

SC2024-1098

IN THE SUPREME COURT OF FLORIDA

FLORIDIANS PROTECTING FREEDOM, ET AL.,
Petitioners;

V.

KATHLEEN C. PASSIDOMO, ET AL.,
Respondents.

**BRIEF OF AMICI CURIAE
LIBERTY COUNSEL ACTION AND LIBERTY COUNSEL
IN SUPPORT OF RESPONDENTS**

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IDENTITY OF AMICI CURIAE

Amicus Liberty Counsel Action (“LCA”) is a public policy education, training, and advocacy organization with offices in Florida and Washington D.C. Founded in 1986, LCA focuses on advancing the sanctity of human life, the family, religious freedom, and responsible government, national security, and support for Israel at the federal, state, and local levels. LCA spearheads grassroots efforts to influence local and state policy, including initiatives and legislation that conflict with its objectives. As a leading organization in opposing Amendment 4, LCA has an interest in ensuring that the proposed amendment’s Financial Impact Statement accurately reflects the significant financial costs if voters approve the amendment.

Amicus Liberty Counsel is a nonprofit legal advocacy organization with offices in Florida, Virginia, and Washington, DC. As a public interest law firm whose attorneys regularly litigate in Florida courts, every state and territory, and the United States Supreme Court, Liberty Counsel has an interest in the uniformity of Florida laws and respect for the rule of law. Liberty Counsel believes that Amendment 4, if passed, would create chaos in the Florida

judicial system and undermine statutory protections for preborn persons.

Liberty Counsel challenged Amendment 4 before this Court and argued that the Amendment violates the single subject rule, and the title and description are vague and deceptive. *See Advisory Opinion to Attorney General re Limiting Government Interference With Abortion*, 384 So. 3d 122 (Fla. 2024). Liberty Counsel Action filed an amicus brief before this Court arguing that *In re T.W.*, 551 So. 2d 1186 (Fla. 1989), should be overturned, which this Court did in *Planned Parenthood of Southwest & Central Florida v. State*, 384 So. 3d 67 (Fla. 2024).

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SUMMARY OF ARGUMENT

The Court lacks jurisdiction to review the issues presented by Petitioner Floridians Protecting Freedom (the “Sponsor) because it cannot render an opinion on financial impact statements that are separate from an initiative petition. As affirmed in *Advisory Opinion to the Attorney General re Raising Florida’s Minimum Wage*, 285 So.3d 1273 (Fla. 2019), the Court’s jurisdiction is confined to the validity of initiative petitions, not financial impact statements. Additionally, the actions taken by the Senate President and House Speaker to direct

the Financial Impact Estimating Conference (FIEC) to revise the Statement are consistent with section 100.371(13)(c), Fla. Stat., which grants them exclusive interpretative and enforcement authority over the financial impact statement process.

Notwithstanding that the Court lacks jurisdiction to consider the Sponsor's assertion that the revised Statement is "plainly misleading," such an argument is meritless. The revised Statement provided by FIEC complies with section 100.371(13): It is clear and unambiguous, outlines potential outcomes such as increased abortions and decreased live births, addresses potential legal uncertainties, and summarizes the fiscal effect on state and local budgets. The Statement is concise, adhering to the 150-word limit, and ensures voters are well-informed about the amendment's financial implications. The Statement also addresses potential economic impacts, including changes in population metrics and litigation costs, thereby offering a comprehensive and realistic assessment of the amendment's financial consequences.

Finally, if the Court exercises jurisdiction over this Petition, then it should also revisit its decision in *Advisory Opinion to Attorney General re Limiting Government Interference With Abortion*, 384 So.3d

122 (Fla. 2024), and invalidate Amendment 4. Simply put—the Court got it wrong. The proposed amendment is extraordinarily vague, ambiguous, and deliberately deceptive, posing significant risks to the judicial system by abolishing established legal protections for preborn persons and inviting extensive litigation that will consume courts across the state. In the past, this Court has acknowledged the necessity of correcting its mistakes and abandoning decisions that are unsound in principle. This case warrants such a reconsideration.

Amendment 4’s broad, undefined terms conflict with numerous existing statutes, such as those criminalizing acts causing death or injury to unborn children and those providing for the representation of unborn individuals in civil matters. Moreover, the amendment undermines the Florida Constitution, which safeguards the right to enjoy and defend life with due process. Therefore, revisiting the decision allowing Amendment 4 to be placed on the ballot is necessary to prevent chaos in the Florida courts and uphold the integrity of the Florida Constitution.

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ARGUMENT

I. The Court should deny the Petition for lack of jurisdiction and on the merits.

The Petition should be summarily denied because the Court lacks jurisdiction to render an opinion about financial impact statements that are separate from an initiative petition. Indeed, the Petition's entire argument is precluded by the constitutional and statutory limitations of the Court's jurisdiction, as well as the distinct procedural and substantive roles of financial impact statements in the initiative process. Even if the Court were to review the revised Financial Impact Statement, the Sponsors' arguments fail on the merits. The revised Statement complies with all statutory requirements, providing a clear and accurate representation of Amendment 4's likely fiscal impact.

A. As affirmed in *Minimum Wage*, the Court lacks jurisdiction to review the validity of a financial impact statement that is separate from a proposed amendment.

The Petition is a transparent attempt to have this Court strike down the revised Financial Impact Statement, which the Sponsor deems a threat to the passage of its proposed amendment. But the Petition suffers from a glaring defect: This Court lacks jurisdiction to

review the validity of a financial impact statement that is not part of an initiative petition. *Advisory Opinion to the Att’y Gen. re Raising Florida’s Minimum Wage*, 285 So.3d 1273, 1277 (Fla. 2019).

The Court’s jurisdiction is defined in article V, section 3 of the Florida Constitution, which provides that the Court “[s]hall, when requested by the attorney general pursuant to the provisions of Section 10 of Article IV, render an advisory opinion of the justices, addressing issues as provided by general law.” Art. V, § 3(b)(10), Fla. Const. Article IV, section 10 provides that the attorney general “shall, as directed by general law, request the opinion of the justices of the supreme court as to the validity of any initiative petition circulated pursuant to Section 3 of Article XI.” Art. IV, § 10, Fla. Const.

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As this Court observed in *Minimum Wage*, none of the provisions in the Florida Constitution defining the Court’s jurisdiction over citizen initiatives mentions financial impact statements. 285 So.3d at 1278. Although the Legislature “expressly contemplated” the Supreme Court’s review of financial impact statements, this Court observed that such “contemplation does not, in itself, give [the Court] jurisdiction.” *Id.* at 1279. Instead, the scope of the Court’s

jurisdiction is narrowly confined to the validity of initiative petitions.
See id.

The Sponsor’s argument is thus meritless because the revised Financial Impact Statement at issue here is separate from the initiative petition itself. In fact, when the Attorney General petitioned for an advisory opinion concerning the validity of the proposed amendment, she did not seek an opinion on the Financial Impact Statement. *See Advisory Opinion to Att’y Gen. re Limiting Gov’t Interference With Abortion*, 384 So.3d 122 (Fla. 2024). Therefore, the Sponsor’s attempt to conflate the Statement with the initiative petition is baseless.

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To ascertain the Sponsor’s strategy to secure this Court’s review of the Financial Impact Statement, look no further than the Petition. The Sponsor contends that “[t]he revised Statement on its face violates this Court’s precedent” and “plainly misleading” (Pet. 5) and asserts that this Court “should not ... sanction this unlawful outcome” (Pet. 6). The Sponsor is effectively trying to backdoor a challenge to the substance of the Financial Impact Statement.

Not only does the Court lack jurisdiction to consider the validity of the Statement, but the Sponsor’s tactic also circumvents the

established process for addressing such disputes and seeks to undermine the integrity of the Financial Impact Estimating Conference’s (FIEC) role in providing unbiased financial assessments. *See generally* § 100.371(13)(c), Fla. Stat. The Court should reject this indirect challenge to ensure that disputes about independent financial impact statements are addressed through the appropriate statutory mechanisms. *See id.*

B. The Senate President and House Speaker’s direction to the FIEC to revise the Financial Impact Statement was consistent with section 100.371(13).

The Sponsor ~~contends~~ that the Senate President or House Speaker does not have “freewheeling authority to *sua sponte* reconvene the Conference at any time” to revise a financial impact statement. (Pet. 6.) But that argument runs headlong into the text of section 100.371(13), which expressly states that “[t]he President of the Senate and the Speaker of the House of Representatives, jointly, shall be the sole judge for the interpretation, implementation, and enforcement of this subsection.” § 100.371 (13)(c), Fla. Stat. This provision signifies a clear legislative intent to place the responsibility for the financial impact statement process within the legislative branch, including the power to direct revisions as necessary.

Indeed, by designating the Senate President and House Speaker as the “sole judges,” the statute not only grants them interpretative authority but also inherently allows them to direct actions, including revisions, to ensure that a financial impact statement meets the statutory criteria and accurately informs voters about the financial implications of proposed amendments. In short, by vesting such authority in the legislative leaders, the statute delineates who may make decisions about how the subsection is applied and enforced, effectively limiting judicial review to matters of constitutional significance or clear statutory violation.

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C. The revised Financial Impact Statement complies with section 100.371(13).

Notwithstanding that the Court lacks jurisdiction to consider the Sponsor’s argument that the revised Financial Impact Statement is “plainly misleading” (Pet. 5), such an argument is meritless. The revised Statement provided by the FIEC complies with section 100.371(13), Fla. Stat. Under that provision, a financial impact statement must contain “the estimated increase or decrease in any revenues or costs to state or local governments and the overall impact to the state budget resulting from the proposed initiative.” § 100.371

(13)(a), Fla. Stat. Specifically, “[t]he statement must be ‘clear and unambiguous,’ no more than 150 words, and address “the estimated increase or decrease in any revenues or costs to state or local governments, estimated economic impact on the state and local economy, and the overall impact to the state budget resulting from the proposed initiative.” *Minimum Wage*, 285 So.3d at 1279 (quoting Fla. Stat. § 100.371(13)(a), (c)(2)).

The revised Financial Impact Statement complies with section 100.371(13) in all respects. The Statement adheres to the requirement that the statement be clear and unambiguous. It explicitly outlines the potential outcomes of the amendment’s implementation, such as an increase in abortions and the corresponding decrease in live births. And it addresses potential legal uncertainties and their implications for the state budget, including the possibility of increased state expenditures due to litigation. The Statement also meets the statutory length requirement by presenting its analysis in a concise format that does not exceed 150 words, ensuring that it is succinct yet informative.

Additionally, the Statement addresses the potential economic impacts as required by the statute. It discusses the possible effects

of increased abortions on state and local revenues over time, highlighting how changes in population metrics might influence economic growth and public finances. By noting the indeterminate fiscal impact, the Statement highlights potential economic consequences without speculating beyond what can be reasonably estimated.

Furthermore, the Statement's identification of potential litigation costs associated with resolving Amendment 4's statutory ambiguities relates to the inevitable financial burden on the State. This consideration is critical, because it reflects a realistic assessment of the legal challenges that will certainly arise if Amendment 4 is approved, thereby ensuring that voters are aware of the likely future government expenditures.

In conclusion, the Financial Impact Statement complies with section 100.371(13) by clearly articulating the potential financial impacts of the amendment, maintaining brevity, and addressing both direct and indirect economic consequences. It provides voters with essential information required to make an informed decision, fulfilling the statutory objectives of transparency and voter education as to the financial implications of a proposed amendment.

II. If the Court exercises its jurisdiction over the Petition, then it should revisit and invalidate Amendment 4.

If the Court exercises jurisdiction over this Petition, then by the same token it should revisit its decision in *Advisory Opinion to Attorney General re Limiting Government Interference With Abortion*, 384 So. 3d 122 (Fla. 2024), and invalidate Amendment 4. This Court “has been willing to correct its mistakes,” *State v. Poole*, 297 So.3d 487, 506 (Fla. 2020), and it has stated that it will abandon a decision that is “unsound in principle,” *Robertson v. State*, 143 So.3d 907, 910 (Fla. 2014) (quoting *Brown v. Nagelhout*, 84 So.3d 304, 309 (Fla. 2012)). Put simply based on a thorough review of *Limiting Gov’t Interference With Abortion*, and of “[the] state’s laws, constitution, and judicial precedents,” the Court “*got it wrong.*” *Poole*, 297 So.3d at 506 (emphasis added).

A. Amendment 4’s exceptional breadth and vagueness warrants this Court’s immediate intervention.

The revised Financial Impact Statement underscores that Amendment 4 is exceptionally broad and vague, far beyond the question of whether it complies with the constitutional and statutory provisions governing citizen initiatives. *See generally* art. XI, § 3, Fla. Const.; § 101.161(1), Fla. Stat. 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.” This language is extraordinarily expansive, purporting to nullify *any* law that might intersect with abortion, without providing clear definitions or limitations.

As Opponents Florida Voters Against Extremism and Liberty Counsel pointed out in their brief and at oral argument, the phrase “no law shall ... restrict” is especially problematic because it offers no room for legislative regulation of abortion. *See generally* Initial Brief of Florida Voters Against Extremism in Opposition to the Initiative at 10–21, *Advisory Opinion to Att’y Gen. re Limiting Gov’t Interference With Abortion*, No. SC23-1392 (Fla. 2024), Filing No. 185154039; Transcript of Oral Argument, *Advisory Opinion to Att’y Gen. re Limiting Gov’t Interference With Abortion*, 384 So.3d 122 (2024) (No. SC23-1392).

Every law imposes some form of restriction, as the purpose of legislation is to regulate behavior, promote the public good, and protect rights. Whether it is a law requiring informed consent, *see* § 390.0111(3)(a)(1)(a), Fla. Stat., a waiting period, *see* § 390.0111(3)(a)(1), Fla. Stat., or licensing standards, *see*

§ 390.0111(2), Fla. Stat., each of these laws inherently restricts some aspect of abortion access. By categorically prohibiting *any* law from restricting abortion, Amendment 4 essentially declares all existing and future regulations related to abortion null and void. Indeed, the only law that stands to survive is the constitutional provision requiring parental notification before a minor obtains an abortion. See art. X, § 22, Fla. Const.

During oral argument, Justice Canady questioned the difference between Amendment 4's language and the existing constitutional provision stating that "[n]o law shall be passed to restrain or abridge the liberty of speech or of the press." Art. I, § 4, Fla. Const. See Transcript of Oral Argument, *Limiting Gov't Interference With Abortion* (No. SC23-1392). But that comparison overlooks critical distinctions in the historical context of these provisions, particularly regarding voter initiatives and the single-subject rule.

At the outset, the constitutional provision protecting the liberty of speech originates from the framers of the United States Constitution and has undergone extensive judicial interpretation over time, leading to a well-established body of case law that clarifies

its scope and limits. *Cf. Dep't of Educ. v. Lewis*, 416 So.2d 455, 461 (Fla. 1982) (“The scope of the protection accorded to freedom of expression in Florida under article I, section 4 is the same as is required under the First Amendment.”). By contrast, the absence of precedent for Amendment 4 will introduce significant legal uncertainty: Unlike established constitutional provisions that have been subject to decades, if not centuries, of judicial interpretation, Amendment 4 would be entering uncharted territory. The lack of precedent means that Florida courts will have to grapple with numerous interpretative challenges to various statutes without the benefit of prior rulings to guide their decisions.

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Moreover, the process of constitutional amendments through voter initiatives inherently requires a different standard due to the lack of legislative debate and scrutiny. Proposed amendments to the Florida Constitution may be made by a joint resolution of the Florida Legislature, a proposal from the Constitution Revision Commission, a proposal from the Taxation and Budget Reform Commission, or by a citizens’ initiative. *See generally* art. XI, Fla. Const. For citizen initiatives, the single subject rule is a critical requirement that ensures that proposed amendments are clear, focused, and

comprehensible to voters. By encompassing a broad and absolute prohibition on any form of restriction related to abortion, Amendment 4 fails to meet this standard. It addresses multiple issues—prohibiting, penalizing, delaying, or restricting abortion—under the guise of a single subject, thereby violating the single-subject rule designed to prevent voter confusion and ensure informed decision-making. This broad language may be permissible in constitutional provisions proposed during legislative sessions, where rigorous debate and scrutiny can sharpen and define statutory language, but here it is wholly unsuitable for voter initiatives.

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In short, the Court should now take the action it should have taken earlier—invalidate Amendment 4—because it fails to comply with the single-subject rule and violates principles of truth in advertising by being misleading and deceptive. The Amendment’s broad and absolute language, “no law shall prohibit, penalize, delay, or restrict abortion,” encompasses multiple issues, thus violating the constitutional requirement that voter initiatives address only a single subject to avoid voter confusion. *See Fine v. Firestone*, 448 So.2d 984, 988 (Fla. 1984). Moreover, the Amendment’s vague terms and sweeping prohibitions do not provide voters with a clear

understanding of its implications, leading to misleading and deceptive representations about its true impact. Indeed, Amendment 4’s lack of clarity effectively disenfranchises voters by obscuring its far-reaching consequences, making it imperative for the Court to invalidate it.

B. Amendment 4’s deceptive ambiguities and undefined terms will wreak havoc on Florida courts and burden the judicial system.

Not only is Amendment 4 vague and ambiguous; if enacted, it will wreak havoc on the judicial system—namely, by abolishing established legal protections for unborn persons and inviting scores of lawsuits over its undefined terms. “Perpetuating an error in legal thinking under the guise of stare decisis serves no one well and only undermines the integrity and credibility of the court.” *Shepard v. State*, 259 So.3d 701, 707 (Fla. 2018) (quoting *State v. Gray*, 654 So.2d 552, 554 (Fla. 1995)). To be sure, the practical effect of the Court’s decision goes beyond the mere merits of Amendment 4. By approving a proposed constitutional amendment that is rife with broad, undefined terms such as “viability,” “necessary,” and “healthcare provider,” the Court has opened the gate to nullifying numerous existing statutes that protect the rights of the unborn.

The supplemental authority submitted by Opponents Liberty Counsel and Florida Voters Against Extremism highlighted numerous Florida constitutional provisions statutes that will be nullified by Amendment 4's passage. For example, by broadly prohibiting laws that restrict abortion before viability or when necessary to protect the patient's "health," Amendment 4 conflicts with the explicit language and intent of article I, section 2 of the Florida Constitution, which safeguards the right to enjoy and defend life. See art. I, § 2, Fla. Const. Amendment 4 also conflicts with article I, section 9, which guarantees that no person shall be deprived of life, liberty, or property without due process of law. See art. I, § 9, Fla. Const. These conflicts underscore the necessity for this Court to revisit its earlier decision. Upholding a flawed advisory opinion would not only frustrate the will of the people but also contravene the Court's responsibility to interpret the Constitution in a manner that preserves its integrity and original intent. See *Lawnwood Med. Ctr., Inc. v. Seeger*, 990 So.2d 503, 510 (Fla. 2008).

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Amendment 4 will also likely nullify numerous criminal statutes, the effect of which will jeopardize public safety.¹ This disruption extends to civil law as well, such as invalidating statutes providing for the representation of unborn persons in trust and estate matters and guardianship laws that protect the interests of unborn children in cases involving incapacitated mothers.² The Amendment's sweeping language also threatens laws designed to ensure prenatal

¹ See, e.g., § 775.021(5), Fla. Stat. (“Whoever commits an act that violates a provision of this code or commits a criminal offense defined by another statute and thereby causes the death of, or bodily injury to, an unborn child commits a separate offense if the provision or statute does not otherwise specifically provide a separate offense for such death or injury to an unborn child.”); § 782.071, Fla. Stat. (defining “vehicular homicide” as “the killing of a human being, or the killing of an unborn child by any injury to the mother, caused by the operation of a motor vehicle by another in a reckless manner....”); § 782.09(1), Fla. Stat. (“The unlawful killing of an unborn child, by any injury to the mother of such child which would be murder if it resulted in the death of such mother, shall be deemed murder in the same degree as that which would have been committed against the mother.”); *Wyche v. State*, 232 So.3d 1117, 1120 (Fla. 1st DCA 2017) (“The clear and unambiguous language of the feticide statute provides that the killing of an unborn quick child may constitute murder, which is in direct conflict with the common law rule requiring the fetus to be born alive. As such, the Legislature has expressed a clear intent to recognize an unborn quick child as a human being entitled to the protection of Florida’s homicide statute.”).

² See, e.g., § 736.0304, Fla. Stat. (“Unless otherwise represented, a minor, incapacitated, or unborn individual, or a person whose identity or location is unknown and not reasonably ascertainable, may be represented by and bound by another person having a substantially identical interest with respect to the particular question or dispute, but only to the extent there is no conflict of interest between the representative and the person represented.”); § 731.303(4), Fla. Stat. (“If the court determines that representation of the interest would otherwise be inadequate, the court may, at any time, appoint a guardian ad litem to represent the interests of an incapacitated person, an unborn or unascertained person, a minor or any other person otherwise under a legal disability, or a person whose identity or address is unknown.”).

care for pregnant inmates, such as section 951.175(4), Fla. Stat. Furthermore, tort law precedents that recognize the rights of unborn children to recover damages could be undermined. *See McNamara v. Seibert*, 537 So.2d 1009, 1010 (Fla. 5th DCA 1988), *rev'd on other grounds*, 566 So.2d 767 (Fla. 1990).

In all events, unless this Court revisits and recedes from *Limiting Government Interference With Abortion*, Amendment 4's vague and ambiguous language will lead to increased judicial intervention, disrupt established legal protections for unborn children, and result in significant legal uncertainty.

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CONCLUSION

For the foregoing reasons, the Court should deny the Petition.

Dated: August 7, 2024

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served via the Florida Courts E-Filing Portal to counsel for all parties on August 7, 2024.

Dated: August 7, 2024

/s/ Mathew D. Staver

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CERTIFICATE OF COMPLIANCE

I certify that this brief was prepared in 14-point Bookman Old Style font, in compliance with Florida Rule of Appellate Procedure 9.210(a)(2), and does not exceed 20 pages.

/s/ Mathew D. Staver

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