proposed Amendment should be stricken.

B. The Ballot Title and Summary Fail to clearly and unambiguously disclose the Proposed Amendment's chief purpose: the legalization of abortion as a matter of state law.

The purpose of the ballot title and summary is "to provide fair notice of the content of the proposed amendment." *Adv. Op. to the Att'y Gen.-Fee on the Everglades Sugar Prod.*, 681 So.2d 1124, 1127 (Fla. 1996). Thus, to satisfy § 101.161, the title and summary must "state in clear and unambiguous language the chief purpose of the measure," *Askew v. Firestone*, 421 So.2d 151, 155 (Fla. 1982), so that the proposed amendment does not "fly under false colors" or "hide the ball" as to its legal effect, *Armstrong v. Harris*, 773 So. 2d 7, 16 (Fla. 2000) (internal quotation marks omitted).

Here, the Proposed Amendment has two overarching purposes. The first is the legalization of unrestricted abortion, as a matter of state law, for any reason, up until viability. The second is the legalization of unrestricted abortion—even possibly during birth—for whatever reason so long as a healthcare provider deems it "necessary" for the woman's "health." As explained below, the ballot language fails to adequately inform voters of either chief purpose.

1. The chief purpose of the Proposed Amendment—to prohibit government regulation of abortion—is hidden from the voters by the Sponsor's unclear and misleading ballot title and summary.

Rather than accurately characterize the initiative as one that practically allows abortion on demand at any stage of the pregnancy, the ballot title and summary mislead the voters as to the proposal's chief purpose by stating that the Proposed Amendment "limits" government interference with abortion. On the contrary, the Proposed Amendment would allow unlimited abortion, at any stage, so long as a healthcare provider deems it "necessary" for the woman's "health." These critical terms are undefined and purposefully nonspecific, opening the door to an unfettered right of access to unrestricted abortion at any stage.

The ballot title and summary also do not apprise voters that a chief purpose of the Proposed Amendment is to legalize under state law a procedure that is currently prohibited. Under current state law, a physician may not terminate a pregnancy if the gestational age of the fetus is more than 15 weeks unless

> (a) Two physicians certify in writing that, in reasonable medical judgment, the termination of the pregnancy is necessary to save the pregnant woman's life or avert a serious risk of substantial and irreversible physical

> impairment of a major bodily function of the pregnant woman other than a psychological condition.
>
> (b) The physician certifies in writing that, in reasonable medical judgment, there is a medical necessity for legitimate emergency medical procedures for termination of the pregnancy to save the pregnant woman's life or avert a serious risk of imminent substantial and irreversible physical impairment of a major bodily function of the pregnant woman other than a psychological condition, and another physician is not available for consultation.
>
> (c) The fetus has not achieved viability under s. 390.01112 and two physicians certify in writing that, in reasonable medical judgment, the fetus has a fatal fetal abnormality.

§ 390.0111(1), Fla. Stat.

Under the plain terms of § 390.0111, the Proposed Amendment violates current law, as it would allow pre-viability abortions for any reason whatsoever, and it would expand the "health" exception from a carefully circumscribed and documented exception to a limitless and gaping hole that would swallow up abortion restrictions and render them meaningless.

The Proposed Amendment's sponsors may speculate that many voters already know that abortion after 15 weeks is generally prohibited under Florida law (subject to the above exceptions) and that such voters might infer that an initiative purporting to "limit

government interference with abortion" would not necessarily have the effect of mostly legalizing abortion. But the problem with the Proposed Amendment and its ballot summary is that it does not make clear the Proposed Amendment's primary objective to eliminate Florida's current abortion laws. Indeed, this Court has held that "[f]air notice in terms of a ballot summary must be actual notice consisting of a clear and unambiguous explanation of the measure's chief purpose." *Askew*, 421 So. 2d at 156. Notice by implication is different from "actual notice," and requiring voters to deduce the chief purpose of a proposed amendment is antithetical to the concept of "a clear and unambiguous explanation." *Id.* The ballot summary does not make clear that its overarching purpose is to generally legalize abortion, and it does not give fair notice that the sponsors' primary objective is to eviscerate Florida's current laws restricting abortion.

This problem is exacerbated by the Proposed Amendment's failure to define the essential terms "viability," "necessary," and "health." Because the ballot language does not declare that its purpose is to broadly legalize, authorize, or otherwise expand access to unrestricted abortion, voters might reasonably assume that an amendment purporting only to "limit government interference with

abortion" would continue to prohibit those abortions that are currently prohibited by law (post 15 weeks, subject to exceptions), and would only further regulate abortions at a gestational age that is already permitted as a matter of state law (*i.e.*, abortions at under 15 weeks).

Moreover, the Proposed Amendment would enshrine a "self-contradictory, ambiguous provision" in the Florida Constitution. *Scialabba v. Cuellar de Osorio*, 573 U.S. 41, 75 (2014). The first sentence provides that "[n]o law shall prohibit, penalize, delay, or restrict abortion," yet the very next sentence says "[t]his amendment does not change the Legislature's constitutional authority to require notification to a parent or guardian before a minor has an abortion." Petition at 9. If "no law" can "prohibit, penalize, delay, or restrict abortion," then how can the notification requirement still be allowed under the amendment given that it would "delay[] or restrict abortion?" Even under a natural reading, the Proposed Amendment is an *ad absurdum*.

2. The expansive and undefined scope of the Proposed Amendment forecloses its placement on the ballot.

As the text of the initiative makes clear, a second chief purpose of the Proposed Amendment is the enactment of a constitutional right to abortion so long as a "healthcare provider" deems it "necessary" to "protect" the woman's "health." Such expansive terms, especially because they lack definitions, would permit abortions for virtually any reason, at any stage—including during birth. Simply put, the Proposed Amendment is breathtaking in scope and at odds with Florida's public policy in protecting the preborn.

Not surprisingly, the ballot summary for the "Amendment to Limit Government Interference with Abortion" fails to disclose to voters the numerous critical and intended legal effects of the amendment. For example, an undisclosed legal effect is the removal of the State's police power to protect life and regulate healthcare. The summary fails to disclose that the amendment would strip elected state legislators of their ordinary power to regulate both the protection of innocent preborn life and Florida's healthcare systems. That upsets conventional lawmaking norms, whereby the Legislature enjoys the power to regulate, in the first instance, all conduct within

the State's police power. Yet the summary tells voters that "No law shall prohibit, penalize, delay, or restrict abortion" "before viability" or if "necessary" for the woman's "health." Petition at 9. Such a sweeping abrogation of the State's traditional police powers strikes at the heart of Florida's constitutional system and governance. That alone is sufficient to reject the Proposed Amendment. It also substantially alters the functions of multiple branches of the Florida government creating a separate and independent reason to strike the Proposed Amendment. *See infra* Section II.

Another legal effect of the Proposed Amendment would be to allow any "healthcare provider" to approve an abortion. The amendment does not define what is "health," or even a "healthcare provider." That is no small thing. First, allowing a single "healthcare provider" to authorize an abortion conflicts with § 390.0111, which requires two *physicians* to certify in writing that an abortion is warranted. *See id.* § 390.0111(1)(a)–(c). More troubling, it would allow anyone who calls themselves a "provider"—even veterinarians or midwives—to authorize surgical dismemberments of viable preborn babies based on subjective determinations about a woman's "health," including, presumably, "emotional" health. Such a limitless

expansion of life-taking capabilities would deprive the Legislature of the power to regulate unsafe and unqualified providers of abortion. It would also encourage barbaric practices on preborn babies. In other words, the Proposed Amendment would wholly foreclose the Legislature's ability to regulate abortion provided by whichever entity holds itself to offer abortions. Under the plain terms of the Proposed Amendment, voters will naturally, but incorrectly, assume that this sort of consumer health protection will remain available to lawmakers if the Proposed Amendment is approved. But it would not. *Cf. Doe v. Bolton*, 410 U.S. 179, 192 (1973), *abrogated by Dobbs*, 142 S. Ct. at 2228 (defining "physical, emotional, psychological, familial, and the woman's age" as "factors" that "may relate to health" for purposes of abortion").

Those and other legal effects represent the sort of "material information" that is "necessarily included in a valid summary." *Smith v. Am. Airlines, Inc.*, 606 So.2d 618, 621 (Fla. 1992). To be sure, this Court has explained that due to the 75-word limit on ballot summaries, a summary "need not explain every detail or ramification of the proposed amendment." *Adv. Op. to Att'y Gen. ex rel. Amendment to Bar Gov't from Treating People Differently Based on*

Race in Public Educ., 778 So.2d 888, 899 (Fla. 2000) (internal quotation marks and citation omitted). At the same time, however, the Court cautioned that "the word limit does not give drafters of proposed amendments leave to ignore the importance of the ballot summary and to provide an abbreviated, ambiguous statement in the hope that this Court's reluctance to remove issues from the ballot will prevent us from insisting on clarity and meaningful information." *Id.* (quoting *Smith*, 606 So.2d at 621). "Thus, drafters of proposed amendments cannot circumvent the requirements of section 101.161, Florida Statutes, by cursorily contending that the summary need not be exhaustive." *Id.* In short, the ballot language does not, and could not, "adequately describe the general operation of the proposed amendment." *Id.* at 899–900. The Proposed Amendment should not be placed on the ballot.

3. The Proposed Amendment's ballot summary is deliberately misleading and rife with ambiguous terms.

The ballot language also violates § 101.161(1), Fla. Stat., because it affirmatively misleads voters in several ways. First, the ballot title and summary deceptively suggest that the amendment will "limit," rather than abolish, the extent of abortion regulation

throughout the state. The verb "limit" means "[a] restriction or restraint" or "[t]he extent of power, right, or authority." *Limit*, Black's Law Dictionary (11th ed. 2019). As discussed above, the ballot language speaks only of "limiting" so-called "interference," not full "legalization."

The ballot title and ballot summary also fail to disclose that the Proposed Amendment not only prohibits regulating abortion before viability but also permits abortion for whatever reason, at any stage, so long as it is deemed "necessary" by any self-declared "healthcare provider" "to protect" the woman's "health." Without informing the voters, the Proposed Amendment legalizes late-term and even partial-birth abortions. That is significant because, among other reasons, constitutionalizing a broad right to abortion prevents the Legislature from responding to new social, political, or legal developments concerning abortion and the viability of preborn children. By contrast, nothing precludes the Legislature from responding with necessary and timely regulations in prenatal healthcare.

The Proposed Amendment's intentional vagueness violates the long-standing requirement that ballot summaries disclose the chief consequences of proposed amendments. *Cf. Detzner v. Anstead*, 256

So.3d 820, 824 (Fla. 2018) (explaining that a ballot summary must "accurately represent the main legal effect and ramifications of a proposed amendment"); *Detzner v. League of Women Voters of Fla.*, 256 So.3d 803, 808 (Fla. 2018) (explaining that ballot language must be "informative" and assure that the "electorate is advised of the true meaning, and ramifications, of an amendment"). Where, as here, a ballot summary fails to inform voters of one of the main effects of a proposed amendment, the amendment should be stricken from the ballot.

A significant purpose of the Proposed Amendment is to legalize all abortions before viability and any abortion so long as it is deemed "necessary" by any undefined "healthcare provider" to protect the woman's "health." To fairly inform voters of the primary consequences of the Proposed Amendment, the ballot summary must disclose that the Proposed Amendment does more than permit all abortions before viability: it allows abortion for virtually any "health"-related reason, without exception. Because it does not advise voters of these effects, the ballot title and summary are deficient, and the Proposed Amendment should be stricken.

4. The summary fails to warn voters of the Proposed Amendment's serious implications under federal law, including the Partial-Birth Abortion Ban Act.

Also fatally, the Proposed Amendment would be preempted by federal law. The American system of federalism mandates that if a conflict exists between federal law and state law, federal law preempts state law. *See Georgia Latino All. for Hum. Rights v. Governor of Georgia*, 691 F.3d 1250, 1262 (11th Cir. 2012). If a state law is preempted, then that law is void, because the Supremacy Clause, U.S. Const. art. VI, cl. 2, "is the inevitable underpinning for the striking down of a state enactment which is inconsistent with federal law." *Swift & Co. v. Wickham*, 382 U.S. 111, 123 n.18 (1965). Indeed, "[i]t is a familiar and well-establish principle that the Supremacy Clause invalidates state laws that interfere with, or are contrary to, federal law. Under the Supremacy Clause, state law is nullified to the extent that it actually conflicts with federal law." *Hillsborough Cnty. v. Automated Med. Labs, Inc.*, 471 U.S. 707, 712–13 (1985) (cleaned up).

Here, federal law unambiguously prohibits the conduct that Proposed Amendment purports to permit. The federal Partial-Birth Abortion Ban Act prohibits a physician from performing a partial-

birth abortion unless it is necessary to save the life of a mother whose life is endangered by a physical disorder, physical illness, or physical injury. 18 U.S.C. § 1531(a). Yet the ballot summary nowhere cautions voters that, if adopted, the Proposed Amendment would authorize, as a matter of state law, activities that would constitute violations of the Partial-Birth Abortion Ban Act. *See Gonzales v. Carhart*, 550 U.S. 124 (2007) (upholding the Act); *see also id.* at 135–36 (describing partial-birth abortions as "caus[ing] the fetus to tear apart," "piece by piece … until it has been completely removed").

Given that the Proposed Amendment would permit partial-birth abortions if they are deemed by a self-declared and undefined "healthcare provider" to protect the woman's "health," in whichever way, voters are not apprised that the Proposed Amendment legalizes conduct that would remain entirely unlawful under federal law. Consequently, the language does nothing to warn voters that conduct permitted by the Proposed Amendment would constitute a violation of federal criminal law. Nor does the summary's language warn that any potential violation of federal law will constitute a criminal violation, a distinction which—were voters apprised of it—might diminish support for the measure. In short, under the Proposed

Amendment, any healthcare provider who performs a partial-birth abortion if deemed "necessary" for the woman's "health" would violate federal law, and no law or state constitutional amendment would cure that illegality.

II. The Proposed Amendment violates the Florida Constitution's single-subject requirement.

The Florida Constitution restricts constitutional amendments proposed by initiative petition to "one subject and matter directly connected therewith." Art. XI, § 3, Fla. Const. The single-subject requirement "is a rule of restraint" placed in the Constitution upon the ballot initiative process to allow the people to propose and vote upon "singular changes in the functions of our governmental structure." *Fine v. Firestone*, 448 So.2d 984, 988 (Fla. 1984). By focusing the electorate's attention on "a change regarding one specific subject of government," the single-subject requirement "protect[s] against multiple precipitous changes in our state constitution." *Id.*

On its face, the Proposed Amendment violates the single-subject requirement by addressing multiple subjects that are logically separable. This Court evaluates compliance with the single-subject requirement by determining whether the initiative: (1) engages in

"logrolling" of distinct subjects; or (2) substantially alters or performs the functions of multiple branches of state government. The Proposed Amendment engages in both prohibited practices, and each provides an independent ground for the Court to deny ballot placement.

A. The Proposed Amendment engages in logrolling.

The Proposed Amendment engages in "logrolling" of distinct subjects in violation of the Florida Constitution's single-subject requirement. This Court has long noted that the single-subject requirement guards against "logrolling," a practice in which several separate issues are rolled into a single initiative to aggregate votes or secure approval of an otherwise unpopular issue. *See Adv. Op. to Att'y Gen. re Indep. Nonpartisan Comm'n to Apportion Legislative & Cong. Districts Which Replaces Apportionment by Legislature*, 926 So.2d 1218, 1224 (Fla. 2006) (defining logrolling as the practice wherein a single proposal combines unrelated issues, "some of which electors might wish to support, in order to get an otherwise disfavored provision passed").

Here, the Proposed Amendment violates the single-subject requirement by engaging in logrolling of disparate topics. For instance, in deciding how to cast their ballot, voters considering the

Proposed Amendment may favor allowing abortion for any reason before viability but oppose the legalization of abortion to protect a woman's mental health. Other voters might support legalizing abortion if it is necessary to protect the woman's health but oppose abortion for any other reason, pre- or post-viability. Still other voters may agree that the government should generally regulate abortion but oppose the Proposed Amendment's seemingly bottomless scope of what constitutes "health." And other voters may favor the increased availability of abortion but strongly oppose the proposal's constitutional mandate that no law may restrict abortion before viability or to protect the woman's "health." Despite these conflicting desires, "[t]he amendment forces the voter who may favor or oppose one aspect of the ballot initiative to vote … in an 'all or nothing' manner," *Adv. Op. to Att'y Gen. re Right of Citizens to Choose Health Care Providers*, 705 So.2d 563, 566 (Fla. 1998), and does so to "aggregate votes or secure approval of an otherwise unpopular issue." *In re Advisory Op. to Att'y Gen.—Save Our Everglades*, 636 So.2d 1336, 1339 (Fla. 1994).

In short, the Proposed Amendment engages in classic logrolling of the sort that this Court has repeatedly condemned as violative of

the single-subject requirement. The Court thus should find the Proposed Amendment invalid and deny ballot placement.

B. The Proposed Amendment addresses multiple subjects in a single initiative.

On its face, the Proposed Amendment violates the single-subject requirement by addressing at least two distinct and logically separable subjects. The Proposed Amendment: (1) prohibits laws restricting abortion "before viability" and (2) prohibits laws restricting abortion when the woman's "healthcare provider" determines that terminating the pregnancy is "necessary to protect the patient's health." These distinct and logically separate topics cannot fairly be characterized as a single "subject and matter directly connected therewith" as required by the Florida Constitution. Instead, the multiple subjects addressed by the Proposed Amendment lack the "logical and natural oneness of purpose" required by the single-subject requirement. *Adv. Op. to Att'y Gen. re Voting Restoration Amend.*, 215 So.3d 1202, 1206 (Fla. 2017). Indeed, the proposal stands as a hodgepodge of significant provisions that would result in exactly the type of "precipitous and cataclysmic change" to Florida's Constitution that the single-subject provision is intended to thwart.

In re Advisory Op. to Att'y Gen.—Save Our Everglades, 636 So.2d at 1339.

The different subjects addressed by the Proposed Amendment are logically separable and distinct from one another. For example, permitting abortion before viability through over-the-counter abortifacients is logically distinct from authorizing (and mandating State approval of) late-term abortion (post-viability) if "necessary" to protect the woman's (undefined) "health." The Proposed Amendment also makes no distinction between chemical (or medical) abortions and surgical abortions, both of which raise complex ethical and medical questions. *See* Regina Kulier et al., *Medical Methods for First Trimester Abortion*, Cochrane Database Systematic Rev. (Nov. 2011), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7144729/pdf/CD002855.pdf. The presence and combination of all these distinct subjects in the Proposed Amendment are fatal under the single-subject requirement.

It is no answer to a single-subject challenge that each of these distinct subjects "limits government interference with abortion." Indeed, almost any collection of distinct topics can be characterized as a "single subject" at a sufficiently high level of generality. But this

Court has long held that "enfolding disparate subjects within the cloak of a broad generality does not satisfy the single-subject requirement." *Evans v. Firestone*, 457 So.2d 1351, 1353 (Fla. 1984); *see also Fine*, 448 So. 2d at 990 (rejecting sponsor's contention that single-subject requirement was satisfied because multiple provisions of an initiative all addressed "limiting government revenue"). Were the Court to adopt a different approach, initiative sponsors could readily evade the Florida Constitution's single-subject requirement by simply describing their proposals in sweeping generalities such as "proposing legal reform" or "proposing changes to government structure," or, as here, "proposing limitations on government interference" in any given arena. In short, the Proposed Amendment violates the single-subject requirement because it addresses disparate subjects in a single initiative, and thus it should be denied placement on the ballot.

C. The Proposed Amendment substantially alters or performs the functions of multiple branches and levels of state and local government.

Finally, the Proposed Amendment violates the single-subject requirement by substantially altering the functions of multiple branches and levels of government in a single initiative proposal. The

proposal's reach not only includes altering and performing functions of the State's executive and legislative branches but also dramatically changes the function of the judicial system.

Although a proposed amendment may lawfully affect more than one branch of government, a ballot initiative violates the Florida Constitution's single-subject requirement where it "substantially alters or performs the functions of multiple branches" of government. *Adv. Op. to Att'y Gen. re Fish & Wildlife Conservation Comm'n*, 705 So.2d 1351, 1353–54 (Fla. 1998). The Proposed Amendment here fails to satisfy this standard. The proposal combines multiple functions of government in violation of the Florida Constitution's single-subject requirement. *See Evans*, 457 So.2d at 1354 (when an amendment "changes more than one government function, it is clearly multi-subject"). The proposal establishes that, as a matter of state policy, abortion should be legal in all cases before viability and when deemed necessary to protect the woman's "health." The Proposed Amendment thus performs and alters the legislative function, both by establishing state policy and by limiting the Legislature's authority. *Cf. In re Adv. Op. to the Att'y Gen.–Save Our Everglades*, 636 So.2d at1340 ("This provision implements a public

policy decision of statewide significance and thus performs an essentially legislative function.").

In addition to eviscerating the Legislature's structural role as the body entrusted with "[t]he legislative power of the state" under Article III of the Florida Constitution, the proposal also substantially performs the function of the executive branch by reshaping the duties and obligations of the Florida Department of Health. The Department of Health is responsible for regulating health practitioners to preserve the health, safety, and welfare of the public, including licensing and disciplining abortion providers. *See generally* § 458.331, Fla. Stat. The proposal's reach not only includes altering and performing functions of the State's executive branch but also dramatically changes the State's judicial system as it applies to enforcing and prosecuting physicians who perform illegal abortions. Because the Proposed Amendment violates the single-subject requirement by substantially altering and performing the functions of multiple branches and levels of state government, it should be denied placement on the ballot.

CONCLUSION

The Proposed Amendment has serious deficiencies, and falls short of the requirements for ballot placement under § 101.161(1), Fla. Stat., and Art. XI, § 3, Fla. Const. Applying its straightforward standards governing petition initiatives, the Court should strike this chaos-inducing initiative from the ballot.

Dated: October 31, 2023

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I certify that this brief was prepared in 14-point Bookman Old Style font, in compliance with Florida Rule of Appellate Procedure 9.210(a)(2), and contains 5,560 words.

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