

# FIEC

## *Amendment to Limit Government Interference with Abortion*

23-07

2024  
Book 2

# Financial Impact Estimating Conference

## Amendment to Limit Government Interference with Abortion Serial Number 23-07 Book 2

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**Tab 1**

# **Authorization**

# THE FLORIDA LEGISLATURE



**KATHLEEN PASSIDOMO**  
*President of the Senate*



**PAUL RENNER**  
*Speaker of the House of Representatives*

June 10, 2024

Ms. Amy Baker  
Office of Economic and Demographic Research  
Pepper Building  
111 W Madison St # 574  
Tallahassee, FL 32399

Dear Ms. Baker,

You are hereby directed to convene the Financial Impact Estimating Conference on July 1, 2024, for the purpose of reviewing the Financial Impact Statement for the proposed constitutional amendment entitled "Limiting Government Interference with Abortion," and making changes, if any, the conference deems appropriate.

Respectfully,

A handwritten signature in blue ink, appearing to read "K. Passidomo".

Kathleen Passidomo, President

A handwritten signature in blue ink, appearing to read "P. Renner".

Paul Renner, Speaker

**Tab 2**

# **Notice of Conference**

**NOTICE OF CONFERENCES**  
**FINANCIAL IMPACT ESTIMATING CONFERENCE**

The Financial Impact Estimating Conference (FIEC) will be holding a series of conference meetings regarding the petition initiative entitled “***Amendment to Limit Government Interference with Abortion (23-07)***.” Unless otherwise indicated on the schedule below, all meetings will be held in Room 117, Knott Building, 415 W. St. Augustine Street, Tallahassee, Florida. Once begun, they will continue until completion of the agenda. Due to construction at the capitol, attendees must enter through the Knott Building.

The FIEC is required by s. 100.371, Florida Statutes, to review, analyze, and estimate the financial impact of amendments to or revisions of the State Constitution proposed by initiative. On November 16, 2023, the FIEC issued a financial impact statement regarding the above referenced petition initiative. The purpose of this Notice of Conferences is to consider potential revisions to the financial impact statement to be placed on the ballot that shows the estimated increase or decrease in any revenues or costs to state and local governments resulting from the proposed initiative. The FIEC will also be considering the overall impact to the state budget. All meetings are designated as active sessions of the Conference, and official action may be taken on any of the noticed dates below:

***Amendment to Limit Government Interference with Abortion (23-07)***

- Monday, July 1<sup>st</sup> at 9:00 a.m.
- Monday, July 8<sup>th</sup> at 9:00 a.m.

Any changes to the meeting times shown on this schedule will be posted at the public entry to Room 117 and displayed as a revised notice on the Legislative Office of Economic and Demographic Research’s website at the following link:

<http://edr.state.fl.us/Content/constitutional-amendments/2024Ballot/LimitGovernmentInterferencewithAbortionAdditionalInformation.cfm>

Opportunity will be provided during the meetings for sponsors, interested parties, proponents and opponents of the initiative to address the FIEC regarding the probable financial impact of the initiative. In addition, information may be submitted at any time to the FIEC by contacting the Legislative Office of Economic and Demographic Research at the addresses or phone numbers provided below:

The Florida Legislature  
Office of Economic and Demographic Research  
111 West Madison, Suite 574  
Tallahassee, FL 32399-6588  
Email: [edrcoordinator@leg.state.fl.us](mailto:edrcoordinator@leg.state.fl.us)  
FAX: (850) 922-6436  
MAIN LINE: (850) 487-1402.



**Tab 3**

**Financial Information  
Statement**

**FLORIDA FINANCIAL IMPACT ESTIMATING CONFERENCE**  
***Amendment to Limit Government Interference with Abortion***  
***Serial Number 23-07***  
***November 16, 2023***

**FINANCIAL IMPACT STATEMENT**

The proposed amendment was analyzed late in the 2023 calendar year. At that time, litigation was pending before the Florida Supreme Court challenging the Legislature's 2022 enactment of a prohibition on most abortions being performed if the gestational age of the fetus is more than 15 weeks. If the Court upholds the 2022 law, a 2023 law further reducing the 15 weeks to 6 weeks will take effect 30 days later. This could lead to additional litigation. In order to measure the proposed amendment's impact on state and local government revenues and costs, a reasonable expectation of what the state of the law will be at the time of the election is required. Because there are several possible outcomes related to this litigation that differ widely in their effects, the impact of the proposed amendment on state and local government revenues and costs, if any, cannot be determined.

**SUMMARY OF INITIATIVE FINANCIAL INFORMATION STATEMENT**

One year prior to the election, it is impossible to predict with any reasonable certainty what the legal landscape will be when the proposed amendment is on the ballot in November 2024. When this proposed amendment was analyzed, litigation was pending before the Florida Supreme Court challenging the Legislature's 2022 enactment of a prohibition on most abortions being performed if the gestational age of the fetus is more than 15 weeks. If the Court upholds the 2022 law, a 2023 law further reducing the 15 weeks to 6 weeks will take effect 30 days later. This could lead to additional litigation.

At least four possible outcomes could occur from these events. Not knowing which outcome will be in place makes a material difference to the financial impacts of the proposed amendment, if any. At a minimum, there is a significant difference in the number of abortions that occur up to and including 6 weeks and 15 weeks. This is because the number of abortions by weeks of gestation are skewed towards fewer weeks of gestation. For this reason, budgetary or revenue effects that are limited or undetectable at 15 weeks may be much stronger at 6 weeks.

- With respect to abortions themselves, prior case law in Florida indicates that the state does not have an obligation to pay for them. The Florida Legislature has made no changes to its policies regarding state abortion funding under either the 15-week or 6-week prohibitions. Future legislative changes, if any, in response to the passage of the proposed amendment are unknown.
- Some state programs may be affected by differences in the number of live births in the state. With respect to the education system and health and human services, if the 15-week prohibition is upheld by the Florida Supreme Court, regardless of whether the 6-week prohibition goes into effect, it is probable that the state will experience cost savings because of the proposed amendment. Alternatively, if the 15-week prohibition is not upheld, there would be no savings as the baseline policy would be essentially equivalent to the proposed amendment.
- At least one government program may be affected by the proposed amendment's requirement that no law shall prohibit, penalize, delay, or restrict abortion. If the 15-week prohibition is upheld, regardless of whether the 6-week prohibition goes into effect, it is probable that there will be cost savings to the criminal justice system as certain criminal penalties are invalidated. Alternatively, if the 15-week prohibition is not upheld, there would be no savings within the criminal justice system as the baseline policy would be essentially equivalent to the proposed amendment.

- With respect to state and local revenues, the baseline for the analysis is uncertain. While increased travel to the state would be expected to result in higher sales tax collections, this result, if it occurred, would not be a direct effect of the proposed amendment.

## **SUBSTANTIVE ANALYSIS**

### **A. Proposed Amendment**

#### **Ballot Title:**

*Amendment to Limit Government Interference with Abortion*

#### **Ballot Summary:**

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.

#### **Article and Section Being Created or Amended:**

Creates – Article 1, New Section

#### **Full Text of the Proposed Amendment:**

New Section, Amendment to Limit Government Interference with Abortion

Limiting government interference with abortion.— Except 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.

### **B. Effective Date**

Article XI, Section 5(e), Florida Constitution, states: “Unless otherwise specifically provided for elsewhere in this constitution, if the proposed amendment or revision is approved by vote of at least sixty percent of the electors voting on the measure, it shall be effective as an amendment to or revision of the constitution of the state on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment or revision.”

Assuming the initiative is on the ballot in 2024, the effective date would be January 7, 2025.

### **C. Formal Communications to and from the Sponsor, Proponents, and Opponents**

The Sponsor, Floridians Protecting Freedom, Inc., designated four representatives to speak on its behalf at meetings held by the Financial Impact Estimating Conference (FIEC): Kara Gross, Sara Latshaw, Pamela Burch Fort, and Michelle Morton.

#### **D. Input Received from the Sponsor, Proponents, Opponents, and Interested Parties**

The FIEC allows any proponent, opponent, or interested party to present or provide the conference with materials to consider. The FIEC received input from a designated representative from the Sponsor, both in writing and orally at the first workshop. Follow-up information was submitted by the Sponsor after each of the first two meetings for the FIEC's review and consideration.

In addition, a representative from an opponent, Susan B. Anthony Pro-Life America, presented to the FIEC and submitted written comments. Follow-up information was also submitted. In addition, materials were received from a proponent of the amendment, the Institute for Women's Policy Research, and one opponent of the amendment, The Heritage Foundation.

The FIEC requested and received input and/or materials for staff analysis from the following state agencies: the Agency for Health Care Administration (AHCA), the Department of Children and Families, the Department of Corrections, and the Department of Management Services. A representative from AHCA's Division of Health Care Policy & Oversight also submitted materials and presented to the FIEC on two occasions.

Representatives for both the Florida League of Cities and the Florida Association of Counties were contacted, but no response was received from either organization.

Documentation of all written comments and materials received by the FIEC can be found in the EDR Notebook on the website at: <http://edr.state.fl.us/Content/constitutional-amendments/2024Ballot/LimitGovernmentInterferencewithAbortionNotebook.pdf>

In addition, the public meetings were recorded and archived by The Florida Channel. These recordings may be viewed at: <https://thefloridachannel.org>.

#### **E. Background (Summary of Current Law)**

In 2022, the Legislature passed HB 5 (ch. 2022-69, L.O.F.) prohibiting a physician from performing an abortion if the physician determines the gestational age of the fetus is more than 15 weeks.<sup>1</sup> The bill became law and maintains medical exceptions<sup>2</sup> to the prohibitions that were in effect under prior law while creating a new exception for fatal fetal abnormalities.<sup>3,4</sup> Shortly before the law was to take effect on July 1, 2022, various abortion providers filed a legal challenge to the 15-week prohibition. The case is currently pending before the Florida Supreme Court in *Planned Parenthood of Southwest and Central Florida v. State of Florida*.<sup>5</sup> The law is not enjoined and remains in effect throughout the duration of the pending litigation.

In 2023, the Legislature passed SB 300 (ch. 2023-21, L.O.F.) prohibiting abortions if the gestational age of the fetus is more than 6 weeks. The bill retains the medical and fatal fetal abnormality exceptions and adds exceptions for rape, incest, or human trafficking if the gestational age of the fetus is less than 15 weeks and

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<sup>1</sup> 15 weeks is calculated based upon the first day of the woman's last menstrual period.

<sup>2</sup> The medical exception applies if two physicians, or one physician in the case of an emergency, certify in writing that, in reasonable medical judgment, the termination of the pregnancy is necessary to save the pregnant woman's life or avert a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman other than a psychological condition.

<sup>3</sup> A "fatal fetal abnormality" is a terminal condition that, in reasonable medical judgment, regardless of the provision of life-saving medical treatment, is incompatible with life outside the womb and will result in death upon birth or imminently thereafter.

<sup>4</sup> Section 390.0111, F.S.

<sup>5</sup> The Florida Supreme Court heard oral arguments on September 8, 2023, but to date has not rendered an opinion in this matter.

the pregnant woman provides specified documentation. However, the provisions of SB 300 only take effect if specified events occur that change Florida’s jurisprudence on the privacy clause in the state constitution, which include:

- The Florida Supreme Court:
  - Recedes from its decision in *In Re T.W.*<sup>6</sup> or its progeny; or
  - Determines that the Florida Constitution’s privacy provision does not include abortion; or
  - Rules in favor of the state in the current case challenging the 15-week abortion prohibition (*Planned Parenthood of Southwest and Central Florida v. State of Florida*).

or

- Florida voters adopt a state constitutional amendment clarifying that the right to privacy does not include abortion.

To date, none of these events have occurred, and the provisions of HB 5 remain in effect.

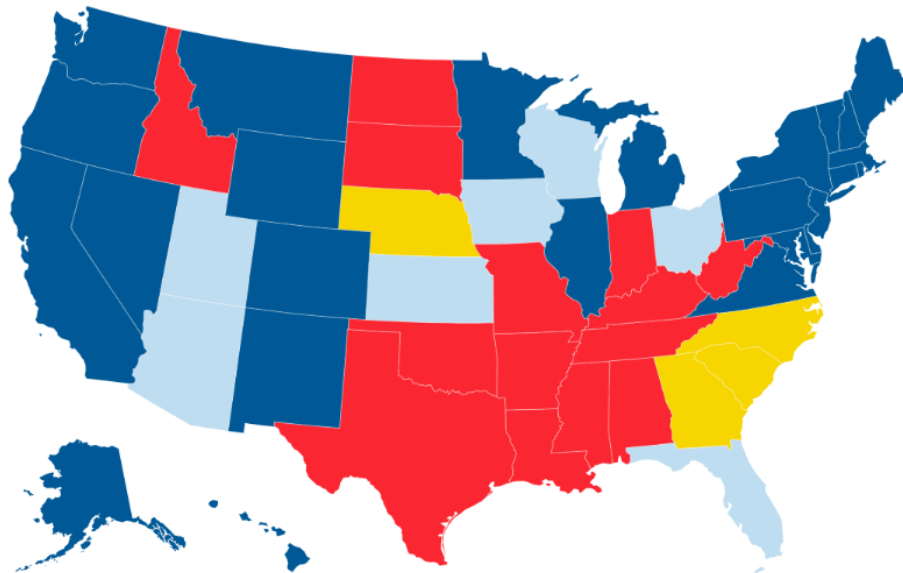
Below is a map showing the status of abortion bans in the United States as of October 24, 2023. This map was extracted from the KFF website on that date and can be found at <https://www.kff.org/womens-health-policy/dashboard/abortion-in-the-u-s-dashboard/#state><sup>7</sup>.

As the map displays, Florida was one of seven states that had an abortion ban with a gestational limit between 15 and 22 week LMP (last menstrual period).

Status of Abortion Bans in the United States as of October 24, 2023

Hover over state for more details

- Abortion Banned (14 states)
- Gestational limit between 6 and 12 weeks LMP (4 states)
- Gestational limit between 15 and 22 weeks LMP (7 states)
- Abortion legal beyond 22 weeks LMP (25 states & DC)



NOTE: LMP = Last Menstrual Period. For more information on state policies, please see our briefs on state actions to protect abortion, states without laws protecting or restricting abortion, our brief on the *Dobbs* case, our KFF State Health Facts page on abortion policies, our brief on legal challenges to state abortion bans, and our brief on abortion ban exceptions. Since the *Dobbs* decision, 25 states have tried to implement a complete ban or a pre-viability ban. In 5 states, these laws are currently blocked by courts. The 25 states are: AL, AZ, AR, FL, GA, ID, IN, IA, KY, LA, MS, MO, NE, NC, ND, OH, OK, SC, SD, TN, TX, UT, WV, WI, and WY. SOURCE: KFF analysis of state policies and court decisions, as of October 24, 2023. • Embed • PNG **KFF**

<sup>6</sup> The Florida Supreme Court held in *In re T.W.* that the express right to privacy contained within Article I, s. 23 of the Florida Constitution “is clearly implicated in a woman’s decision whether or not to continue her pregnancy”.

<sup>7</sup> Formally known as the Kaiser Family Foundation.

## F. Discussion of Impact of Proposed Amendment

### *Potential Conflicts with Current Statutes*

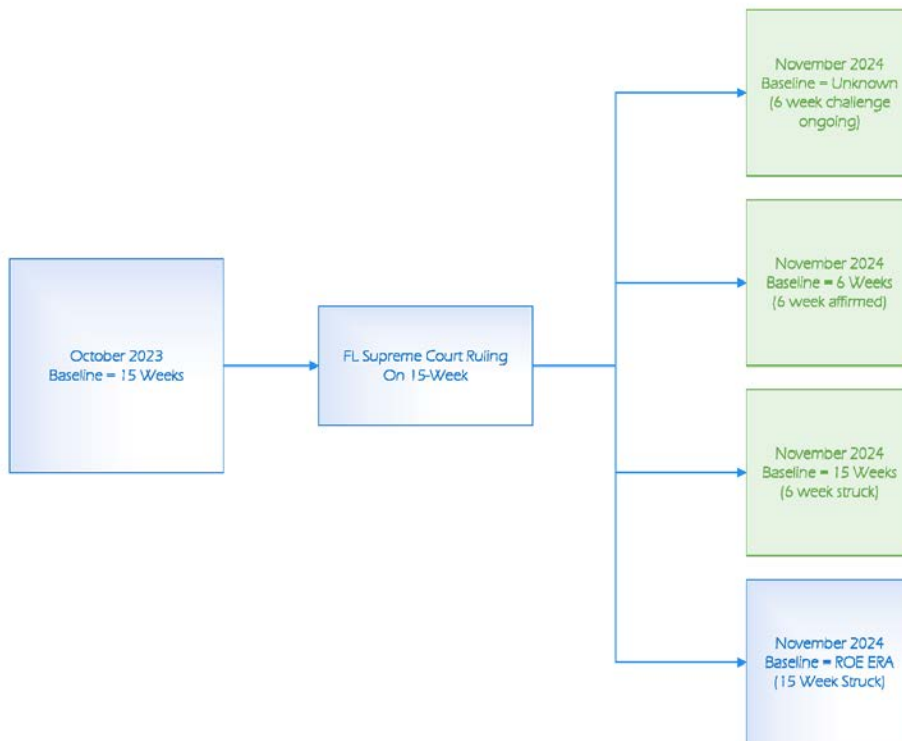
The proposed constitutional amendment would supersede many provisions in Chapter 390, F.S., which are directly related to abortion procedures.

### *Potential Impact of the Amendment*

At the time this analysis was prepared, the 15-week prohibition was in effect. Relative to the 15-week prohibition, the proposed constitutional amendment has the potential to affect the state's costs, primarily through savings. Likewise, the state's revenues may be affected.

The major programs and revenues are described in the remainder of this document; however, to calculate the proposed constitutional amendment's financial impacts, the appropriate baseline for measurement must first be determined. This baseline represents the status quo or pre-change condition. The difference estimated to result from the proposed change (positive or negative) is then determined by measuring the post-change condition against the baseline. An increased cost would be expected to increase or a savings would be expected to decrease the state's budget in the future, while an increase in tax or fee collections would be expected to increase the state's revenue and the opposite would be expected to decrease it in the future. In the case of the proposed amendment, at the time this analysis was prepared, the appropriate baseline for November 2024 was unclear.

The graphic below illustrates both the uncertainty and complexity of the legal landscape that will be in place when the amendment is on the ballot in November 2024.



This legal uncertainty makes a material difference to the potential financial impacts of the proposed amendment. For example, there is a significant difference in the number of abortions that occur up to and

including 6 weeks and 15 weeks. The table below shows the number of reported abortions in Florida by known week of gestation during different calendar years. The 2020 calendar year uses the most recent published data from CDC, while 2021 and 2022 use unpublished data from the Agency for Health Care Administration. The weeks of gestation starting July 1, 2022 use a revised state definition that is calculated from the first day of the pregnant woman’s last menstrual period. Prior to this, the calculation was based on the clinician’s estimate.

Weeks of Gestation	2020		2021		2022 <i>(definitional change)</i>	
	Number	Percent	Number	Percent	Number	Percent
≤6	55,834	74.6	58,136	72.8	46,011	55.7
7–9	11,686	15.6	13,436	16.8	24,015	29.1
10–13	4,768	6.4	5,321	6.7	9,384	11.4
14–15	1,005	1.3	1,140	1.4	1,859	2.3
16–17	652	0.9	734	0.9	527	0.6
18–20	704	0.9	764	1.0	572	0.7
≥21	219	0.3	286	0.4	213	0.3
Total abortions reported by known gestational age	74,868		79,817		82,581	

Percentages may not add to 100.0 due to rounding.

The number of abortions by weeks of gestation are skewed towards fewer weeks of gestation. For this reason, budgetary or revenue effects that are limited or undetectable at 15 weeks of gestation may be much stronger at 6 weeks of gestation.

## State and Local Costs:

### A. Criminal Justice System

Under current law, there are four felonies related to abortion that exist under Chapter 390, F.S. Section 390.0111, F.S., includes a Level 1, 3<sup>rd</sup> degree felony for “any person who willfully performs, or actively participates in, a termination of pregnancy in violation of the requirements of” how pregnancies should be terminated, including when it is permitted to terminate a pregnancy after the gestational age of 15 weeks, and when a partial-birth abortion or experimentation on a fetus is permitted. A Level 4, 2<sup>nd</sup> degree felony is also included for “any person who performs, or actively participates in, a termination of pregnancy in violation of this section or s. 390.01112, F.S., which results in the death of the woman.” Additionally, it includes a Level 1, 3<sup>rd</sup> degree felony for a person who violates the requirements that an infant “born alive during or immediately after an attempted abortion” be treated like “any other child born alive in the course of natural birth.” Section 390.01112, F.S., states that “no termination of pregnancy shall be performed on any human being if the physician determines that, in reasonable medical judgment, the fetus has achieved viability,” with exceptions. Section 390.01114, F.S., includes a Level 1, 3<sup>rd</sup> degree felony for “a physician who intentionally or recklessly performs or induces, or attempts to perform or induce, a termination of a pregnancy of a minor without obtaining the required consent” from a parent or legal guardian.

Given the data available from the Florida Department of Corrections, there have been no commitments to prison for any of the felonies described above—either before or after the enactment of the 2022 legislative change to 15 weeks (ch. 2022-69, L.O.F.).<sup>8</sup> It should be noted that the 15-week language just went into effect last year, and given the time it would take from arrest to adjudication, it is likely that

<sup>8</sup> The data series from the Florida Department of Corrections begins in 1979.

few, if any, current or future offenders would have moved through the criminal justice system at this point.

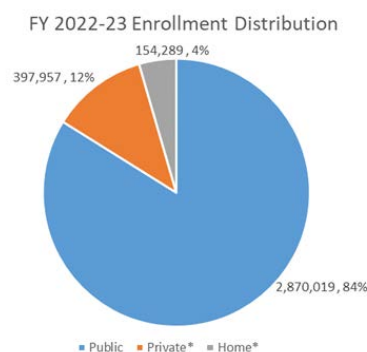
Conclusion: As previously noted, the baseline for the analysis is uncertain. As illustrated in the graphic in Section F of this document, there are scenarios where either a 6-week prohibition or a 15-week prohibition could be in effect in November 2024. In either event, it is probable that there will be cost savings to the criminal justice system. The magnitude of those savings will differ depending on which prohibition (15-week or 6-week) is in effect. Alternatively, if the 15-week prohibition is not upheld, there would be no savings within the criminal justice system as the baseline policy would be essentially equivalent to the proposed amendment. Without knowing these answers, the impact is indeterminate.

## B. Education Services

Florida resident births directly influence the state’s future preschool and school age populations. The initial effects of policies that impact birth rates may be seen in the school system beginning three to four years following the change. The first educational setting that could experience differences would be Florida’s Exceptional Student Education programs, including public schools and the Family Empowerment Scholarship Program for Students with Unique Abilities. In 2022-23, these two programs for three and four year olds with additional needs for learning support served roughly 15 percent of this age group. The next program preschoolers can participate in is Florida’s universal Voluntary Prekindergarten Program (VPK), which serves 65.7 percent of four year olds.

The full-effect of policies that influence birth rates and their interactions with Florida’s schools would begin five to six years following the policy change, once students reach the age of compulsory education. Florida’s school choice landscape would result in the effects of the policies being felt across public, private, and home education settings beginning in Kindergarten. Once students are eligible for Kindergarten, impacts are cumulative – stretching across 13 grades from Kindergarten to 12th grade. After 18 years of policy change, all 15 years of education across three settings (public, private, and home), two key scholarship programs (Family Empowerment Scholarship and Florida Tax Credit Scholarship programs) and five major funding programs (Florida Education Finance Program, VPK within the General Appropriations Act, Florida Tax Credit Scholarship Program, Hope Scholarship Program, and Sales Tax Credit Scholarship Program) would ultimately feel the full effect of policies influencing birth rates.

In FY 2023-24, the typical VPK cost is \$2,839 per student. As of July 2023, the FY 2023-24 statewide funds per unweighted PreK-12 FTE was \$8,668, with average scholarship amounts ranging from \$7,800 for a private school scholarship to \$10,900 for a unique abilities scholarship. Further, costs across the public school setting and scholarship programs depend on the grade, level of needs, and residence of each student.



\*Private and Home education settings include FES and FTC scholarship students



FY 2022-23 through FY 2028-29 Unweighted FTE and Scholarship Forecast							
	FY 2022-23 SE* 4/14/2023	FY 2023-24 Forecast 8/7/2023	FY 2024-25 Forecast 8/7/2023	FY 2025-26 Forecast 8/7/2023	FY 2026-27 Forecast 8/7/2023	FY 2027-28 Forecast 8/7/2023	FY 2028-29 Forecast 8/7/2023
Total PreK-12 FEFP FTE (Excl. Scholarships)	2,832,246	2,867,520	2,871,840	2,872,278	2,861,645	2,862,123	2,865,229
Family Empowerment Scholarship (FES)	155,183	219,790	274,265	324,878	364,761	402,109	437,073
FES-Education Opportunity (EO)	87,402	126,433	156,128	181,194	195,326	206,443	214,744
FES-Unique Ability (UA)	67,781	93,357	118,137	143,684	169,435	195,666	222,329
Florida Tax Credit Scholarship (FTC)	94,518	134,891	114,576	101,721	100,377	99,111	97,840
	* FY 2022-23 SE = recalibrated survey 3 (February 2023) data excluding scholarship FTE, with adjustments to reflect scholarship payment data						

Conclusion: As previously noted, the baseline for the analysis is uncertain. As illustrated in the graphic in Section F of this document, there are scenarios where either a 6-week prohibition or a 15-week prohibition could be in effect in November 2024. In either event, it is probable that there will be cost savings to education services. The magnitude of those savings will differ depending on which prohibition (15-week or 6-week) is in effect. Alternatively, if the 15-week prohibition is not upheld, there would be no savings within education services as the baseline policy would be essentially equivalent to the proposed amendment. Without knowing these answers, the impact is indeterminate.

C. Health and Human Services

Florida offers a wide range of social services to support residents with medical, food, and cash assistance that are partially dependent on Florida’s population and birth rate. While there are programs that are purely federally funded, many programs use a mix of state and federal funding. An example of the latter is the Medicaid program that provides medical assistance to individuals and families to cover or assist in the cost of services that are medically necessary. Another example is the Temporary Cash Assistance program that provides financial assistance to pregnant women in their third trimester and families with dependent children to assist in the payment of rent, utilities and other household expenses. As many of these programs serve children as well as new or expecting mothers, any changes in Florida resident births affect the number of people potentially eligible for these various social services for both the birthed and the birthing.

For children in Florida needing medical assistance, the state offers Medicaid and Kidcare (Title XXI Children’s Health Program—CHIP). Children from birth until their first birthday are eligible for Medicaid if the household income is below 200 percent of the Federal Poverty Level (FPL). After their first birthday, the household income threshold drops to 133 percent of the FPL. Those children remain Medicaid eligible up until their nineteenth birthday (there are special programs for 19 and 20 years old based on a fixed income dollar amount). If household income is above 133 percent but below 300 percent of the FPL, children are eligible for Medikids Title XXI. If household income is above 300 percent, children are eligible for Medikids Full Pay. Eligibility for both Medikids programs covers children until their fifth birthday. From ages 5 to 18 years old, under the same FPL thresholds, children are eligible for Florida Healthy Kids Title XXI or Full Pay. Children in income eligible households with special healthcare needs that require extensive preventive and ongoing care are eligible for the Children’s Medical Services health plan (CMS).

<b>Florida Medicaid and CHIP Income Requirements (Children)</b>	
<b>Medicaid</b>	
Children Under Age 1	200% FPL
Children ages 1 through 18	133% FPL
Parents, Caretakers, Children ages 19-20	Fixed dollar amount
<b>Children's Health Insurance Program (CHIP)</b>	
Medikids (Ages 1-4)	
Title XXI	133% up to 300%
Full Pay	300%
Florida Healthy Kids (Ages 5-18)	
Title XXI	133% up to 300%
Full Pay	300%
CMS	133% up to 300%

With coverage beginning as early as birth, the effects of any changes to the birth rate can be cumulative and varying. Medicaid covers almost one-half of the births (45.47 percent CY 2021) in the state. They maintain that coverage until their first birthday is reached and their eligibility is reassessed. Many remain on Medicaid, move to a CHIP program, or are able to find health insurance elsewhere. As of August 2023, 47.4 percent (2,490,633) of the 5.3 million Medicaid enrollees were under the age of 18 with ages from 0 to five years making up approximately 33 percent of the total under 18. CHIP covers a further 138,293 children under the age of 18 with Medikids covering 12,281, Healthy Kids covering 118,281 and CMS covering 7,731. It should also be noted that the federal Public Health Emergency (PHE) significantly affected enrollment leading into this period. The tables below show current enrollment as of August 2023 and December 2019, the month before the PHE retroactively went into effect (the PHE began in March 2020 but continuous enrollment was retroactive to January 1, 2020).

<b>Florida Medicaid Enrollment by Age Group and Date</b>				
Group	8/31/2023		12/31/2019	
	Enrolled	% of Total	Enrolled	% of Total
Ages 0-5	827,024	15.7%	769,120	19.9%
Ages 6 -10	661,289	12.6%	543,814	14.1%
Ages 11-18	1,002,320	19.1%	770,549	19.9%
Total 0-18	2,490,633	47.4%	2,083,483	53.9%
Total	5,254,460	100.0%	3,868,723	100.0%

<b>Florida Children's Health Insurance Program (CHIP) Enrollment by Age Group and Date</b>					
	MK XXI	MK Full Pay	HK XXI	HK Full pay	CMS
	9/30/2023				
Ages 1-5	9,014	3,267	-	-	574
Ages 6-10	-	-	28,709	8,540	2,458
Ages 11-18	-	-	67,614	13,418	4,699
12/31/2019					
Ages 1-5	31,830	8,847	-	-	1,196
Ages 6-10	-	-	63,334	6,939	4,102
Ages 11-18	-	-	129,784	9,614	8,227

While children under the age of 18 make up almost one-half of the Medicaid enrollees, they account for approximately a quarter of the total Medicaid expenditure. In SFY 2021-22, children were 49.06 percent of enrollees and 24.5 percent of expenditures. The 2023 Rate Year (October 2022 – September 2023) statewide average MMA capitation rate for a child between the age of one month and eleven months without a serious mental illness (SMI) was \$274.25 per month (\$3,291.00 per year). For a similar child between a year and 13 years old, that rate was \$134.86 per month (\$1,618.32 per year). There are

circumstances where the expenditure on a child is higher than these statewide averages. Children on the CMS plan typically have higher per person per month expenditures, but they account for a small portion of the total children on Medicaid.

As mentioned above, Medicaid covers a significant number of the births in Florida (see table below). There is also pre- and postnatal public assistance for the mothers. Medical assistance for pregnant women is available through various Medicaid programs. A pregnant woman who is eligible for regular Medicaid (income below 185 percent FPL) for at least one month, including a retroactive month, is eligible to receive Medicaid throughout her pregnancy and until the end of the 12th month after the birth (postpartum period). The family planning waiver program covers family planning services to eligible women, ages 14 through 55. Services are provided up to 24 months. Eligibility is limited to women with family incomes at or below 191 percent of the FPL who have lost or are losing Florida Medicaid State Plan eligibility and are not otherwise eligible for Medicaid, Children’s Health Insurance Program, or health insurance coverage that provides family planning services.

Recipients losing SOBRA (pregnancy Medicaid) eligibility will have passive enrollment during the first 12 months of losing Medicaid. Non-SOBRA women have to actively apply for the first year of benefits at their local county health departments. All women enrolled in the family planning waiver have active re-determination of eligibility through their local county health departments after 12 months of family planning waiver eligibility. In order to receive the second year of benefits, recipients must reapply at their local county health departments.

As of August 2023, there were 333,510 individuals receiving Medicaid or the Family Planning waiver to assist with the pregnancies. Of the total, 150,546 receive Pregnant Women Medicaid and 182,964 utilize the Family Planning Waiver.

CY	Medicaid	Total	Rate
2017	109,225	223,579	48.85%
2018	106,695	221,508	48.17%
2019	102,636	220,010	46.65%
2020	98,018	209,645	46.75%
2021	98,297	216,189	45.47%

	SOBRA PREGNANT WOMEN UP TO 100% FPL	SOBRA PREGNANT WOMEN OVER 100% OF FPL UP TO 185% OF FPL	Family Planning Waiver	Total
8/31/2023	114,432	36,043	182,964	333,439
% of Total	34.32%	10.81%	54.87%	100.00%
12/31/2019	67,810	19,124	69,250	156,184
% of Total	43.42%	12.24%	44.34%	100.00%

The Temporary Assistance for Needy Families – Temporary Cash Assistance (TCA) program provides cash assistance to families with children under the age of 18 or under age 19 if full time secondary (high school) school students. The program helps families become self-supporting while allowing children to remain in their own homes. Pregnant women may also receive TCA, either in the third trimester of pregnancy if unable to work, or in the 9th month of pregnancy. Eligibility for the TCA program is similar

to Medicaid eligibility with a few other technical requirements. Gross income must be less than 185 percent of the FPL and countable income cannot be higher than the payment standard for the family size. Individuals get a \$90 deduction from their gross earned income. Some people must participate in work activities unless they meet an exemption. Regional Workforce Boards provide work activities and services needed to get or keep a job. Individuals who receive TCA are eligible for Medicaid. Individuals who are eligible for TCA, but choose not to receive it, may still be eligible for Medicaid. Florida law creates four categories of families who may be eligible for TCA. While many of the basic eligibility requirements apply to all of these categories, there are some distinctions between the categories in terms of requirements and restrictions:

- **Child-Only Families:** These families include situations where the child is living with a relative or situations where a custodial parent is not eligible to be included in the eligibility group.
- **Relative Caregiver Program:** A specialized program for child-only families where the child has been adjudicated dependent due to abuse or neglect and has been placed with a grandparent or other relative by the court. These relatives are eligible for a payment that is higher than the typical child-only payment, but less than the payment for licensed foster care
- **Single-Family Parents with Children:** Parents with children can receive cash assistance for the parent and the children.
- **Two-Parent Families with Children:** Are eligible on the same basis as single-parent families except the work requirement for two-parent families includes a higher number of hours of participation per week (35 hours or 55 hours if childcare is subsidized) than required for single-parent families (30 hours).

In FY 2022-23, these four programs assisted 67,224 individuals (in FY 2019-20 that number was 61,260). Both the Child-Only Families and Relative Caregiver programs have experienced steady declines in terms of cases and persons served. The other two programs have seen increases over the last few fiscal years that are mostly driven by increased activity among non-citizens seeking assistance.

Temporary Cash Assistance by Program and Date		
Programs	FY 2022-23	FY 2019-20
Child Only Cases	13,840	19,191
Relative Caregiver	9,495	16,461
Single-Family Parents with Children	21,613	22,884
Unemployed Two-Parent Families with Children Parent	22,276	2,723
<b>Total</b>	<b>67,224</b>	<b>61,260</b>

Looking at the age groups served by the TCA programs, ages six and over represent the majority of those receiving assistance (approximately 70 percent). Children from birth to 5 years old make up a smaller proportion of TCA recipients, but are usually also receiving other forms of public assistance as well. While these individuals are treated separately from Medicaid, they are included in the total caseload counts reported each month.

Temporary Cash Assistance by Age and Date				
	9/30/2023		12/31/2019	
	Eligible	%total	Eligible	%total
Age 0 to 5	12,795	29%	16,014	32%
Age 6 to 12	18,755	42%	21,137	42%
Age 13 to 17	13,209	30%	12,989	26%
Total	44,759	100%	50,140	100%

Finally, the foster care system in Florida serves children from birth until their 18<sup>th</sup> birthday. There are specialty programs to extend foster care services to those older than eighteen, but the majority of those receiving these services are seventeen or younger. In 2022, 24,245 children (aged 0-17) received foster care services. These services are federally funded through Title IV of the Social Security Act with matching state funds (similar to Medicaid and CHIP). Title IV-E provides federal funding to help provide foster care, independent living services, adoption assistance, and guardianship assistance. Like all states that receive Title IV-E funds for foster care, independent living services, adoption assistance, and guardianship assistance, Florida must follow a Title IV-E State Plan.

Conclusion: As previously noted, the baseline for the analysis is uncertain. As illustrated in the graphic in Section F of this document, there are scenarios where either a 6-week prohibition or a 15-week prohibition could be in effect in November 2024. In either event, it is probable that there will be cost savings to health and human services. The magnitude of those savings will differ depending on which prohibition (15-week or 6-week) is in effect. Alternatively, if the 15-week prohibition is not upheld, there would be no savings within health and human services as the baseline policy would be essentially equivalent to the proposed amendment. Without knowing these answers, the impact is indeterminate.

**D. Federal and State Funds for Abortion**

First passed in 1976, the Hyde Amendment refers to annual funding restrictions that Congress has regularly included in the annual appropriations acts for the Departments of Labor, Health and Human Services, Education, and related agencies.

The most recently enacted version of the Hyde Amendment (P.L. 117-103. Div. H, §§ 506–507), applicable for federal fiscal year 2022, prohibits covered funds to be expended for any abortion or to provide health benefits coverage that includes abortion. This restriction, however, does not apply to abortions of pregnancies that are the result of rape or incest (“rape or incest exception”), or where a woman would be in danger of death if an abortion were not performed (“life-saving exception”).

As a statutory provision included in annual appropriations acts, Congress can modify, and has modified, the Hyde Amendment’s scope over the years, both as to the parameters of exceptions and the sources of funding subject to this restriction.

The Hyde Amendment would continue to restrict the use of federal Medicaid funds even with the adoption of the proposed Florida constitutional amendment. While some states have elected to provide coverage for abortions that are not medically necessary, these states do so through the use of state funds, not federal funds that are restricted by the Hyde Amendment.

In Florida, the issue of whether there is a state coverage obligation under the current privacy clause of the Florida Constitution was previously litigated - see, *Renee B. v. Florida Agency for Health Care*

*Administration*, 790 So. 2d 1036 (Fla. 2001). The Florida Supreme Court held that the Legislature’s choice not to fund abortions with state funds did not violate the right to privacy in the Florida Constitution, specifically noting: “[t]here is a big difference between a government making a decision not to fund the exercise of a constitutional right and doing something affirmatively to prohibit, restrict, or interfere with it” (quoting, *Renee B.*, No. 97–3983 (Fla.2d Cir.Ct. Oct. 9, 1998)).

Conclusion: Under current law, the state does not have an obligation to pay for abortions. The proposed constitutional amendment does not expressly create a new obligation for the state to pay for abortions. The Florida Legislature has made no changes to its policies regarding state abortion funding under either the 15-week or 6-week prohibitions. Future legislative changes, if any, in response to the passage of the proposed amendment are unknown.

## **State and Local Revenues:**

### *Revenue Impact from Out-of-State Abortions Occurring in Florida*

In the post-Roe landscape, where many states have enacted stricter regulations on abortion, many people seeking an abortion are traveling across state lines to get the medical care they want. In 2020, approximately 9 percent of all abortions in the United States were obtained by individuals traveling across state lines.<sup>9</sup> This percentage has increased dramatically. For example, in Illinois, where abortion laws are not restrictive, one abortion clinic reported a 700 percent increase in out-of-state abortions in the 11 months after *Roe vs Wade* was overturned.<sup>10</sup> Illinois has seen a 28 percent increase in abortions from April 2022 to August 2022 for the entire state.<sup>11</sup> This documented increase in abortion travel has been witnessed in several states, including Colorado, Kansas, and New Mexico.

Geographically, the most restrictive region in the United States is the Southeast. A 2022 study of the estimated travel time to the nearest abortion clinic found Texas, Louisiana, Mississippi, Alabama, and Arkansas to have the longest travel times to the nearest abortion clinic that did post-6 week abortions.<sup>12</sup> For example, the study estimated that the nearest abortion clinic to a Louisiana resident was a 9.61 hour drive.<sup>13</sup> With its 15-week threshold, Florida could be a destination for abortion travel since it is located within the Southeast region. To the extent that atypical travel to Florida has occurred or will occur, it generates additional sales tax collections.

In 2022, Florida reported 82,581 abortions.<sup>14</sup> Of those 82,581 abortions, 6,726 were related to out-of-state individuals.<sup>15</sup> When compared to 2021, total abortions increased by 3 percent, but out-of-state abortions increased by 38 percent. While this signals that more individuals are traveling to Florida for abortions, the total level of out-of-state abortions remains low. In comparison, Florida’s total visitors in 2022 reached approximately 137.6 million.<sup>16</sup>

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<sup>9</sup> <https://www.gutmacher.org/article/2022/07/even-roe-was-overturned-nearly-one-10-people-obtaining-abortion-traveled-across>

<sup>10</sup> <https://www.plannedparenthood.org/reproductive-health-services-planned-parenthood-st-louis-region/press-releases/post-dobbs-planned-parenthood-sees-700-increase-in-abortion-patients-traveling-to-illinois-from-outside-the-bi-state-region-for-care>

<sup>11</sup> <https://ci3.uchicago.edu/il-abortion-stats/>

<sup>12</sup> Rader, Benjamin, “Estimated Travel Time and Spatial Access to Abortion Facilities in the US Before and After the *Dobbs v Jackson Women’s Health Decision*” Published: November 1, 2022. *Journal of American Medical Association*.

<sup>13</sup> *Ibid.*

<sup>14</sup> <https://ahca.myflorida.com/health-care-policy-and-oversight/bureau-of-central-services/frequently-requested-data>

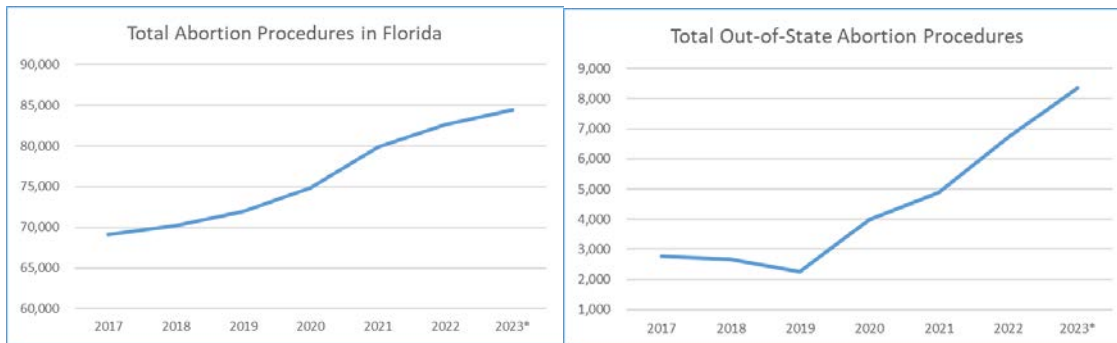
<sup>15</sup> *Ibid.*

<sup>16</sup> <https://www.visitflorida.org/resources/research/research-faq/>

For 2023, only nine months of data are currently available. To project the 2023 annual number, the growth rate between 2023Q1-Q3 and 2022Q1-Q3 was used to grow the 2022Q4 level, producing an estimate for 2023Q4. This estimate was then added to the data for the current year. The results indicate a small increase in total abortions (2 percent growth) and a significant increase in out-of-state abortions (24 percent growth). Charts and graphs of Florida’s abortion data can be found below.

Florida Abortion Statistics				
Year	Total	Growth	Out-of-State	Growth
2017	69,102	-	2,771	-
2018	70,239	2%	2,654	-4%
2019	71,914	2%	2,256	-15%
2020	74,868	4%	3,988	77%
2021	79,817	7%	4,873	22%
2022	82,581	3%	6,726	38%
2023*	84,263	2%	8,351	24%

\* 2023 Data is a forecast based-on the first 9 months of data and an estimate of Q4 data.



The data from Florida is inconclusive. While the state has seen an increase in out-of-state abortions since Roe vs Wade was overturned, Florida also saw a significant increase in out-of-state abortions prior to that decision. It is not clear that the current increase is related to Florida’s position (legally and geographically) relative to the other states in the Southeast.

Conclusion: As previously noted, the baseline for the analysis is uncertain. While atypical travel to the state would be expected to result in higher sales tax collections, this result would not be a direct effect of the proposed amendment.

**Tab 4**

# **Law Relating to FIECs**



**100.371 Initiatives; procedure for placement on ballot. –**

(1) Constitutional amendments proposed by initiative shall be placed on the ballot for the general election, provided the initiative petition has been filed with the Secretary of State no later than February 1 of the year the general election is held. A petition shall be deemed to be filed with the Secretary of State upon the date the secretary determines that valid and verified petition forms have been signed by the constitutionally required number and distribution of electors under this code.

(2) The sponsor of an initiative amendment shall, prior to obtaining any signatures, register as a political committee pursuant to s. [106.03](#) and submit the text of the proposed amendment to the Secretary of State, with the form on which the signatures will be affixed, and shall obtain the approval of the Secretary of State of such form. The Secretary of State shall adopt rules pursuant to s. [120.54](#) prescribing the style and requirements of such form. Upon filing with the Secretary of State, the text of the proposed amendment and all forms filed in connection with this section must, upon request, be made available in alternative formats.

(3)(a) A person may not collect signatures or initiative petitions for compensation unless the person is registered as a petition circulator with the Secretary of State.

(b) A citizen may challenge a petition circulator's registration under this section by filing a petition in circuit court. If the court finds that the respondent is not a registered petition circulator, the court may enjoin the respondent from collecting signatures or initiative petitions for compensation until she or he is lawfully registered.

(4) An application for registration must be submitted in the format required by the Secretary of State and must include the following:

(a) The information required to be on the petition form under s. [101.161](#), including the ballot summary and title as approved by the Secretary of State.

(b) The applicant's name, permanent address, temporary address, if applicable, and date of birth.

(c) An address in this state at which the applicant will accept service of process related to disputes concerning the petition process, if the applicant is not a resident of this state.

(d) A statement that the applicant consents to the jurisdiction of the courts of this state in resolving disputes concerning the petition process.

(e) Any information required by the Secretary of State to verify the applicant's identity or address.

(5) All petitions collected by a petition circulator must contain, in a format required by the Secretary of State, a completed Petition Circulator's Affidavit which includes:

(a) The circulator's name and permanent address;

(b) The following statement, which must be signed by the circulator:

By my signature below, as petition circulator, I verify that the petition was signed in my presence. Under penalties of perjury, I declare that I have read the foregoing Petition Circulator's Affidavit and the facts stated in it are true.

(6) The division or the supervisor of elections shall make hard copy petition forms or electronic portable document format petition forms available to registered petition circulators. All such forms must contain information identifying the petition circulator to which the forms are provided. The division shall maintain a database of all registered petition circulators and the petition forms assigned to each. Each supervisor of elections shall provide to the division information on petition forms assigned to and received from petition circulators. The information must be provided in a format and at times as required by the division by rule. The division must update information on petition forms daily and make the information publicly available.

(7)(a) A sponsor that collects petition forms or uses a petition circulator to collect petition forms serves as a fiduciary to the elector signing the petition form, ensuring that any petition form entrusted to the petition circulator shall be promptly delivered to the supervisor of elections within 30 days after the elector signs the form. If a petition form collected by any petition circulator is not promptly delivered to the supervisor of elections, the sponsor is liable for the following fines:

1. A fine in the amount of \$50 for each petition form received by the supervisor of elections more than 30 days after the elector signed the petition form or the next business day, if the office is closed. A fine in the amount of \$250 for each petition form received if the sponsor or petition circulator acted willfully.

2. A fine in the amount of \$500 for each petition form collected by a petition circulator which is not submitted to the supervisor of elections. A fine in the amount of \$1,000 for any petition form not submitted if the sponsor or petition circulator acted willfully.

(b) A showing by the sponsor that the failure to deliver the petition form within the required timeframe is based upon force majeure or impossibility of performance is an affirmative defense to a violation of this subsection. The fines described in this subsection may be waived upon a showing that the failure to deliver the petition form promptly is based upon force majeure or impossibility of performance.

(8) If the Secretary of State reasonably believes that a person or entity has committed a violation of this section, the secretary may refer the matter to the Attorney General for enforcement. The Attorney General may institute a civil action for a violation of this section or to prevent a violation of this section. An action for relief may include a permanent or temporary injunction, a restraining order, or any other appropriate order.

(9) The division shall adopt by rule a complaint form for an elector who claims to have had his or her signature misrepresented, forged, or not delivered to the supervisor. The division shall also adopt

rules to ensure the integrity of the petition form gathering process, including rules requiring sponsors to account for all petition forms used by their agents. Such rules may require a sponsor or petition circulator to provide identification information on each petition form as determined by the department as needed to assist in the accounting of petition forms.

(10) The date on which an elector signs a petition form is presumed to be the date on which the petition circulator received or collected the petition form.

(11)(a) An initiative petition form circulated for signature may not be bundled with or attached to any other petition. Each signature shall be dated when made and shall be valid until the next February 1 occurring in an even-numbered year for the purpose of the amendment appearing on the ballot for the general election occurring in that same year, provided all other requirements of law are met. The sponsor shall submit signed and dated forms to the supervisor of elections for the county of residence listed by the person signing the form for verification of the number of valid signatures obtained. If a signature on a petition is from a registered voter in another county, the supervisor shall notify the petition sponsor of the misfiled petition. The supervisor shall promptly verify the signatures within 60 days after receipt of the petition forms and payment of a fee for the actual cost of signature verification incurred by the supervisor. However, for petition forms submitted less than 60 days before February 1 of an even-numbered year, the supervisor shall promptly verify the signatures within 30 days after receipt of the form and payment of the fee for signature verification. The supervisor shall promptly record, in the manner prescribed by the Secretary of State, the date each form is received by the supervisor, and the date the signature on the form is verified as valid. The supervisor may verify that the signature on a form is valid only if:

1. The form contains the original signature of the purported elector.
2. The purported elector has accurately recorded on the form the date on which he or she signed the form.
3. The form sets forth the purported elector's name, address, city, county, and voter registration number or date of birth.
4. The purported elector is, at the time he or she signs the form and at the time the form is verified, a duly qualified and registered elector in the state.
5. The signature was obtained legally, including that if a paid petition circulator was used, the circulator was validly registered under subsection (3) when the signature was obtained.

The supervisor shall retain all signature forms, separating forms verified as valid from those deemed invalid, for at least 1 year following the election for which the petition was circulated.

(b) Each supervisor shall post the actual cost of signature verification on his or her website and may increase such cost, as necessary, on February 2 of each even-numbered year. The division shall also

publish each county's current cost on its website. The division and each supervisor shall biennially review available technology aimed at reducing verification costs.

(c) On the last day of each month, or on the last day of each week from December 1 of an odd-numbered year through February 1 of the following year, each supervisor shall post on his or her website the total number of signatures submitted, the total number of invalid signatures, the total number of signatures processed, and the aggregate number of verified valid signatures and the distribution of such signatures by congressional district for each proposed amendment proposed by initiative, along with the following information specific to the reporting period: the total number of signed petition forms received, the total number of signatures verified, the distribution of verified valid signatures by congressional district, and the total number of verified petition forms forwarded to the Secretary of State.

(12) The Secretary of State shall determine from the signatures verified by the supervisors of elections the total number of verified valid signatures and the distribution of such signatures by congressional districts, and the division shall post such information on its website at the same intervals specified in paragraph (11)(c). Upon a determination that the requisite number and distribution of valid signatures have been obtained, the secretary shall issue a certificate of ballot position for that proposed amendment and shall assign a designating number pursuant to s. [101.161](#).

(13)(a) At the same time the Secretary of State submits an initiative petition to the Attorney General pursuant to s. [15.21](#), the secretary shall submit a copy of the initiative petition to the Financial Impact Estimating Conference. Within 75 days after receipt of a proposed revision or amendment to the State Constitution by initiative petition from the Secretary of State, the Financial Impact Estimating Conference shall complete an analysis and financial impact statement to be placed on the ballot of 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. The 75-day time limit is tolled when the Legislature is in session. The Financial Impact Estimating Conference shall submit the financial impact statement to the Attorney General and Secretary of State. If the initiative petition has been submitted to the Financial Impact Estimating Conference but the validity of signatures has expired and the initiative petition no longer qualifies for ballot placement at the ensuing general election, the Secretary of State must notify the Financial Impact Estimating Conference. The Financial Impact Estimating Conference is not required to complete an analysis and financial impact statement for an initiative petition that fails to meet the requirements of subsection (1) for placement on the ballot before the 75-day time limit, including any tolling period, expires. The initiative petition may be resubmitted to the Financial Impact Estimating Conference if the initiative petition meets the requisite criteria for a subsequent general election cycle. A new Financial Impact Estimating Conference shall be established at such time as the initiative petition again satisfies the criteria in s. [15.21](#)(1).

(b) Immediately upon receipt of a proposed revision or amendment from the Secretary of State, the coordinator of the Office of Economic and Demographic Research shall contact the person identified as the sponsor to request an official list of all persons authorized to speak on behalf of the named sponsor and, if there is one, the sponsoring organization at meetings held by the Financial Impact Estimating Conference. All other persons shall be deemed interested parties or proponents or opponents of the initiative. The Financial Impact Estimating Conference shall provide an opportunity for any representatives of the sponsor, interested parties, proponents, or opponents of the initiative to submit information and may solicit information or analysis from any other entities or agencies, including the Office of Economic and Demographic Research.

(c) All meetings of the Financial Impact Estimating Conference shall be open to the public. The 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.

1. The Financial Impact Estimating Conference is established to review, analyze, and estimate the financial impact of amendments to or revisions of the State Constitution proposed by initiative. The Financial Impact Estimating Conference shall consist of four principals: one person from the Executive Office of the Governor; the coordinator of the Office of Economic and Demographic Research, or his or her designee; one person from the professional staff of the Senate; and one person from the professional staff of the House of Representatives. Each principal shall have appropriate fiscal expertise in the subject matter of the initiative. A Financial Impact Estimating Conference may be appointed for each initiative.

2. Principals of the Financial Impact Estimating Conference shall reach a consensus or majority concurrence on a clear and unambiguous financial impact statement, no more than 150 words in length, and immediately submit the statement to the Attorney General. Nothing in this subsection prohibits the Financial Impact Estimating Conference from setting forth a range of potential impacts in the financial impact statement. Any financial impact statement that a court finds not to be in accordance with this section shall be remanded solely to the Financial Impact Estimating Conference for redrafting. The Financial Impact Estimating Conference shall redraft the financial impact statement within 15 days.

3. If the Supreme Court has rejected the initial submission by the Financial Impact Estimating Conference and no redraft has been approved by the Supreme Court by 5 p.m. on the 75th day before the election, the following statement shall appear on the ballot: "The impact of this measure, if any, has not been determined at this time."

(d) The financial impact statement must be separately contained and be set forth after the ballot summary as required in s. [101.161\(1\)](#).

1. If the financial impact statement projects a net negative impact on the state budget, the ballot must include the statement required by s. [101.161\(1\)\(b\)](#).

2. If the financial impact statement projects a net positive impact on the state budget, the ballot must include the statement required by s. [101.161\(1\)\(c\)](#).

3. If the financial impact statement estimates an indeterminate financial impact or if the members of the Financial Impact Estimating Conference are unable to agree on the statement required by this subsection, the ballot must include the statement required by s. [101.161\(1\)\(d\)](#).

(e)1. Any financial impact statement that the Supreme Court finds not to be in accordance with this subsection shall be remanded solely to the Financial Impact Estimating Conference for redrafting, provided the court's advisory opinion is rendered at least 75 days before the election at which the question of ratifying the amendment will be presented. The Financial Impact Estimating Conference shall prepare and adopt a revised financial impact statement no later than 5 p.m. on the 15th day after the date of the court's opinion.

2. If, by 5 p.m. on the 75th day before the election, the Supreme Court has not issued an advisory opinion on the initial financial impact statement prepared by the Financial Impact Estimating Conference for an initiative amendment that otherwise meets the legal requirements for ballot placement, the financial impact statement shall be deemed approved for placement on the ballot.

3. In addition to the financial impact statement required by this subsection, the Financial Impact Estimating Conference shall draft an initiative financial information statement. The initiative financial information statement should describe in greater detail than the financial impact statement any projected increase or decrease in revenues or costs that the state or local governments would likely experience if the ballot measure were approved. If appropriate, the initiative financial information statement may include both estimated dollar amounts and a description placing the estimated dollar amounts into context. The initiative financial information statement must include both a summary of not more than 500 words and additional detailed information that includes the assumptions that were made to develop the financial impacts, workpapers, and any other information deemed relevant by the Financial Impact Estimating Conference.

4. The Department of State shall have printed, and shall furnish to each supervisor of elections, a copy of the summary from the initiative financial information statements. The supervisors shall have the summary from the initiative financial information statements available at each polling place and at the main office of the supervisor of elections upon request.

5. The Secretary of State and the Office of Economic and Demographic Research shall make available on the Internet each initiative financial information statement in its entirety. In addition, each supervisor of elections whose office has a website shall post the summary from each initiative financial information statement on the website. Each supervisor shall include a copy of each summary from the initiative financial information statements and the Internet addresses for the information statements on the Secretary of State's and the Office of Economic and Demographic Research's websites in the publication or mailing required by s. [101.20](#).

(14) The Department of State may adopt rules in accordance with s. [120.54](#) to carry out the provisions of subsections (1)-(14).

(15) No provision of this code shall be deemed to prohibit a private person exercising lawful control over privately owned property, including property held open to the public for the purposes of a commercial enterprise, from excluding from such property persons seeking to engage in activity supporting or opposing initiative amendments.

**History.**—s. 15, ch. 79-365; s. 12, ch. 83-251; s. 30, ch. 84-302; s. 22, ch. 97-13; s. 9, ch. 2002-281; s. 3, ch. 2002-390; s. 3, ch. 2004-33; s. 28, ch. 2005-278; s. 4, ch. 2006-119; s. 25, ch. 2007-30; s. 1, ch. 2007-231; s. 14, ch. 2008-95; s. 23, ch. 2011-40; s. 3, ch. 2019-64; s. 3, ch. 2020-15; s. 13, ch. 2022-73.

## **Tab 5**

# **Discussion Documents**



## E. Background (Summary of Current Law)

In 2022, the Legislature passed HB 5 (ch. 2022-69, L.O.F.) prohibiting a physician from performing an abortion if the physician determines the gestational age of the fetus is more than 15 weeks.<sup>1</sup> The bill became law and maintains medical exceptions<sup>2</sup> to the prohibitions that were in effect under prior law while creating a new exception for fatal fetal abnormalities.<sup>3,4</sup> Shortly before the law was to take effect on July 1, 2022, various abortion providers filed a legal challenge to the 15-week prohibition. The case is currently pending before the Florida Supreme Court in *Planned Parenthood of Southwest and Central Florida v. State of Florida*.<sup>5</sup> The law is not enjoined and remains in effect throughout the duration of the pending litigation.

In 2023, the Legislature passed SB 300 (ch. 2023-21, L.O.F., also known as the Heartbeat Protection Act), prohibiting abortions if the gestational age of the fetus is more than 6 weeks. The bill retains the medical and fatal fetal abnormality exceptions and adds exceptions for rape, incest, or human trafficking if the gestational age of the fetus is less than 15 weeks and the pregnant woman provides specified documentation. However, the provisions of SB 300 took effect on May 1, 2024, thirty days after the Florida Supreme Court ruling on HB 5 (ch. 2022-69, L.O.F.) which permitted a 15-week ban.<sup>6</sup> Only take effect if specified events occur that change Florida's jurisprudence on the privacy clause in the state constitution, which include:

- The Florida Supreme Court:
  - Recedes from its decision in *In Re T.W.*<sup>7</sup> or its progeny; or
  - Determines that the Florida Constitution's privacy provision does not include abortion; or
  - Rules in favor of the state in the current case challenging the 15-week abortion prohibition (*Planned Parenthood of Southwest and Central Florida v. State of Florida*).

or

- Florida voters adopt a state constitutional amendment clarifying that the right to privacy does not include abortion.

To date, none of these events have occurred, and the provisions of HB 5 remain in effect.

Below is a map showing the status of abortion bans in the United States as of ~~May 23, 2024~~ October 24, 2023. This map was extracted from the KFF website ~~on that date~~ and can be found at <https://www.kff.org/womens-health-policy/dashboard/abortion-in-the-u-s-dashboard/#state><sup>8</sup>.

As the map displays, Florida was one of ~~seven~~ five states that had an abortion ban with a gestational limit between ~~15 and 22~~ 6 and 12 weeks LMP (last menstrual period).

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<sup>1</sup> 15 weeks is calculated based upon the first day of the woman's last menstrual period.

<sup>2</sup> The medical exception applies if two physicians, or one physician in the case of an emergency, certify in writing that, in reasonable medical judgment, the termination of the pregnancy is necessary to save the pregnant woman's life or avert a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman other than a psychological condition.

<sup>3</sup> A "fatal fetal abnormality" is a terminal condition that, in reasonable medical judgment, regardless of the provision of life-saving medical treatment, is incompatible with life outside the womb and will result in death upon birth or imminently thereafter.

<sup>4</sup> Section 390.0111, F.S.

<sup>5</sup> The Florida Supreme Court heard oral arguments on September 8, 2023, but to date has not rendered an opinion in this matter.

<sup>6</sup> The Florida Supreme Court ruled on *Planned Parenthood of Southwest and Central Florida v. State of Florida* on April 1, 2024.

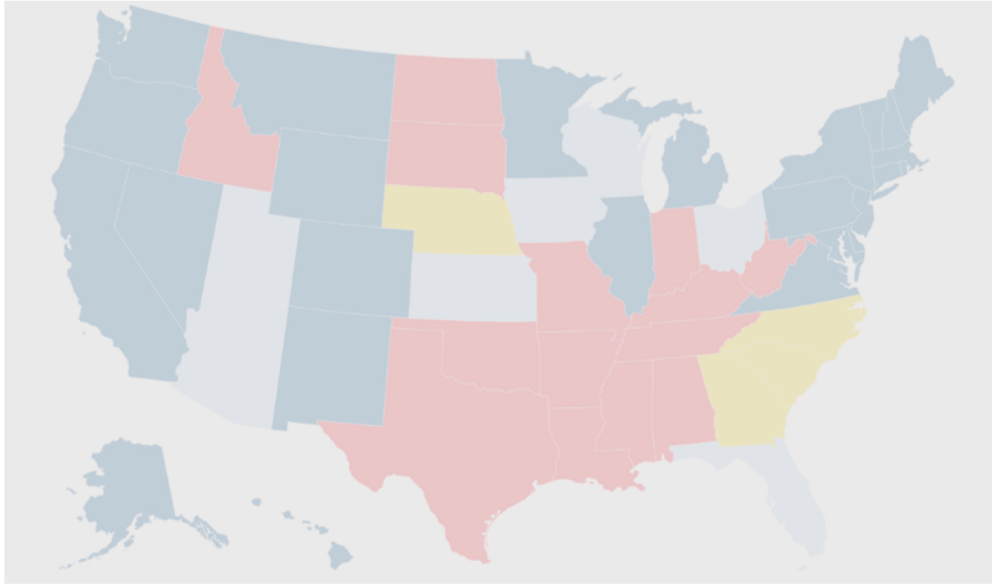
<sup>7</sup> The Florida Supreme Court held in *In re T.W.* that the express right to privacy contained within Article I, s. 23 of the Florida Constitution "is clearly implicated in a woman's decision whether or not to continue her pregnancy".

<sup>8</sup> Formally known as the Kaiser Family Foundation.

**Status of Abortion Bans in the United States as of October 24, 2023**

Hover over state for more details

- Abortion Banned (14 states)
- Gestational limit between 6 and 12 weeks LMP (4 states)
- Gestational limit between 15 and 22 weeks LMP (7 states)
- Abortion legal beyond 22 weeks LMP (25 states & DC)



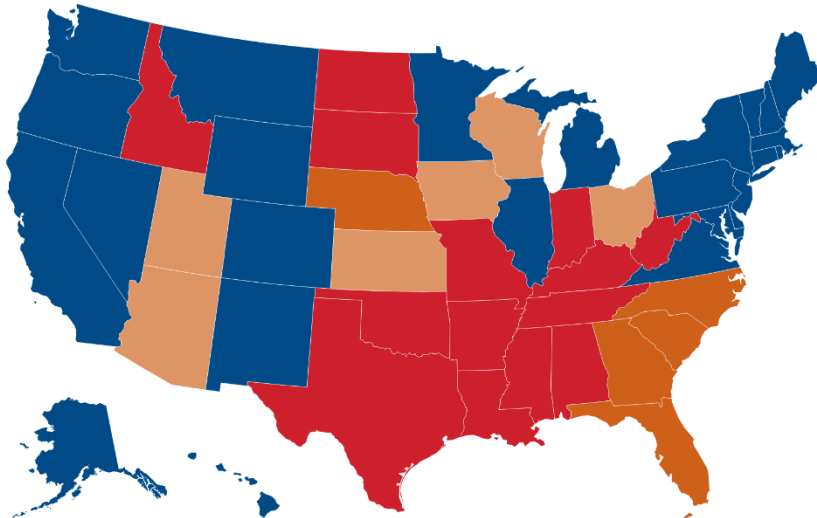
NOTE: LMP = Last Menstrual Period. For more information on state policies, please see our briefs on state actions to protect abortion, states without laws protecting or restricting abortion, our brief on the *Dobbs* case, our KFF State Health Facts page on abortion policies, our brief on legal challenges to state abortion bans, and our brief on abortion ban exceptions.  
 KFF State Health Facts page on abortion policies: <https://www.kff.org/state-health-facts/abortion-policies/>  
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 KFF State Health Facts page on abortion ban exceptions: <https://www.kff.org/state-health-facts/abortion-ban-exceptions/>  
 KFF: Non-Partisan. © 2023. All rights reserved. For more information, visit [www.kff.org](https://www.kff.org).  
 SOURCE: KFF analysis of state policies and court decisions, as of October 24, 2023. [View Data](#)

**KFF**

**Status of Abortion Bans in the United States as of May 23, 2024**

Hover over state for more details

- Abortion Banned (14 states)
- Gestational limit between 6 and 12 weeks LMP (5 states)
- Gestational limit between 15 and 22 weeks LMP (6 states)
- Abortion legal beyond 22 weeks LMP (25 states & DC)



Note: LMP = Last Menstrual Period. For more information on state policies, please see our briefs on state actions to protect abortion, states without laws protecting or restricting abortion, our brief on the *Dobbs* case, our KFF State Health Facts page on abortion policies, our brief on legal challenges to state abortion bans, and our brief on abortion ban exceptions.  
 In 4 states (IA, OH, WI, and WY), laws banning or limit abortion earlier in pregnancy are currently blocked by courts.  
 Source: KFF analysis of state policies and court decisions, as of May 23, 2024.

**KFF**

## F. Discussion of Impact of Proposed Amendment

### Potential Conflicts with Current Statutes

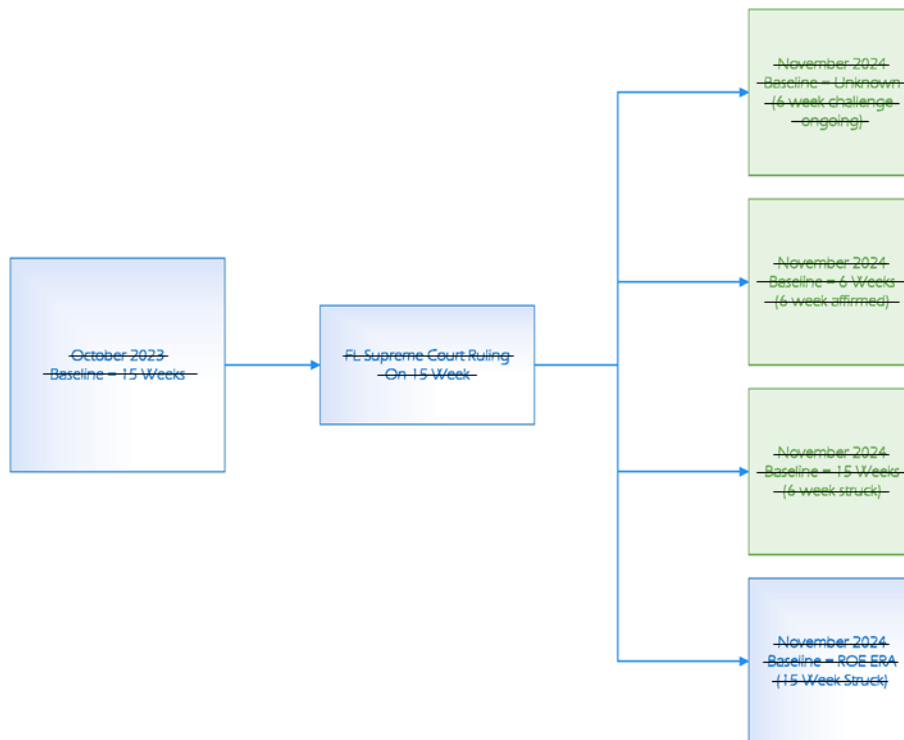
The proposed constitutional amendment would supersede many provisions in Chapter 390, F.S., which are directly related to abortion procedures.

### Potential Impact of the Amendment

At the time this analysis was prepared in July 2024, ~~the a 15-6-week prohibition~~ was in effect. Relative to ~~the this 15-week~~ prohibition, the proposed constitutional amendment has the potential to affect the state's costs, primarily through savings. Likewise, the state's revenues may be affected.

The major programs and revenues are described in the remainder of this document; ~~however, I~~ to calculate the proposed constitutional amendment's financial impacts, ~~the appropriate current law is used as the~~ baseline for measurement must first be determined, which. This baseline represents the status quo or pre-change condition. The difference estimated to result from the proposed change (positive or negative) is then determined by measuring the post-change condition against the baseline. An increased cost would be expected to increase or a savings would be expected to decrease the state's budget in the future, while an increase in tax or fee collections would be expected to increase the state's revenue and the opposite would be expected to decrease it in the future. ~~In the case of the proposed amendment, at the time this analysis was prepared, the appropriate baseline for November 2024 was unclear.~~

The graphic below illustrates both the uncertainty and complexity of the legal landscape that will be in place when the amendment is on the ballot in November 2024.



This legal uncertainty makes a material difference to the potential financial impacts of the proposed amendment. For example, there is a significant difference in the number of abortions that occur up to and including 6 weeks and 15 weeks. The table below shows the number of reported abortions in Florida by known week of gestation during different calendar years. The 2020 and 2021 calendar years uses the most recent are published data from CDC, while 2021~~2~~ and 2022~~3~~ use unpublished data from the Agency for Health Care Administration (AHCA). The weeks of gestation starting July 1, 2022 use a revised state definition that is calculated from the first day of the pregnant woman’s last menstrual period. Prior to this, the calculation was based on the clinician’s estimate.

Weeks of Gestation	CY 2020		CY 2021		CY 2022 <i>(definitional change as of July 1, 2022)</i>		CY 2023	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
≤6	55,834	74.6	58,136	72.8	46,011	55.7	33,453	39.8
7–9	11,686	15.6	13,436	16.8	24,015	29.1	34,854	41.5
10–13	4,768	6.4	5,321	6.7	9,384	11.4	12,577	15.0
14–15	1,005	1.3	1,140	1.4	1,859	2.3	3,013	3.6
16–17	652	0.9	734	0.9	527	0.6	46	0.1
18–20	704	0.9	764	1.0	572	0.7	71	0.1
≥21	219	0.3	286	0.4	213	0.3	38	0.0
Total abortions reported by known gestational age	74,868		79,817		82,581		84,052	

2023 data received from AHCA on June 27, 2024. Percentages may not add to 100.0 due to rounding.

The number of abortions by weeks of gestation are skewed towards fewer weeks of gestation. ~~For this reason, budgetary or revenue effects that are limited or undetectable at 15 weeks of gestation may be much stronger at 6 weeks of gestation.~~ Data related to the 6-week ban are not yet available.

## A. Criminal Justice System

Under current law, there are four felonies related to abortion that exist under Chapter 390, F.S. Section 390.0111, F.S., includes a Level 1, 3<sup>rd</sup> degree felony for “any person who willfully performs, or actively participates in, a termination of pregnancy in violation of the requirements of” how pregnancies should be terminated, including when it is permitted to terminate a pregnancy after the gestational age of 15 6 weeks, and when a partial-birth abortion or experimentation on a fetus is permitted. A Level 4, 2<sup>nd</sup> degree felony is also included for “any person who performs, or actively participates in, a termination of pregnancy in violation of this section ~~or s. 390.01112, F.S.,~~ which results in the death of the woman.” Additionally, it includes a Level 1, 3<sup>rd</sup> degree felony for a person who violates the requirements that an infant “born alive during or immediately after an attempted abortion” be treated like “any other child born alive in the course of natural birth.” ~~Section 390.01112, F.S., states that “no termination of pregnancy shall be performed on any human being if the physician determines that, in reasonable medical judgment, the fetus has achieved viability,” with exceptions.~~ Section 390.01114, F.S., includes a Level 1, 3<sup>rd</sup> degree felony for “a physician who intentionally or recklessly performs or induces, or attempts to perform or induce, a termination of a pregnancy of a minor without obtaining the required consent” from a parent or legal guardian.

Given the data available from the Florida Department of Corrections, there have been no commitments to prison for any of the felonies described above—either before or after the enactment of the ~~2022-2023~~ legislative change to 15 6 weeks (ch. ~~2022-69~~ 2023-21, L.O.F.), ~~which went into effect on May 1, 2024.~~<sup>1</sup> It should be noted that the 15-6-week language just went into effect ~~last~~ this year, and given the time it would take from arrest to adjudication, it is ~~likely that few, if any,~~ highly unlikely that any current or future offenders would have moved through the entire criminal justice system at this point.

Conclusion: ~~As previously noted, the baseline for the analysis is uncertain. As illustrated in the graphic in Section F of this document, there are scenarios where either a 6-week prohibition or a 15-week prohibition could be in effect in November 2024. In either event, i~~ It is probable that there will be cost savings to the criminal justice system. However, the impact on the criminal justice system is not expected to be significant based on prior law. The magnitude of those savings will differ depending on which prohibition (15-week or 6-week) is in effect. Alternatively, if the 15-week prohibition is not upheld, there would be no savings within the criminal justice system as the baseline policy would be essentially equivalent to the proposed amendment. Without knowing these answers, the impact is indeterminate.

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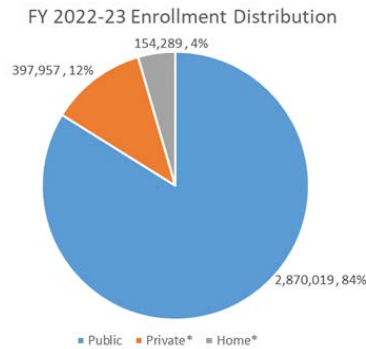
<sup>1</sup> The data series from the Florida Department of Corrections begins in 1979.

**B. Education Services**

Florida resident births directly influence the state’s future preschool and school age populations. The initial effects of policies that impact birth rates may be seen in the school system beginning three to four years following the change. The first educational setting that could experience differences would be Florida’s Exceptional Student Education programs, including public schools and the Family Empowerment Scholarship Program for Students with Unique Abilities. In ~~2022-23~~ 2023-24, these two programs for three and four year olds with additional needs for learning support served roughly ~~15~~ 16 percent of this age group. The next program preschoolers can participate in is Florida’s universal Voluntary Prekindergarten Program (VPK), which serves ~~65.7~~ 64.8 percent of four year olds.

The full-effect of policies that influence birth rates and their interactions with Florida’s schools would begin five to six years following the policy change, once students reach the age of compulsory education. Florida’s school choice landscape would result in the effects of the policies being felt across public, private, and home education settings beginning in Kindergarten. Once students are eligible for Kindergarten, impacts are cumulative – stretching across 13 grades from Kindergarten to 12th grade. After 18 years of policy change, all 15 years of education across three settings (public, private, and home), two key scholarship programs (Family Empowerment Scholarship and Florida Tax Credit Scholarship programs) and five major funding programs (Florida Education Finance Program, VPK within the General Appropriations Act, Florida Tax Credit Scholarship Program, ~~Hope~~ Motor Vehicle Sales Tax Credit Scholarship Program, and Commercial Rental Sales Tax Credit Scholarship Program) would ultimately feel the full effect of policies influencing birth rates.

In FY 2023-24, the typical VPK cost is \$2,839 per student. As of ~~July 2023~~ June 2024, the FY 2023-24 statewide funds per unweighted PreK-12 FTE was ~~\$8,668~~ \$8,716, with average scholarship amounts ranging from \$7,800 for a private school scholarship to \$10,900 for a unique abilities scholarship. Further, costs across the public school setting and scholarship programs depend on the grade, level of needs, and residence of each student.



\*Private and Home education settings include FES and FTC scholarship students

**FY 2022-23 through FY 2028-29 Unweighted FTE and Scholarship Forecast**

	FY 2022-23 SE* 4/14/2023	FY 2023-24 Forecast 8/7/2023	FY 2024-25 Forecast 8/7/2023	FY 2025-26 Forecast 8/7/2023	FY 2026-27 Forecast 8/7/2023	FY 2027-28 Forecast 8/7/2023	FY 2028-29 Forecast 8/7/2023
Total PreK-12 FEFP FTE (Excl. Scholarships)	2,832,246	2,867,520	2,871,840	2,872,278	2,861,645	2,862,123	2,865,229
Family Empowerment Scholarship (FES)	155,183	219,790	274,265	324,878	364,761	402,109	437,073
— FES-Education Opportunity (EO)	87,402	126,433	156,128	181,194	195,326	206,443	214,744
— FES-Unique Ability (UA)	67,781	93,357	118,137	143,684	169,435	195,666	222,329
Florida Tax Credit Scholarship (FTC)	94,518	134,891	114,576	101,721	100,377	99,111	97,840

\* FY 2022-23 SE = recalibrated survey 3 (February 2023) data excluding scholarship FTE, with adjustments to reflect scholarship payment data

	FY 2022-23 Final 1/12/2024	FY 2023-24 3rd Calc 1/23/2024	FY 2024-25 Forecast 2/21/2024	FY 2025-26 Forecast 2/21/2024	FY 2026-27 Forecast 2/21/2024	FY 2027-28 Forecast 2/21/2024	FY 2028-29 Forecast 2/21/2024
K-12 FEFP FTE (Excl. Scholarships)	2,823,723	2,835,236	2,854,409	2,863,759	2,864,675	2,880,547	2,901,502
Family Empowerment Scholarship (FES)	155,183	216,857	315,892	360,113	394,804	429,985	465,772
<i>FES-Education Opportunity (EO)</i>	87,402	134,801	216,960	240,967	255,094	269,423	283,645
<i>FES-Unique Ability (UA)</i>	67,781	82,056	98,932	119,146	139,710	160,562	182,127
Florida Tax Credit Scholarship (FTC)	94,518	147,041	114,587	106,751	105,647	104,501	103,331

Conclusion: As previously noted, the baseline for the analysis is uncertain. As illustrated in the graphic in Section F of this document, there are scenarios where either a 6-week prohibition or a 15-week prohibition could be in effect in November 2024. In either event, it is probable that there will be Limiting government interference with abortion would result in cost savings to education services.

C. Health and Human Services

Florida offers a wide range of social services to support residents with medical, food, and cash assistance that are partially dependent on Florida’s population and birth rate. While there are programs that are purely federally funded, many programs use a mix of state and federal funding. An example of the latter is the Medicaid program that provides medical assistance to individuals and families to cover or assist in the cost of services that are medically necessary. Another example is the Temporary Cash Assistance program that provides financial assistance to pregnant women in their third trimester and families with dependent children to assist in the payment of rent, utilities and other household expenses. As many of these programs serve children as well as new or expecting mothers, any changes in Florida resident births affect the number of people potentially eligible for these various social services for both the birthed and the birthing.

For children in Florida needing medical assistance, the state offers Medicaid and Kidcare (Title XXI Children’s Health Program—CHIP). Children from birth until their first birthday are eligible for Medicaid if the household income is below 200 percent of the Federal Poverty Level (FPL). After their first birthday, the household income threshold drops to 133 percent of the FPL. Those children remain Medicaid eligible up until their nineteenth birthday (there are special programs for 19 and 20 years old based on a fixed income dollar amount). If household income is above 133 percent but below 300 percent of the FPL, children are eligible for Medikids Title XXI. If household income is above 300 percent, children are eligible for Medikids Full Pay. Eligibility for both Medikids programs covers children until their fifth birthday. From ages 5 to 18 years old, under the same FPL thresholds, children are eligible for Florida Healthy Kids Title XXI or Full Pay. Children in income eligible households with special healthcare needs that require extensive preventive and ongoing care are eligible for the Children’s Medical Services health plan (CMS).

<b>Florida Medicaid and CHIP Income Requirements (Children)</b>	
<b>Medicaid</b>	
Children Under Age 1	200% FPL
Children ages 1 through 18	133% FPL
Parents, Caretakers, Children ages 19-20	Fixed dollar amount
<b>Children’s Health Insurance Program (CHIP)</b>	
Medikids (Ages 1-4)	
Title XXI	133% up to 300%
Full Pay	300%
Florida Healthy Kids (Ages 5-18)	
Title XXI	133% up to 300%
Full Pay	300%
CMS	133% up to 300%

With coverage beginning as early as birth, the effects of any changes to the birth rate can be cumulative and varying. Medicaid covers almost one-half of the births (~~45.47~~ 43.9 percent ~~CY 2021~~ 2022) in the state. They maintain that coverage until their first birthday is reached and their eligibility is reassessed. Many remain on Medicaid, move to a CHIP program, or are able to find health insurance elsewhere. As of ~~August 2023~~ May 2024, ~~47.4~~ 48.6 percent (~~2,490,633~~ 2,149,107) of the ~~5.3~~ 4.4 million Medicaid enrollees were under the age of 18 with ages from 0 to five years making up approximately ~~33~~ 34 percent of the total under 18. CHIP covers a further ~~138,293~~ 243,944 children under the age of 18 with Medikids covering ~~12,281~~ 20,748, Healthy Kids covering ~~118,281~~ 209,671 and CMS covering ~~7,731~~ 13,525. It should also be noted that the federal Public Health Emergency (PHE) significantly affected enrollment leading into this period. The tables below show current enrollment as of ~~August 2023~~ May



2024 and December 2019, the month before the PHE retroactively went into effect (the PHE began in March 2020 but continuous enrollment was retroactive to January 1, 2020).

Florida Medicaid Enrollment by Age Group and Date						
	5/31/2024		8/31/2023		12/31/2019	
Group	Enrolled	% of Total	Enrolled	% of Total	Enrolled	% of Total
Ages 0-5	721,308	16.3%	827,024	15.7%	769,120	19.9%
Ages 6 -10	570,910	12.9%	661,289	12.6%	543,814	14.1%
Ages 11-18	856,889	19.4%	1,002,320	19.1%	770,549	19.9%
Total 0-18	2,149,107	48.6%	2,490,633	47.4%	2,083,483	53.9%
Total	4,423,280	100.0%	5,254,460	100.0%	3,868,723	100.0%

Florida Children’s Health Insurance Program (CHIP) Enrollment by Age Group and Date					
	MK XXI	MK Full Pay	HK XXI	HK Full pay	CMS
<u>5/31/2024</u>					
Ages 1-5	16,660	4,088	-	-	1,196
Ages 6 -10	-	-	63,334	6,939	4,102
Ages 11-18	-	-	129,784	9,614	8,227
<u>9/30/2023</u>					
Ages 1-5	9,014	3,267	-	-	574
Ages 6 -10	-	-	28,709	8,540	2,458
Ages 11-18	-	-	67,614	13,418	4,699
<u>12/31/2019</u>					
Ages 1-5	31,830	8,847	-	-	1,196
Ages 6 -10	-	-	63,334	6,939	4,102
Ages 11-18	-	-	129,784	9,614	8,227

While children under the age of 18 make up almost one-half of the Medicaid enrollees, they account for approximately a quarter of the total Medicaid expenditure. In SFY ~~2021-22~~ 2022-23, children were ~~49.06~~ 47.2 percent of enrollees and ~~24.5~~ 27.0 percent of expenditures. The ~~2023~~ 2024 Rate Year (October ~~2022~~ 2023 – September ~~2023~~ 2024) statewide average MMA capitation rate for a child between the age of one month and eleven months without a serious mental illness (SMI) was ~~\$274.25~~ 325.19 per month (~~\$3,291.00~~ 3,902.28 per year). For a similar child between a year and 13 years old, that rate was ~~\$134.86~~ 159.62 per month (~~\$1,618.32~~ 1915.44 per year). There are circumstances where the expenditure on a child is higher than these statewide averages. Children on the CMS plan typically have higher per person per month expenditures, but they account for a small portion of the total children on Medicaid.

As mentioned above, Medicaid covers a significant number of the births in Florida (see table below). There is also pre- and postnatal public assistance for the mothers. Medical assistance for pregnant women is available through various Medicaid programs. A pregnant woman who is eligible for regular Medicaid (income below 185 percent FPL) for at least one month, including a retroactive month, is eligible to receive Medicaid throughout her pregnancy and until the end of the 12th month after the birth (postpartum period). The family planning waiver program covers family planning services to eligible women, ages 14 through 55. Services are provided up to 24 months. Eligibility is limited to women with family incomes at or below 191 percent of the FPL who have lost or are losing Florida

Medicaid State Plan eligibility and are not otherwise eligible for Medicaid, Children’s Health Insurance Program, or health insurance coverage that provides family planning services.

Recipients losing SOBRA (pregnancy Medicaid) eligibility will have passive enrollment during the first 12 months of losing Medicaid. Non-SOBRA women have to actively apply for the first year of benefits at their local county health departments. All women enrolled in the family planning waiver have active re-determination of eligibility through their local county health departments after 12 months of family planning waiver eligibility. In order to receive the second year of benefits, recipients must reapply at their local county health departments.

As of ~~August 2023~~ May 2024, there were ~~333,510~~ 427,463 individuals receiving Medicaid or the Family Planning waiver to assist with the pregnancies. Of the total, ~~150,546~~ 143,606 receive Pregnant Women Medicaid and ~~182,964~~ 283,857 utilize the Family Planning Waiver.

Florida Births Covered by Medicaid, Percent of Total births			
CY	Medicaid	Total	Rate
2017	109,225	223,579	48.85%
2018	106,695	221,508	48.17%
2019	102,636	220,010	46.65%
2020	98,018	209,645	46.75%
2021	98,297	216,189	45.47%
<u>2022</u>	<u>97,966</u>	<u>222,976</u>	<u>43.90%</u>

Pregnant Women and Family Planning Enrollment by Program and Date				
	SOBRA PREGNANT WOMEN UP TO 100% FPL	SOBRA PREGNANT WOMEN OVER 100% OF FPL UP TO 185% OF FPL	Family Planning Waiver	Total
<u>5/31/2024</u>	<u>110,142</u>	<u>33,464</u>	<u>283,857</u>	<u>427,463</u>
<u>% of Total</u>	<u>25.77%</u>	<u>7.83%</u>	<u>66.41%</u>	<u>100.00%</u>
<del>8/31/2023</del>	<del>114,432</del>	<del>36,043</del>	<del>182,964</del>	<del>333,439</del>
<del>% of Total</del>	<del>34.32%</del>	<del>10.81%</del>	<del>54.87%</del>	<del>100.00%</del>
12/31/2019	67,810	19,124	69,250	156,184
% of Total	43.42%	12.24%	44.34%	100.00%

The Temporary Assistance for Needy Families – Temporary Cash Assistance (TCA) program provides cash assistance to families with children under the age of 18 or under age 19 if full time secondary (high school) school students. The program helps families become self-supporting while allowing children to remain in their own homes. Pregnant women may also receive TCA, either in the third trimester of pregnancy if unable to work, or in the 9th month of pregnancy. Eligibility for the TCA program is similar to Medicaid eligibility with a few other technical requirements. Gross income must be less than 185 percent of the FPL and countable income cannot be higher than the payment standard for the family size. Individuals get a \$90 deduction from their gross earned income. Some people must participate in work activities unless they meet an exemption. Regional Workforce Boards provide work activities and services needed to get or keep a job. Individuals who receive TCA are eligible for Medicaid. Individuals who are eligible for TCA, but choose not to receive it, may still be eligible for Medicaid. Florida law

creates four categories of families who may be eligible for TCA. While many of the basic eligibility requirements apply to all of these categories, there are some distinctions between the categories in terms of requirements and restrictions:

- **Child-Only Families:** These families include situations where the child is living with a relative or situations where a custodial parent is not eligible to be included in the eligibility group.
- **Relative Caregiver Program:** A specialized program for child-only families where the child has been adjudicated dependent due to abuse or neglect and has been placed with a grandparent or other relative by the court. These relatives are eligible for a payment that is higher than the typical child-only payment, but less than the payment for licensed foster care
- **Single-Family Parents with Children:** Parents with children can receive cash assistance for the parent and the children.
- **Two-Parent Families with Children:** Are eligible on the same basis as single-parent families except the work requirement for two-parent families includes a higher number of hours of participation per week (35 hours or 55 hours if childcare is subsidized) than required for single-parent families (30 hours).

In FY 2022-23, these four programs assisted 67,224 individuals (in FY 2019-20 that number was 61,260). Both the Child-Only Families and Relative Caregiver programs have experienced steady declines in terms of cases and persons served. The other two programs have seen increases over the last few fiscal years that are mostly driven by increased activity among non-citizens seeking assistance.

Temporary Cash Assistance by Program and Date		
Programs	FY 2022-23	FY 2019-20
Child Only Cases	13,840	19,191
Relative Caregiver	9,495	16,461
Single-Family Parents with Children	21,613	22,884
Unemployed Two-Parent Families with Children Parent	22,276	2,723
<b>Total</b>	<b>67,224</b>	<b>61,260</b>

Looking at the age groups served by the TCA programs, ages six and over represent the majority of those receiving assistance (approximately 70 percent). Children from birth to 5 years old make up a smaller proportion of TCA recipients, but are usually also receiving other forms of public assistance as well. While these individuals are treated separately from Medicaid, they are included in the total caseload counts reported each month.

Temporary Cash Assistance by Age and Date				
	9/30/2023		12/31/2019	
	Eligible	%total	Eligible	%total
Age 0 to 5	12,795	29%	16,014	32%
Age 6 to 12	18,755	42%	21,137	42%
Age 13 to 17	13,209	30%	12,989	26%
<b>Total</b>	<b>44,759</b>	<b>100%</b>	<b>50,140</b>	<b>100%</b>

Finally, the foster care system in Florida serves children from birth until their 18<sup>th</sup> birthday. There are specialty programs to extend foster care services to those older than eighteen, but the majority of those receiving these services are seventeen or younger. In ~~2022~~ 2023, ~~24,245~~ 21,031 children (aged 0-

17) received foster care services. These services are federally funded through Title IV of the Social Security Act with matching state funds (similar to Medicaid and CHIP). Title IV-E provides federal funding to help provide foster care, independent living services, adoption assistance, and guardianship assistance. Like all states that receive Title IV-E funds for foster care, independent living services, adoption assistance, and guardianship assistance, Florida must follow a Title IV-E State Plan.

Conclusion: The health and human services in Florida serve children as well as new or expecting mothers. Any changes in Florida resident births affect the number of people potentially eligible for these services. ~~As previously noted, the baseline for the analysis is uncertain. As illustrated in the graphic in Section F of this document, there are scenarios where either a 6-week prohibition or a 15-week prohibition could be in effect in November 2024. In either event,~~ It is probable that there will be cost savings to health and human services when comparing current law to the proposed amendment. ~~The magnitude of those savings will differ depending on which prohibition (15-week or 6-week) is in effect. Alternatively, if the 15-week prohibition is not upheld, there would be no savings within health and human services as the baseline policy would be essentially equivalent to the proposed amendment. Without knowing these answers,~~ The magnitude of those savings is dependent on highly variable interactions between birth outcomes and economic factors affecting personal or family income. Due to this, the impact is indeterminate.

D. Federal and State Funds for Abortion

First passed in 1976, the Hyde Amendment refers to annual funding restrictions that Congress has regularly included in the annual appropriations acts for the Departments of Labor, Health and Human Services, Education, and related agencies.

The most recently enacted version of the Hyde Amendment (P.L. 117-103. Div. H, §§ 506–507), applicable for federal fiscal year 2022, prohibits covered funds to be expended for any abortion or to provide health benefits coverage that includes abortion. This restriction, however, does not apply to abortions of pregnancies that are the result of rape or incest (“rape or incest exception”), or where a woman would be in danger of death if an abortion were not performed (“life-saving exception”).

As a statutory provision included in annual appropriations acts, Congress can modify, and has modified, the Hyde Amendment’s scope over the years, both as to the parameters of exceptions and the sources of funding subject to this restriction.

The Hyde Amendment would continue to restrict the use of federal Medicaid funds even with the adoption of the proposed Florida constitutional amendment. While some states have elected to provide coverage for abortions that are not medically necessary, these states do so through the use of state funds, not federal funds that are restricted by the Hyde Amendment.

In Florida, the issue of whether there is a state coverage obligation under the current privacy clause of the Florida Constitution was previously litigated - see, *Renee B. v. Florida Agency for Health Care Administration*, 790 So. 2d 1036 (Fla. 2001). The Florida Supreme Court held that the Legislature’s choice not to fund abortions with state funds did not violate the right to privacy in the Florida Constitution, specifically noting: “[t]here is a big difference between a government making a decision not to fund the exercise of a constitutional right and doing something affirmatively to prohibit, restrict, or interfere with it” (quoting, *Renee B.*, No. 97–3983 (Fla.2d Cir.Ct. Oct. 9, 1998)).

Conclusion: Under current law, the state does not have an obligation to pay for abortions. The proposed constitutional amendment does not expressly create a new obligation for the state to pay for abortions. The Florida Legislature has made no changes to its policies regarding state abortion funding under ~~either the 15-week or the~~ the 6-week prohibitions. Future legislative changes, if any, in response to the passage of the proposed amendment are unknown.

## Revenue Impact from Out-of-State Abortions Occurring in Florida

In the post-Roe landscape, where many states have enacted stricter regulations on abortion, many people seeking an abortion are traveling across state lines to get the medical care they want. In 2020, approximately 9 percent of all abortions in the United States were obtained by individuals traveling across state lines.<sup>1</sup> This percentage has increased dramatically. For example, in Illinois, where abortion laws are not restrictive, one abortion clinic reported a 700 percent increase in out-of-state abortions in the 11 months after Roe vs Wade was overturned.<sup>2</sup> Illinois has seen a 28 percent increase in abortions from April 2022 to August 2022 for the entire state.<sup>3</sup> This documented increase in abortion travel has been witnessed in several states, including Colorado, Kansas, and New Mexico.

Geographically, the most restrictive region in the United States is the Southeast. A 2022 study of the estimated travel time to the nearest abortion clinic found Texas, Louisiana, Mississippi, Alabama, and Arkansas to have the longest travel times to the nearest abortion clinic that did post-6 week abortions.<sup>4</sup> For example, the study estimated that the nearest abortion clinic to a Louisiana resident was a 9.61 hour drive.<sup>5</sup> ~~With its 15-week threshold, Florida could be a destination for abortion travel since it is located within the Southeast region. Before the enactment of the 6-week abortion ban, Florida may have been a destination for abortion travel; however, to the extent that atypical travel to Florida has occurred or will occur, it generates additional sales tax collections. now with the 6week abortion ban, Florida will not be a destination for abortion travel.~~

~~In 2022, Florida reported 82,581 abortions.<sup>6</sup> Of those 82,581 abortions, 6,726 were related to out of state individuals.<sup>7</sup> When compared to 2021, total abortions increased by 3 percent, but out of state abortions increased by 38 percent. In 2023, Florida reported 84,052 abortions.<sup>8</sup> When compared to 2022, total abortions increased by 2 percent, but out of state abortions increased by 15 percent.<sup>9</sup> While this signals that more individuals are traveling to Florida for abortions, the total level of out-of-state abortions remains low. In comparison, Florida's total visitors in 2022 ~~2023~~ reached approximately ~~137.6~~ 140.62 million.<sup>10</sup>~~

~~For 2023-2024, only nine five months of data are currently available. To project the 2023 annual number, the growth rate between 2023Q1-Q3 and 2022Q1-Q3 was used to grow the 2022Q4 level, producing an estimate for 2023Q4. This estimate was then added to the data for the current year. The results indicate a small increase in total abortions (2 percent growth) and a significant increase in out-of-state abortions (24 percent growth). A forecast of the remaining 2024 year was not done, because of the change in the abortion law that occurred on May 1<sup>st</sup>. The new law places additional restrictions and any estimate would be inaccurate given the change in the law.~~ Charts and graphs of Florida's abortion data can be found below.

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<sup>1</sup> <https://www.guttmacher.org/article/2022/07/even-roe-was-overturned-nearly-one-10-people-obtaining-abortion-traveled-across>

<sup>2</sup> <https://www.plannedparenthood.org/reproductive-health-services-planned-parenthood-st-louis-region/press-releases/post-dobbs-planned-parenthood-sees-700-increase-in-abortion-patients-traveling-to-illinois-from-outside-the-bi-state-region-for-care>

<sup>3</sup> <https://ci3.uchicago.edu/il-abortion-stats/>

<sup>4</sup> Rader, Benjamin, "Estimated Travel Time and Spatial Access to Abortion Facilities in the US Before and After the *Dobbs v Jackson Women's Health* Decision" Published: November 1, 2022. Journal of American Medical Association.

<sup>5</sup> Ibid.

<sup>6</sup> <https://ahca.myflorida.com/health-care-policy-and-oversight/bureau-of-central-services/frequently-requested-data>

<sup>7</sup> Ibid.

<sup>8</sup> <https://ahca.myflorida.com/health-care-policy-and-oversight/bureau-of-central-services/frequently-requested-data>

<sup>9</sup> Ibid.

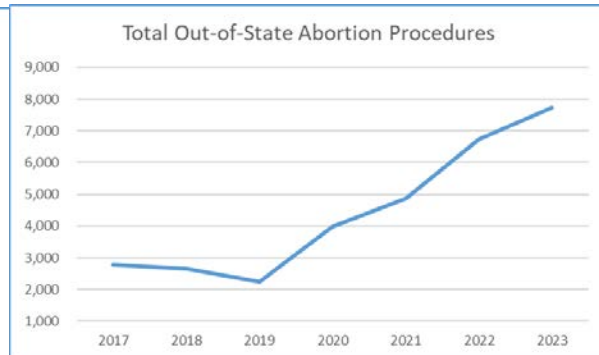
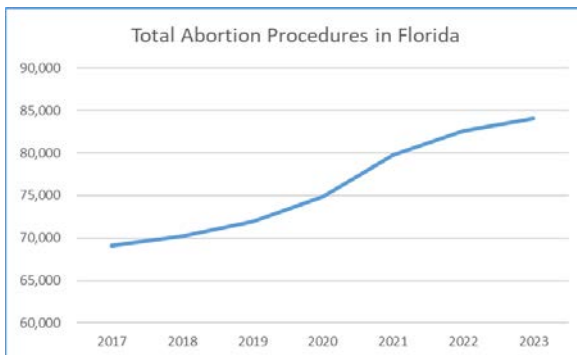
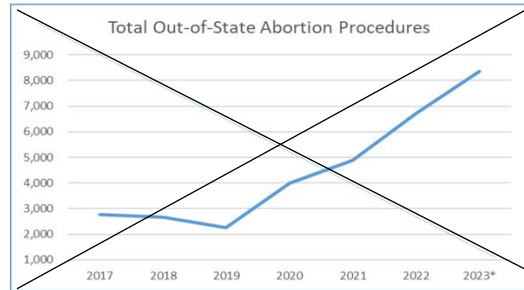
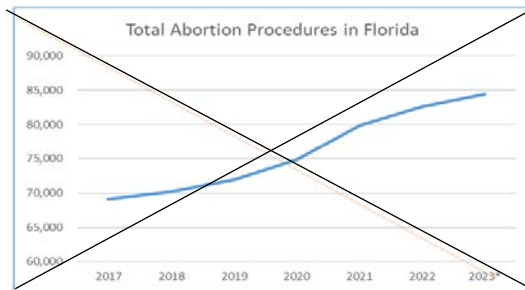
<sup>10</sup> <https://www.visitflorida.org/resources/research/research-faq/>

Florida Abortion Statistics				
Year	Total	Growth	Out-of-State	Growth
2017	69,102	-	2,771	-
2018	70,239	2%	2,654	-4%
2019	71,914	2%	2,256	-15%
2020	74,868	4%	3,988	77%
2021	79,817	7%	4,873	22%
2022	82,581	3%	6,726	38%
2023*	84,263	2%	8,351	24%

\* 2023 Data is a forecast based on the first 9 months of data and an estimate of Q4 data.

Florida Abortion Statistics				
Year	Total	Growth	Out-of-State	Growth
2017	69,102	-	2,771	-
2018	70,239	2%	2,654	-4%
2019	71,914	2%	2,256	-15%
2020	74,868	4%	3,988	77%
2021	79,817	7%	4,873	22%
2022	82,581	3%	6,726	38%
2023	84,052	2%	7,736	15%
2024*	32,081	N/A	2,693	N/A

\* 2024 Data is only up to June 3, 2024. This is not forecast of what is expected for the remaining year.



The data from Florida is inconclusive. While the state has seen an increase in out-of-state abortions since Roe vs Wade was overturned, Florida also saw a significant increase in out-of-state abortions prior to that decision. It is not clear that the current 2022 and 2023 increase is was related to Florida's position (legally prior legality and geographically) relative to the other states in the Southeast.

However, if the amendment passes, the number of out-of-state abortions could potentially increase because the 6-week ban has created a restriction that is curtailing the number of out-of-state abortions

from presently occurring. Whether this is from abortion tourism or the normal flow of out-of-state abortions (pre-Roe vs Wade decision) is debatable.

Conclusion: ~~As previously noted, the baseline for the analysis is uncertain. While~~ Atypical travel to the state would be expected to result in higher sales tax collections. This result would ~~not~~ be a direct effect of the proposed amendment.



**Tab 6**

# **Materials from Sponsor**

**Floridians Protecting Freedom’s  
Submission to the Financial Impact Estimating Conference**

**Re: Amendment to Limit Government Interference with Abortion, 23-07**

**July 1, 2024**

Floridians Protecting Freedom submits this information as the Financial Impact Estimating Conference considers revisions to the Financial Impact Statement for the Amendment to Limit Government Interference with Abortion. We request the Conference adhere to its initial analysis, ensure there is clarity regarding the statement’s purpose, and ensure the statement is clear and accurate.

In this document, we discuss the following:

- The Conference’s previous analysis should inform its revision..... 1**
- Court-identified issues with the initial Financial Impact Statement.....2**
- Ways to ensure clarity in financial impact statements..... 3**

**The Conference’s previous analysis should inform its revision**

The Conference’s charge is to provide an analysis of 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,” if it becomes law.<sup>1</sup> The baseline for this analysis is now clear: Abortion in Florida is prohibited after six weeks gestation and penalized as a felony.

In its initial analysis, the Conference determined that the proposed amendment’s impact on state and local budgets would be “essentially equivalent” to what existed until 2022, during what was characterized by the Conference as the “Roe Era,”<sup>2</sup> when state law prohibited abortions after viability. The Conference determined that there would be a probable financial impact, specifically a cost savings, on the following state and local costs:

Criminal Justice System: In either event, it is probable that there will be cost savings to the criminal justice system. The magnitude of those savings will differ depending on which prohibition (15-week or 6-week) is in effect.<sup>3</sup>

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<sup>1</sup> Fla. Stat. § 100.371(13)(a).

<sup>2</sup> Complete Financial Information Statement (Nov. 16, 2023), p. 5.

<sup>3</sup> *Id.* at p. 7.

Education Services: In either event, it is probable that there will be cost savings to education services. The magnitude of those savings will differ depending on which prohibition (15-week or 6-week) is in effect.<sup>4</sup>

Health and Human Services: In either event, it is probable that there will be cost savings to health and human services. The magnitude of those savings will differ depending on which prohibition (15-week or 6-week) is in effect.<sup>5</sup>

The Conference did not identify any other sources of probable financial impacts of the amendment.

When determining the extent of these impacts, the Conference should consider that the State has not adjusted State budgets, estimated demands on State resources,<sup>6</sup> or population estimates<sup>7</sup> due to any of the recent changes in abortion law. Additionally, legislative staff analyses of the recent abortion bans noted no fiscal impact.<sup>8</sup>

### **Court-identified issues with the initial Financial Impact Statement**

The district court identified the following issues with the initial Financial Impact Statement in its order remanding the statement to the Conference for redrafting:

- (1) the Financial Impact Statement's conclusion is inaccurate and presents outdated facts;
- (2) the Financial Impact Statement is not limited to summarizing Amendment 4's probable impact to state and local government revenues or costs and to the state budget; and
- (3) the Financial Impact Statement is ambiguous, vague, confusing, and misleading.<sup>9</sup>

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<sup>4</sup> *Id.* at p. 8.

<sup>5</sup> *Id.* at p. 12.

<sup>6</sup> Office of Economic and Demographic Research, Resource Demand Forecasting, <http://edr.state.fl.us/Content/resource-demand/index.cfm>.

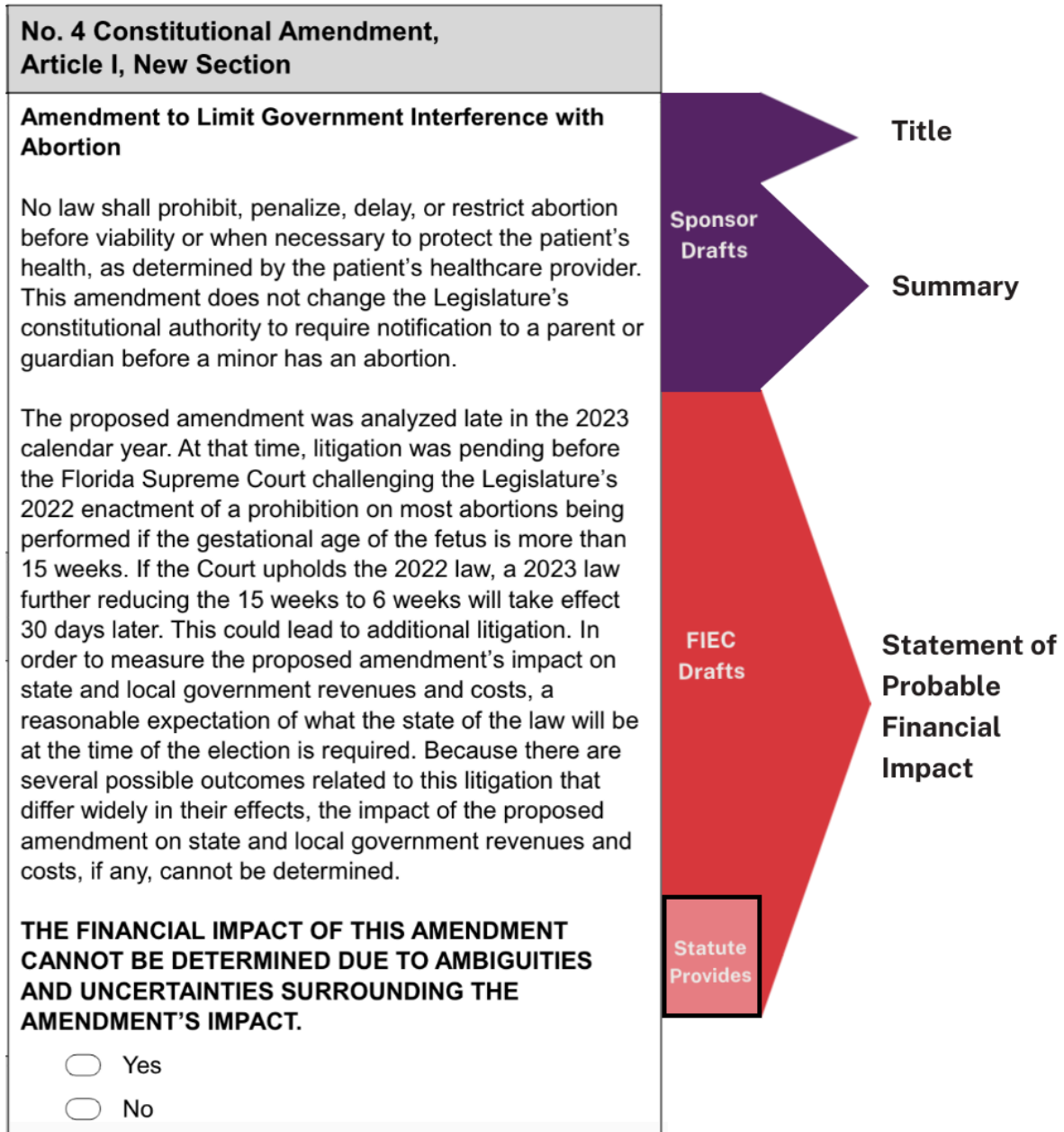
<sup>7</sup> Office of Economic and Demographic Research, Population & Demographics, <http://edr.state.fl.us/Content/population-demographics/index.cfm>.

<sup>8</sup> See Staff analyses gathered in Tab 2, EDR Notebook - from the Formal Workshop help (November 16, 2023).

<sup>9</sup> Circuit Court Order, p. 7.

## Ways to ensure clarity in financial impact statements

The illustration below shows how financial impact statements generally appear on Florida voters' ballot, using the initial statement as an example. Florida statute requires that the Conference-drafted financial impact statement be printed on the ballot after the amendment's ballot summary and title. A statutorily provided statement follows in bold, all-capital type.



As the illustration above indicates, there is no subtitle or introductory signal between the ballot summary and the Financial Impact Statement. While the Conference prints “FLORIDA FINANCIAL IMPACT ESTIMATING CONFERENCE FINANCIAL IMPACT STATEMENT” on its financial impact statements, this has not traditionally been included on the ballot.

For clarity, the Conference should begin the Financial Impact Statement with a clear reference to the statement’s purpose.<sup>10</sup> Such a signal makes clear to voters that they are no longer reading the summary of the amendment, but rather a statement on the amendment’s probable financial impact. An early draft of the initial financial impact statement, for example, began “State law required *this Financial Impact Statement* to be completed by November 22, 2023.” Should the 150-word limit<sup>11</sup> constrain this effort, the Conference should use an introductory signal, such as “Financial Impact Statement:” or “Financial Impact:”.

Recent financial impact statements serve as additional examples, as follows:

Amendment	Introductory Sentence
Adult Personal Use of Marijuana, 22-05	<b>The amendment’s financial impact</b> primarily comes from expected sales tax collections.
Raising Florida’s Minimum Wage, 18-01	<b>State and local government costs</b> will increase to comply with the new minimum wage levels.
All Voters Vote in Primary Elections for State Legislature, Governor, and Cabinet, 19-07	<b>It is probable that the proposed amendment will result in additional local government costs</b> to conduct elections in Florida.
Voter Approval of Constitutional Amendments, 19-08	<b>It is probable that the proposed amendment will result in additional state and local government costs</b> to conduct elections in Florida.
Voter Control of Gambling in Florida, 15-22	<b>The amendment’s impact on state and local government revenues and costs</b> , if any, cannot be determined at this time because of its unknown effect on gambling operations that have not been approved by voters through a constitutional amendment proposed by a citizens’ initiative petition process.

<sup>10</sup> See Circuit Court Order, page 8, paragraph 10: “Instead, voters must read 77 words about unrelated, non-extant litigation before getting to the idea that this paragraph has something to do with the amendment’s financial impact.”

<sup>11</sup> Until 2019, the financial impact statement was limited to 75 words, like the ballot summary. Today, the financial impact statement can be up to 150 words.

For your reference, since 2020, the statement the Conference adopted has been followed by statutorily provided language, depending on the Conference’s conclusion, unless no impact is expected.

Conference’s conclusion	Statutory statement for ballot
Net negative impact on the state budget	THIS PROPOSED CONSTITUTIONAL AMENDMENT IS ESTIMATED TO HAVE A NET NEGATIVE IMPACT ON THE STATE BUDGET. THIS IMPACT MAY RESULT IN HIGHER TAXES OR A LOSS OF GOVERNMENT SERVICES IN ORDER TO MAINTAIN A BALANCED STATE BUDGET AS REQUIRED BY THE CONSTITUTION.
Net positive impact on the state budget resulting in whole or in part from additional tax revenue	THIS PROPOSED CONSTITUTIONAL AMENDMENT IS ESTIMATED TO HAVE A NET POSITIVE IMPACT ON THE STATE BUDGET. THIS IMPACT MAY RESULT IN GENERATING ADDITIONAL REVENUE OR AN INCREASE IN GOVERNMENT SERVICES.
Net positive impact on the state budget for other reasons	THIS PROPOSED CONSTITUTIONAL AMENDMENT IS ESTIMATED TO HAVE A NET POSITIVE IMPACT ON THE STATE BUDGET. THIS IMPACT MAY RESULT IN LOWER TAXES OR AN INCREASE IN GOVERNMENT SERVICES.
Indeterminate or FIEC principals unable to agree	THE FINANCIAL IMPACT OF THIS AMENDMENT CANNOT BE DETERMINED DUE TO AMBIGUITIES AND UNCERTAINTIES SURROUNDING THE AMENDMENT’S IMPACT.

## **Conclusion**

The Conference has a responsibility to the People of Florida to present a clear and accurate statement of Amendment 4’s probable financial impact that provides voters the ability to evaluate the proposal on its merits. To fulfill this responsibility, the Conference must adhere to its initial analysis, ensure the statement’s purpose is straightforwardly communicated to voters, and ensure the statement is clear and accurate.

**Tab 7**

# **Materials from Proponents**

## The Economic Impacts of Reproductive Restrictions in Florida

Restrictions on reproductive health, like the gestational abortion ban implemented in Florida, have devastating and far-reaching impacts on the health and well-being of women. Furthermore, reproductive restrictions create barriers to women's pursuit of education and their participation in the labor force, therefore inflicting adverse financial repercussions on women, families, and the entire state economy.

The 15-week abortion ban in Florida that was in effect throughout 2023 is no exception. IWPR estimates that reproductive health restrictions cost the Florida economy \$14 billion in 2023.<sup>1</sup> This estimate builds upon the work highlighted in the State Policy at a Glance report published by IWPR on October 18, 2023, which discussed the serious and negative impacts on Florida's economy of reproductive health restrictions over the past five years.<sup>2</sup>

Triggered by the Supreme Court's decision to overturn the constitutional right to abortion in *Dobbs v. Jackson Women's Health Organization*, Florida Governor Ron DeSantis signed into law a 15-week statewide abortion ban, effective July 1, 2022. He subsequently signed a stricter ban, passed in April 2023, but the implementation of this six-week ban had been contingent upon the outcome of legal challenges to the 15-week restriction and, therefore, did not take effect until May 1, 2024.<sup>3</sup>

Sweeping restrictions like the gestational age limitations passed by the Florida state legislature are just one policy tool that lawmakers use to restrict abortion access and reproductive rights. Other restrictions in Florida include prohibitions on the use of public funds for abortion services and requirements that abortion providers treating minors must first notify the patient's parents and obtain parental consent. There is no mandatory, quality sex education in Florida to promote safe sex practices and informed consent among young people.<sup>4</sup>

When compared to other states, Florida's economy experienced one of the greatest financial losses related to reproductive restrictions, totaling \$14 billion in 2023. According to economic analysis conducted by IWPR, 1.5 percent more women of reproductive age (15–44) would have entered the Florida labor force in 2023 absent the legal restrictions that limited abortion access.<sup>5</sup> As high as these estimated costs already are, IWPR reasonably projects that these numbers will only increase in 2024 due to the implementation of a stricter six-week abortion ban.

### Comparative Analysis

Florida is one of 16 states that ban or severely restrict abortion access, and those states are seeing similarly devastating and wide-ranging impacts, including economic harm. In 2023, Florida experienced some of the greatest economic losses related to reproductive restrictions nationwide, second only to Texas in total dollars lost.<sup>6</sup>

Reproductive health restrictions threaten the economic security of women and families, but they also reduce the economic competitiveness of states within the national economy. Collectively, Florida and the 15 states with severe restrictions on abortion access cost the national economy \$68 billion annually.<sup>7</sup> This estimate accounts for states that have taken legislative action to expand and protect abortion access, thus offsetting the adverse economic impacts that abortion bans like the one in Florida are contributing to the national economy. The total loss to the national economy would be \$45 billion greater if it weren't for those proactive states that have expanded and protected abortion access.



## REFERENCES

<sup>1</sup> Institute for Women's Policy Research, "2024 Analysis Costs of Reproductive Health Restrictions," (Washington, DC: IWPR, 2024), <https://iwpr.org/2024-analysis-costs-of-reproductive-health-restrictions/>.

<sup>2</sup> Institute for Women's Policy Research, "The Economic Impacts of Reproductive Health Restrictions in Florida," Brief, IWPR (Washington, DC: IWPR, 2023) <https://iwpr.org/wp-content/uploads/2023/10/The-Economic-Impacts-of-Reproductive-Restrictions-in-Florida-FINAL.pdf>.

<sup>3</sup> Nick Robertson, "Florida's abortion law will change: Here's when," (Washington, DC: *The Hill*, 2024), <https://thehill.com/policy/healthcare/4568593-floridas-abortion-law-will-change-heres-when/>.

<sup>4</sup> IWPR, "2024 Analysis Costs of Reproductive Health Restrictions."

<sup>5</sup> IWPR, "2024 Analysis Costs of Reproductive Health Restrictions."

<sup>6</sup> IWPR, "2024 Analysis Costs of Reproductive Health Restrictions."

<sup>7</sup> IWPR, "2024 Analysis Costs of Reproductive Health Restrictions."

**Tab 8**

# **Materials from Opponents**

# FLORIDA CONFERENCE OF CATHOLIC BISHOPS

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MICHAEL B. SHEEDY  
EXECUTIVE DIRECTOR



## MEMORANDUM

**TO:** Financial Impact Estimating Conference – Office of Economic & Demographic Research

**FROM:** Tammy Fecci, Associate for Life and Dignity; Michael Barrett, In-House Counsel

**DATE:** July 1, 2024

**RE:** FIEC Workshop re Amendment to Limit Government Interference with Abortion

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The purpose of this document is to assist the Financial Impact Estimating Conference (FIEC) with its analysis of the financial impact of Amendment 4 (Amendment to Limit Government Interference with Abortion). This memo offers several considerations for the FIEC including:

1. The passage of Amendment 4 could potentially result in significant litigation costs to the state because abortion advocates will likely challenge almost every Florida law that touches abortion.
2. One of the laws that will likely be challenged if Amendment 4 passes is Florida's restriction on Medicaid coverage for abortion. If this law is struck down, it could lead to increased state spending on Medicaid.
3. Florida's birth rate is below replacement level and this demographic trend, if it continues, will likely have negative long-term economic impacts for the state. Passage of Amendment 4 could exacerbate these trends further or hinder efforts to reverse them.

Please see below for more information. We hope this analysis is helpful to the FIEC as it conducts its workshop.

## Considerations for Financial Impact Analysis of Amendment 4

Amendment 4 is extremely broad and, if passed, will significantly impact all of Florida abortion law. There are many reasons why passage of the Amendment may have a negative fiscal impact on the state. We offer the following information to the Financial Impact Estimating Conference to consider as they conduct their analysis of the amendment:

**I. Passage of Amendment 4 could potentially result in significant litigation costs to the state because abortion advocates will likely challenge almost every Florida law that touches abortion.**

Abortion advocacy groups oppose any law that they consider to be a regulatory burden on abortion clinics. Advocacy groups refer to these regulations as “targeted regulation of abortion provider laws” (TRAP laws).<sup>1</sup>

Regulations that fall into the category of TRAP Laws include, but are not limited to:

- Basic health and safety requirements for abortion clinics;
- Requirements that doctors obtain admitting privileges at nearby hospitals prior to performing abortions;
- Requiring abortion providers to be located within a certain distance to a hospital.
- Reporting requirements for abortion procedures;
- Mandatory waiting period laws;
- Requirements to provide information about gestational phases, ultrasounds, or the identification of a heartbeat.

If Amendment 4 passes, it is likely that any law in Florida that could be considered a TRAP law or that restricts or limits abortion in any way will be challenged in court.<sup>2</sup> This has already occurred in other states after state constitutional amendments similar to Amendment 4 have passed.

### **Michigan**

In 2022, Michigan passed Proposal 3, a state constitutional amendment similar to Amendment 4, prohibiting government restrictions on abortion access pre-viability while allowing for government restrictions post-viability subject to a broad health exception. This amendment was promoted as an attempt to keep abortion access safe and legal after the U.S. Supreme Court’s decision in *Dobbs v. Jackson Women’s Health Organization*. However, after the Michigan amendment passed, instead of restoring the status quo, abortion advocates used the amendment to repeal or challenge almost every law that regulated abortion in Michigan.

In November 2023, the Michigan Legislature passed the Reproductive Health Act<sup>3</sup> which did the following:

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<sup>1</sup> Guttmacher Institute, *Targeted Regulation of Abortion Providers*, Guttmacher Institute (Aug. 31, 2023), <https://www.guttmacher.org/state-policy/explore/targeted-regulation-abortion-providers>.

<sup>2</sup> Planned Parenthood Action Fund, *What are TRAP Laws?*, Planned Parenthood Action Fund (2024), <https://www.plannedparenthoodaction.org/issues/abortion/types-attacks/trap-laws>.

<sup>3</sup> Press Release, *Governor Whitmer Signs Final Piece of Reproductive Health Act*, Michigan Governor Gretchen Whitmer (Dec. 11, 2023), <https://www.michigan.gov/whitmer/news/press-releases/2023/12/11/governor->

- Repealed criminal penalties for performing abortions.
- Repealed a law providing opt-outs for abortion insurance coverage.
- Clarified that when determining post-viability health exceptions for abortion procedures, the attending health care professional may consider any factor relevant to the well-being of the mother, including, but not limited to, the mother’s age, physical, emotional, psychological, and familial factors.
- Repealed a ban on partial-birth abortion.
- Repealed a requirement that physicians report abortions to state health care agencies.
- Repealed regulations governing the disposal of fetal remains from abortion.
- Repealed a requirement that a patient seeking an abortion be screened to determine whether they had been coerced to do so and that prescribed protocols for the screening process.
- Repealed a requirement for a personal physical exam by a physician before administering prescription drugs for a chemical abortion.

Additionally, the Reproductive Health Act repealed almost all Michigan health and safety regulations related to abortion clinics.<sup>4</sup> This included regulations that did the following:

- Required abortion providers to have a written policy and procedure to provide adequate surgical hand-scrub stations throughout the surgical and post-operative procedure.<sup>5</sup>
- Required surgical equipment, instruments, and supplies to be maintained in sufficient quantities, stored in a sanitary environment and maintained in accordance with applicable manufacturer guidelines and nationally recognized infection prevention and control guidelines published by a reputable organization.<sup>6</sup>
- Required policies and protocols for onsite and offsite processing of surgical instruments and equipment to include sterilization, high-level disinfection, immediate-use steam sterilization, and indicators to capture sterilization or disinfection failures.<sup>7</sup>
- Required collection, storage, and disposal of solid wastes, including garbage, refuse, and dressings, to be accomplished in a manner that would minimize the danger of disease transmission and avoid creating a public nuisance or a breeding place for insects and rodents.<sup>8</sup>
- Required that the sewage disposal system be maintained in a sanitary manner.<sup>9</sup>

The abortion clinic regulations repealed by the Michigan Reproductive Health Act are very similar to abortion clinic regulations in Florida. This is evident by comparing the rescinded regulations in Michigan (MAR 325.45101 – MAR 325.4543) with the Florida regulations in FAC Rule 59A-9.018 – 59A-9.035.

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[whitmer-signs-final-piece-of-reproductive-health-act](#) (The Reproductive Health Act was a package of bills passed during the 2023-2024 Michigan Legislative Session that included: HB 4949, HB 4951, HB 4953, HB 4954, HB 4955, HB 4956, SB 474, SB 476, and SB 477).

<sup>4</sup> SB 474 of the Reproductive Health Act amended MCL 333.20115 and removed the requirement that abortion clinics that perform 120 or more surgical abortions per year and that publicly advertise outpatient abortion services be subject to the Michigan administrative rules governing freestanding surgical outpatient facilities.

<sup>5</sup> Michigan Administrative Rule (MAR) 325.45335

<sup>6</sup> MAR 325.45337

<sup>7</sup> *Id.*

<sup>8</sup> MAR 325.54307

<sup>9</sup> *Id.*

After the Reproductive Health Act was passed the Chief Medical Operating Officer of Planned Parenthood Michigan stated:

Today's passage of the Reproductive Health Act is an important step forward for Michiganders, but sadly, only an incremental one. While we are grateful that Michigan's TRAP laws will finally be repealed, making it less burdensome for abortion providers to expand into areas of the state that need them most, I am deeply disappointed that some of the worst restrictions that directly target my patients will remain on our law books. Every single day, I see patients who have struggled to pull together needed funds because Medicaid won't cover their care. Every single day, we have to cancel and reschedule appointments because of insignificant clerical errors in state-mandated paperwork. This is not reproductive freedom.<sup>10</sup>

Subsequently, in February of 2024, the Center for Reproductive Rights filed a lawsuit on behalf of an abortion clinic challenging some of the only remaining abortion regulations in Michigan law.<sup>11</sup> The lawsuit challenges:

- a mandatory 24-hour waiting period law prior to receiving an abortion;
- a requirement that abortion providers: (1) confirm the patient is pregnant and determine the probable gestational age of the fetus; (2) orally describe to the patient the gestational age, information about what to do should any complications arise from the abortion, and information about how to obtain pregnancy prevention resources; and (3) provide the patient with physical copies of the following: a summary of the procedure, a medically accurate depiction of a fetus at the gestational age nearest the probable gestational age of the patient's fetus, a prenatal care and parenting information packet, and a prescreening summary on prevention of coercion to abort
  - Before a patient signs the acknowledgment and consent form, a physician must also: (1) confirm that the patient received a screening on coercion to abort; (2) inform the patient of the right to withhold or withdraw consent at any time before performance of the abortion; and (3) orally describe risks of any complications associated with abortion as well as risks of any complications that could arise should the patient choose to continue pregnancy.
- A requirement that abortions be performed by a physician and that the physician perform the abortion with the patient's informed written consent.<sup>12</sup>

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<sup>10</sup> Press Release, *Reproductive Health Act Passes, Repealing Some Restrictions on Abortion Care in Michigan*, Planned Parenthood of Michigan (Nov. 2, 2023), <https://www.plannedparenthood.org/planned-parenthood-michigan/newsroom/reproductive-health-act-passes-repealing-some-restrictions-on-abortion-care-in-michigan>.

<sup>11</sup> *Northland Family Planning Center v. Nessel*, No. 24-000011-MM (Mich. Ct. Cl. 2024).

<sup>12</sup> *Northland Family Planning Center v. Nessel*, No. 24-000011-MM (Mich. Ct. Cl. 2024), Verified Complaint for Declaratory and Injunctive Relief, February 6, 2024, at 36 ("But for the Provider Ban, Northland and other providers in Michigan could hire Advanced Practice Clinicians ("APCs") like Certified Nurse Midwives ("CNMs"), Nurse Practitioners ("NPs"), and Physician Assistants/Associates ("PAs") to provide early abortions and thus greatly expand available services and appointments.").

On June 25, 2024, the Michigan Court of Claims granted a preliminary injunction against the 24-hour waiting period, the requirement that abortions be performed by a physician, and the informed consent requirement.<sup>13</sup>

## Ohio

The events that have unfolded in Michigan subsequent to the passage of Proposal 3 demonstrate abortion advocates' intent to repeal all laws that regulate abortion. However, abortion advocates in Michigan pursued this strategy mainly through legislative action. If Amendment 4 passes in Florida, it is unlikely that a similar legislative effort will take place. Therefore, Michigan is not the best comparison of what might happen in Florida if Amendment 4 passes.

Ohio provides a better example of a post-amendment litigation strategy that is likely to occur in Florida. In 2023, Ohio passed an amendment very similar to Michigan's Proposal 3 and Florida's Amendment 4. After the Ohio amendment passed, abortion advocates filed several lawsuits (or filed new motions or amended complaints in existing law suits) challenging a host of abortion regulations under the recently passed constitutional amendment.

The Ohio Amendment states, in pertinent part, that:

The State shall not directly or indirectly, burden, penalize, prohibit, interfere with, or discriminate against either:

(1) an individual's voluntary exercise of this right or;

(2) a person or entity that assists an individual exercising this right,

unless the State demonstrates that it is using the least restrictive means to advance the individual's health in accordance with widely accepted and evidence-based standards of care.

However, an abortion may be prohibited after fetal viability. But in no case may such an abortion be prohibited if in the professional judgment of the pregnant patient's treating physician it is necessary to protect the pregnant patient's life or health.<sup>14</sup>

After the Ohio Amendment passed, the Ohio Capital Journal reported that:

In the meantime, those who supported the amendment are working through court cases regarding abortion that were started before the amendment was put to voters.

"All of us who have been continuing to fight litigation will continue to work together to ensure that restrictions and bans that are currently in place are no longer in place," said Lauren Blauvelt, co-chair of Ohioans

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<sup>13</sup> *Northland Family Planning Center v. Nessel*, No. 24-000011-MM (Mich. Ct. Cl. 2024), Opinion and Order, June 25, 2024, at 50.

<sup>14</sup> Ohio Constitution, Article 1, Section 22.

United for Reproductive Rights, a coalition who led the amendment campaign.

While Blauvelt said the group was not yet revealing their legal strategy as they move forward, she acknowledged that previous lawsuits regarding the six-week abortion ban would have to be resolved.

That could mean a motion to dismiss the Hamilton County case in which the injunction was set for the six-week ban, or some other legal maneuver to deem the case moot based on the amendment's passage.

Jessie Hill, an attorney and Case Western Reserve University law professor who presented the case against lifting a pause on the six-week ban to the Ohio Supreme Court in September, said the state could agree that the six-week ban law is now unenforceable, but she is prepared for the alternative.

"This gives us a new claim we can add into our pending litigation, and we can fight it out from there if the state insists on trying to defend its laws," Hill told the OCJ. "But we are now in a very strong position based on the new amendment."<sup>15</sup>

In June 2024, a Wall Street Journal report on abortion litigation after passage of the Ohio Amendment stated that:

Since 2011, Ohio lawmakers passed some 30 new abortion restrictions, according to a list compiled by abortion-rights groups. Long term, the groups say they hope to challenge every one of them in court.

"We're not on the defense anymore," said Kellie Copeland, executive director of Abortion Forward, a state organization that recently rebranded from Pro-Choice Ohio.<sup>16</sup>

Currently, there are several cases pending in Ohio state courts challenging various abortion regulations under the new constitutional amendment. These cases include challenges to the following regulations:

- A requirement that abortion clinics maintain an ambulatory surgical facility license which mandates that clinics either (1) have a written transfer agreement with a local hospital; or (2) be granted a variance from that requirement by the Department of Health.<sup>17</sup>

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<sup>15</sup> Susan Tebben, *Abortion is Now a Constitutional Right in Ohio. But the Work Isn't Done*, Ohio Capital Journal (Nov. 8, 2023), <https://ohiocapitaljournal.com/2023/11/08/abortion-is-now-a-constitutional-right-in-ohio-but-the-work-isnt-done/>.

<sup>16</sup> Laura Kusisto, *Abortion-Rights Advocates Deploy a New Red State Playbook*, Wall St. J., June 19, 2024, <https://www.wsj.com/politics/policy/abortion-rights-advocates-deploy-a-new-red-state-playbook-8f13a644>

<sup>17</sup> *Women's Medical Group Professional Corp. v. Vanderhoff*, No. A 2200704 (Ohio C.P. Hamilton Cnty. Apr. 15, 2024), First Amended Complaint for Declaratory and Injunctive Relief.



- A requirement that embryonic and fetal remains from a procedural abortion at an abortion facility must be disposed of by cremation or interment.<sup>18</sup>
- A requirement that a patient must be provided with a notification form listing the options for disposition of embryonic or fetal remains and that patient must certify in writing that they have received the notification form.<sup>19</sup>
- A requirement that a physician must meet with a woman in an in-person, individual, private setting and inform the patient verbally of the nature and purpose of the abortion as well as its medical risks, the probable gestational age of the embryo or fetus, and the medical risks associated with carrying the pregnancy to term.<sup>20</sup>
- A requirement that a physician provide the patient with copies of state-produced materials concerning gestational development, family planning information, and publicly-funded support options. The physician must also inform that patient that these materials are published by the state and describe the zygote, blastocyte, embryo, or fetus and list agencies that offer alternatives to abortion.<sup>21</sup>
- A requirement that the physician obtain informed consent from the patient.<sup>22</sup>
- A requirement that a health care provider test for a fetal heartbeat. If a heartbeat is detected, then the patient is required to delay the abortion for 24 hours.<sup>23</sup>
- A requirement that, if a fetal/embryonic heartbeat is detected, the physician give patient written confirmation of the heartbeat and provide information about the statistical probability of carrying the pregnancy to term based on gestational age, and the patient must sign and acknowledge receipt of this information.<sup>24</sup>

These cases demonstrate that, if Amendment 4 passes, abortion advocates will likely pursue a litigation strategy aimed at achieving overall de-regulation of the abortion industry similar to what was achieved in Michigan and is currently being pursued in Ohio. Ultimately, if Amendment 4 passes in Florida, abortion advocates are likely to challenge almost any law that regulates abortion. It will be important for the state of Florida to defend against such attacks. As the Ohio Attorney General recently stated in a case where abortion advocates are seeking to overturn Ohio’s six-week abortion ban:

To the extent Plaintiffs in this case seek to expand the Amendment beyond its language, they are not alone. Plaintiffs in other currently-pending cases likewise seek to commandeer the Amendment for their own purposes, claiming in the aggregate that the Amendment bars all laws that touch on abortion – and even some laws that have nothing to do with abortion or anything else the Amendment mentions. Just as it is the State Government’s duty to respect the will of the People by conceding the invalidity of a statutory provision that conflicts with the

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<sup>18</sup> *Planned Parenthood Sw. Ohio Region v. Ohio Dep’t of Health*, No. A21 00870 (Ohio C.P. Hamilton Cnty. Apr. 15, 2024), Second Amended Complaint for Declaratory and Injunctive Relief.

<sup>19</sup> *Id.*

<sup>20</sup> *Preterm-Cleveland v. Yost*, No. 24 CV 002634 (Ohio C.P. Franklin Cnty.), Amended Complaint, at 13.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 15.

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

current language of the Ohio Constitution, it is also the State Government's duty to respect the will of the People by defending statutory provisions that the Amendment does *not* invalidate against meritless attack. Against such overreach, the State will stand fast.<sup>25</sup>

### Other States

There are many cases (both past and current) in other states that are also worth highlighting. Below are just a few examples. Many states have not passed a constitutional amendment similar to Amendment 4, however, the plethora of cases involving abortion law challenges in those states serve to demonstrate how abortion advocates view almost all abortion regulation as a limitation or restriction on abortion access.

- *Silver State Hope Fund v. Nevada Dep't of Health & Human Servs.*, No. A-23-876702-W (Nev. Dist. Ct. Clark Cnty)
  - In 2023, Nevada adopted an Equal Rights Amendment in its state constitution. The state's Medicaid abortion coverage ban was subsequently challenged as a violation of Nevada's Equal Rights Amendment arguing that the ban constitutes sex discrimination under the Equal Rights Amendment. The lawsuit requests a court order to Nevada Division of Health Care Financing and Policy to remove the abortion coverage ban in Nevada's Medicaid Program.
  - Case status: Ongoing.
- *Planned Parenthood of Mont. v. State of Mont.*, No. ADV-23-299 (Mont. 1st Jud. Dist. Ct. Lewis & Clark Cnty).
  - Challenge to MT state laws that limit Medicaid coverage of abortions by:
    - Prohibiting coverage for abortions provided by advanced practice clinicians including physician assistants;
    - Prohibiting coverage for telehealth abortions; and
    - Narrowly defining "medically necessary service."
  - Case status: Ongoing.
- *Planned Parenthood South Atlantic v. Moore*, No. 20CVS500147-910 (N.C. Super. Ct. Wake Cnty 2022).
  - Challenge to several North Carolina abortion restrictions including:
    - A requirement that abortions be performed by licensed physicians;
    - A prohibition on abortions performed via telemedicine;
    - Licensing and facility regulations for abortion providers;
    - Requirement that providers deliver state-mandated counseling prior to an abortion;
    - Requirement that patients wait 72-hours before undergoing an abortion procedure.
  - Case status: Voluntarily dismissed in 2022.

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<sup>25</sup> *Pre-Term Cleveland, et al. v. Dave Yost, et al.*, No. A 2203203 (Ohio C.P. Hamilton Cnty. Mar. 29, 2024), State Defendants' Response to Plaintiffs' Motion for Judgment on the Pleadings.

- *Planned Parenthood Arizona, et al. v. Brnovich, et al.*, No. 4:19-cv-00207-JGZ (D. Ariz. Apr. 11, 2019).
  - Challenged a ban on telehealth abortions, mandatory waiting periods, licensing requirements for abortion clinics, physician only requirements, counseling requirements, ultrasound requirements, bans on state health plan coverage for abortions. All considered TRAP laws that restrict abortion access.
  - Case status: Voluntarily dismissed in 2020.

#### **Florida and Amendment 4**

Abortion advocates may argue that constitutional amendments in other states go much farther than Amendment 4 because they create an individual right to abortion access under the state constitution while Amendment 4 does not. However, when it comes to challenging state abortion regulations, Amendment 4 may actually create a lower threshold for striking down existing state abortion regulations because challengers will not have to prove that a regulation infringes on an individual’s constitutional right. Instead challengers will merely have to prove that the regulation limits or restricts abortion in any way. Therefore, Florida’s Amendment 4 may in fact turn out to be even more extreme than amendments that create a constitutional right to abortion. This, in turn, could potentially result in even more litigation compared to other states.

Regardless, current litigation in other states like Michigan and Ohio demonstrate that there is a significant likelihood that the passage of Amendment 4 will result in increased litigation costs to the state. The absolute breadth of the amendment will only become clear once courts determine the contours of the prohibition on government regulation of abortion. As the amendment sponsors noted in their brief before the Florida Supreme Court:

Opponent’s fears about the Proposed Amendment’s potential application are not germane to this Court’s review. As explained *supra*, the question of how specific laws would be construed under the proposed Amendment must, as a matter of law, be “left to subsequent litigation should the amendment pass.” *Med. Liab. Claimant’s Comp.*, 880 So.2d at 679.<sup>26</sup>

**II. One of the laws that will likely be challenged if Amendment 4 passes is Florida’s restriction on Medicaid coverage for abortion. If this law is struck down, it could lead to increased state spending on Medicaid.**

If Amendment 4 passes, it is likely that most of the provisions in section 390.0111, *Florida Statutes* will be challenged. This includes, section 390.0111(15) which precludes the use of state funds to pay for abortions. Currently, Florida excludes abortion coverage in state Medicaid plans with the exception of

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<sup>26</sup> *Advisory Opinion to the Attorney General Re: Limiting Government Interference with Abortion*, Answer Brief of Floridians Protecting Freedom, Sponsor, at 52; *Oral Argument for Advisory Opinion to the Attorney General Re: Limiting Government Interference with Abortion*, YouTube Feb. 7, 2024 <https://www.youtube.com/watch?v=kdTCtxBJd9w> (47:00) (Counsel for amendment sponsor stating: “If there was a regulation that was challenged as being a prohibition, delay, restriction, or penalizing abortion it would be back before this court. It will be for this court to make that determination.”)

instances of rape, incest, or if a physician finds that the life of the mother would be endangered if the fetus were carried to term.<sup>27</sup> This coverage policy is set by the Agency for Health Care Administration which determines coverage in state Medicaid plans. ACHA is required to exclude such coverage under section 390.0111(15).

However, if Amendment 4 passes, it is likely that section 390.0111(15) will be challenged as restricting or limiting abortion access. This will likely include a challenge that abortion coverage exclusions in state Medicaid plans also restrict and limit abortion access for women covered by Medicaid.

If, section 390.0111(15) is struck down, any subsequent decision by AHCA to limit or restrict Florida Medicaid coverage of abortion would similarly be challenged as restricting and limiting abortion access for Medicaid participants. This would likely result in AHCA being required to allow Medicaid insurance plans to cover abortion procedures using state Medicaid funds. This would increase spending on Florida Medicaid resulting in a negative fiscal impact for the state.

### **III. Florida's birth rate is below replacement level and current demographic trends, if they continue, will likely have negative long-term economic impacts on the state. Passage of Amendment 4 could exacerbate these trends further or hinder efforts to reverse them.**

The total fertility rate (TFR) in the United States has dropped from 2.12 in 2007 to 1.65 in 2022.<sup>28</sup> Similarly, the TFR in Florida has dropped from 2.12 in 2007 to 1.64 today.<sup>29</sup> The birth rate in Florida and in the U.S. is now below the replacement level birth rate of 2.1.<sup>30</sup> Therefore, both the U.S. and Florida are experiencing below-replacement-level fertility rates which could lead to declining population growth.<sup>31</sup> This has potential negative long-term impacts for the economy.

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<sup>27</sup> Agency for Health Care Administration, *Florida Medicaid: Reproductive Services Coverage Policy*, at 4; FAC Rule 59G-4.030 *Reproductive Services*.

<sup>28</sup> Melissa S. Kearney and Phillip B. Levine, *The Causes and Consequences of Declining US Fertility. Economic Policy in a More Uncertain World: Aspen Economic Strategy Group* (Jan. 2023), [https://www.economicstrategygroup.org/wp-content/uploads/2022/08/Kearney\\_Levine\\_081222.pdf](https://www.economicstrategygroup.org/wp-content/uploads/2022/08/Kearney_Levine_081222.pdf) (Describing total fertility rate as “a simulated measure that calculates expected lifetime births by assuming that women will follow current age-specific birth rates over their childbearing years.”); Osterman, M. J., Hamilton, B. E., Martin, J. A., Driscoll, A. K., & Valenzuela, J. M., *Births: Final Data for 2022, National Vital Statistics Reports*, Centers for Disease Control, Vol. 72, No. 2 (Apr. 4, 2024), p. 27, Table 8, <https://www.cdc.gov/nchs/data/nvsr/nvsr73/nvsr73-02.pdf>.

<sup>29</sup> Martin, J. A., Hamilton, B. E., Sutton, P. D., Ventura, S. J., Mathews, T. J., Kirmeyer, S., & Osterman, M. J., *Births: Final Data for 2007, Vital Statistics Reports*, Centers for Disease Control, Vol. 58, No. 24 (Aug. 9, 2010), p. 41, Table 11. [https://www.cdc.gov/nchs/data/nvsr/nvsr58/nvsr58\\_24.pdf](https://www.cdc.gov/nchs/data/nvsr/nvsr58/nvsr58_24.pdf); *Births: Final Data for 2022, supra* note 27 at 27.

<sup>30</sup> *Id* at 5. (“The TFR for the nation in 2022 remained below replacement, the level at which a given generation can exactly replace itself (generally considered to be 2,100 births per 1,000 women). The U.S. TFR has generally been below replacement since 1971 and has consistently been below replacement since 2008.”)

<sup>31</sup> *The Causes and Consequences of Declining US Fertility* at 75 (Noting that “lower fertility implies lower population growth and eventually a smaller working-age population, which will have consequences for social, fiscal, and economic conditions.”); *The Demographic Outlook: 2024 to 2054*, Congressional Budget Office (January 18, 2024), <https://www.cbo.gov/system/files/2024-01/59697-Demographic-Outlook.pdf> (“Population growth generally slows over the next 30 years, from 0.6 percent per year, on average, between 2024 and 2034 to 0.2 percent per year, on average, between 2045 and 2054. Net immigration increasingly drives population growth and accounts for all population growth beginning in 2040, in part because fertility rates remain below the rate that would be required for a generation to replace itself in the absence of immigration.”).

Lower birth rates and shrinking populations are associated with negative long-term economic impacts, including:

- Difficulty supporting pensions, social security, Medicare, and other programs designed to assist aging populations;<sup>32</sup>
- Decreased tax base for state and federal budgets;<sup>33</sup>
- Slower economic growth;<sup>34</sup>
- Smaller labor force;<sup>35</sup>
- Lower federal funding for state programs based on population counts.<sup>36</sup>

Florida's population is projected to grow by an average of 1.27% per year between 2022 and 2030.<sup>37</sup> However, this overall growth will not reverse Florida's aging population trends. In 2030, the population of Floridians age 65 and over is forecast to represent at least 24.4% of the population, compared with 21.2% in 2020 and 17.3% in 2010.<sup>38</sup> Florida's prime working age population (ages 25-54) is forecast to represent only 35.8% of the population by 2030, down from 36.8% in 2020 and 41.5% in 2000.<sup>39</sup> The youngest cohort (ages 0-17) represented 22.8% of the total population in 2000 but is forecast to see zero growth through the end of the decade, remaining at 19.5% of the total population.<sup>40</sup> Therefore, it is likely that Florida's population of individuals 65 and over will continue to grow while the percentage of younger cohorts shrink or remain the same.

There were 82,600 abortions performed in Florida in 2023.<sup>41</sup> Of these, 92% were performed on Florida residents.<sup>42</sup> Passage of Amendment 4 would broadly expand abortion access in Florida. Unlimited abortion

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<sup>32</sup> *The Causes and Consequences of Declining US Fertility* at p. 90-92.

<sup>33</sup> *The Long-Term Decline in Fertility – and What It Means for State Budgets*, Pew Charitable Trusts, Issue Brief (Dec. 5, 2022), <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2022/12/the-long-term-decline-in-fertility-and-what-it-means-for-state-budgets>.

<sup>34</sup> Nicole Maestas, Kathleen J. Mullen, & David Powell, *The Effect of Population Aging on Economic Growth, the Labor Force, and Productivity*, 15 Am. Econ. J.: Macroecon. 306 (2023). (Finding that each 10 percent increase in the fraction of the population age 60+ decreased per capita GDP by 5.5%.); Jinill Kim, *The Effects of Demographic Change on GDP Growth in OECD Economies*, IFDP Notes, Board of Governors of the Federal Reserve System (Sept. 28, 2016), <https://doi.org/10.17016/2573-2129.22>.

<sup>35</sup> *Demographic Overview and Population Trends*, The Florida Legislature Office of Economic and Demographic Research, Jan. 28, 2020, p. 9, [http://edr.state.fl.us/Content/presentations/population-demographics/DemographicTrends\\_1-28-20.pdf](http://edr.state.fl.us/Content/presentations/population-demographics/DemographicTrends_1-28-20.pdf).

<sup>36</sup> For example, Title I funding under ESSA and IDEA funding for students with special needs are both determined by student population counts.

<sup>37</sup> *Florida: Long-Range Financial Outlook*, The Florida Legislature Office of Economic and Demographic Research, November 14, 2023. p. 6. [http://edr.state.fl.us/Content/presentations/long-range-financial-outlook/3YearPlan2023FallUpdate\\_House.pdf](http://edr.state.fl.us/Content/presentations/long-range-financial-outlook/3YearPlan2023FallUpdate_House.pdf).

<sup>38</sup> *Id.* at 7.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> Mia Steupert & Tessa Cox. *Abortion Reporting: Florida (2022)*, Charlotte Lozier Institute (July 25, 2023), <https://lozierinstitute.org/abortion-reporting-florida-2022/>

<sup>42</sup> *Id.*

access is generally associated with decreased fertility rates.<sup>43</sup> Additionally, initial research, post-Dobbs, has demonstrated that states with a total abortion ban have seen an average birthrate increase of 2.3%.<sup>44</sup>

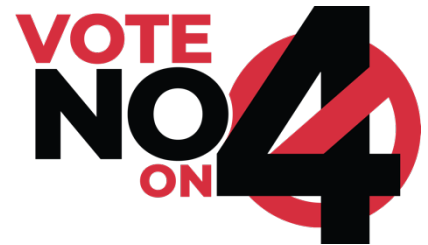
If a pregnancy is carried to term a child is born. However, every completed abortion terminates a pregnancy. Therefore, each abortion results in less people than there would have been if the abortion had not occurred and the pregnancy was carried to term. As a result, passage of Amendment 4, and broad access to abortion in Florida, could potentially exacerbate current demographic trends that negatively impact the economy and hinder any efforts that may contribute to reversing those trends.

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<sup>43</sup> Brief of Amici Curiae Economists in Support of Respondents, *Dobbs v. Jackson Women's Health Organization*, No. 19-1392, Supreme Court of the United States, Sept. 20, 2021, pp. 7-9. ("Applying tools of causal inference, economists have shown that abortion legalization, independent of other factors such as contraception, has had a direct and significant impact on birth rates." Also noting that after Roe legalized abortion nationwide reduced birth rates by 4 to 11%, independent of other factors such as contraception.) [https://www.supremecourt.gov/DocketPDF/19/19-1392/193084/20210920175559884\\_19-1392bsacEconomists.pdf](https://www.supremecourt.gov/DocketPDF/19/19-1392/193084/20210920175559884_19-1392bsacEconomists.pdf); PB Levine et al., *Roe v. Wade and American Fertility*, 89 Am. J. Pub. Health 199 (Feb. 1, 1999) (Comparing fertility rates over time between states that varied in the timing of abortion legalization. Finding that states legalizing abortion experienced a 4% decline in fertility relative to states where the legal status of abortion was unchanged. Also concluding that a complete recriminalization of abortion nationwide could result in 440,000 additional births per year.) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1508542/>

<sup>44</sup> Dench, Pineda-Torres, & Myers, *The Effects of Post-Dobbs Abortion Bans on Fertility*, 234 J. Pub. Econ. (June 2024). <https://doi.org/10.1016/j.jpubeco.2024.105124>

**Remarks from Sara Johnson  
On Behalf of Vote No on 4 Florida  
Before the Financial Impact Estimating Conference  
July 1, 2024**



My name is Sara Johnson, on behalf of Vote No On 4 Florida.

Since my time is limited, I'll address just one point.

Contrary to Circuit Court Judge Cooper's pronouncements, Amendment 4 **would** certainly result in significant financial impacts from litigation, and voters must be advised of these impacts.

How do we know? Because of history, because of necessity, and because the sponsors admitted it in front of the Supreme Court.

First, history: In any of our lifetimes, how many policy matters have been litigated more than abortion?

The fact that we are gathered here today is proof that, when it comes to abortion, anything that can be litigated, will be litigated.

Second, is necessity: Amendment 4 is neither self-implementing, nor does it lend itself to legislative implementation. The words "No Law Shall..." make legislative implementation virtually impossible. Since Amendment 4 is neither self-implementing nor legislatively implementable – it would have to be implemented judicially, through costly litigation.

If Amendment 4 passes, there will be at least two separate realms of litigation. The first involves constitutional challenges to existing laws. Not just the laws that make headlines now, but laws that almost every Floridian supports, regardless of their position on abortion.

Like requiring minors to have parental consent for an abortion. Or laws that provide for informed consent. Amendment 4 backers are currently litigating to overturn these types of laws in states where similar abortion amendments have passed.

But Amendment 4 also requires another realm of litigation, because at merely 34 words, it is deliberately vague. In fact, the ballot summary is longer than the amendment itself. None of its operative terms "government interference" -- "healthcare provider" -- "patient's health" -- or "viability" are defined, creating more litigation to define each term.

Finally, the sponsors admitted to the Florida Supreme Court that much of what Amendment 4 would do must be determined by the courts.

Amendment 4 is deliberately vague – to hide from voters what it would actually do – which is to allow abortion at any time during pregnancy if it is approved by any undefined "healthcare provider" – and to make abortion the only medical procedure that can be performed on a minor without parental consent.

Amendment 4's sponsors didn't have to write it so deceptively vague, but they did. And now they want you to reward their deception; by having you fail to disclose to voters that there will be costly litigation, and additional costs that will cascade from each judicial decision.

The litigation described in your original statement may have been decided, but as I've described, Amendment 4 would cause exponentially more litigation and resulting costs.

Florida voters deserve to be advised of these economic impacts.

Thank you.





## **Comment on Amendment to Limit Government Interference with Abortion (23-07)**

Date: July 1, 2024

To: The Financial Impact Estimating Conference (FIEC)  
Office of Economic & Demographic Research

Protect Women Florida Action, a partner of Susan B. Anthony Pro-Life America, strongly believes that 23-07 will result in significant, negative financial impacts for the State of Florida. The FIEC understandably concluded previously that the financial impact of 23-07 on state and local government revenues and costs cannot be determined. The proponents of 23-07 have failed to date to articulate the full scope of the amendment, knowing the extreme impact would be rejected by voters, and therefore the significant costs the state will incur are not calculable given the undefined terms of the amendment. However, 23-07 as explained here, will have a significant and negative impact on Florida and Florida taxpayers through ballooning costs in the state Medicaid program as well as subjecting the state to a certain endless future of litigation. The FIEC should acknowledge and clearly inform voters of this negative impact on the financial summary.

Today, we reassert the arguments made previously by Susan B. Anthony Pro-life America and submitted to the FIEC on October 31, 2023. Those arguments “based on analyzing legal precedent and longitudinal medical data” concluded significant financial impacts are likely. That prior testimony is attached here for review by the committee. The conclusion made is based on the likelihood proponents of the amendment will contend the amendment requires the State to use taxpayer dollars to fund abortion and the trend of legal precedent where when a right to abortion has been found in a state it has led to a requirement of using expanded taxpayer funding in support of abortion. Additionally, the amendment seeks to eliminate existing safety requirements in place for abortion providers and expand the utilization of abortion within the state. The expansion, at the time of reduced safety of abortion, will lead to increased complications resulting in an increase of the state’s Medicaid costs – not just for covering the abortion – but also for subsequently covering the treatment of the increased number of complications following the higher number of abortions within Florida.

This is only further evidenced by a lawsuit filed by the ACLU on June 27, 2024 arguing a ban on Medicaid coverage for abortion in Michigan “violates the newly enacted fundamental right to reproductive freedom in the Michigan Constitution, which voters approved as Proposal 3 in 2022.”

The proponents of 23-07 openly campaign to increase the number of abortions, and per the language of their amendment eliminate any burden to abortion. While the proponents chose to obfuscate what burden they believe would remain constitutional under their amendment in an effort to withhold the true impact of the amendment from the public, the FIEC is under no obligation to assess the financial impact of the 23-07 based on the deceit of the proponents. In fact, the Supreme Court of Florida has already confirmed the “broad sweep” of the amendment language that will inarguably lead to an unknown increase in the number of abortions across Florida, and until additional further litigation is brought, litigated and concluded, it is unknowable under what safety protocols or lack of safety protocols abortions will be performed. While numerous data confirm the complications from and risks of abortion, because the increased number of future of abortions and increased number of future complications from abortions cannot be known the FIEC must inform voters of the significant increase in Medicaid costs that will ensue if the amendment is passed.

In addition to arguments submitted on October 31, 2023 by Susan B. Anthony Pro-Life America, the FIEC must also account for the assured litigation that will be brought by the proponents. The Florida Office of Attorney General, state agencies, and Florida judiciary will be saddled with the costs associated with litigation on numerous occasions and at every level of the judiciary. As discussed during oral testimony on behalf of Protect Women Florida Action, the cost of that litigation from the executive branch only can be expected to be around five million dollars annually.

The Florida Supreme Court conceded that the text of the amendment “presents interpretive questions” and assured costly litigation surrounding the amendment into the future. Simply based on the Florida Supreme Court’s opinion and the text of the amendment that fails to provide definitions to any term of importance the FIEC must conclude significant costs to the state are guaranteed, however how many lawsuits the proponents are expected to bring against the state is unknowable.

The FIEC, like the general public, are limited to assessing actions of the proponents and their allies. That assessment includes the ACLU, the attorneys and a leading contributor of the proponent, leading lawsuits in both Michigan and Ohio following passage of amendments with the same stated purpose. Since November after an analogous amendment was passed in Ohio, the ACLU has now filed three separate amended complaints to strike down the Ohio Heartbeat Law, eliminate informed consent and waiting period requirements, and to eliminate restrictions on use of telehealth for abortion all based on the argument the existing laws “violate the Ohio Constitution, as amended by voters to include an explicit right to abortion on November 7, 2023.”

As stated, in Michigan the ACLU also filed a lawsuit to mandate coverage of abortion in Medicaid based on a similar premise. And even where a state attorney general fails to defend a challenged law, like the Michigan Attorney General did in a suit seeking to eliminate the Michigan waiting period requirement, the state will still incur costs from staff and agencies who must defend the law and costs incurred by the judiciary.

The committee would also be correct in assessing how ambiguity around the issue of abortion played out in the federal judiciary over the past 50 years. Nearly each decade a seminal case was decided at the Supreme Court of the United States. The costs for those cases do not include the additional dozens of cases at the district and circuit courts throughout the country. Should 23-07 pass, Florida will without question replicate that series of federal litigation within the state for years and decades to come.

The proponent's allies in other states have maintained they have a legal strategy planned to effectuate their vision of the abortion amendments, however having not stated the current filings are the end to their strategy they are implying additional costly lawsuits will be brought against the states of Michigan and Ohio. When looking at the fact the attorneys representing the proponents are actively carrying out a multi-pronged litigation strategy on similar amendments and taking into account the litigious history surrounding the regulation of abortion, it is a certainty the state of Florida will be facing a cost of tens of millions of dollars related only to the cost of litigation.

The proponents in Florida could bring clarity to the issue and provide the FIEC the information necessary to provide a better estimate of the financial impact by informing the FIEC what current Florida laws the proponents intend to challenge as unconstitutional under their amendment. Absent that, the financial impact is not calculable and, as the FIEC correctly stated initially, the financial impact cannot be determined with specificity – the FIEC is left then in a position to describe with the best clarity possible the expected impact of enormous financial costs associated with 23-07. If the proponents informed the FIEC of what laws they intend to challenge the FIEC would at least have an ability to estimate the number of potential lawsuits. Additionally, knowing what existing safety protocols would be at risk the FIEC would have some way to understand what the increased scope of abortions may be, and what current medical safety protocols would no longer be in place for the health and safety of women so as to calculate an estimate on the increased number of complications.

Absent the proponents of 23-07 providing the FIEC this information, and based on the arguments made prior, the FIEC has a duty to inform voters with clarity the significant expansion of costs and taxpayer funding that will be a direct result of 23-07. Failure of the proponents to provide this necessary information to the committee would lead to the FIEC correctly again finding the fiscal impact of 23-07 cannot be determined with specificity, however the summary should acknowledge the breadth and scope of the likely financial increase due to the amendment, so voters are fully and accurately informed.