IN THE SUPREME COURT OF FLORIDA
CASE NO. SC15-67

EILEEN HERNANDEZ, M.D. AND
WOMEN'S CARE FLORIDA,
LLC D/B/A PARTNERS IN
WOMEN'S HEALTHCARE,

Petitioners,

v. L.T. Case No. 5D14-0759

LUALHATI CRESPO and
JOSE CRESPO,

Respondents.
_____/

RESPONDENTS' BRIEF ON JURISDICTION

On Review from the District Court of Appeal,
Fifth District, State of Florida

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STATEMENT OF THE CASE AND FACTS

Respondents, Lualhati and Jose Crespo (the "Crespos"), largely agree with Petitioners' statement of the case and facts. However, Petitioners have improperly characterized this Court's holding in *Franks v. Bowers*, 116 So. 3d 1240 (Fla. 2013). In *Franks*, this Court held: "Because the Legislature explicitly found that the [Medical Malpractice Act] was necessary to lower the costs of medical care in this State, we find that any contract that seeks to enjoy the benefits of the arbitration provisions under the statutory scheme must necessarily adopt all of its provisions." *Id.* at 1248.

SUMMARY OF ARGUMENT

This Court should decline to accept jurisdiction of this case for three reasons. First, the case is not important to Floridians and the development of Florida law; it is important only to Petitioners because it concerns the validity of their form arbitration agreement. Second, this case turns on the application of this Court's very recent decision in *Franks v. Bowers*, 116 So. 3d 1240 (Fla. 2013). So far, very few appellate cases have applied *Franks*; therefore, this Court should decline review to allow more case law to first develop on the application of *Franks*. Third, this case can be decided on a fact-specific issue that is unrelated to the conflict issue.

ARGUMENT

I. THIS COURT MAY AND SHOULD DECLINE JURISDICTION.

The Crespos concede that the Fifth District properly certified a conflict, and thus this Court could review this case. But this Court's jurisdiction is not mandatory. It is discretionary. *See* Art. V, § 3(4), Fla. Const.; Harry Lee Anstead et. al., *The Operation and Jurisdiction of the Supreme Court of Florida*, 29 NOVA L. REV. 431, 502, 529 & n. 586 (2005). This Court should not review this case for three reasons. *See* Anstead, *supra* at 485 (discussing how this Court may decline to review a case because it does not present a significant issue).

First, the case is important only to the Petitioners – in particular, Petitioner Women's Care Florida LLC ("Women's Care"). The case is not sufficiently important to Floridians, public policy, or the administration of justice to warrant this Court's scarce resources. Two courts (the Second and Fifth Districts) have come to different conclusions regarding the validity of Women's Care's form arbitration agreement in light of this Court's recent decision in *Franks v. Bowers*, 116 So. 3d 1240 (Fla. 2013). *Compare Crespo v. Hernandez*, 151 So. 3d 495, 496 (Fla. 5th DCA 2014) *with Santiago v. Baker*, 135 So. 3d 569, 570-71 (Fla. 2d DCA 2014). Having this conflict resolved may be important to Women's Care and may assist Women's Care in deciding whether it should continue to use its form arbitration

agreement. But resolving this conflict for Women's Care's benefit will not significantly advance the development of the law for all Floridians.

Second, it is too soon for this Court to address the issue raised in this case. This Court just two years ago addressed the validity of arbitration agreements in medical malpractice cases. *See Franks*, 116 So. 3d at 1240. This Court should allow the district courts of appeal more time and more cases to apply the holding of *Franks* in different factual contexts with different types of agreements. *Franks* involved a form arbitration agreement used by North Florida Surgeons, P.A. *See id.* at 1241; *see also Brown v. N. Fla. Surgeons, P.A.*, 141 So. 3d 1292, 1292 (Fla. 1st DCA 2014) (invalidating arbitration agreement because it was the "same agreement that was invalidated in *Franks*"). The form arbitration agreement at issue in this case and the conflicting case, *Santiago*, is used by Women's Care. *See Crespo*, 151 So. 3d at 496; *Santiago*, 135 So. 3d at 570-71. These two form arbitration agreements from North Florida Surgeons and Women's Care are the only two agreements that have been litigated in the district courts of appeal under this Court's recent *Franks* holding.[1] The development of more case law that applies *Franks* in different factual

[1] Besides the cases mentioned in the text, the only other case from a district court of appeal to cite to *Franks* involved a nursing home arbitration agreement. *See Fi-Evergreen Woods, LLC v. Estate of Vrastil*, 118 So. 3d 859 (Fla. 5th DCA 2013). There, the appellate court mentioned *Franks* in passing to support its holding that a nursing home arbitration agreement – which is not governed by the Medical Malpractice Act – was valid. *See id.* at 863 n.5.

contexts will give this Court a better, richer, and more thorough understanding of the different arbitration agreements impacted by the *Franks* holding and how this Court may want to extend or modify its previous holding in *Franks*.

Third, this case is a poor vehicle for addressing the conflict issue: Whether Women's Care's form arbitration agreement is void for public policy under *Franks*. This case can be decided on an unrelated non-conflict issue that is fact-specific and not discussed in the Fifth District's opinion: Whether the agreement is unenforceable against both Mr. and Mrs. Crespo because Mr. Crespo never consented to the agreement.[2] In other words, even if this Court determines, under the conflict issue, that Women's Care's form arbitration agreement is not void for public policy under *Franks*, the agreement still is unenforceable for a reason unrelated to the conflict issue. *See supra* note 2. This unrelated non-conflict issue was not preserved in the conflicting *Santiago* case from the Second District and thus

[2] Mr. Crespo's claim does not derive from Mrs. Crespo's claims; he is pursuing a negligent stillbirth action for losing his unborn child. *See Tanner v. Hartog*, 696 So. 2d 705, 708 (Fla. 1997) (holding that an action "for negligent stillbirth is a direct common law action by the parents which is different in kind from a wrongful death action"). Accordingly, Mrs. Crespo's consent to the arbitration agreement cannot bind Mr. Crespo. *Cf. Henderson v. Idowu*, 828 So. 2d 451, 453 (Fla. 4th DCA 2002) (holding that a wife was bound by an arbitration agreement signed by her husband because she was bringing a loss-of-consortium claim that derived from her husband's personal-injury claim). Nor can Mrs. Crespo's claim be arbitrated because Women's Care's form agreement expressly provided that all claims by all parties must be arbitrated. This provision was essential and cannot be severed. *See Shotts v. OP Winter Haven, Inc.*, 86 So. 3d 456, 477 (Fla. 2011) (noting that contractual provisions are severable only "where the illegal portion of the contract does not go to its essence").

not addressed there. 135 So. 3d at 570 n.1; *see also id.* at 572 (Alterbernd, J. concurring) (suggesting that had the father in *Santiago* preserved the argument that he did not sign the agreement, he could not constitutionally be required to arbitrate). Accordingly, the Court should not waste scarce judicial resources deciding the conflict issue.

CONCLUSION

This Court should decline to accept jurisdiction of this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing brief is in Times New Roman 14-point font and complies with the font requirements of Rule 9.210(a)(2), Florida Rules of Appellate Procedure.

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