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IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. SC2022-1050

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

Petitioners,

v.

STATE OF FLORIDA, *ET AL.*,

Respondents.

BRIEF OF *AMICUS CURIAE* LAW PROFESSORS IN SUPPORT OF PETITIONERS

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SUMMARY OF ARGUMENT

In 1980, Florida voters approved an explicit and broad right to privacy in the state constitution. The plain text and context of the privacy amendment show that when voters approved this privacy right, they understood it to encompass a right to abortion, and the Florida Supreme Court has repeatedly held that this privacy right includes a right to abortion. Further, the voters confirmed this inclusion in 2012, when they rejected a proposed constitutional amendment that would have limited this state constitutional right to abortion and placed it in lockstep with the federal one. When they rejected this incursion on the right to abortion, the people of Florida functionally ratified the previous judicial interpretations of the privacy clause—which include a broad right to abortion. With this strong privacy right in place, the Florida legislature may only pass regulations that can survive a strict scrutiny analysis or pursue an additional state constitutional amendment to alter this settled meaning.

STATEMENT OF INTEREST OF *AMICI CURIAE*

Amici Curiae are professors at U.S. law schools and leading experts in state constitutional law, reproductive rights law, and related areas.[1] They bring a broad perspective informed by deep scholarly analysis of state constitutional law and related fields and contend that in this case the Court should reaffirm that the Florida Constitution's explicit right to privacy includes the right to abortion. The will of the people is the fundamental principle guiding state constitutional interpretation, and the will of Florida voters, as clearly expressed both in the adoption of the privacy clause and the rejection of Amendment 6, includes a right to abortion.

[1] A list of signatories is attached as Appendix A.

ARGUMENT

I. The Constitutional Right to Privacy in Florida Includes a Right to Abortion

A. The Importance of the Declaration of Rights in the Florida Constitution

The Florida Constitution begins with its most important principle: "All political power is inherent in the people. The enunciation herein of certain rights shall not be construed to deny or impair others retained by the people." *Art. I, § 1, Fla. Const.*

The people exercised this political power when they passed Article I, § 23 of the Florida Constitution, which contains an explicit right to privacy. Article I, § 23 declares:

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

Art. I., § 23, Fla. Const. This explicit privacy right is separate from any implicit federal constitutional right to privacy: Article 1, § 23 "is an independent, freestanding constitutional provision which declares the fundamental right to privacy," and it "expressly and succinctly provides for a strong right of privacy not found in the United States

Constitution." *Winfield v. Division of Pari-Mutuel Wagering*, 477 So. 2d 544, 548 (Fla. 1985).

This independent and expansive right is housed in the Florida Constitution's Declaration of Rights. The Declaration of Rights forms the first part of the Florida Constitution, and this "primacy of position" reflects the primary significance and "importance of those basic and inalienable rights of personal liberty" to democratic governance in Florida. *State v. City of Stuart*, 120 So. 335, 347 (Fla. 1929) (en banc). The rights expressed in this "place of special privilege" constitute "liberties that conjoin to form a single overarching freedom: They protect each individual [...] from the unjust encroachment of state authority – from whatever official source – into his or her life." *Traylor v. State*, 596 So. 2d 957, 963 (Fla. 1992). The rights found within the Declaration of Rights are fundamental rights and constitute a significant limit on government power that "operates in favor of the individual, against government." *Id.* See also *State v. J.P.*, 907 So.2d 1101, 1109 (Fla. 2005).

B. The History and Development of the Privacy Clause

Consistent with the guiding principle that "all political power is inherent in the people," the will of the people is paramount in Florida

state constitutional interpretation. Courts must seek interpretations that accord with the will of the people and the state constitution "must never be construed in such manner as to make it possible for the will of the people to be frustrated or denied." *Caribbean Conservation Corp. v. Fla. Fish & Wildlife Conservation Comm'n*, 838 So. 2d 492, 501 (Fla. 2003). The plain text and history of Art. I, § 23 demonstrate that the will of the people incorporates a right to abortion in the privacy clause.

Plain Text

The meaning of a state constitutional provision turns first on the "the actual language used." *Crist v. Fla. Ass'n of Criminal Def. Lawyers*, 978 So. 2d 134, 140 (Fla. 2008). Words are to be given "their most usual and obvious meaning, unless the text suggests that they have been used in a technical sense." *Wilson v. Crews*, 160 Fla. 169, 175 (Fla. 1948), quoting *City of Jacksonville v. Glidden Co.*, 169 So. 216, 217 (Fla. 1936). This is part of the broader interpretative principle that the will of the people is the most important lodestar for state constitutional interpretation in Florida: "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." *Lawnwood Med. Ctr., Inc. v. Seeger*, 990 So. 2d 503, 512 (Fla. 2008).

On a plain text reading, the privacy right is broad and not limited to any particular form of privacy. The only suggestion of any sort of limit on the privacy right in the text—neither of which relate to abortion—is if there is a conflict with another state constitutional provision or if the clause were used defensively to limit public records access. This latter section of the provision was in response to a concern that the claims "might interfere with the broad concepts of open government in Florida:" it protects those principles "by expressly negating privacy claims posed against open government." Talbot D'Alemberte, *The Florida State Constitution* 39 (1st ed. 2011), citing *Forsberg v. Housing Authority of City of Miami Beach*, 455 So. 2d 373 (Fla. 1984).

Despite this broad and inclusive plain text language, the state asserts that the privacy amendment is somehow limited to just "informational" privacy. Resp. Emergency Mot. 25-26 (Sept. 26, 2022). Nothing in the text itself suggests this: a plain text reading indicates an independent, broad, and capacious right that would be understood to include all forms of privacy in circulation at the time

of adoption, including decisional and informational privacy. The phrase "right to be let alone" is and was widely understood to be synonymous with the right to privacy, and the terms have a long tradition of being used interchangeably. Gerald B. Cope, Jr. *To Be Let Alone: Florida's Proposed Right of Privacy*, 6 Fla. St. U. L. Rev. 671, 641 (1978). See also James W. Fox, *An Historical and Originalist Defense of Abortion in Florida,* Rutgers U.L. Rev. (forthcoming) 12, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4224718.

Similarly, "free from governmental intrusion" is broad on its face, and in fact borrows the language from previous decisional autonomy cases like the Supreme Court case of *Griswold v. Connecticut*, 381 U.S. 479, 483 (1965) and others. Fox, *supra* at, 12. Likewise, it is difficult to conceive of a broader phrase than "into the person's private life," and dictionary definitions confirm this understanding. See Adam Richardson, *The Originalist Case for Why the Florida Constitution's Right of Privacy Protects the Right to an Abortion,* Stetson L. Rev. (forthcoming), 17-18, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4187311.

Simply put, "there is no hint in the text of section 23, as it would

have been understood by voters in 1980, that it is limited to government snooping and information-gathering." *Id.* at 19.

History of the People's Approval of the 1980 Amendment

Although the plain text meaning is paramount, the history of the clause also supports that it was a broad, inclusive, and independent right to privacy. Art. I, § 23 was enacted in 1980, at the tail end of the 1968-1980 period when most states with state constitutional rights to privacy passed their amendments. Honorable Major B. Harding et al., *Right to be Let Alone? Has the Adoption of Article 1, Section 23 in the Florida Constitution, Which Explicitly Provides for a State Right of Privacy, Resulted in Greater Privacy Protection for Florida Citizens*? 14 Note Dame J. L. Ethics & Pub. Pol'y 945, 951 (2000). This era also represented the "the period when the Supreme Court was setting the boundaries for the federal right of privacy." *Id.* It was unclear just how much protection for privacy the Supreme Court was going to find in the penumbras of explicit federal constitutional rights. The Supreme Court in *Katz v. The United States*, 389 U.S. 347 (1967) had suggested that protection of privacy rights would generally fall to the states. Harding et al., *supra*, at 950. On the other hand, the Supreme Court seemed to embrace privacy

when it held in the 1973 highly publicized case of *Roe v. Wade,* 410 U.S. 113 (1973) that the implicit federal constitutional right to privacy included a right to abortion. In 1977, in *Whalen v. Roe*, 429 U.S. 589 the Supreme Court further noted that "privacy" encompassed multiple kinds of interests including decisional autonomy and informational autonomy, but an already growing backlash to *Roe v. Wade* made it unclear how stable those federal privacy rights would be. Harding et al., *supra*, at 950. Because of uncertainty over the scope of federal protections, and because states without explicit state constitutional privacy decisions saw a similar uncertainty in their own state courts about recognizing privacy as a constitutional right, many states were motivated to pass their own explicit rights to privacy that would withstand any potential changing of the federal constitutional tides and would remedy the lack of privacy protections occurring in their own courts. *Id.* at 952.

Florida was one such state. After the Court in *Laird v. State*, 342 So. 2d 962 (Fla. 1977) and *Shevin v. Harless, Schaffer, Reid & Associates*, 379 So. 2d 633 (Fla. 1980) found there was no general right to privacy in Florida, it was apparent that an explicit amendment was necessary to create robust privacy rights, regardless

of whatever federal constitutional privacy right did or did not exist. Harding et al., *supra,* at 953. As an October 1980 Miami News editorial explained, "[c]ritics of the amendment" argued that the state constitutional amendment was unnecessary because it just "duplicate[d]" existing federal constitutional protections" such as the right to abortion. *Editorial, Vote to Strengthen the Right of Privacy*, Miami News, Oct. 31, 1980, at 12A. Richardson, *supra*, at 40-41. Proponents explained that the federal right was precarious and that "[t]he U.S. Supreme court, in fact, has encouraged the states to protect more thoroughly the privacy of citizens, and the amendment is an explicit attempt to do just that." *Id*.

Although the state argues that this more thorough protection was somehow limited to informational privacy, the historical record does not support this. To be sure, some evidence suggests that informational privacy was the main focus of the legislative conversation. But, in the words of a lawmaker "who helped write the 1980 measure," this is likely because the existence of a federal constitutional right to abortion "muted" discussion of decisional autonomy. Jon L. Mills, *Sex, Lies, and Genetic Testing: What are Your Rights to Privacy in Florida?*, 48 Fla. L. Rev. 813, 826 (1996); Lloyd

Dunkelberger, *Panel Rejects Plan to Narrow Right to Privacy in Florida Constitution*, The Palm Beach Post (Feb. 1, 2018) https://www.palmbeachpost.com/story/news/state/2018/02/02/panel-rejects-plan-to-narrow/7784384007/ The main piece of evidence the state points to in suggesting the amendment was limited to informational privacy is a brief, confused exchange between two Senators. Resp. Emergency Mot. 23-26; Jurisdictional Ans. 12-13. Yet, using the available evidence and context, the most plausible interpretation of this mangled conversation was that Senator Gordon was simply acknowledging that "[f]ederal law already protected abortion rights and Section 23 did not change that fact." Fox, *supra*, at 21.

Moreover, additional evidence makes clear that the committee was certainly aware of the reality that a "right to privacy" on its face included both informational and decisional privacy. In particular, a law review article that was noted multiple times in the legislative materials, *Gerald B. Cope Jr., Toward a Right of Privacy as a Matter of State Constitutional Law*, 5 FLA. St. U. L. REV. 631 (1977), laid out the lineage of the decisional privacy jurisprudence from *Griswold v.*

Connecticut onward and made it very clear that the right to privacy at that time encompassed a right to abortion. Fox, *supra*, at 13.

And, more importantly, "what was generally communicated to the *public* about the amendment was that it covered far more than informational privacy." Richardson, *supra*, at 30 (emphasis added). In fact, the inherently broad scope of the clause was a main basis for public debate about the amendment, with concerns raised about its undefined breadth. *Id.* at 44-45. Further, the state constitutional privacy right "was intentionally phrased" in unmodified, strong terms, with the drafters refusing to limit governmental intrusions to those that were "unreasonable" or "unwarranted:" the privacy right was designed to be "as strong as possible." *Winfield,* 477 So. 2d at 548. It is this unmodified, capacious version which the voters approved.

Importantly, the ballot summary described Art. 1, § 23 in broad terms as well, as "[p]roposing the creation of Section 23 of Article I of the State Constitution establishing a *constitutional right of privacy.*" Fla. Dep't of State, Div. of Elections, Initiative Information, Right of Privacy, https://dos.elections.myflorida.com/initiatives/initdetail.asp?account=10&seqnum=10. (emphasis added). *See* Scott Denson,

Florida's Constitutional Shield: An Express Right to Be Let Alone by Government and the Private Sector, 20 Fla. St. U. L. Rev. 907, 922 (1993) (emphasis added). Newspaper circulation as the election drew near also "reminded the voters that they would decide on a '*constitutional right of privacy*.'" *Id.* The phrase is on its face an inclusive, umbrella term, and coming in the wake of the highly publicized decision of *Roe v. Wade*—which was widely presented to the public to have established a right to abortion based on privacy—the public would have understood this amendment to establish a state constitutional right to the same decisional autonomy: newspapers circulating in Florida at the time routinely noted that abortion was part of the constitutional right to privacy. Fox, *supra*, at 24. The state's assertion that voters would nevertheless somehow have understood this broad language and context to have actually meant only informational privacy defies the available evidence and common sense.

Post-Enactment Understandings

In addition to the plain text, historical context, and public understanding, the post-enactment context also establishes that the state constitutional right to privacy includes a right to abortion. First,

abortion is not the only form of decisional autonomy protected by Art. I, § 23. In 1990, in *In re Guardianship of Browning,* 568 So. 2d 4 (Fla. 1990), the Court held that the state constitutional privacy right includes the right to make personal medical decisions. Six years later, in *Beagle v. Beagle*, 678 So. 2d 1271 (Fla. 1996), the Court confirmed that the privacy right includes the right to make certain child-rearing decisions. This line of jurisprudence also recognizes that the "state constitutional right to privacy is much broader in scope, embraces more privacy interests, and extends more protection to those interests than its federal counterpart. *Von Eiff v. Azicri*, 720 So. 2d 510, 514 (Fla. 1998).

The post-enactment history also shows that voters understood Art. I, § 23 to include an abortion right and know exactly how to tailor that right when they wished to do so. In 1989, the Florida Supreme Court confirmed in *In re T.W.* that Art. I, § 23 protects a "woman's decision of whether or not to continue her pregnancy," and that a 1988 law requiring that minors obtain parental consent prior to having an abortion violated this state constitutional privacy right. 551 So. 2d 1186, 1192 (Fla. 1989). In 2003, the Florida Supreme Court in *North Florida Women's Health Services v. State*, 866 So. 2d

612, reaffirmed that the state constitutional privacy right includes a right to abortion, and held that a Florida statute which required parental *notification* when a minor sought an abortion also violated this privacy right.

The following year, in 2004, the Florida legislature put on the ballot a proposed constitutional amendment that would overrule this decision and instead allow for parental notification. The voters passed this amendment, and Article X, § 22 was added to the Florida Constitution. Article X, § 22 states that "the legislature is authorized to require by general law for notification to a parent or guardian of a minor before the termination of the minor's pregnancy […]. *Art. X, § 22, Fla. Const.* With the passage of this amendment, Florida voters demonstrated that they both understood the privacy amendment to encompass a right to abortion, and that they were able to readily use constitutional amendments to tailor that right and alter judicial decisions that did not accurately reflect the will of the people. Indeed, the Florida Constitution is one of the easiest state constitutions to amend, and Florida voters are entirely capable of using the amendment process to voice their will through the adoption (and

rejection) of proposed amendments. Robert F. Williams, *The Law of American State Constitutions* 390 (2009)

II. The Significance of the 2012 Rejected Amendment

In 2012, the Florida legislature placed "Amendment 6" on the ballot. Amendment 6 presented Florida voters with a clear opportunity to overturn existing abortion protections. In addition to providing that public funds could not be used for abortion, this Amendment was summarized to the voters as follows:

> [...] This proposed amendment provides that the State Constitution may not be interpreted to create broader rights to an abortion than those contained in the United States Constitution. With respect to abortion, this proposed amendment overrules court decisions which conclude that the right of privacy under Article I, Section 23 of the State Constitution is broader in scope than that of the United States Constitution.

Florida Amendment 6, State Constitution Interpretation and Prohibit Public Funds for Abortions Amendment (2012), Ballotpedia.com, https://ballotpedia.org/Florida_Amendment_6,_State_Constitution_Interpretation_and_Prohibit_Public_Funds_for_Abortions_Amendment_(2012). There was significant public conversation about this amendment. *See, e.g.*, *Victoria Macchi, Amendment 6: Abortion Rights in Florida at Center of Debate on Ballot*

Measure, Naples News (Oct. 31, 2012); Sascha Cordner, *Both Sides Of Abortion Amendment 6 Make Case To Florida Voters*, WFSU (Oct. 19, 2012). All of the circulating discussions indicate that Florida voters understood what the clause purported to do: it proposed to overturn previous judicial decisions on the right to abortion and put state constitutional law in "lock-step" with the federal constitutional right, such that if *Roe v. Wade* were overturned, Floridians would also lose the right to abortion. Richardson, *supra,* at 53-4.

Florida voters resoundingly rejected Amendment 6. As with all state constitutional amendments, it needed 60% of the voters to approve. Instead, it received only 45% approval, with 55% of the voters voting against it. *Id.* at 54. In rejecting this amendment, Floridians indicated their strong support for a state constitutional regime that included a robust right to abortion in the privacy right. *Reuters Staff, Floridians Defeat Amendment to Reduce Abortion Privacy Rights*, Reuters, (Nov. 6, 2012). Florida voters also evinced their support for the existing legal precedent on the privacy clause when they refused to overturn it.

Under some circumstances, it can be difficult to draw conclusions about voter intent from the voters' rejection of an amendment. For example, when an amendment is part of a package, voters may reject the package because they reject all, one, or some of the amendments. An example of this occurred when Floridians in 1978 initially rejected an amendment incorporating a package of changes—which included adding privacy—to the state constitution. Floridians then overwhelmingly supported the privacy amendment when it was introduced on its own in 1980. Denson, *supra*, at 914, n. 55. Additionally, when it is a legislature that is doing the rejecting, the meaning of rejections may be less clear. *Grupe Dev. Co. v. Superior Court*, 4 Cal.4th 911, 923 (Cal. 1993).

However, despite these sorts of occasional difficulties, state courts often acknowledge the relevance of rejected amendments and frequently "derive[] the meaning of current state constitutional provisions" from "proposed amendments [...] that were defeated by the electorate." Williams, *supra*, at 341. In this case, the well-documented history and context of the amendment and vote make the meaning of the voters' rejection of Amendment 6 easy to ascertain. Amendment 6 offered the voters a chance to "fix" the right

to privacy if indeed courts had misconstrued it to include a right to abortion that the electorate did not want. If, as the state contends, Florida voters did not mean for the privacy amendment to include a right to abortion, Amendment 6 was specifically designed to let voters correct this error. But the electorate instead confirmed that a broad interpretation of the amendment and a robust jurisprudence protecting the right to abortion did in fact reflect the electorate will.

Given the voters' clear rebuke of limiting the abortion right in this manner, arguments that Art. 1, § 23 is somehow "limited to informational privacy" amount simply to "end runs around the valid amending process, employing unsupported historical arguments to achieve what has failed to convince the voting public." Fox, *supra*, at 40.[2]

III. State Constitutional Rights to Privacy

Although the decisions of sister states are not binding on Florida courts, Florida and other state courts often look to decisions in other states to provide further helpful context when adjudicating

[2] See also Dunkelberger, *supra* (describing a failed attempt to explicitly narrow the privacy amendment to only "informational" privacy. The Judicial Committee of the state Constitution Revision Commission rejected the measure 4.2.)

matters under their own constitutions. In addition to Florida, nine other states currently have an explicit constitutional right to privacy.[3] With only three exceptions,[4] all of these states with an explicit state constitutional right to privacy have confirmed the existence of a right to abortion grounded in privacy.[5]

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[3] The nine states are Alaska, Montana, Hawaii, Washington,Arizona, California, South Carolina, Illinois, and Louisiana.

[4] The three exceptions are Louisiana, Arizona, and Illinois. Louisiana recently passed a state constitutional amendment declaring that the state constitution cannot be the basis of any right to abortion. See Associated Press, *Louisiana Approves Amendment 1 Stating Abortion Not a Right*, WAFB (Nov. 4, 2020) https://www.wafb.com/2020/11/03/louisiana-approves-amendment-stating-abortion-not-right/. In Arizona, the status of the right to abortion remains somewhat unsettled as there is no ruling from the Arizona Supreme Court on whether the state constitution protects a right to abortion. See Paul Benjamin Linton, *Abortion Under State Constitutions: A State-by-State Analysis* 41 (2020).Illinois has a state constitutional right to abortion on the basis of a due process amendment rather than its privacy one. Id. at 117.

[5] See, e.g. *Planned Parenthood South Atlantic v. State*, 882 S.E. 2d 770 (SC 2023); *Valley Hosp. Ass'n, Inc. v. Mat-Su Coal. for Choice*, 948 P.2d 963, 969 (Alaska 1997); *Committee to Defend Reproductive Rights v. Myers*, 625 P. 2d. 779 (Cal. 1981); *Armstrong v. State*, 989 P.2d 364 (Mont. 1999). Washington's path to a right to abortion rooted in privacy was slightly different: it passed legislation codifying the fundamental right to abortion in 1991. The statute states that "[t]he sovereign people hereby declare that every individual possesses a fundamental right of privacy with respect to personal reproductive decisions." Wash. Rev. Code § 9.02.100. Hawaii was different as well, in that their drafting committee specifically announced that the amendment was meant to include a right to abortion. Linton, *supra* note 4, at 141.

Indeed, after surveying this state jurisprudence, the South Carolina Supreme Court concluded that it was "persuaded by the logic replete in the opinions [...] that few decisions in life are more private than the decision whether to terminate a pregnancy" in upholding a right to abortion inherent in the South Carolina privacy clause. *Planned Parenthood South Atlantic v. State*, 882 S.E. 2d 770, 782 (S.C. 2023).

Further, state courts have continually confirmed that the right to abortion in these state constitutional privacy rights is independent of and does not float with any federal constitutional right or lack thereof. In *Planned Parenthood of The Great Nw. v. State,* 375 P.3d 1122, 1129 (Alaska 2016), the Alaska Supreme Court noted that it had previously "examined this express privacy provision in the context of pregnancy-related decisions and held that a woman's fundamental privacy right to reproductive choice is more broadly protected by the Alaska Constitution than the United States Constitution." Additionally, the Montana Supreme Court noted in *Armstrong v. State* that "independently of the federal constitution, where the right of individual privacy is implicated, Montana's Constitution affords significantly broader

protection than does the federal constitution." *Armstrong,* 989 P.2d at 375.

Additionally, in many of these states, courts considered and rejected arguments that that the privacy right was one which only included informational privacy. For example, in *Valley Hospital Association v. Mat-Su Coalition for Choice*, a decision of the Supreme Court of Alaska, it was argued that a state constitutional provision with broad wording (similar to Art. I, § 23) was meant to only encompass informational privacy. 948 P.2d at 969 (Alaska 1997). The Alaska Supreme Court rejected this argument and held that "the plain language" of the constitutional amendment offered a "broad protection" that "simply protected the right of the people to privacy." The court held that given the plain language, the "legislative history [was] insufficient to limit the general language of the privacy amendment." *Id.*

Similarly, in *Planned Parenthood South Atlantic*, 882 S.E. 2d at 777, the respondents also argued that the state constitutional right to privacy only covered a right to data privacy and not to decisional privacy. The Supreme Court of South Carolina noted that the amendment was enacted six years after the Supreme Court ruling in

Griswold v. Connecticut and there was "no doubt that the authors of this provision were aware of *Griswold* and its right to privacy." *Id.* at 778. Thus, despite the fact that the Committee notes tended to focus on informational privacy issues, the South Carolina Supreme Court held that "[c]ognizant of the ongoing developments and extensions of privacy law into areas such as marriage and intimacy, the authors nevertheless chose broad language, which we cannot now simply ignore by looking to discrete references to data security in the Committee notes." *Id.* The broad language in the Florida amendment similarly overrides any minor conversational focus on informational privacy that the drafters may have had.[6]

[6] When the intent of drafters and the will of the people conflict, the will of the people must prevail. *Myers v. Hawkins*, 362 So. 2d 926, 930 (Fla. 1978). *See also Williams*, *supra*, at 324.

CONCLUSION

This Court should reaffirm that Art. I, § 23 includes the right to abortion, not simply because it is consistent with the meaning of privacy itself, and with the overwhelming jurisprudence of the Florida Supreme Court, but because the people of Florida themselves have affirmed that inclusion both when they originally adopted the amendment in 1980 and when they refused to approve Amendment 6 in 2012, voting instead to retain a broad and independent state constitutional right to privacy that included a right to abortion. With this strong privacy right in place, the Florida legislature is limited to passing regulations that can survive a strict scrutiny analysis or pursuing an additional state constitutional amendment from the voters themselves.

Dated: March 8, 2023.

Respectfully,

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CERTIFICATE OF SERVICE

I certify that on March 8, 2023, I electronically filed the foregoing motion and proposed brief of *amicus curiae* with the Clerk of the Court and caused an electronic copy to be generated to all counsel of record.

/s/ Brad F. Barrios
Attorney

CERTIFICATE OF COMPLIANCE

I certify that this brief was drafted with 14 pt. Bookman Old Style font as required by the Florida Rules of Appellate Procedure and does not exceed the 5,000-word limit imposed by Florida Rule of Appellate Procedure 9.370(b).

/s/ Brad F. Barrios
Attorney

APPENDIX A

LIST OF AMICI

Courtney Cahill served as a Professor of Law at the Florida State University College of Law (2012-2022) and is currently a Professor of Law at the University of California Irvine, with expertise in constitutional and reproductive rights areas.

Jessica Bulman-Pozen is the Betts Professor of Law at Columbia Law School with expertise in issues of state constitutional law and democracy.

Robert F. Williams is a Professor Emeritus at Rutgers Law School and the Director of the Center for State Constitutional Studies. He is a national expert on state constitutional interpretation.

Sarah L. Swan served as an Assistant Professor at the Florida State University College of Law (2018-2022) and is currently an Associate Professor at Rutgers Law School, with expertise in state and local government law.