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Consolidated with Case No. SC2022-1127
L.T. Case Nos.: 1D22-2034; 37 2022 CA 000912

IN THE SUPREME COURT OF FLORIDA

PLANNED PARENTHOOD OF SOUTHWEST & CENTRAL FLORIDA, ET AL.,

Petitioners,

v.

STATE OF FLORIDA, ET AL.

Respondents.

AMICUS BRIEF OF FORMER STATE REPRESENTATIVE JOHN GRANT

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STATEMENT OF IDENTITY AND INTERESTS OF AMICI

Former State Representative John Grant ("Grant" or "Amicus") is a former Florida legislator who has an interest in the disposition of this appeal and possesses unique historical insight into the original public meaning of the key constitutional provision on which Petitioners seek to challenge HB 5. Amicus was elected to the Florida Legislature in 1980 shortly before the vote on the joint resolution (the "Joint Resolution") placing a constitutional amendment creating a right to privacy on the 1980 General Election ballot. It was the language in this Joint Resolution that Florida voters approved that same year and ultimately became enshrined in this State's Constitution as Article I, Section 23 (the "Privacy Amendment").

Grant has a stake in this appeal's outcome because he approved the language of the Privacy Amendment, voting to put it before his constituents. He seeks to assure that the Privacy Amendment is interpreted and applied consistently with the text of the amendment as he understood it when he voted for it and consistently with the public understanding of the amendment when the voters adopted it. Grant views this act of participating in the judicial process as an extension of his service in the legislature because it fulfils his oath to

support the people's constitution. In bringing clarity to the legal issue being addressed, and the historical linguistic question inherent in that legal issue, he hopes to see the will of the people prevail, as required by a faithful application of the First Principles governing our democratic republic.

SUMMARY OF ARGUMENT

First Principles dictate that the legal question presented in this appeal be decided based upon the original public meaning of the Privacy Amendment, with courts having a "duty to interpret the Constitution in light of its text, structure, and original understanding." *NLRB* v. *Noel Canning*, 573 U.S. 513, 573 (2014) (Scalia, J., concurring).

Here, both the text and structure of the Privacy Amendment, and the public's discernable understanding of the meaning of the amendment when adopted, dictate a legal conclusion that Article I, Section 23 does not address abortion.

As such, this Court should approve the First District Court of Appeal's decision below and hold that the right to privacy enumerated in Florida's Constitution does not create a right to abortion.

ARGUMENT

I. FIRST PRINCIPLES DICTATE THAT THE LEGAL ISSUE IN THIS CASE BE DECIDED BASED UPON THE ORIGINAL PUBLIC MEANING OF THE CONSTITUTIONAL TEXT.

> "We, the people of the State of Florida … do ordain and establish this constitution."
>
> Preamble to the Florida Constitution

One need look no further than the first eight words of Florida's constitution—quoted above and adopted by Florida's citizens to establish, empower, and limit their government—to find the First Principle directing the analysis and outcome of this case.

The principle is this: As a constitutional republic created by the people, of the people and for the people, our government and all its officials are subservient to the people's constitution as the supreme law of the state. No governmental official or body can lawfully act contrary to the constitution and no governmental official or body, including the judiciary, is authorized to alter or change the constitution. Only the people can amend their constitution. Fla. Const., art. XI, § 5.

As such, the judiciary is not free to declare that the constitution means anything other than what the people understood it to mean

when they voted to adopt it. This case is, therefore, first and foremost about the rule of law. And this rule of law principle is satisfied when the courts exercise judicial restraint and objectively interpret and apply a constitutional provision consistently with its text as understood by the people when they voted to adopt it. *See, e.g., Brinkmann v. Francois,* 184 So. 3d 504, 510-11 (Fla. 2016) ("'[U]nless the text of a constitution suggests that a technical meaning is intended, words used in the constitution should be given their usual and ordinary meaning because such is the meaning most likely intended by the people who adopted the constitution.'") (quoting *Lawnwood Med. Ctr., Inc. v. Seeger*, 990 So.2d 503, 512 (Fla. 2008); *see also* Amy Coney Barrett, Congressional Insiders and Outsiders, 84 U. CHI. L. REV. 2193, 2195 (2017) (explaining that judges are bound "as agents of the people," to faithfully interpret the words at issue "the way their principal—the people—would understand them."); *cf. Bostock v. Clayton County, Georgia*, 140 S.Ct. 1731, 1738 (2019) (explaining that the court interprets a statute "in accord with the ordinary public meaning of its terms at the time of its enactment" and noting that "[i]f judges could add to, remodel, update, or detract from old statutory terms inspired only by extratextual sources and

our own imaginations, we would risk amending statutes outside the legislative process reserved for the people's representatives").

II. THE TEXT OF THE PRIVACY AMENDMENT DOES NOT CREATE A RIGHT TO ABORTION.

Florida adheres to the "supremacy-of-text principle" wherein "[t]he words of a governing text are of paramount concern, and what they convey, in their context, is what the text means." *Advisory Opinion to Governor re Implementation of Amend. 4, The Voting Restoration Amend.,* 288 So. 3d 1070, 1078 (Fla. 2020) (quoting Scalia & Garner, *supra* at 56). "[T]he goal of interpretation is to arrive at a 'fair reading' of the text by "determining the application of [the] text to given facts on the basis of how a reasonable reader, fully competent in the language, would have understood the text at the time it was issued." *Ham v. Portfolio Recovery Assocs., LLC*, 308 So. 3d 942, 947 (Fla. 2020) (quoting Scalia & Garner, *supra* at 33). The United States Supreme Court has further explained that when interpreting constitutional text it is "guided by the principle that '[t]he Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning.'" *D.C. v. Heller*, 554 U.S. 570, 576 (2008)

(quoting *United States v. Sprague*, 282 U.S. 716, 731 (1931)). Ordinary meaning necessarily "excludes secret or technical meanings that would not have been known to ordinary citizens" at the time of the enactment. *See id.,* at 576–77. Finally, this Court has explained that when construing constitutional language approved by the voters, it often "looks to dictionary definitions of the terms because [it] recognize[s] that, 'in general, a dictionary may provide the popular and common-sense meaning of terms presented to the voters.'" *re Implementation of Amend. 4,* 288 So. 3d at 1078–79 (quoting *Advisory Op. to Att'y Gen. re Use of Marijuana for Certain Med. Conditions*, 132 So. 3d 786, 800 (Fla. 2014)).

With these principles in mind, the language of the Privacy Amendment reads:

> 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.

Fla. Const. art. I, § 23.[1]

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[1] The original Privacy Amendment language read:

> Every natural person has the right to be let alone and free from governmental intrusion into his private life except as

The State in its Answer Brief on the Merits (the "State's Answer Brief") uses era-appropriate dictionaries and other resources to convincingly demonstrate that the Privacy Amendment's language would have been understood by most voters in 1980 as referring to the right to be free from governmental surveillance and information collection, and not an abortion right. *See* State's Answer Brief at 9-15. The Court could end its analysis there and conclude based solely upon the text of the Privacy Amendment that Petitioners are not entitled to the relief they seek. *See re Implementation of Amend. 4*, 288 So. 3d at 1078.

III. CONSIDERATION OF EXTRATEXTUAL EVIDENCE OF ORIGINAL PUBLIC MEANING IS APPROPRIATE IN THIS CASE.

> 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.

HJR 387 (1980). However, in 1998, voters approved a technical amendment to make the privacy provision gender neutral. *See* November 3, 1998 General Election Official Results Constitutional Amendments, Florida Department of State Division of Elections available at https://results.elections.myflorida.com/Index.asp?ElectionDate=11/3/1998&DATAMODE= (last visited March 24, 2024).

It is especially appropriate, however, for the Court to consider and weigh extratextual evidence of original public meaning when that evidence clearly and compellingly answers the interpretational issue in question. The United States Supreme Court's decision in *Bostock* is particularly instructive on this point. First, every jurist on that esteemed Court agreed that the statutory text at issue needed to be interpreted based upon "the ordinary public meaning" of the statute's language "at the time of its enactment." 140 S. Ct. at 1738; *see also id.* at 1766 (Alito, J. dissenting); *id.* at 1824–25 (Kavanaugh, J., dissenting). Justice Gorsuch, writing for a majority that included Chief Justice Roberts, the late Justice Ginsberg, now-retired Justice Breyer, Justice Kagan, and Justice Sotomayor, declared that the American people had the "right to rely[] on the original meaning" of statutory language, making the Court's task "clear." *Id.* at 1738 (majority opinion). That majority found the statute clear on its face, and therefore deemed it inappropriate to look beyond a word-and-phrase, dictionary-heavy analysis to extratextual considerations that would support a contrary reading of the statute at issue. *Id.* at 1737 ("When the express terms of a statute give us one answer and

extratextual considerations suggest another, it's no contest. Only the written word is the law, and all persons are entitled to its benefit.").

Justice Alito, in a dissent joined by Justice Thomas, agreed with the majority that the Court had a "duty" to interpret the language at issue "to 'mean what [the words would have] conveyed to reasonable people *at the time they were written*.'" *Id.* at 1755. (Alito, J., dissenting) (quoting Scalia & Garner, *supra* 16) (emphasis added by Alito, J.). However, the dissent forcefully argues that the majority breached its duty and radically changed the statute's original meaning with its textual dissection and rejection of extratextual sources, concluding that "[i]f every single living American had been surveyed [at the time the statute was enacted], it would have been hard to find any who thought that [the language at issue meant what the majority interpreted it to mean]." *Id.* at 1755. In addition to a persuasive textual analysis, Alito's dissent presents as more robust and complete because of its full consideration of verifiable,[2] legally

[2] For an analysis to be credible, the information relied upon must either be verified, verifiable or so commonly understood that no verification would be needed.

relevant,[3] and logically persuasive[4] extratextual sources that common sense suggests would objectively help a judge confidently determine original public meaning. It is the majority that used the terms "extratextual sources," *id.* at 1738 (majority opinion), and "extratextual considerations," *id.* at 1737, to describe the information relied upon by the dissent in reaching its conclusion. The dissent simply sets forth a reasoned analysis of how the public would have understood the language at issue using logically persuasive information (evidence) from the appropriate time period.

Justice Kavanaugh also dissented, beginning his dissent with the first principle recognized by the majority and other dissenters: "Under the Constitution's separation of powers, the responsibility to amend [the statute at issue] belongs to Congress and the President in the legislative process, not to this Court." *Id.* at 1822 (Kavanaugh,

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[3] Legally, relevance simply means that the information tends to prove or disprove the fact or proposition being asserted. *Cf.* Fla. Stat. § 90.401.

[4] Logical persuasiveness can also be discussed using terms such as credibility or "probative value." The more credible or probative the evidence or information, the more a decision-maker can comfortably rely upon it when deciding between opposing interpretations or positions.

J., dissenting). He also echoed all the other justices in defining the interpretive question at issue by explaining that the language should be read based upon its "ordinary public meaning at the time of enactment." *Id.* at 1825.

In considering "how 'most people' 'would have understood' the text at issue when adopted," *id.* at 1828 (quoting *New Prime Inc. v. Oliveira*, 139 S. Ct. 532, 538–539 (2019)), Justice Kavanaugh discussed historical facts so well-known that citation was unnecessary, *id.* at 1828-29, a body of federal law and long-standing federal practice, *id.* at 1829-30, proposed bills, *id.*, state statutes and executive orders, *id.* at 1831-32, and presidential executive orders. *Id.* at 1831. He cited cases in which the United States Supreme Court "us[ed] a conversation between friends to demonstrate ordinary meaning." *Id.* at 1828. He also appropriately explained, without citation to any authority, how "[m]ost everyone familiar with the use of the English language in America" would understand the words and phrases used in context, i.e., "[c]ommon parlance," and "[c]ommon sense." *Id.* at 1835-36

The *Bostock* majority also acknowledged the value of reliance on "historical sources" due to "the possibility a [legal text] that means

one thing today or in one context might have meant something else at the time of its adoption or might mean something different in another context." *Id.* at 1750 (majority opinion).

The importance of considering credible and compelling extratextual evidence of original public meaning is even higher here than in *Bostock* for at least three reasons.

First, *Bostock* involved interpretation of a statute and there is unlikely to be robust public consideration of statutory language at the time of its enactment. While statutory language occurs within the legislative body itself a constitutional amendment requires robust public education and discussion of the amendment. Tapping into the right historical material in that context has the potential to reveal exactly what the public understood about the amendment at the time of their vote.

Second, when it comes to a statute, "only the words on the page constitute the law" and a text-heavy analysis without resort to extratextual sources is usually appropriate because it is the specific words of a statute that are relied upon by the people "to settle their rights and obligations." *Id.* at 1738. By contrast, a constitutional amendment constrains the government and First Principles compel

judicial scrutiny of extratextual considerations when those considerations conclusively reveal the will of the people in a way that a traditional dictionary-heavy parsing of words cannot.

Third, the language of the statute at issue in *Bostock* was technical and specific compared to the general language of the Privacy Amendment. The importance of considering extratextual sources that credibly elucidate public understanding is at its apex in a case like this where a court is dealing with constitutional text that is more general and a question presented that is narrow and specific.

Again, the State's Answer Brief compellingly uses era-appropriate credible sources to make the case that in 1980, the Florida public understood the constitutional language guaranteeing "the right to be let alone and free from governmental intrusion into his private life" to grant protection against unwarranted governmental surveillance and collection of personal, private information -- and nothing more. State's Answer Brief at 11-39. In other words, the public did not understand the language of the privacy amendment as creating an abortion right.

IV. AMICUS' PERSONAL HISTORY IN THE 1980 LEGISLATURE CONCLUSIVELY PROVES THE ORIGINAL

PUBLIC MEANING OF PRIVACY WAS UNRELATED TO ABORTION.

Grant's own personal history along with other verifiable, legally relevant, and logically persuasive extratextual sources from 1980 demonstrate beyond any reasonable doubt that the language of the Privacy Amendment was not understood as creating an abortion right at the time of its adoption. This is because (1) it is objectively verifiable that in 1980 Grant personally voted to approve the Privacy Amendment; (2) it can be compelling demonstrated from historical records that he would not have done so had the language been understood as creating an abortion right; and (3) historical records objectively show that Grant was acting based upon an understanding of the Privacy Amendment shared by the general public, such that he was merely reflecting the public's original understanding of the language he helped place in Florida's constitution.

A. AMICUS IS PRO-LIFE, RAN AS A PRO-LIFE CANDIDATE, AND VOTED FOR THE PRIVACY AMENDMENT.

Grant served in the Florida House of Representatives from 1980-1986 and the Florida Senate from 1986 to 2000.[5] He was

[5] Staff, Governor Ron DeSantis Appoints Two to the Florida Commission on Ethics, Ron Desantis 46th Gov. of Fla. (July 11,

"overwhelming[ly]" elected to the House of Representatives during a special election in March of 1980. Jack Greene, *Grant Wins Hillsborough House Seat*, THE TAMPA TRIBUNE (March 26, 1980) available at https://www.newspapers.com/image/335322047. He was the first Republican elected to the 64th district (representing the Hillsborough County area) in over a hundred years. John Grant, *The Issue is Life* 31 (2013); *It isn't even close; Republican Grant romps*, THE TAMPA TIMES 9A (March 26, 1980) available at https://www.newspapers.com/image/327674008 (hereinafter "*Republican romps*"). Against the advice of a campaign consultant, Grant ran as a pro-life candidate explaining he would "run as a strong pro-life candidate and lose before [he] w[ould] compromise on [his] number one issue and passion to win." *Grant, supra* at 27. Newspapers of the era labeled him an "arch-conservative" who ran a campaign that "smacked of God, mom and apple pie." *Republican romps*, *supra*.

The pro-life cause was and remains deeply personal to Grant, becoming his life's work in the 1960s with the birth of his son. *See*

2019) available at https://www.flgov.com/2019/07/11/governor-ron-desantis-appoints-two-to-the-florida-commission-on-ethics/.

Grant, *supra* at 21-22. Before his son was born, his then-pregnant wife was exposed to German Measles and a doctor encouraged her to obtain an abortion as an easy solution to concerns about possible birth defects. *Id.* Grant and his wife decided against abortion and their son was born healthy—growing up to become a talented lawyer with a beautiful wife and four children. *Id.* at 22. As Grant tells it, he was "driven to run because of [his] passion for the protection of the unborn." *Id.* at 35.

During the special election of 1980 Grant highlighted his conservative bona fides as a limited government, low tax Republican. *See* Ken Mulholland, Letter to the Editor, *Grant will stand on God's word* THE TAMPA TIMES (March 18, 1980) available at https://www.newspapers.com/image/327672848 ("John is for the preservation of the family, he is for prayer in the schools, he is for tax relief, he is for laws that protect the law-abiding citizens; and he is against the ERA, against a state income tax, is against 'convenience' abortions, and he is against increasing government regulation in our daily lives."); Betty Meng, Letter to the Editor, *Grant Not Beholden to Governor*, THE TAMPA TRIBUNE 13A (March 22, 1980) available at https://www.newspapers.com/image/335319342 ("He is dedicated

to the principles of government serving the people and not creating monstrous bureaucracy. John Grant is opposed to a state income tax and he would work for limits on government spending."). But even as Grant highlighted his opposition to big government and support for fiscal conservatism, his pro-life position was on full display. *See* Jack Greene, *Anderson, Grant Trade Tough Charges in Plant City Debate*, THE TAMPA TRIBUNE (March 20, 1980) available at https://www.newspapers.com/image/335430384 (highlighting Grant's abortion position as expressed during a debate with his opponent); *Republican romps*, *supra* (highlighting "the things Grant stood for—or more accurately, stood against[]—against ERA, against abortion, for prayer in schools").

B. AMICUS WAS CONCERNED ABOUT BOTH ABORTION AND PRIVACY RIGHTS—AS SEPARATE ISSUES—IN 1980.

When he entered the House in the spring of 1980, the issue of privacy was also on Grant's mind. In his first month in the legislature, he filed a bill to prevent the public and press from examining public employee personnel, disciplinary, medical and grievance files when such disclosure "would constitute a clearly unwarranted invasion of personal privacy." Jon Peck, *Legislative*

spotlight grabbed by Grant, THE TAMPA TIMES 10A (April 21, 1980) available at https://www.newspapers.com/image/327674659. A month later, he cast a vote in favor of the Privacy Amendment. H.R. Journal, 12th Sess., at 318 (Fla. 1980).

It is clear from these sources that Grant was highly attuned to the privacy issue, having sponsored privacy legislation himself. It is also clear that the abortion issue was at the top of his mind, as "protection of the unborn" was his "number one issue and passion." *Grant, supra* at 27. There is only one credible explanation for his vote in favor of the Privacy Amendment and it is this: in 1980 when the Privacy Amendment was adopted, the public understood the language of the Privacy Amendment meant protection against governmental surveillance and the collection and dissemination of private information—and not as creating a right to end the life of an unborn child.

That Grant's understanding would be reflective of the public's understanding on these issues is common sense. He was a new legislator having just finished his first successful election cycle during which he was heavily engaged in the public debate on both issues.

V. ORIGINAL PUBLIC MEANING VIEWED PRIVACY AND ABORTION AS SEPARATE ISSUES.

That others in the Florida Legislature shared Grant's understanding is apparent from the committee and floor debates, as thoroughly discussed in the State's Answer Brief. State's Answer Brief at 42-44. It is also apparent from the fact that the same legislative body overwhelmingly passed legislation imposing "sweeping" abortion regulations on first trimester abortions that same year. *Fla. Women's Med. Clinic, Inc. v. Smith*, 536 F. Supp. 1048, 1055 (S.D. Fla. 1982).[6]

A. THE 1980 LEGISLATURE PASSED A LAW VIOLATIVE OF ROE'S "PRIVACY" PROTECTIONS.

The history of the 1980 legislature's abortion regulations begins in 1978. That year the legislature passed a law requiring all abortion

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[6] The 1980 Legislature passed its first trimester abortion law less than a month after it passed the Joint Resolution to place the Privacy Amendment on the 1980 ballot. *Compare* S. Journal, 12th Sess., at 884 (Fla. 1980) (showing Senate passage of HB 1240 on June 6, 1980) *and* H.R. Journal, 12th Sess., at 1131 (Fla. 1980) (showing House passage of HB 1240 on June 5, 1980), *with* S. Journal, 12th Sess., at 313 (Fla. 1980) (showing Senate passage of the Joint Resolution on May 14, 1980) *and* H.R. Journal, 12th Sess., at 318 (Fla. 1980) (showing House passage of the Joint Resolution on May 6, 1980).

facilities in the State of Florida to be licensed by the Department of Health & Rehabilitative Services ("DHRS") and delegated to DHRS the authority to promulgate and enforce rules for abortion facilities (the "Abortion Clinic Law"). *Fla. Women's Med. Clinic, Inc. v. Smith*, 478 F. Supp. 233, 235 (S.D. Fla. 1979). With a broad mandate to regulate, DHRS imposed rules limiting abortions in the state to 13 weeks and regulating the same. *See id.* Abortion advocates challenged the Abortion Clinic Law as a violation of a woman's right under *Roe v. Wade*. *Id.* The court struck down the regulations as a violation of *Roe v. Wade* for impermissibly regulating first trimester abortions. *Id.* at 236.

In 1980, the Legislature attempted to revive the abortion regulations the court struck down. *See Fla. Women's Med. Clinic, Inc.*, 536 F. Supp. at 1050 (S.D. Fla. 1982) (considering the amended statute and regulations found to be unconstitutional in 1979); *see also* S. Journal, 12th Sess., at 884 (Fla. 1980) (showing Senate passage of HB 1240); H.R. Journal, 12th Sess., at 1131 (Fla. 1980) (showing House passage of the same). The Legislature passed HB 1240/SB1096, codified at chapter 80-413, as a direct response to the Southern District's decision. Florida House Committee on Health and

Rehabilitative Services, Staff Analysis of HB 1240, July 10, 1980 ("The lack of regulation relating to abortion clinics and the finding of unconstitutionality for the 1978 statute and rules promulgated to provide such regulation have led to the introduction of HB 1240.").[7]

The Senate unanimously passed HB 1240, S. Journal, 12th Sess., at 884 (Fla. 1980), and the House passed the bill on a vote of 90 to 7, H.R. Journal, 12th Sess., at 1131 (Fla. 1980). Representatives Elaine Gordon and Virginia Fox opposed the abortion regulations because they argued the regulations would be unconstitutional under U.S. Supreme Court precedent. *See id.* at 1131-32.[8]

The most credible explanation for the Legislature's overwhelming passage of the Joint Resolution in light of the

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[7] Available at Appendix 012.

[8] In 1982, a federal court found that the revived Abortion Clinic Law was still unconstitutional under *Roe*. *Fla. Women's Med. Clinic, Inc*. 536 F. Supp. at 1056 ("The statute and rules circumscribe the facilities themselves and the procedures used to perform first trimester abortions. They clearly run afoul of the standards articulated in *Roe v. Wade*."); *id*. at 1057 ("Fla. Stat. s 390.012(1)(a) through (e), (2) and the rules cited above impermissibly regulate first trimester abortions; they cannot withstand the challenge to their constitutionality.").

overwhelming vote in favor of the abortion clinic regulations passed during the same session is, again, that the language of the Privacy Amendment was understood as unrelated, in the mind of the public and their elected representatives, to the issue of abortion. To be sure, these legislators were likely exposed to the idea that *Roe v. Wade* was founded in notions of "privacy." It is clear from the historical record, however, that the discussion in this unrelated context had no bearing on the legislature's understanding of the word "privacy" within the context of the Privacy Amendment (which it had passed the month prior). *See Bostock,* 140 S. Ct. at 1766 (Alito, J., dissenting) (explaining "the meaning of language depends on the way a linguistic community uses words and phrases in context.") (citations and quotations omitted).

This truth is confirmed in the reporting about the Privacy Amendment in Florida's newspapers during 1980.

B. ERA NEWSPAPERS REPORTED ON PRIVACY AND ABORTION AS SEPARATE ISSUES.

In 1980, there were 131 articles published in Florida's newspapers about the Privacy Amendment. These are cataloged in Appendix 013-142. Only three of the articles, barely two percent,

reference abortion in passing, and reflect a total of two individuals who were reported as stating that the amendment could affect abortion rights.[9]

If a picture is "worth a thousand words," page 3D of the May 15, 1980 Tallahassee Democrat poignantly paints a picture demonstrating that the public discussed and understood the Privacy

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[9] Only two of the three outlier articles ran before the vote and neither ran in a major Florida newspaper. One of the two pre-election articles reported near the end of the article that a psychologist had stated that the amendment "could affect the right of women to have abortions, gay rights and the private use of small amounts of marijuana." Julius Karash, *Psychologist stumps for amendment*, FORT MYERS NEWS-PRESS (Oct. 3, 1980) available at https://www.newspapers.com/image/214034151. The second article stated in the last paragraph that although the measure was intended "only as a safeguard against government excesses" an "activist" named Bob Kunst said that it would reverse statutes outlawing homosexuality and other sexual conduct and void anti-abortion laws. *Amendments under attack as vote nears*, THE BRADENTON HERALD (Oct. 29, 1980) available at https://www.newspapers.com/image/718471324. The third article, published after the vote, again quoted Bob Kunst, near the end of the article, saying he intended to bring a "gay test case" under the new provision and would also "look at the use of marijuana, co-habitation, abortion, pornography, governmental surveillance, adult movie houses, swingers clubs, nude dancing, adult bookstores …. To find out what legitimate cases exist." Dary Matera, *Gay forces read rights legislation their way*, MIAMI NEWS (Nov. 5, 1980) available at https://www.newspapers.com/image/302628359. Those are the only three references to abortion out of the 131 articles published about the Privacy Amendment in 1980.

Amendment as addressing a topic completely unrelated to the abortion regulation debate of the day.[10] The page is topped with an article reporting that the bill requiring state licensing of abortion clinics had been approved. Deborah Ibert, *State licensing of abortion clinics approved*, TALLAHASSEE DEMOCRAT 3D (May 15, 1980) available at https://www.newspapers.com/image/246049301. The article does not mention privacy rights. *See id.* Immediately below that article is a second article reporting that the Privacy Amendment would be on the November ballot and explaining that the "proposed amendment [] would protect people from 'government intrusion' – such as wiretapping." Susan Postlewaite, *Privacy proposal to be on ballot*, TALLAHASSEE DEMOCRAT 3D (May 15, 1980) available at https://www.newspapers.com/image/246049301. The article further explained:

> Sen. Jack Gordon, D-Miami Beach, rejected arguments on the Senate floor that the measure, if approved, would open the door to a flood of Supreme Court suits over the constitutionality of existing public-information laws.
>
> "I think we all know what we mean by our right to privacy," said Gordon. The proposal

[10] Available at Appendix 021.

> would stop government wiretapping, and searches and seizures.

Id. The article, of course, does not offer any hint that the Privacy Amendment would affect abortion rights.

And yes, it is clear from the overwhelming evidence available from multiple credible sources that the people did "all know what [they] mean[t]" when they were discussing the Privacy Amendment. The historical record demonstrates beyond any reasonable doubt that the public understood "the right to be let alone and free from governmental intrusion into the person's private life" to mean informational privacy and not the creation of a right to abort an unborn child.

CONCLUSION

Although abortion is a highly charged political issue on which our Nation is deeply divided, this Court is not being asked to make a political decision here. Rather, the Court's task is to uphold the will of the people when they voted to add Article I, Section 23 to their constitution. First principles and precedent from this Court and the United States Supreme Court dictate that this Court interpret Section 23 in accord with its original public meaning and hold that

the right to privacy enumerated in Florida's Constitution does not create a right to abortion.

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Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the requirements of Florida Rules of Appellate Procedure 9.045(b) and (e) and 9.370(b) because it was prepared using Bookman Old Style 14-point font and the word count is 4979.

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