SC22-1050, SC22-1127

In the Supreme Court of Florida

PLANNED PARENTHOOD OF SOUTHWEST AND CENTRAL FLORIDA, ET AL.,
Petitioners,
v.
STATE OF FLORIDA, ET AL.,
Respondents.

On Petition for Discretionary Review from the First District Court of Appeal
DCA No. 1D22-2034

SUSAN B. ANTHONY PRO-LIFE AMERICA'S AMICUS BRIEF IN SUPPORT OF RESPONDENTS

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STATEMENT OF IDENTITY AND INTEREST

Susan B. Anthony Pro-life America ("SBA Pro-life America") is a non-partisan, not-for-profit organization named after the influential suffragette who also fiercely opposed abortion. SBA Pro-Life America seeks to embody the courageous spirit of its namesake and other pro-life women leaders by advocating for laws that save lives. SBA Pro-Life America has a significant interest in this case because the organization's mission is saving innocent and vulnerable human beings and serving their mothers, and the resolution of this case will have a profound impact on the advancement of that mission. Accordingly, SBA Pro-Life America respectfully submits this amicus brief in support of Respondents.

SUMMARY OF THE ARGUMENT

Stare decisis is "not a universal, inexorable command." *Waller v. First Sav. & Tr. Co.*, 138 So. 780, 787 (Fla. 1931). For that reason, this Court "has been willing to correct its mistakes." *State v. Poole*, 292 So. 3d 694, 712 (Fla. 2020). And as this Court explained in *Poole*, mistakes will be corrected, and adherence to stare decisis set aside, (1) where the precedent at issue is "clearly erroneous," and (2) where there is no "valid reason" to adhere to "that precedent." *Id.* at 713. At the second step, the "critical consideration ordinarily will be reliance" on the earlier caselaw. *Id.*

Poole's two-step stare decisis analysis confirms that it is time to dispense with *In re T.W.*, 551 So. 2d 1186 (Fla. 1989), *North Florida Women's Health & Counseling Services, Inc. v. State*, 866 So. 2d 612 (Fla. 2003), and *Gainesville Woman Care, LLC v. State*, 210 So. 3d 1243 (Fla. 2017), each of which wrongly interpreted Article I, Section 23 of the Florida Constitution to encompass a woman's decision to terminate a pregnancy. The text, context, and history of Section 23 confirm that these cases are clearly incorrect. And because there are no valid reasons whatsoever to adhere to these mistakes, this Court

should not hesitate to right the wrongs that began more than three decades ago.

ARGUMENT

I. THIS COURT APPLIES A TWO-STEP ANALYSIS WHEN DECIDING WHETHER TO OVERTURN ITS PRECEDENTS.

This Court's decision in *Poole* established what it called "the proper approach to stare decisis" analysis. *See Poole*, 292 So. 3d at 713; *see also Boan v. Fla. Fifth Dist. Ct. of Appeal Jud. Nominating Comm'n*, 352 So. 3d 1249, 1252 (Fla. 2022) (noting that *Poole* "explain[s] this Court's stare decisis criteria"). This "straightforward" approach asks (1) whether a precedent of this Court is "clearly erroneous" and, if so, (2) is there "a valid reason *why not* to recede from that precedent." *Poole*, 292 So. 3d at 713 (emphasis in original).

Poole acknowledged that a valid reason could be reliance on the challenged precedent. *Id.* at 713-14. And in evaluating such reliance interests, the Court has considered the "legitimate expectations of those who have reasonably relied" on it. *See State v. Maisonet-Maldonado*, 308 So. 3d 63, 69 (Fla. 2020) (citation omitted). That said, the Court has clarified that such legitimate expectations arise from traditional "concrete reliance interest[s]," *see Phillips*, 299

So. 3d at 1024, which are at their "acme" in cases involving "property and contract rights," and at their "lowest" in cases involving "procedural and evidentiary rules," *see Poole*, 292 So. 3d at 713-14 (citations omitted).

In any event, such interests may be outweighed by countervailing State interests, *Lawrence v. State*, 308 So. 3d 544, 551 (Fla. 2020),[1] and, naturally, unprincipled precedent cannot be said to engender reliance interests that are "legitimate" in any sense of the word. For that reason, precedent incorporating the sort of "[m]ulti-factor" "frameworks" that encourage courts to "decide cases on the basis of guesses about the consequences of [their] decisions"—i.e., "like the one set out in *North Florida Women's Health*," *id.* at 713—are precisely the sort of cases that the Court should *not* preserve under the stare-decisis banner.

In sum, even though "this Court adheres to the doctrine of stare decisis," *Dorsey v. State*, 868 So. 2d 1192, 1199 (Fla. 2003), that

[1] *See also Phillips v. State*, 299 So. 3d 1013, 1024 (Fla. 2020); *Poole*, 292 So. 3d at 714 (noting that "any reliance considerations cut against" a death-sentenced individual, especially when weighed against the heavy interests of "the victims of [his] crimes and of society's interest in holding [him] to account").

principle "does not command blind allegiance to precedent," *Poole*, 292 So. 3d at 712 (quoting *Shepard v. State*, 259 So. 3d 701, 707 (Fla. 2018)). And as the U.S. Supreme Court has observed, stare decisis is at its "weakest" when a court interprets a Constitutional provision because its interpretation "can be altered only by constitutional amendment or by overruling [its] prior decisions." *Agostini v. Felton*, 521 U.S. 203, 235 (1997). This is especially true when departure from a constitutional precedent is "necessary to vindicate other principles of law or to remedy continued injustice." *Haag v. State*, 591 So. 2d 614, 618 (Fla. 1992). Stated bluntly, when "precedent clearly conflicts with the law [the courts] are sworn to uphold," that "precedent normally must yield." *Poole*, 292 So. 3d at 713; *see also Puryear v. State*, 810 So. 2d 901, 905 (Fla. 2002).

II. STEP ONE: THIS COURT'S PRECEDENTS RECOGNIZING A FUNDAMENTAL RIGHT TO ABORTION UNDER THE FLORIDA CONSTITUTION ARE CLEARLY ERRONEOUS.

The first step of the Court's stare decisis analysis calls for a determination of whether its existing abortion precedents rest on a "clearly erroneous" interpretation of Section 23. *Poole*, 292 So. 3d at 713. They do.

A. *T.W.* wrongly concluded that Section 23 enshrines a right to decisional autonomy rather than informational privacy.

When interpreting a constitutional provision, this Court's ultimate goal is "determining the objective meaning of the text" as it would have been reasonably understood at the time of ratification. *Advis. Op. to the Gov. re: Implementation of Amend. 4, the Voting Restoration Amend.*, 288 So. 3d 1070, 1078 ("*Amendment 4*") (Fla. 2020); *see Lawnwood Med. Ctr. v. Seeger*, 990 So. 2d 503, 512 (Fla. 2008). Several sources, like dictionaries, *Lee Mem'l Health Sys. v. Progressive Select Ins. Co.*, 260 So. 3d 1038, 1043 (Fla. 2018), context, *Amendment 4*, 288 So. 3d at 1082, and ratification history, *Jenkins v. State*, 385 So. 2d 1356, 1357-60 (Fla. 1980), all provide guidance.

This Court held for the first time in *T.W.* that Section 23 recognizes a State constitutional right to abortion. It did so after construing abortion as a form of decisional autonomy, and then surmising that "Florida's privacy provision is clearly implicated in a woman's decision of whether or not to continue her pregnancy." *T.W.*, 551 So. 2d at 1192. In so doing, however, *T.W.* never explained how abortion is a "private decision[] concerning one's body" or a "privacy

interest[] inherent in the concept of liberty." *Id.* at 1192 (citations omitted). Nor did *T.W.* conduct any independent analysis of Section 23's plain text. *Id.* at 1191-93. *T.W.* instead based its holding on the now-abrogated reasoning contained in *Roe v. Wade*, 410 U.S. 113 (1973), and its progeny, as well as a federal constitutional law treatise that actually stood for a contrary proposition regarding the scope of privacy. *See* Resp't Br. at 58-59.

In other words, *T.W.*'s holding that Section 23 guarantees a right to abortion was wrong from the start. In *T.W.*, the Court never bothered to conduct a proper analysis of the text, context, and history of that constitutional provision, which the State meticulously explains. *See* Resp't Br. at 9-57. Indeed, the plain meaning of Section 23 and the historical context in which Section 23 developed both confirm that Section 23 enshrines a right to *informational* privacy rather than *decisional* autonomy. *See* Resp't Br. at 12-51. Stated differently, *T.W.*'s interpretation of Section 23 stands in stark contrast to contemporaneous dictionary definitions, the textual context, a corpus-linguistics analysis, the public discourse, the framers' deliberations, and the self-evident principle that privacy does not extend to acts that harm others. *See* Resp't Br. at 12-51.

T.W. is thus "clearly erroneous" under step one of this Court's stare decisis analysis because Section 23 clearly provides no right to abortion. *See Poole*, 292 So. 3d at 713.

B. The Court's decision in *North Florida Women's Health* perpetuated *T.W.*'s error.

This Court's decision in *North Florida Women's Health* cannot prop up *T.W.*'s erroneous interpretation of Section 23. *North Florida Women's Health* suffers from the same basic error as its forebearer; namely, that it failed to conduct a proper textual and historical analysis of Section 23. Indeed, the entirety of *North Florida Women's Health*'s conclusion that Section 23 guarantees a right to abortion is supported by block quotes from and references to the *T.W.* decision. *E.g.*, *N. Fla. Women's Health*, 866 So. 2d at 618-22, 634-35, 637-40 (citing portions of *T.W.*).

North Florida Women's Health cannot support *T.W.*'s interpretative error for another reason: the stare decisis test that *North Florida Women's Health* considered in determining whether to recede from *T.W.* was itself erroneous. The Court in *North Florida Women's Health* invoked a three-factor stare decisis test:

(1) Has the prior decision proved unworkable due to reliance on an impractical legal "fiction"?

(2) Can the rule of law announced in the decision be reversed without serious injustice to those who have relied on it and without serious disruption in the stability of the law?

(3) Have the factual premises underlying the decision changed so drastically as to leave the decision's central holding utterly without legal justification?

Id. at 637. Notably, *North Florida Women's Health* did not identify as a relevant consideration whether a precedent is "clearly erroneous." And in any event, *Poole* expressly repudiated the *North Florida Women's Health* test: "Multi-factor tests or frameworks like the one in *North Florida Women's Health* often serve as little more than a toolbox of excuses to justify a court's unwillingness to examine a precedent's correctness on the merits." *Poole*, 292 So. 3d at 713.

Poole's stare decisis analysis, unlike *North Florida Women's Health*, places the initial focus on whether the Court actually got the right answer in its earlier decision. If it did not, the presumption is that the Court will correct its mistake. In other words, *Poole* shifted the focus to determining whether there is any judicially ascertainable, sufficiently good reason to sustain earlier caselaw, notwithstanding an error in that caselaw. *See id.* at 713-14. *T.W.*'s

mistaken analysis of Section 23 thus finds no refuge in *North Florida Women's Health*'s erroneous stare decisis test.

C. The Court's decision in *Gainesville Woman Care* is premised on the errors of *T.W.* and *North Florida Women's Health*.

The Court's decision in *Gainesville Woman Care* similarly lends no support to *T.W.*'s erroneous interpretation of Section 23. *Gainesville Woman Care*, like *T.W.* and *North Florida Women's Health*, failed to conduct any textual or historical analysis of Section 23. Instead, *Gainesville Woman Care*'s conclusion that Section 23 guarantees a right to abortion simply apes the errors of *T.W.* and *North Florida Women's Health*. *E.g.*, *Gainesville Woman Care*, 210 So. 3d at 1253-54 (citing portions of *T.W.* and *North Florida Women's Health*). Nor does *Gainesville Woman Care* contain any stare decisis analysis of *T.W.* or *North Florida Women's Health*.

Because *T.W.*, *North Florida Women's Health*, and *Gainesville Woman Care* are all "clearly erroneous," the first step of this Court's stare decisis analysis is satisfied. *See Poole*, 292 So. 3d at 712 (acknowledging that [t]he doctrine of stare decisis bends . . . where there has been an error in legal analysis" (citation omitted)).

III. STEP TWO: THERE IS NO VALID REASON TO AFFIRM THIS COURT'S ABORTION PRECEDENTS.

The second step of the Court's stare decisis analysis is to determine "whether there is a valid reason *why not* to recede from" its "clearly erroneous" abortion precedents. *Id.* at 713 (emphasis in original). Here, there is no reason whatsoever for the Court to leave intact these clear mistakes.

A. Traditional concrete reliance interests are not implicated by abortion.

This Court in *Poole* agreed that the "critical consideration" in any stare decisis analysis "ordinarily will be reliance." *Id.* But in the realm of stare decisis, not all reliance interests are equal. As this Court acknowledged in *Poole*, "[i]t is generally accepted that reliance interests are 'at their acme in cases involving property and contract rights.'" *Id.* at 713-14 (citation omitted); *see also Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2276 (2022) (characterizing these sort of interests as "very concrete reliance interests," or those arising where "advance planning of great precision is most obviously a necessity" (citations omitted)). When considering reliance, this Court assesses first whether a "concrete reliance interest" exists, and

then weighs whatever interest is present against countervailing interests, like those of the State. *See Phillips*, 299 So. 3d at 1024.

The right to abortion found by this Court in *T.W.* does not implicate traditional concrete reliance interests. As the plurality in *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), acknowledged, "conventional, concrete reliance interests are not present" in the abortion context, *Dobbs*, 142 S. Ct. at 2276. Simply put, abortion cases are "dissimilar[]" to those "involving property or contract," *Casey*, 505 U.S. at 856. After all, "[a]bortion is customarily chosen as an unplanned response to the consequence of unplanned activity or to the failure of conventional birth control." *Casey*, 505 U.S. at 856.[2] For this reason, the *Dobbs* majority agreed with the *Casey* plurality's conclusion that "conventional, concrete reliance interests are not present" in the abortion context. *Dobbs*, 142 S. Ct. at 2276.

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[2] Florida's Agency for Health Care Administration collects public health data on the "reasons" women seek abortion, and its 2022 data shows that 95 percent of all abortions performed that year were for elective, social, or economic reasons. *See* Agency for Health Care Administration, *Reported Induced Terminations of Pregnancy (ITOP) by Reason, by Trimester, 2022 - Year to Date* (Mar. 3, 2023), https://ahca.myflorida.com/content/download/22076/file/TrimesterByReason_2022.pdf. This aligns with the *Casey* plurality's assessment that abortion does not implicate traditional reliance interests.

Notably, *North Florida Women's Health*'s stare decisis analysis regarding "the extent of reliance on *T.W.*" failed to address whether there existed any concrete reliance interest in *T.W. See N. Fla. Women's Health*, 866 So. 2d at 638. And there is none. *See Dobbs*, 142 S. Ct. at 2276; *Casey*, 505 U.S. at 856. This Court should therefore hold that there is no traditional concrete reliance interest in perpetuating *T.W.*, and that any interest in this Court's abortion jurisprudence is outweighed by the State's strong and compelling interests in the "protection of unborn life," the "prevention of fetal pain," and the protection of women from "later-term abortion harms." Resp't Br. at 55, 59.

B. Courts are ill-equipped to evaluate the intangible reliance referenced in *North Florida Women's Health*.

In *North Florida Women's Health*, this Court rejected an invitation to reconsider its decision in *T.W.*, and justified its decision in part on the following ground:

> During the past fourteen years, Floridians have organized their personal and family relationships based on the constitutional right articulated in [*T.W.*], and a generation of Florida women has matured during that period and has 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 *T.W.*

N. Fla. Women's Health, 866 So. 2d at 638. *T.W.* cites no evidence in support of this conclusion.[3] Nor does it account for any past, present, or future private and public sector support for mothers facing unplanned pregnancy, including any appropriations by the Florida Legislature.[4]

In any event, the ambiguous and intangible reliance interest identified by *North Florida Women's Health* cannot justify adherence. In *Dobbs*, the U.S. Supreme Court considered and rejected this argument, because "[t]hat form of reliance depends on an empirical question that is hard for anyone—and in particular, for a court—to assess, namely, the effect of the abortion right on society and in

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[3] *See generally* Monique C. Wubbenhorst & Brian Baugus, *Does Abortion Improve Economic Outcomes for Women? A Review of the Evidence* (Mar. 6, 2023), https://lozierinstitute.org/does-abortion-improve-economic-outcomes-for-women-a-review-of-the-evidence/.

[4] *See, e.g.*, Jeanneane Maxon, *Fact Sheet: State Alternatives to Abortion Funding* (Mar. 28, 2023) (collecting state alternatives to abortion funding in Florida and other states), https://lozierinstitute.org/fact-sheet-state-alternatives-to-abortion-funding/; Fla. S. Comm. on Fiscal Policy (2023) Bill Analysis (Mar. 27, 2023) (currently pending before the Florida Legislature is a proposal to appropriate a record-high $25,000,000 in recurring funds to implement the expanded Florida Pregnancy Care Network), https://www.flsenate.gov/Session/Bill/2023/300/Analyses/2023s00300.fp.PDF.

particular on the lives of women." *Dobbs*, 142 S. Ct. at 2277. It is far afield from the sorts of concrete reliance interests that courts are equipped to ascertain—those that arise in "cases involving property and contract rights." *Id.* at 1276 (citation omitted).

The same should hold true here. Like the U.S. Supreme Court, this Court is "ill-equipped to assess" the intangible form of reliance endorsed by *North Florida Women's Health*.

C. Abortion is a uniquely consequential act because it terminates life and is therefore inherently different from other circumstances involving reliance interests.

Of course, any purported interest in abortion is qualitatively different from other reliance interests. "Abortion is a unique act . . . fraught with consequences for others," especially the unborn. *Casey*, 505 U.S. at 852. Even *Roe* acknowledged that "[t]he pregnant woman cannot be isolated in her privacy" because another life is always at stake, rendering her situation "inherently different" from other intimate contexts in which the U.S. Supreme Court had recognized a right to privacy, like "marital intimacy," "marriage," and "procreation." *Roe*, 410 U.S. at 159. Abortion is the only purported interest in this list that "destroys . . . 'potential life.'" *Dobbs*, 142 S. Ct. at 2258 (citations omitted).

North Florida Women's Health's analysis of "the extent of reliance on *T.W.*" lacks any discussion of the uniquely consequential effect of abortion: the termination of an unborn human. *See N. Fla. Women's Health*, 866 So. 2d at 638. That omission runs up against a wall of precedent acknowledging the moral and legal legitimacy of the State's interest in protecting the lives of the unborn.[5] Even *T.W.* acknowledged that "the health of the mother and the potentiality of life in the fetus" eventually becomes "compelling." *T.W.*, 551 So. 2d at 1193-94.

But *T.W.*'s analysis of the State's interests in that case, including the high level of scrutiny it required the State to satisfy, was premised on its "clearly erroneous" conclusion that Section 23 guarantees a right to abortion. *See Poole*, 292 So. 3d at 713. Because no right to abortion exists under Section 23, there is no "valid reason"

[5] *See, e.g.*, *Stern v. Miller*, 348 So. 2d 303, 306 (Fla. 1977) (holding for purposes of tort law that the rationale for extending certain protections to the unborn was "compelling" because a "viable fetus is a human being, capable of independent existence outside the womb; a human life is therefore destroyed when a viable fetus is killed"; citing laws punishing the killing of an unborn child by injury to the mother and protecting viable unborn children from abortion); *State v. Barquet*, 262 So. 2d 431, 437 (Fla. 1972) (discussing the "common law offense of abortion").

to adhere to precedents barring the State from prohibiting the termination of innocent unborn life. *See id.*; *see also* Art. I, § 2, Fla. Const.

Indeed, the extent to which the State should prohibit abortion requires the balancing of moral and policy issues beyond the purview of the judiciary.[6] "The legislature," instead, enjoys the "broad discretion in determining necessary measures for the protection of the public health, safety, and welfare." *State v. Yu*, 400 So. 2d 762, 765 (Fla. 1981); *accord Hamilton v. State*, 366 So. 2d 8, 10 (Fla. 1978). And in enacting HB5, the legislature rationally exercised its discretion to prohibit abortions after 15 weeks' gestation with exceptions for maternal health and fatal fetal abnormalities. Ch. 2022-69, Laws of Fla., § 4 (amending § 390.0111, Fla. Stat.), http://laws.flrules.org/2022/69. If that policy "does not prove to be

[6] *See Barquet*, 262 So. 2d at 433 ("[W]hether an abortion should be prohibited . . . is a matter entirely within the discretion of the legislative branch of government, subject only to constitutional limitations. . . . The judicial branch is constitutionally forbidden from exercising any powers appertaining to the legislative branch, and will not suggest a solution to this sensitive problem." (citing Art. II, § 3, Fla. Const.)).

wise, the remedy lies with the people, through their legislative department." *Carlton v. Mathews*, 137 So. 815, 847 (Fla. 1931).[7]

There is no "valid reason" to leave intact the Court's abortion precedents. *See Poole*, 292 So. 3d at 713. Because an abortion destroys the life of an unborn child, any interest in the right to abortion found by *T.W.* is different from any interest in this Court's other precedents. Evaluating the wisdom of the State's restrictions on abortion is beyond the role of the judiciary and should be left to the people through their elected representatives. *See Barquet*, 262 So. 2d at 433. Just as *Dobbs* receded from *Roe* and *Casey* and thereby returned the "authority to regulate abortion" to "the people and their elected representatives," *Dobbs*, 142 S. Ct. at 2279, this Court should recede from its "clearly erroneous" decisions in *T.W.*, *North Florida Women's Health*, and *Gainesville Woman Care*, and in so doing "restore[]" the "discretion" that those decisions "wrongly took from the political branches." *See Poole*, 292 So. 3d at 713-14.

[7] Policymaking is reserved to the Legislature, the branch of government directly responsive to Floridians both through the ballot and the constitutional requirement that committee meetings "be open and noticed to the public." Art. III, § 4(e), Fla. Const.

D. This Court should not allow the extraneous influences referenced in *North Florida Women's Health* to influence its decision whether to overrule its abortion precedents.

In *North Florida Women's Health*, this Court declined to recede from *T.W.* in substantial part based on its fears of how the public might receive such a decision: "[A] basic change in Florida law at this point . . . would invite the popular misconception that this Court is subject to the same political influence as the two political branches of government. Nothing could do more lasting injury to the legitimacy of this Court as an institution." *N. Fla. Women's Health*, 866 So. 2d at 639.

North Florida Women's Health was "certainly right that it is important for the public to perceive that [the Court's] decisions are based on principle, and [it] should make every effort to achieve that objective by issuing opinions that carefully show how a proper understanding of the law leads to the results [it] reach[es]." *See Dobbs*, 142 S. Ct. at 2278. But the Court "veer[ed] off course" when it allowed its decision to be affected by such "extraneous influences." *See id.* Those influences are simply not part of the two-step *Poole*

analysis. Public outcry for or against a decision is not, nor will it ever be, the same as a reliance interest.

The independence of the judiciary is a foundational principle of law. *See In re Amendments to the Code of Judicial Conduct-Canon 7.*, 167 So. 3d 399, 401 (Fla. 2015) ("[T]he 'role of the judiciary' as an 'independent, fair and competent' branch of government 'is central to American concepts of justice and the rule of law.'" (citation omitted)). It is a logical corollary of the separation of powers. *See* Art. II, § 3, Fla. Const. Regardless of the public's interest in a given case, courts must remain unaffected by "extraneous influences such as concern about the public's reaction to [their] work." *Dobbs*, 142 S. Ct. at 2278. As Justice Terrell of this Court acknowledged long ago, the judiciary is vested with the solemn duty of "settling controversies incumbered by questions of political policy that shape the course of society." *State ex rel. Albritton v. Lee*, 183 So. 782, 784 (Fla. 1938) (opinion of Terrell, J.). In adjudicating those controversies, the Court must administer justice "without fear or favor from extraneous influences." *Id.*

Recently, the U.S. Supreme Court echoed this sentiment—noting that courts cannot allow their decisions to be impacted by outside pressures. "The Judicial Branch derives its legitimacy, not

from following public opinion, but from deciding by its best lights whether legislative enactments of the popular branches of Government comport with the Constitution." *Dobbs*, 142 S. Ct. at 2278 (quoting *Casey*, 505 U.S. at 963) (opinion concurring in judgment in part and dissenting in part).

For these reasons, the Court's stare decisis analysis of its abortion precedents should not be swayed by concerns about how the public may view its decision. *See Poole*, 292 So. 3d at 713 (identifying the Court's wariness of any stare decisis analysis that would decide a case on "the basis of guesses about the consequences of [its] decision[]"). To the contrary, the Court's decision should be driven by the objective, two-part stare decisis analysis identified in *Poole*. Doing so will demonstrate to the public the Court's fidelity to both stare decisis and the actual text, context, and history of Florida's constitutional right to privacy.

E. This Court's precedents protecting other aspects of decisional autonomy under Section 23 would not be affected by receding from this Court's abortion precedents.

Finally, this Court need not be concerned that a decision to recede from its abortion precedents might create a sea change in

other areas of its Section 23 jurisprudence. In *North Florida Women's Health*, the Court noted that "*T.W.* has been relied on by Florida appellate courts more than fifty times and has been utilized extensively by this Court in formulating Florida's privacy jurisprudence." *N. Fla. Women's Health*, 866 So. 2d at 638 & n.61; *see id.* at 636 n.55 (collecting cases). Yet the specific cases collected and cited by *North Florida Women's Health* involved privacy issues that are different from abortion. *See generally id.* at 636 n.55.

In any event, a reversal of this Court's abortion precedents will not abrogate the Court's other precedents protecting aspects of decisional autonomy under Section 23. The sole stare decisis question before the Court is whether to recede from the Court's abortion precedents: *T.W.*, *North Florida Women's Health*, and *Gainesville Woman Care*. Respondents have not asked the Court to reconsider any of its privacy cases outside of that narrow context. Thus, any future case regarding one of the Court's non-abortion precedents would be "subject to its own stare decisis analysis," *Dobbs*, 142 S. Ct. at 2281, including the particular "reliance interest" at issue in that hypothetical case, *Poole*, 292 So. 3d at 713. As this

Court emphasized in *Poole*: "The critical consideration ordinarily will be reliance." *Poole*, 292 So. 3d at 713-14.

CONCLUSION

For all these reasons, and those advanced by the State, the Court should apply *Poole*'s two-part stare decisis analysis and recede from its abortion precedents.

Date: April 10, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been furnished by electronic mail via the Florida Courts E-Filing Portal system's transmission of the Notice of Electronic Filing on this 10th day of April, 2023 to all counsel of record.

/s/ D. Kent Safriet
D. Kent Safriet

CERTIFICATE OF COMPLIANCE

I hereby 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 9.370(b) and contains 4,449 words.

/s/ D. Kent Safriet
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