



# Floridians Face Pro-Abortion Constitutional Amendment: The Legal and Policy Implications of Providing Constitutional Protection for Elective Abortion

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## Introduction

With the fall of *Roe v. Wade*,<sup>2</sup> the Supreme Court has empowered Americans and their elected representatives to protect life at greater lengths. However, *Roe*'s demise has also emboldened abortion activists to seek to enshrine unfettered access to elective abortion in state constitutions across the country. As a result, state ballot initiatives have emerged as a new battleground for life. These initiatives pose a serious threat to pro-life laws and the protection of preborn human beings, women, and adolescents.

Both Michigan and Ohio are harrowing examples of the devastating impact abortion ballot measures have on life-affirming policies. In 2022, Michigan residents voted to enshrine a "right" to elective abortion in their state constitution. One year later, Ohioans followed suit and passed a constitutional amendment contriving a right to elective abortion throughout all nine months of pregnancy. Since voters passed these measures, abortion activists have challenged life-affirming policies in both the legislatures and courts. For example, after Michigan residents voted to constitutionally protect elective abortion, the Michigan legislature repealed numerous protections for women and preborn children, including the state's ban on partial-birth abortions and provisions requiring abortion facilities to be licensed and operated under necessary health and safety standards.

Florida is one of the many states facing a similar dilemma. This November, Floridians will be asked to vote on a ballot initiative entitled, "Right to Abortion Initiative" ("RTA"). The RTA initiative would amend Florida's constitution to state, "[e]xcept as provided in Article X, Section 22, no law shall prohibit, penalize, delay, or restrict abortion before viability or when necessary to protect the patient's health, as determined by the patient's healthcare provider."<sup>3</sup>

Both the ballot summary<sup>4</sup> and the amendment use deceptive language that downplays the ramifications of the radical amendment. In fact, Florida's attorney general asked the state Supreme Court to provide an advisory opinion on the validity of the proposed amendment because of its vague and ambiguous language. Justice Jamie Grosshans aptly described the deceitful nature of the amendment and ballot summary in her dissent:

A voter may think this amendment simply returns Florida to a pre-*Dobbs* status quo. It does not. A voter may think that a healthcare provider would be clearly defined as a licensed physician specializing in women's health. It is not. A voter may think that viability falls within a readily apparent time frame. It does not. A voter may think that the comma is an insignificant grammatical tool that would have very little interpretive purpose. It will not. And, critically,

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<sup>2</sup> See *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022).

<sup>3</sup> The Right to Abortion Initiative (Fla. 2024).

<sup>4</sup> The summary of the amendment that voters will see on the ballot states as follows: "No law shall prohibit, penalize, delay, or restrict abortion before viability or when necessary to protect the patient's health, as determined by the patient's healthcare provider. This amendment does not change the Legislature's constitutional authority to require notification to a parent or guardian before a minor has an abortion."

the voter may think this amendment results in settling this issue once and for all. It does not. Instead, this amendment returns abortion issues back to the courts to interpret scope, boundary, definitions, and policy, effectively removing it from the people and their elected representatives. Perhaps this is a choice that Floridians wish to make, but it should be done with clarity as to their vote's ramifications and not based on a misleading ballot summary.<sup>5</sup>

Ultimately, the RTA initiative “is not some run-of-the-mill restoration of *Roe*—it goes far beyond that into uncharted territory in this State.”<sup>6</sup>

If Florida voters pass the RTA initiative this November, the consequences of the amendment will be devastating, especially for the welfare of Florida women and their preborn children. The RTA initiative authorizes abortion on demand throughout pregnancy, threatens to eliminate protections for women's welfare, gives abortionists free rein to operate clinics without health and safety regulations, increases the number of coerced abortions in Florida, and furthers the harmful and false narrative that abortion is necessary for women to have equality and success in America. The RTA Initiative allows abortion activists to turn Floridians' life-affirming state into an abortion destination that endangers the health and safety of its residents both inside and outside the womb.

### I. The RTA Initiative Authorizes Abortion on Demand Throughout Pregnancy.

Passage of the RTA initiative will effectuate abortion on demand up until a preborn baby's birth date. Although the proposed amendment includes language that seemingly allows Florida to prohibit abortion after fetal viability, it allows for a broad “health” exception. The proposed amendment states, “no law shall prohibit, penalize, delay, or restrict abortion before viability *or when necessary to protect the patient's health, as determined by the patient's healthcare provider.*”<sup>7</sup>

Courts, including the U.S. Supreme Court, have broadly interpreted health exceptions within abortion jurisprudence. In *Doe v. Bolton*<sup>8</sup>, the companion case to *Roe*, the Supreme Court defined “health” in abortion laws as “*all factors—physical, emotional, psychological, familial, and the woman's age—relevant to the well-being of the patient. All these factors may relate to health.*”<sup>9</sup> Thus, according to this definition, the word “health” in the abortion context “means emotional well-being without limits.”<sup>10</sup> “Any potential emotional reservation a woman has about being pregnant can be deemed, at the discretion of the abortion provider, as a threat to her ‘health,’ and thus a reason to ignore any abortion prohibition after fetal

<sup>5</sup> *Advisory Opinion to the Attorney General re: Limiting Government Interference with Abortion*, No. SC2023-1392, 46-47 (Fla. Apr. 1, 2024) (Grosshans, J., dissenting).

<sup>6</sup> *Id.* at 54.

<sup>7</sup> The Right to Abortion Initiative (Fla. 2024) (emphasis added).

<sup>8</sup> Although *Doe v. Bolton* was the companion case for *Roe*, the Supreme Court did not overturn *Doe* in the *Dobbs* decision.

<sup>9</sup> *Doe v. Bolton*, 410 U.S. 179, 192 (1973).

<sup>10</sup> Clarke D. Forsythe, *ABUSE OF DISCRETION: THE INSIDE STORY OF ROE V. WADE* 8 (2013).

viability.”<sup>11</sup> Consequently, the “health” exception contrived by the Court in *Doe* “swallowed the supposed ability of the states to prohibit abortion after fetal viability.”<sup>12</sup> In other words, “[w]here *Roe* prevented any prohibition on abortion before viability, the *Doe* ‘health’ exception eliminated prohibitions after viability as well.”<sup>13</sup>

Under the RTA initiative’s broad health exception, if a pregnancy is affecting a woman’s “emotional well-being” for whatever reason, she can have an abortion up to the date of her preborn child’s birth. The RTA initiative grants abortionists wide discretion in such circumstances because the abortionist simply has to find the abortion “necessary”—a word left undefined—to protect the patient’s “health” in order to end the life of a healthy, viable preborn child. By including this health exception, Florida will be authorizing abortion on demand throughout all nine months of pregnancy. Indeed, upon reviewing the language of the RTA initiative in a recent advisory opinion, Florida Supreme Court Justice Renatha Francis notes the broad nature of the amendment’s health exception, stating, “[h]ealth’ is undefined and, thus, not limited to just life threatening physical conditions. Rather, ‘health’ could mean anything, really. And ‘health’ seems to include nebulous conditions that could be used to justify a late term abortion.”<sup>14</sup>

To justify the extreme nature of the amendment, proponents of the RTA initiative may argue that abortions performed under a health exception, or late-term abortions, are rare and only performed for reasons of medical necessity. This is a common misconception that is ungrounded. As the American Association of Pro-Life Obstetricians and Gynecologists (“AAPLOG”) states, “most abortions are done for social reasons.”<sup>15</sup> “Overall, common exceptions to abortion restrictions are estimated to account for less than five percent of all abortions meaning that 95 percent of abortions are for elective or unspecified reasons.”<sup>16</sup> Dr. James Studnicki published a similar outcome in *Health Services Research and Managerial Epidemiology* regarding late-term abortions. As he says,

[t]he Guttmacher Institute has provided a number of reports over 2 decades which have identified the reasons why women choose abortion, and they have consistently reported that childbearing would interfere with their education, work, and ability to care for existing dependents; would be a financial burden; and would disrupt partner relationships.<sup>17</sup>

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<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Advisory Opinion to the Attorney General re: Limiting Government Interference with Abortion*, No. SC2023-1392, 57 (Fla. Apr. 1, 2024) (Francis, J., dissenting).

<sup>15</sup> AM. ASSOC. OF PRO-LIFE OBSTETRICIANS & GYNECOLOGISTS, STATE RESTRICTIONS ON ABORTION: EVIDENCE-BASED GUIDANCE FOR POLICYMAKERS, Comm. Op. 10, at 10 (updated Sept. 2022).

<sup>16</sup> *The Assault on Reproductive Rights in a Post-Dobbs America: Hearing before the S. Comm. on the Jud.*, 118th Cong. 15 (2023) (written testimony of Monique Chireau Wubbenhorst, MD, MPH).

<sup>17</sup> James Studnicki, *Late-Term Abortion and Medical Necessity: A Failure of Science*, HEALTH SERVS. RSCH. & MANAGERIAL EPIDEMIOLOGY, Apr. 9, 2019, at 1, 1.

Accordingly, most abortions occur for elective reasons of the mother, not because of either the baby or the mother’s medical condition.

Furthermore, it is estimated that abortionists perform around 10,000 abortions at 21 weeks’ gestation or later each year.<sup>18</sup> Although, the number of late-term abortions are likely significantly higher given that the Centers for Disease Control and Prevention (“CDC”) has limited data because of voluntary state reporting and abortion destination states’, such as California and Maryland, refusal to provide any data to the CDC.<sup>19</sup>

The RTA initiative will only increase the number of late-term abortions that occur in Florida due to its broad health exception, putting more women at risk of suffering severe and life-threatening complications, as well as subjecting preborn child to painful abortion procedures. Passing this amendment is not in the best interest of Floridian women and only deepens the abortion industry’s pockets while subjecting women to dangerous late-term abortions that threaten their physical and emotional well-being.

*a. The RTA Initiative Increases the Number of Late-Term Abortions, Which Carry Higher Risks of Health Complications.*

By opening the door for late-term abortions in the state, the RTA initiative puts more women at risk of suffering severe and life-threatening complications. Abortions carry a higher medical risk when done later in pregnancy. Even Planned Parenthood, the largest abortion business in the United States, agrees that abortion becomes riskier later in pregnancy. On its national website, Planned Parenthood states: “[t]he chances of problems gets higher the later you get the abortion, and if you have sedation or general anesthesia,” which would be necessary for an abortion at or after twenty weeks of gestation.<sup>20</sup>

Gestational age is the strongest risk factor for abortion-related mortality, and the incidence of major complications is significantly higher after twenty weeks’ gestation.<sup>21</sup> For example, compared to an abortion at eight weeks’ gestation, the relative risk of mortality increases exponentially (by thirty-eight percent for each additional week) at higher gestational ages.<sup>22</sup> Further, researchers have concluded that it may not be possible to reduce the risk of death in later-term abortions because of the “inherently greater technical complexity of later abortions.”<sup>23</sup> This is because later-term abortions need to dilate the cervix

<sup>18</sup> Guttmacher Institute, *Induced Abortion in the United States*, GUTTMACHER (2019), <https://www.guttmacher.org/fact-sheet/induced-abortion-united-states>.

<sup>19</sup> See *Questions and Answers on Late-Term Abortion*, CHARLOTTE LOZIER INST. (May 16, 2022), <https://lozierinstitute.org/questions-and-answers-on-late-term-abortion/>.

<sup>20</sup> See Planned Parenthood, *How Safe Is an In-Clinic Abortion?*, <https://www.plannedparenthood.org/learn/abortion/in-clinic-abortion-procedures/how-safe-is-an-in-clinic-abortion> (last visited Oct. 20, 2023).

<sup>21</sup> Linda A. Bartlett et al., *Risk Factors for Legal Induced Abortion-Related Mortality in the United States*, 103 OBSTETRICS & GYNECOLOGY 729, 731 (2004).

<sup>22</sup> *Id.* at 731; PRO. ETHICS COMM. OF AM. ASSOC. OF PRO-LIFE OBSTETRICIANS & GYNECOLOGISTS, *Induced Abortion & the Increased Risk of Maternal Mortality*, Comm. Op. 6 (Aug. 13, 2019).

<sup>23</sup> Bartlett, *supra* note 21, at 735.

to a greater degree, and the increased blood flow predisposes women to hemorrhage, and the myometrium relaxes and is more subject to perforation.<sup>24</sup>

Later-term abortions also pose an increased risk to the woman's physical and mental health. Some immediate complications from abortion include blood clots, hemorrhaging, incomplete abortions, infection, and injury to the cervix and other organs.<sup>25</sup> Immediate complications affect approximately ten percent of women undergoing abortion, and approximately one-fifth of these complications are life-threatening.<sup>26</sup>

The RTA initiative disregards the risks abortion poses to women by not only authorizing abortion on demand but also by allowing non-physicians to perform abortions. The RTA initiative leaves the term "healthcare provider" undefined. Currently, Florida law only authorizes physicians to perform abortions.<sup>27</sup> However, because this important term is not defined, the initiative opens the door for abortion activists to challenge Florida's law regarding who can perform abortions. In turn, this may lead to a legislative repeal or court injunction against the law.<sup>28</sup> Abortion activists may argue that the broad term "healthcare provider" encompasses non-physicians such as nurses and physician assistants. They also may argue that Florida's current law is in violation of the constitutional amendment because it prevents such individuals from performing abortions. If successful in their efforts, the welfare of women seeking abortions will be placed at greater risk since non-physicians do not have the same level of training in handling abortion-related complications as physicians.<sup>29</sup> Thus, if a woman seeks a late-term abortion from a non-physician and experiences medical complications during the procedure, she could face increased risks to her health and safety due to the non-physician's lack of medical training.

Ultimately, if Floridians pass the RTA initiative and authorize abortion on demand, more women will experience life-threatening complications from late-term abortions. Floridan women deserve better than to be subjected to these kinds of risks.

*b. The RTA Initiative Furthers the Psychological Harm of Abortion on Women.*

Amending Florida's constitution to enshrine a "right" to abortion will result in more women suffering post-abortive psychological harms. "[P]regnancy loss (natural or induced) is associated with an increased risk of mental health problems."<sup>30</sup> "Research on mental health subsequent to early pregnancy loss as a result of elective induced abortions has historically

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<sup>24</sup> *Id.*

<sup>25</sup> See Planned Parenthood, *supra* note 20.

<sup>26</sup> REPORT OF THE SOUTH DAKOTA TASK FORCE TO STUDY ABORTION 48 (2005).

<sup>27</sup> FLA. STAT. § 390.0111(2); FLA. ADMIN. CODE R. § 59A-9.023.

<sup>28</sup> See *infra* Section II.

<sup>29</sup> Rsch. Comm., Am. Ass'n of Pro-Life Obstetricians & Gynecologists, Concluding Pregnancy Ethically, Prac. Guideline No. 10, at 10-13 (Aug. 2022).

<sup>30</sup> David C. Reardon & Christopher Craver, *Effects of Pregnancy Loss on Subsequent Postpartum Mental Health: A Prospective Longitudinal Cohort Study*, 18 INT'L J. ENV'T RSCH. & PUB. HEALTH 1, 1 (2021).

been polarized, but recent research indicates an increased correlation to the genesis or exacerbation of substance abuse and affective disorders including suicidal ideation.”<sup>31</sup>

Scholarship shows “that the emotional reaction or grief experience related to miscarriage and abortion can be prolonged, afflict mental health, and/or impact intimate or parental relationships.”<sup>32</sup> In fact, a recent 2023 study found that American “women whose first pregnancy ends in induced abortion are significantly more likely than women whose first pregnancy ends in a live birth to experience mental health problems throughout their reproductive years.”<sup>33</sup> Similarly, “[s]everal recent international studies have demonstrated that repetitive early pregnancy loss, including both miscarriage and induced abortions, is associated with increased levels of distress, depression, anxiety, and reduced quality of life scores in social and mental health categories.”<sup>34</sup>

The RTA initiative authorizes dangerous abortion procedures for women and adolescents that negatively impact their mental and emotional well-being. By authorizing abortion on demand, the rates of mental health issues—such as depression, anxiety, and suicidal ideation—will increase and diminish women’s overall quality of life. Floridian women and adolescents deserve better than to be subjected to such risks.

*c. The RTA Initiative Exposes Preborn Children to Painful Abortion Procedures.*

In addition to harming women’s physical and mental health, abortion also subjects preborn children to fetal pain. There is ample research on fetal pain in the fifty years after *Roe*. As one example, in 2019, scientists found evidence of fetal pain as early as 12 weeks’ gestation.<sup>35</sup> “Pain receptors (nociceptors) begin forming at seven weeks’ gestational age, with the nerves linking pain receptors to the pain-sensing part of the brain, the thalamus, forming at 12 weeks.”<sup>36</sup> Furthermore, by twelve weeks’ gestation almost every organ and tissue has formed in a preborn baby<sup>37</sup> and the baby has arms, legs, fingers, toes, a face, and

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<sup>31</sup> Kathryn R. Grauerholz et al. *Uncovering Prolonged Grief Reactions Subsequent to a Reproductive Loss: Implications for the Primary Care Provider*, 12 FRONTIERS IN PSYCH. 1, 2 (2021).

<sup>32</sup> *Id.*

<sup>33</sup> James Studnicki et al., *A Cohort Study of Mental Health Services Utilization Following a First Pregnancy Abortion or Birth*, 15 INT’L J. WOMEN’S HEALTH 955, 959 (2023).

<sup>34</sup> Grauerholz, *supra* note 31; *see, e.g.*, Louis Jacob et al., *Association Between Induced Abortion, Spontaneous Abortion, and Infertility Respectively and the Risk of Psychiatric Disorders in 57,770 Women Followed in Gynecological Practices in Germany*, 251 J. AFFECTIVE DISORDERS 107, 111 (2019) (finding “[a] positive relationship between induced abortion . . . and psychiatric disorders”).

<sup>35</sup> Stuart W.G. Derbyshire & John C. Bockmann, *Reconsidering Fetal Pain*, 46 J. MED. ETHICS 3 (2020).

<sup>36</sup> *12 Facts at 12 Weeks*, CHARLOTTE LOZIER INST. (Apr. 25, 2023), <https://lozierinstitute.org/12-facts-at-12-weeks/>.

<sup>37</sup> Thomas Sadler, *MEDICAL EMBRYOLOGY* 14<sup>th</sup> ed. (2019).



eyelids.<sup>38</sup> The preborn baby is beginning to form unique fingerprints,<sup>39</sup> is able to suck his or her thumb,<sup>40</sup> and has a fully developed heart.<sup>41</sup>

Furthermore, a 2010 study found that “the earlier infants are delivered, the stronger their response to pain”<sup>42</sup> because the “neural mechanisms that inhibit pain sensations do not begin to develop until 34–36 weeks[] and are not complete until a significant time after birth.”<sup>43</sup> As a result, preborn children display a “hyperresponsiveness” to pain.<sup>44</sup> According to one group of fetal surgery experts, “[t]he administration of anesthesia directly to the fetus is critical in open fetal surgery procedures.”<sup>45</sup>

Given the medical advancements in fetal medicine and the evidence of fetal pain early in a pregnancy, it is well within the state’s legitimate interests to enact laws that preserve prenatal life as well as minimize fetal pain as much as possible.<sup>46</sup> Consistent with the state’s interest to protect prenatal life, Florida enacted a law that protects preborn children after six weeks’ gestation.<sup>47</sup> However, passing the RTA initiative will impede the ability of the state to maintain any gestational limit on abortion. Abortion activists are likely to deem such protections as hampering a woman’s “right” to elective abortion under the state constitution, even though these laws further the state’s legitimate interest in preserving prenatal life and mitigate fetal pain. This will lead to abortion activists challenging and seeking the removal of existing life-affirming protections for preborn children.<sup>48</sup>

*d. The RTA Initiative Imposes a Vague Viability Standard that Will Shift in Favor of Abortion.*

The RTA initiative imposes a vague, arbitrary standard for determining if a preborn child can survive outside the womb. The RTA initiative purports to give Florida authority to regulate abortion after viability, yet it fails to define viability. Abortion activists often use the viability standard to expand the window for access to abortion, just as Supreme Court Justices Powell and Marshall did in *Roe*.<sup>49</sup> Prior to *Roe*, a viable pregnancy simply “meant a

<sup>38</sup> *Carnegie Stage 23 Introduction*, VIRTUAL HUM. EMBRYO: DIGITALLY REPRODUCED EMBRYONIC MORPHOLOGY, <https://www.ehd.org/virtual-human-embryo/intro.php?stage=23> (last visited Apr. 25, 2024).

<sup>39</sup> J. W. Babler, *Embryologic Development of Epidermal Ridges and Their Configurations*, 27 BIRTH DEFECTS ORIGINAL ARTICLE SERIES 95, 95-112 (1991).

<sup>40</sup> See Peter Hepper et al., *Prenatal Thumb Sucking Is Related to Postnatal Handedness*, 43 NEUROPSYCHOLOGIA 313 (JAN. 2005).

<sup>41</sup> See M. A. Hill, *Cardiovascular System Development*, EMBRYOLOGY (Apr. 26, 2024), [https://embryology.med.unsw.edu.au/embryology/index.php/Cardiovascular\\_System\\_Development](https://embryology.med.unsw.edu.au/embryology/index.php/Cardiovascular_System_Development).

<sup>42</sup> Lina K. Badr et al., *Determinants of Premature Infant Pain Responses to Heel Sticks*, 36 PEDIATRIC NURSING 129 (2010).

<sup>43</sup> *Fact Sheet: Science of Fetal Pain*, CHARLOTTE LOZIER INST. (Sept. 2022), [https://lozierinstitute.org/fact-sheet-science-of-fetal-pain/#\\_ednref14](https://lozierinstitute.org/fact-sheet-science-of-fetal-pain/#_ednref14).

<sup>44</sup> Christine Greco & Soorena Khojasteh, *Pediatric, Infant, and Fetal Pain*, CASE STUDIES PAIN MGMT. 379 (2014).

<sup>45</sup> Maria J. Mayorga-Buiza et al., *Management of Fetal Pain During Invasive Fetal Procedures. Lessons Learned from a Sentinel Event*, 31 EUROPEAN J. ANAESTHESIOLOGY 188 (2014).

<sup>46</sup> See *Dobbs*, 142 S. Ct. at 2284.

<sup>47</sup> Fla. Stat. § 390.0111.

<sup>48</sup> See *Infra* Section II.

<sup>49</sup> Forsythe, *supra* note 10, at 137.

pregnancy that was progressing.”<sup>50</sup> However, the Supreme Court justices in *Roe* “defined ‘viability,’ for the purposes of abortion law, as the ability of the unborn child to survive outside the mother’s womb. In that sense, viability in 1973 was thought to generally occur at twenty-eight weeks of pregnancy.”<sup>51</sup> “This elaborate scheme was the Court’s own brainchild. Neither party advocated the trimester framework; nor did either party or any *amicus* argue that “viability” should mark the point at which the scope of the abortion right and a State’s regulatory authority should be substantially transformed.”<sup>52</sup> Today, given the advancements in medical technology, viability is generally understood to be around twenty-two to twenty-three weeks gestation.<sup>53</sup> The world’s youngest premature child to survive, Curtis Means, was born even earlier at twenty-one weeks and one day.<sup>54</sup> A recent study of premature babies in the United States shows that “[s]urvival among actively treated infants [is] 30.0% . . . at 22 weeks and 55.8% . . . at 23 weeks.”<sup>55</sup> As medical technology advances, it is likely preborn babies will survive at even earlier gestations with medical intervention.

Despite advancements in medical technology that allow for preborn children to survive outside the womb as early as twenty-one weeks gestation, the RTA initiative will empower abortionists to shift the viability line to later gestations. In fact, by leaving viability undefined, abortionists may disregard current medical interventions that ensure survival of 94.0% of babies born prematurely at twenty-eight weeks<sup>56</sup> because in their subjective opinion the baby is not “viable” and cannot survive outside the mother’s womb. Contrary to established modern medical principles, abortionists do not consider a preborn child as a second patient. Further, the abortionist’s direct intent in the abortion is not to keep the preborn child alive with medical intervention, but it is to end the preborn child’s life. Naturally, these beliefs inform an abortionist’s judgment when it comes to determining viability and will most likely always end in an abortion.

Ultimately, the RTA initiative allows abortionists to entirely usurp Florida’s ability to regulate abortion after viability because 1) the question of whether a baby is viable is left up to the abortionist’s implicit pro-abortion judgment, and 2) even if a preborn baby is viable with or without medical intervention, the abortionists is free to disregard that factor as long as the abortionist deems the abortion is “necessary” for the woman’s “health.”<sup>57</sup> This viability standard is a vague and unworkable measure that abortionists will use to continuously shift the line of viability in favor of abortion rather than the health and safety of women and their

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<sup>50</sup> *Id.* at 8.

<sup>51</sup> *Id.*

<sup>52</sup> *Dobbs*, 142 S. Ct. at 2266 (citing Forsythe, *supra* note 10, at 127, 141).

<sup>53</sup> Noelle Younge, et al., *Survival and Neurodevelopmental Outcomes among Periviable Infants*, 7 *NEW ENG. J. MED.* 617, 617-28 (2017).

<sup>54</sup> *Alabama Boy Certified as World’s Most Premature Baby*, BBC (Nov. 11, 2021), <https://www.bbc.com/news/world-us-canada-59243796>.

<sup>55</sup> Edward F. Bell et al., *Mortality, In-Hospital Morbidity, Care Practices, and 2-Year Outcomes for Extremely Preterm Infants in the US, 2013–2018*, 327 *JAMA* 248, 248 (Jan. 18, 2022).

<sup>56</sup> *See id.*

<sup>57</sup> *See supra* Section I.

preborn children. Even the Supreme Court in *Dobbs* rejected the “viability” standard, finding it to be unworkable.<sup>58</sup>

Ultimately, since the RTA initiative leaves the question of “viability” up to the abortionist’s subjective opinion, Florida will have extreme difficulty enacting or maintaining any laws that regulate abortion after viability.

## II. The RTA Initiative Leads to the Elimination of Protections for Women, Adolescents, and Preborn Children, and Impedes the State’s Ability to Enact Future Safeguards.

Passage of the RTA initiative places pro-life protections for women, adolescents, and preborn child at risk of being challenged in court, as shown by current activist litigation and legislative repeal of pro-life laws. As stated above, both Ohio and Michigan are facing challenges to their life-affirming laws since providing constitutional protection for elective abortion. This raises grave concerns for Florida’s existing life-affirming laws, which provide the following protections:

- comprehensive informed consent process that ensures abortionists inform women of the risks of abortion as well as available alternatives, provides an ultrasound, and gives women a twenty-four-hour reflection period;<sup>59</sup>
- provision ensuring only physicians perform abortions;<sup>60</sup>
- prohibition against gruesome partial-birth abortions;<sup>61</sup>
- parental consent laws;<sup>62</sup>
- regulations on abortion-inducing drugs, such as a prohibition on abortionists distributing chemical abortion drugs through telemedicine;<sup>63</sup>
- abortion reporting laws that require abortionists to report necessary data, such as the number of abortion complications;<sup>64</sup>
- conscience protections for health care professionals and hospitals that object to abortion based on their beliefs and convictions;<sup>65</sup>
- safeguards for infants born alive after an attempted abortion;<sup>66</sup> and
- protections against taxpayer funding of abortions.<sup>67</sup>

These laws serve to protect women and adolescents from the inherent harms of abortion, as well as protect preborn children. However, Florida’s life affirming laws are

<sup>58</sup> See *Dobbs*, 142 S. Ct. at 2261, 2268-70.

<sup>59</sup> Fla. Stat. § 390.0111(3).

<sup>60</sup> *Id.* at § 390.0111(2).

<sup>61</sup> *Id.* at § 390.0111(5), *enjoined by A Choice for Women v. Butterworth*, 54 F. Supp. 2d 1148, 1154-55 (S.D. Fla. 1998).

<sup>62</sup> *Id.* at § 390.01114(4)-(5).

<sup>63</sup> *Id.* at § 390.0111(2).

<sup>64</sup> *Id.* at §§ 390.012(2)(h), 390.0112.

<sup>65</sup> *Id.* at § 390.0111(8).

<sup>66</sup> *Id.* at § 390.0111(12).

<sup>67</sup> *Id.* at § 390.0111(15).

subject to attack if the RTA initiative passes. Abortion activists may—and likely will—argue that the state’s existing safeguards “prohibit” or “restrict” a woman’s “right” to abortion pursuant to the constitutional amendment, leading to legislative repeal or judicial injunction. In effect, as noted by Supreme Court Justice Francis in her review of the amendment language, the RTA initiative “effectively eliminates the Legislature’s ability to pass laws in the future regulating abortion in any meaningful, substantive way.”<sup>68</sup>

### III. The RTA Initiative Threatens Florida’s Parental Consent Laws

The elimination of Florida’s existing protections is particularly hazardous for adolescents. Upon first glance, the artfully-worded ballot summary and amendment appear to leave Florida’s parental involvement laws intact. However, while the RTA initiative may not impact the state’s parental notice law, passage of the amendment may very well lead to the elimination of Florida’s parental consent law, which requires an abortionist to obtain the written consent from the parent or legal guardian of a minor prior to performing an abortion.<sup>69</sup>

The ballot summary for the RTA initiative states that “[t]his amendment does not change the Legislature’s constitutional authority to require *notification* to a parent or guardian before a minor has an abortion.”<sup>70</sup> Further, the amendment language of the RTA initiative begins with the following phrase, “[e]xcept as provided in *Article X, Section 22 . . .*”<sup>71</sup> Article X, Section 22 of the Florida constitution authorizes the legislature “to require by general law for notification to a parent or guardian of a minor before the termination of the minor’s pregnancy.”<sup>72</sup> Notably, neither the summary nor the amendment language make any mention of Florida’s parental consent law, only the state’s notification law. Florida’s notification law requires an abortionist to notify the parent or legal guardian prior to a minor obtaining an abortion, with several waiver exceptions. While parental notification laws are necessary safeguards that help ensure the protection of minors seeking abortions, parental consent laws allow for further needed parental guidance and involvement and ensure parents can exercise their constitutional right over the care of their minor pregnant daughters.

Maintaining these protections in Florida is essential to protecting pregnant adolescents. Parental involvement laws recognize the fundamental rights of parents to make healthcare decisions for and with their children. These laws also protect the physiological and emotional wellbeing of children who, with developing decision-making capabilities and facing the stress and uncertainty of an unexpected pregnancy, need love and guidance from the people who care about them most, not the “quick fix” of a secret or coerced abortion.

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<sup>68</sup> *Advisory Opinion to the Attorney General re: Limiting Government Interference with Abortion*, No. SC2023-1392, 57 (Fla. Apr. 1, 2024) (Francis, J., dissenting).

<sup>69</sup> See Fla. Stat. § 390.01114(5).

<sup>70</sup> The Right to Abortion Initiative (Fla. 2024) (emphasis added).

<sup>71</sup> *Id.*

<sup>72</sup> Fla. Const. art. X, § 22.

Parents can help their daughters understand the physical and psychological risks of undergoing an abortion, and they usually possess information essential to a physician's exercise of his or her best medical judgment concerning the minor. Additionally, if parents are aware that their daughter has obtained an abortion, they may better ensure she receives the best post-abortion medical attention, especially if the minor suffers post-abortive complications. Due to their developing bodies, adolescent girls have a "biological predisposition for high-risk pregnancies."<sup>73</sup> The high-risk nature of adolescent pregnancy is compounded by the fact that pregnant adolescent patients often delay care.<sup>74</sup> Pregnant adolescent girls delay care for multiple reasons, such as "lack of knowledge about the importance of prenatal care and lack of understanding of the consequences of its absence; history as a victim of violence, desire to hide pregnancy, fear of potential apprehension of the baby, contemplation of abortion services . . ."<sup>75</sup> Delay of care may also lead adolescents to seek an abortion when they are farther along in their pregnancies, which subjects them to increased risks of health complications.

Florida's current parental notification and consent laws respond to the need to protect the welfare and safety of adolescents by ensuring that abortionists notify parents of their daughter's desire to obtain an abortion. This ensures pregnant adolescents receive proper and prompt care. If Florida voters approve the RTA initiative, Florida's parental consent law will be in the crosshairs of abortion activists and likely to be challenged and possibly removed.

#### IV. The RTA Initiative Gives Abortionists Free Rein to Operate Without Any Health and Safety Restrictions.

Passing the RTA initiative opens the door for the elimination of necessary laws regulating abortion clinics. Similar to what occurred in Michigan after the state provided constitutional protection for elective abortion, if the RTA initiative passes, abortion activists will likely seek to challenge Florida's laws relating to abortion clinics. Removing these safeguards will allow abortionists to operate their businesses without the necessary oversight, leading to more abortion violence.

Currently, Florida has laws in place for the inspection and monitoring of abortion businesses.<sup>76</sup> However, even with these safeguards, Florida abortion facilities have routinely compromised women's health and safety. To name a few examples, the state has cited several abortion facilities for failing to report injuries women received during an abortion, "including a patient hospitalized due to bowel perforation, and a second trimester abortion that resulted in a perforated uterus."<sup>77</sup> The state has also cited facilities for "hundreds of instances of expired medications and medical supplies and incomplete or improperly authenticated

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<sup>73</sup> Nadia Akseer et al., *Characteristics and Birth Outcomes of Pregnant Adolescents Compared to Older Women: An Analysis of Individual Level Data from 140,000 Mothers from 20 RCTs*, ECLINICALMED., Feb. 26, 2022, at 1, 3.

<sup>74</sup> Nathalie Fleming et al., *Adolescent Pregnancy Guidelines*, 37 J. OBSTETRICS & GYNAECOLOGY CAN. 740, 743 (2015).

<sup>75</sup> *Id.*

<sup>76</sup> Fla. Admin. Code R. 59A-9.019 *et seq.*

<sup>77</sup> *Unsafe: America's Abortion Industry Endangers Women*, AMS. UNITED FOR LIFE, 2021, at 62.

medical records, including physicians failing to sign off on medications and patient discharge orders.”<sup>78</sup> Additionally, the state cited abortion facilities for their failure to have licensed practitioners on their personnel list, untrained staff, unsanitary conditions, lack of emergency equipment, and failure to perform “preventive maintenance calibration on equipment such as ultrasound machines, suction units, and sterilization machines.”<sup>79</sup> In fact one abortion business performed close to one hundred abortions without being licensed in the state and did not have a medical director.<sup>80</sup>

Unfortunately, the RTA initiative will impede the state’s ability to maintain or enact additional safeguards regulating abortion clinics, endangering more pregnant women and adolescents. It is evident from the numerous health and safety citations that abortion clinics do not have women’s best interest in mind. Abortion already subjects women to physical and psychological harm as stated above in Sections I (a)-(b). Unregulated abortion clinics will only exacerbate these harms by subjecting women to unsanitary conditions, substandard care, and additional health risks.

#### V. The RTA Initiative Enables Sex Traffickers and Abusers to Continue Coercing Women into Having Unwanted Abortions

If Floridians enshrine a “right” to abortion in their state constitution, more pregnant women and adolescents will face coercive abuse. Currently, under Florida law, an abortionist must obtain a women’s voluntary and informed written consent before performing an abortion. However, the RTA initiative may lead to the elimination of laws that ensure a pregnant women’s decision to obtain an abortion is informed and free from coercion. Abortion activists may argue that such laws frustrate abortion access, as they have done in Michigan when challenging the state’s informed consent laws protecting women and adolescents from coerced abortions. If the RTA initiative passes, it will strip Floridian women of necessary safeguards that ensure that they can exercise authentic choice. This raises serious concerns for women’s health and safety as coerced abortions are not a trivial or uncommon issue.

Sadly, many individuals coerce women into having an abortion. For example, a woman seeking an abortion may be facing intimate partner violence (IPV). There are “[h]igh rates of physical, sexual, and emotional IPV . . . among women seeking a[n abortion].”<sup>81</sup> For women seeking abortion, the prevalence of IPV is nearly three times greater than women continuing a pregnancy.<sup>82</sup> Post-abortive IPV victims also have a “significant association” with

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<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> Megan Hall et al., *Associations Between Intimate Partner Violence and Termination of Pregnancy: A Systematic Review and Meta-Analysis*, 11 PLOS MED. 1, 15 (Jan. 2014).

<sup>82</sup> COMM. ON HEALTH CARE FOR UNDERSERVED WOMEN, *Reproductive and Sexual Coercion*, Comm. Op. No. 554, at 2 (Feb. 2013).

“psychosocial problems including depression, suicidal ideation, stress, and disturbing thoughts.”<sup>83</sup>

Similarly, intimate partners, family members, and sex traffickers may be asserting reproductive control over the woman, which are “actions that interfere with a woman’s reproductive intentions.”<sup>84</sup> In the context of abortion, reproductive control not only produces coerced abortions or continued pregnancies, but it also affects whether the pregnancy was intended in the first place.<sup>85</sup> Reproductive control is a prevalent issue for women. “As many as one-quarter of women of reproductive age attending for sexual and reproductive health services give a history of ever having suffered [reproductive control].”<sup>86</sup>

To name a recent example of coercive abuse, a man pled guilty to secretly drugging his pregnant wife’s drinks with misoprostol in order to induce an abortion.<sup>87</sup> The man’s wife claimed that this led to her daughter being born ten weeks premature, which resulted in daughter being in the hospital for nine months and having to attend therapy for developmental delays.<sup>88</sup> Unfortunately, this is not an uncommon occurrence as courts have found several other individuals guilty of trying to force their pregnant partners to have an abortion through similar means.<sup>89</sup> In fact, another man received charges of forcing abortion pills inside his girlfriend after she told him that she was possibly pregnant.<sup>90</sup>

There are several studies that also highlight the prevalence of coerced abortions. A recent peer-reviewed study showed that 43% of post-abortive women described their abortion as “accepted but inconsistent with their values and preferences,” while 24% indicated their abortion was “unwanted or coerced.”<sup>91</sup> Similarly, another study found that 61% of women reported experiencing “high levels of pressure” to abort from “male partners, family members, other persons, financial concerns, and other circumstances.”<sup>92</sup> This study found that:

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<sup>83</sup> Hall, *supra* note 81, at 11.

<sup>84</sup> Sam Rowlands & Susan Walker, *Reproductive Control by Others: Means, Perpetrators and Effects*, 45 *BMJ SEXUAL & REPROD. HEALTH* 61, 62, 65 (2019).

<sup>85</sup> *Id.* at 62–63.

<sup>86</sup> *Id.* at 62.

<sup>87</sup> Jesus Jimenez, *Man Who Drugged Wife’s Drinks to Cause Abortion Gets 180 Days in Jail*, *NY Times* (Feb. 8, 2024), <https://www.nytimes.com/2024/02/08/us/texas-abortion-drug-sentence.html>.

<sup>88</sup> *Id.*

<sup>89</sup> See, e.g., Chris Mueller, *Man Who Put Abortion-Inducing Drugs in Girlfriend’s Drink Gets 22 Years in Prison*, *Post Crescent* (Oct. 9, 2018), <https://www.postcrescent.com/story/news/2018/10/09/judge-imposes-22-year-sentence-case-involving-abortion-inducing-drug/1567018002/>; *Doctor Sentenced for Spiking Girlfriend’s Drink to Induce Abortion*, *CBS News* (May 21, 2018), <https://www.cbsnews.com/news/sikander-imran-doctor-sentenced-for-spiking-girlfriends-drink-to-induce-abortion/> (Doctor sentenced to three years in prison for spiking his girlfriend’s drink with abortion-inducing medication).

<sup>90</sup> Puneet Bsanti, *Married WA Medical Worker Forced Abortion Pills Inside Pregnant Girlfriend, Charges Say*, *News Tribune* (Mar. 18, 2024), <https://www.thenewstribune.com/news/local/crime/article286695865.html>.

<sup>91</sup> David C. Reardon et al., *The Effects of Abortion Decision Rightness and Decision Type on Women’s Satisfaction and Mental Health*, *CUREUS*, May 11, 2023, at 1.

<sup>92</sup> David C. Reardon & Tessa Longbons, *Effects of Pressure to Abort on Women’s Emotional Responses and Mental Health*, *CUREUS*, Jan. 31, 2023, at 1.

These pressures [to abort] . . . are strongly associated with more negative emotions about [a woman’s] abortion; more disruptions of their daily life, work, or relationships; more frequent . . . intrusive thoughts about their abortions; more frequent feelings of loss, grief, or sadness about their abortion; . . . [and] a perceived decline in their overall mental health that they attribute to their abortions . . . .<sup>93</sup>

Furthermore, victims of sex trafficking are among the number of women who experience reproductive control. A 2014 study on the health consequences for sex-trafficking victims found that 66 sex-trafficking victims had a total of 114 abortions, “[w]ithout accounting for possible underreporting.”<sup>94</sup> “The [sex-trafficking] survivors in this study [] reported that they often did not freely choose the abortions they had while being trafficked.”<sup>95</sup> A majority of the 66 sex-trafficking victims “indicated that one or more of their abortions was at least partly forced upon them.”<sup>96</sup> Given the prevalence of coerced abortions among sex-trafficking victims, the authors of the study note how “[h]ealthcare providers can play a crucial role in the trafficking rescue process by identifying possible victims and following up on those suspicions with careful, strategic questions, and actions that catalyze rescue or help create exist strategies.”<sup>97</sup>

Upon the RTA initiative’s passage, abortion activists may seek to challenge and eliminate critical protections for women experiencing IPV or reproductive control such as Florida’s informed consent laws. This is what happened in Michigan after the voters passed a similar version of the RTA initiative. In the following year, the Michigan legislature considered repealing a law that requires doctors to screen for coercion and provide helpful resources to victims of coercive abuse. Proponents of the repeal argued that the law created “barriers” to women’s access to abortion. Floridian could see similar challenges to their current informed consent laws or pushback on any new legislation seeking to protect women from coercive abuse. Eliminating protections against coerced abortions incentivizes abusers to continue forcing women to obtain abortions in order to cover up their violent acts, leaving women unprotected, victimized, and silenced. The RTA initiative aids such abusers by opening the door for the removal of safeguards ensuring informed consent and protecting against coercive abuse.

## VI. The RTA Initiative Furthers the False Narrative that Abortion is Necessary for Women’s Equality in American Society.

By attempting to contrive a “right” to elective abortion, the RTA initiative furthers the narrative that women need abortion in order to secure success and equality in American society. This belief is unfounded and harms women. First, the language used in the RTA

<sup>93</sup> *Id.* at 1.

<sup>94</sup> Laura J. Lederer & Christopher A. Wetzel, *The Health Consequences of Sex Trafficking and Their Implications for Identifying Victims in Healthcare Facilities*, 23 *ANNALS HEALTH L.* 61, 73 (2014).

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> *Id.* at 84.



initiative is deceptive and does not describe the reality of what abortion is. “[T]he proposed amendment implicitly and completely redefines the abortion issue as a ‘patient’s health’ issue without acknowledging what even *Roe* and *Casey* acknowledged: the State’s compelling interest in protecting “the potentiality of human life,” particularly viable pregnancies.”<sup>98</sup> Elective abortion is not a patient health issue nor is it healthcare. It is the intentional destruction of innocent human life. According to the American Association of Pro-life Obstetricians and Gynecologists (“AAPLOG”), “elective abortion is defined as those drugs or procedures used with the primary intent to end the life of the human being in the womb.”<sup>99</sup> Elective abortions are not medically required, as AAPLOG explains, “[e]lective’ . . . refers to inductions done in the absence of some condition of the mother or the fetus which requires separation of the two in order to protect the life of one or the other (or both).”<sup>100</sup> Indeed, “there is no medical indication for elective induced abortion, since it cures no medical disease.”<sup>101</sup>

Additionally, abortion activists often imply that pregnancy is some sort of illness or disability, rather than a natural, physiological process that many women experience. As AAPLOG notes, “[p]regnancy is not a disease, and the killing of human beings in utero is not medical care.”<sup>102</sup> Despite these evident truths, abortion activists continue to push forth false narratives about pregnancy and women’s alleged “need” for abortion. However, the evidence abortion activists rely upon, which “claim[s] to show that abortion has facilitated women’s health and equality is feeble and/or scientifically invalid.”<sup>103</sup> Indeed, “the repetition and acceptance of the ‘equality’ argument for favoring legal abortion” harms women because it “easily communicates that women’s pregnancy and parenting is a disability most females suffer. It explicitly or implicitly assumes that the male body and reproductive model is the norm, to which women should conform in order to achieve ‘agreed’ measures of success—good, well-paying employment outside of the home.”<sup>104</sup>

Pregnancy is neither an illness nor a disability and to imply that it is such discriminates against women. “A system that undervalues both mothering and fathering severely disadvantages women as well as men and children, and interferes with children receiving the care they require.”<sup>105</sup> Additionally, this leads to both a “public and private resistance to accommodating motherhood in employment,” which “leads to additional

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<sup>98</sup> *Advisory Opinion to the Attorney General re: Limiting Government Interference with Abortion*, No. SC2023-1392, 58-59 (Fla. Apr. 1, 2024) (Francis, J., dissenting).

<sup>99</sup> *AAPLOG Statement: Clarification of Abortion Restrictions*, AM. ASS’N PRO-LIFE OBSTETRICIANS & GYNECOLOGISTS (July 14, 2022), <https://aaplog.org/aaplog-statement-clarification-of-abortion-restrictions/>.

<sup>100</sup> Rsch. Comm., Am. Ass’n of Pro-Life Obstetricians & Gynecologists, *Concluding Pregnancy Ethically*, Prac. Guideline No. 10, at 5 (Aug. 2022).

<sup>101</sup> Pro. Ethics Comm., Am. Ass’n of Pro-Life Obstetricians & Gynecologists, *Hippocratic Objection to Killing Human Beings in Medical Practice*, Comm. Op. No. 1, at 8 (May 8, 2017).

<sup>102</sup> *Id.*

<sup>103</sup> Helen M. Alvarez, *Nearly 50 Years Post-Roe v. Wade and Nearing its End: What is the Evidence that Abortion Advances Women’s Health and Equality*, 35 REGENT L. R. 165, 216 (Feb. 2022).

<sup>104</sup> *Id.* at 213.

<sup>105</sup> *Id.* at 214.

disadvantages for women.”<sup>106</sup> “For example, discrimination on the basis of pregnancy and motherhood has succeeded outright discrimination on the basis of sex.”<sup>107</sup>

Floridian women deserve better than to have the abortion industry subject them to deceptive language surrounding abortion, which is a life-altering—and at times, life-threatening—decision. The RTA initiative furthers the abortion industry’s false narratives and efforts to mask the realities of abortion, which is to the detriment of women’s health, safety, success, and equality in America.

## **Conclusion**

Enshrining a “right” to abortion in Florida’s constitution will negatively impact the welfare of women, adolescents, and preborn children in Florida. Recently, Florida Supreme Court Justice Renatha Francis noted the grave ramifications of the amendment in an advisory opinion:

The effects I discern from the parroted-proposed-amendment summary here—which effects are the best evidence of its chief purpose—are fourfold: (1) to immediately abrogate meaningful abortion laws and restrictions; (2) to eliminate any meaningful, future participation by the Legislature by prohibiting any laws on previability abortions and subjecting any laws regulating postviability abortions to a “healthcare provider’s” veto; (3) to—by eliminating the Legislature’s interference—vastly expand the right to abortion at any time during pregnancy as a “health” issue for the mother; and (4) troublingly, to—by ignoring the State’s legitimate interests in protecting life—completely redefine abortion as a health issue in Florida without saying so.<sup>108</sup>

As highlighted by Justice Francis and this policy paper, the RTA initiative targets and undermines the life-affirming policies Floridians fought so hard to implement, potentially leading to the elimination of such laws. Florida’s pro-life policies will be at risk of being replaced with an anti-life culture that threatens the health and safety of Florida residents both inside and outside the womb. Further, having a constitutionally protected “right” to elective abortion will make it difficult for Florida to enact any future protections for women and adolescents seeking abortion, which subjects women to an unregulated, dangerous abortion industry. This amendment does not give “freedom” to women from purported “government interference with abortion” but hands unfettered control and authority to self-interested abortionists who financially benefit from abortion on demand as well as to sex traffickers and abusers who seek to cover up their crimes by forcing their victims to obtain abortions. Elective abortion is not healthcare, and contriving a state constitutional right to abortion will be disastrous for Floridians.

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<sup>106</sup> *Id.* at 214.

<sup>107</sup> *Id.* at 216.

<sup>108</sup> *Advisory Opinion to the Attorney General re: Limiting Government Interference with Abortion*, No. SC2023-1392, 55-56 (Fla. Apr. 1, 2024) (Francis, J., dissenting).