>> NEXT CASE ON THE DOCKET WILL
BE GAINESVILLE WOMAN CARE V.
STATE OF FLORIDA.
>> WHENEVER YOU'RE READY.
>> GOOD MORNING, YOUR HONORS,
AND MAY IT PLEASE THE COURT,
JULIA KAYE WITH ACLU FOR
PETITIONERS.
I'D LIKE TO RESERVE FOUR MINUTES
FOR REBUTTAL, PLEASE.
VIOLATES THE RIGHT TO PRIVACY IN
A VERY LITERAL WAY.
IT PLANTS THE GOVERNMENT
SQUARELY BETWEEN A WOMAN WHO HAS
DECIDED TO HAVE AN ABORTION AND
THE HEALTH CARE SHE SEEKS.
THIS INTERFERENCE IS INCIDENTAL
TO THE LAW, IT IS THE POINT OF
THE LAW.
BY DESIGN FOR AT LEAST 24 HOURS,
A WOMAN WHO HAS MADE THE
EXCEEDING PRIVATE DECISION
TO END HER PREGNANCY CANNOT DO
SO.
THE PRINCIPLE GROUND FOR REVERSE
ORAL IS THIS: IN VACATING THE
T.I., THE DCA NOT ONLY MISSTATED
AND MISAPPLIED THIS COURT'S
BINDING PRECEDENT, IT ALSO
REACHED A CONCLUSION DIRECTLY AT
ODDS WITH THE CONCLUSIONS
REACHED BY EVERY COURT TO
CONSIDER A MANDATORY DELAY LAW
UNDER THE SAME STANDARD THAT
THIS COURT APPLIES TO
RESTRICTIONS ON ABORTION.
NOW, THE CENTRAL QUESTION IN
THIS CASE IS WHETHER A LAW THAT
FORECLOSES THE OPTION--
>> I'D LIKE TO ASK YOU ABOUT
JURISDICTION AT THE OUTSET
BRIEFLY.
YOUR, THE BASIS YOU'VE ASSERTED
FOR JURISDICTION HERE IS WHAT?
>> IS EXPRESS CONSTRUCTION OF A
CONSTITUTIONAL PROVISION.
>> WHAT IS THE EXPRESS
CONSTRUCTION IN THE DCA'S
OPINION?
>> YOUR HONOR, THE DCA-- THERE

ARE SEVERAL.
FIRST, THE DCA HELD THAT A
EVOLUTIONS IN FEDERAL LAW ARE
RELEVANT IN CONSIDERING A
RESTRICTION ON ABORTION UNDER
FLORIDA'S EXPLICIT RIGHT TO
PRIVACY EVEN THOUGH--
>> DO THEY HOLD THAT? -- WHERE
DO THEY HOLD THAT?
>> THAT LANGUAGE IS ON PAGE 5 OF
THE DECISION WHERE THE KCA SAYS
THAT-- DCA SAYS THAT EVOLUTIONS
IN FEDERAL LAW ARE RELEVANT AND
STRONGLY SUGGESTS THAT NORTH
FLORIDA IS NO LONGER GOOD LAW.
ON PAGE 6 OF THE DCA ORDER, THE
COURT STATES THAT A T.I. ORDER
IS DEFICIENT IF A TRIAL COURT,
CONSIDERING A RESTRICTION ON
ABORTION THAT APPLIES FROM THE
VERY START OF PREGNANCY--
>> WERE YOU CITING TO A
CONCURRING OPINION?
>> NO, I WAS-- THE LANGUAGE ON
EVOLUTIONS IN FEDERAL LAW IS ON
PAGE 5 OF THE MAJORITY OPINION,
AND NOW I'M LOOKING AT PAGE 6 OF
THE MAJORITY OPINION IN THE DCA
ORDER.
SO HERE ON PAGE 6 THE DCA HOLDS
THAT A T.I. ORDER IS LEGALLY
DEFICIENT IF THE TRIAL COURT
FAILS TO CONSIDER THE STATE'S
COMPELLING INTEREST IN
PROTECTING POTENTIAL LIFE.
EVEN WHERE THE RESTRICTION
APPLIES FROM THE VERY BEGINNING
OF PREGNANCY, EVEN THOUGH THIS
COURT HAS CLEARLY HELD THAT AN
INTEREST IN POTENTIAL LIFE DOES
NOT BECOME COMPELLING AND DOES
NOT JUSTIFY AN INTRUSION INTO
THE WOMAN'S PRIVATE DECISION
UNTIL THE POINT OF PREGNANCY.
>> YOU KNOW, I'M HAVING TROUBLE
FINDING--
>> UNTIL THE POINT OF VIABILITY.
>> I'M HAVING TROUBLE FINDING
WHAT YOU'RE TALKING ABOUT.
I UNDERSTAND THAT THERE'S

LANGUAGE IN HERE WHERE THE COURT
TALKS ABOUT ARGUMENTS THAT WERE
MADE AND THE TRIAL COURT'S
FAILURE TO ADDRESS ARGUMENTS,
BUT I'M-- I JUST DON'T SEE THE
HOLDING.
COULD YOU QUOTE THE SPECIFIC
HOLDING, THE LANGUAGE IN THE
HOLDING?
>> ON PAGE 6, THIS IS JUST ONE
EXAMPLE AND I'M HAPPY TO
IDENTIFY OTHERS, THE DCA STATES
THAT A TRIAL COURT'S FAILURE TO
MAKE SUFFICIENT,
FACTUALLY-SUPPORTED FINDINGS
ABOUT THE STATE'S COMPELLING
INTEREST, AND THREE LINES UP IT
SAYS THAT ONE OF THOSE INTERESTS
IS PROTECTING THE UNIQUE
POTENTIALITY OF HUMAN LIFE
RENDERS THE INJUNCTION
DEFICIENT.
THAT STANDS IN DIRECT
CONTRADICTION TO THIS COURT'S
PRECEDENT, AND IT WAS
APPROPRIATE AND NECESSARY MORE
THIS COURT TO AGREE TO REVIEW AN
ORDER THAT CREATES NEW BINDING
PRECEDENT IN THE JUDICIAL
DISTRICT MOST LIKELY TO SEE A
PRIVACY CHALLENGE ON WHEN THE
RIGHT TO PRIVACY IS IMPLICATED
AND HOW SUCH CHALLENGES MUST BE
EVALUATED.
NOW, THE CENTRAL QUESTION IN
THIS CASE IS WHETHER THIS LAW,
WHICH FORECLOSES THE OPTION OF
ABORTION FOR AT LEAST 24 HOURS,
IS A SIGNIFICANT RESTRICTION ON
THE RIGHT.
OR IN OTHER WORDS, WHETHER IT
IMPLICATES RATHER THAN MERELY
TOUCHES UPON THE RIGHT TO
PRIVACY AND, THEREFORE, TRIGGERS
STRICT SCRUTINY.
THERE ARE THREE BASES FOR
FINDING THE MANDATORY DELAY LAW
IS A SIGNIFICANT RESTRICTION.
FIRST AND MOST IMPORTANTLY, THE
PLAIN ARE TERMS OF THE STATUTE.

SECOND, THE WEIGHT OF AUTHORITY.
AND, THIRD, THE UNREBUTTED
RECORD EVIDENCE.
NOW, AS THE MONTANA COURT
EXPLAINED IN STRIKING DOWN A
24-HOUR MANDATORY DELAY LAW
UNDER THAT STATE'S EXPLICIT
RIGHT TO PRIVACY, THE PRIVACY
INFRINGEMENT IS APPARENT AS A
MATTER OF LAW BECAUSE THE STATE
IS TELLING A WOMAN THAT SHE
CANNOT EXERCISE A FUNDAMENTAL
CONSTITUTIONAL RIGHT FOR A
24-HOUR PERIOD.
THIS COURT HAS NEVER DEMANDED
FACTUAL FINDINGS ON A LAW'S
EFFECTS BEFORE FINDING THAT THE
PRIVACY RIGHT IS IMPLICATED WHEN
THE INFRINGEMENT IS APPARENT
FROM THE FACE OF THE LAW AS IT
IS HERE.
AND WE'VE SEEN THAT IN THE
CONTEXT OF GRANDPARENT
VISITATION LAWS, JUVENILE CURFEW
BE LAWS, IN OTHER DECISIONS OF
THIS COURT.
SECOND, THIS COURT CAN FIND THAT
IT IMPLICATES THE RIGHT TO
PRIVACY BASED ON AUTHORITY WHICH
IS JUST WHAT THE 2ND CIRCUIT
COURT OF APPEALS DID IN ONE OF
THE RELEVANT FEDERAL DECISIONS
BECAUSE IT CAME DOWN DURING THE
20-YEAR PERIOD BETWEEN ROE V.
WADE AND PLANNED PARENTHOOD VERY
CASEY WHEN THE FEDERAL STANDARD
OF REVIEW MIRRORED THE STANDARD
THAT FLORIDA APPLIES.
NO COURT HAS HELD THAT A 4-HOUR
MANDATORY DELAY LAW IS SO
INSIGNIFICANT THAT IT DOESN'T
EVEN IMPLICATE THE RIGHT TO
PRIVACY.
TO THE CONTRARY, COURTS APPLYING
THE SAME STANDARD THAT THIS
COURT APPLIES HAVE STRUCK DOWN
MANDATORY DELAY LAWS OF AS
LITTLE AS TWO HOURS BECAUSE THE
STATE IS DELAYING THE WOMAN WHO
AFTER APPROPRIATE COUNSELING IS

PREPARED TO GIVE HER INFORMED
CONSENT AND EXERCISE THIS
FUNDAMENTAL RIGHT.
EVEN THE UNDO BURDEN CASES THAT
THE STATE RELIES ON, EVEN THOSE
CASES WHICH ARE GENERALLY IN
OPPOSITE BECAUSE THEY APPLY A
LESS PROTECTIVE STANDARD THAT
THIS COURT HAS EXPRESSLY
REJECTED AND THAT THE FLORIDA
VOTERS REJECTED AT THE BALLOT IN
2012, EVEN THOSE CASES
ACKNOWLEDGE AND RECOGNIZE THAT A
24-HOUR MANDATORY DELAY LAW
IMPLICATES THE RIGHT TO PRIVACY
AND THAT THESE LAWS IMPOSE REAL
BURDENS.
AND THIS COURT NEED LOOK NO
FURTHER THAN THE LONG FOOTNOTE
ON PAGES 30 AND 31 OF THE
STATE'S ANSWER BRIEF WHICH
INCLUDE SOME EXPLANATORY PANE
NET CALLS FROM THOSE DECISIONS
ACKNOWLEDGING THESE MANDATORY
DELAY LAWS OF 24 HOURS PREVENT
SOME WOMEN FROM OBTAINING
ABORTIONS, DOUBLE THE HARASSMENT
THAT A WOMAN FACES UPON ENTERING
THE CLINIC, THAT IT INCREASES
THE COSTS.
EVEN THOSE CASES WHICH IN
GENERAL ARE IN AP SIT
ACKNOWLEDGE THAT THIS MANDATORY
DELAY LAW IMPLICATES THE RIGHT
TO PRIVACY.
NOW, THE FACT THAT THOSE CASES
FOUND THAT THOSE BURDENS DIDN'T
VIOLATE THE LESS PROTECTIVE
FEDERAL STANDARD CERTAINLY
DOESN'T MEAN THAT IT DOESN'T
IMPLICATE THE RIGHT TO PRIVACY
IN FLORIDA.
CLEARLY, A LAW DOESN'T NEED TO
BE SO BURDENSOME THAT IT WOULD
VIOLATE THE LESS PROTECTED
FEDERAL STANDARD BEFORE IT EVEN
IMPLICATES FLORIDA'S EXPLICIT
RIGHT TO PRIVACY WHICH FOR 30
YEARS THIS COURT HAS HELD IS
MUCH BROADER IN SCOPE THAN THE

FEDERAL RIGHT.
AND THIRD, THE UNREBUTTED RECORD
EVIDENCE IN DR. CURRY'S
AFFIDAVIT IS NOT ONLY THAT WOMEN
WILL ALL BE PREVENTED FOR AT
LEAST 24 HOURS AND IN MANY CASES
LONGER FROM EXERCISING THIS
FUNDAMENTAL RIGHT, BUT THAT SOME
VICTIMS OF DOMESTIC VIOLENCE
WILL BE PREVENTED ALTOGETHER,
THAT SOME WOMEN WILL BE PUSHED
PAST THE POINT IN PREGNANCY AT
WHICH SHE CAN OBTAIN A
MEDICATION ABORTION INVOLVING
MEDICATIONS RATHER THAN A SURGE
CALL PROCEDURE.
SURGICAL PROCEDURE.
THAT SOME WOMEN WHO RECEIVE A
DEVASTATING DIAGNOSIS OF A
SEVERE OR LETHAL FETAL ANOMALY
WILL SUFFER SERIOUS EMOTIONAL
HARM BECAUSE THE STATE IS
FORCING HER TO CARRY A DOOMED
PREGNANCY LONGER THAN SHE WANTS
TO.
NOW, I WANT TO ALSO ADDRESS WHY
THE DCA WAS WRONG THAT A TRIAL
COURT MUST ALWAYS HAVE AND MUST
ALWAYS DISCUSS FACTUAL EVIDENCE
OF A LAW'S EFFECT BEFORE FINDING
THAT IT IMPLICATES THE RIGHT TO
PRIVACY AND TRIGGERS STRICT
SCRUTINY.
SO FIRST, AS I MENTIONED
EARLIER, THAT DECISION TREATS
ABORTION AS LESS OF A
FUNDAMENTAL RIGHT THAN ANY
OTHER.
AS LAST AMONG EQUALS.
BECAUSE THIS COURT, AS I NOTED
EARLIER IN THE CONTEXT OF
GRANDPARENT VISITATION LAWS,
JUVENILE CURFEW LAWS AND OTHERS,
SOMETIMES FINE THAT IT IS CLEAR
FROM A LAW'S PLAIN TERMS THAT IT
IMPLICATES THE RIGHT TO PRIVACY.
THERE'S NO REASON WHY A TRIAL
COURT SHOULD NOT BE ABLE TO DO
THE SAME THING WHEN IT COMES TO
ABORTION.

AND SECOND, IF THE DCA WERE
CORRECT THAT A REGULATION
RESTRICTING ACCESS TO ABORTION
CAN NEVER IMPLICATE THE RIGHT TO
PRIVACY ON ITS FACE AND EVEN IF
THE STATE WERE TO BAN ABORTION
OUTRIGHT AS TWO BILLS INTRODUCED
IN THE LAST LEGISLATIVE SESSION
WOULD HAVE DONE, EVEN THEN A
COURT COULD NOT FIND THAT THAT
IMPLICATES THE RIGHT TO PRIVACY
ON ITS FACE.
PLAINTIFFS WOULD FIRST NEED TO
PRODUCE EVIDENCE OF THE LAW'S
EFFECTS OF AN OUTRIGHT BAN.
THAT CANNOT BE WHAT FLORIDA'S
EXCEEDINGLY STRONG, EXPLICIT
RIGHT TO PRIVACY REQUIRES.
NOW, I WANT TO MAKE ONE OTHER
POINT ABOUT THE STATE'S ARGUMENT
IN ITS ANSWER BRIEF.
THE STATE CONFLATES TWO ISSUES.
THE STATE ARGUES THAT THE
MANDATORY DELAY LAW DOES NOT
IMPLICATE THE RIGHT TO PRIVACY
BECAUSE A WOMAN CANNOT MAKE AN
INFORMED DECISION ABOUT HER
PREGNANCY WITHOUT A
GOVERNMENT-- EXCUSE ME, WITHOUT
A GOVERNMENT-MANDATED DELAY.
SO IN OTHER WORDS, BECAUSE THIS
IS REASONABLE, IT'S NOT A
SIGNIFICANT RESTRICTION.
IN ADDITION TO BEING UNSUPPORTED
BY ANY RECORD EVIDENCE OR ANY
LEGISLATIVE FINDINGS, THE
STATE'S ARGUMENT ALSO PUTS THE
CART BEFORE THE HORSE.
WHETHER THIS LAW, IN FACT,
ANSWER ADVANCES AN INTEREST IN
INFORMED CONSENT IS RELEVANT TO
WHETHER THE LAW SURVIVES STRICT
SCRUTINY.
IT'S NOT RELEVANT TO THE
QUESTION OF WHETHER THIS LAW IS
SUBJECT TO STRICT SCRUTINY AS IT
CLEARLY IS FROM THE PLAIN TERMS.
>> IS THERE-- IN NORTH FLORIDA
THERE IS THE STRONG STATEMENT
THAT IS MADE THAT LEGISLATION

INTRUDING ON THE FUNDAMENTAL
RIGHT OF PRIVACY IS
PRESUMPTIVELY INVALID AND MUST
MEET THE STRICT SCRUTINY
STANDARD.
AND THAT, AS YOU SAID, THAT WHEN
THE RIGHT OF PRIVACY IS
IMPLICATED, STRICT SCRUTINY IS
APPLIED, AND WE EXPRESSLY REJECT
THIS-- BECAUSE WE SAY IT'S
AMORPHOUS, UNDUE BURDEN
STANDARD.
I LOOKED BACK AT T.W. AND ALSO
NORTH FLORIDA WHICH WERE BOTH,
DID INVOLVE MINORS, AND, YOU
KNOW, WHETHER THE RIGHT OF
PRIVACY EXTENDS TO ALL.
WE'RE HERE, WE'RE TALKING ABOUT
INDIVIDUAL WOMEN INCLUDING
ADULT, I MEAN, MAINLY ADULT
WOMEN.
IS THE CONCEPT OF A SIGNIFICANT
RESTRICTION WHICH YOU'VE USED AS
SAYING, WELL, THAT'S-- ANY
RESTRICTION ON THE RIGHT TO
OBTAIN AN ABORTION IS A
SIGNIFICANT RESTRICTION, ISN'T
THAT ALMOST SUPERFLUOUS?
IN OTHER WORDS, IT'S IN THERE IN
T.W., BUT IT SEEMS TO BE TALKING
ABOUT MAYBE THE SECOND
TRIMESTER, THIRD TRIMESTER, THAT
THERE MAY BE DIFFERENT INTERESTS
AT STAKE THAT THE STATE WOULD
HAVE TO SHOW.
IS THAT A-- AND, YOU KNOW, YOU
ACCEPT IT, BUT I DON'T, I THINK
THAT THE PROBLEM MAYBE IS THAT
NORTH FLORIDA BY USING BOTH
SIGNIFICANT RESTRICTION BUT ALSO
SAYING THAT LEGISLATION IS
PRESUMPTIVELY INVALID MAY HAVE
INADVERTENTLY CREATED SOME
CONFUSION.
SO THIS IS JUST WHY-- I MEAN,
WHERE DOES SIGNIFICANT
RESTRICTION COME FROM AS FAR AS
SOME THRESHOLD REQUIREMENT THAT,
AS YOU SAY, THAT ONLY IN RIGHT
TO PRIVACY INVOLVING ABORTION

THERE'S SOME INITIAL HURDLE?
THAT'S WHY, THAT'S MY CONCERN,
THAT OUT DOESN'T REALLY SEEM--
THAT IT DOESN'T REALLY SEEM THAT
THAT'S REALLY MORE THE STATE'S
BURDEN TO SHOW EITHER IT'S NOT A
SIGNIFICANT RESTRICTION OR THAT
THERE'S A COMPELLING INTEREST
FOR THIS SIGNIFICANT RESTRICTION
WHICH IS NOWHERE IN THE RECORD.
>> WELL, YOUR HONOR, THE
DISTINCTION BETWEEN SIGNIFICANT
AND INSIGNIFICANT RESTRICTIONS
ON ABORTION COMES FROM T.Y. OF
AKRON, THE AKRON CENTER FOR
REPRODUCTIVE HEALTH, A U.S.
SUPREME COURT DECISION THAT
STRUCK DOWN A MANDATORY 24-HOUR
DELAY LAW.
AND WHAT THE U.S. SUPREME COURT
WAS DOING THERE THAT'S QUOTED IN
T.W., THE COURT WAS SAYING IN
GENERAL SIGNIFICANT RESTRICTIONS
ON THE RIGHT TO ABORTION ARE
GOING TO BE SUBJECT TO STRICT
SCRUTINY, BUT WHERE THE LAW
MERELY TOUCHES UPON THE RIGHT TO
PRIVACY SUCH AS A RECORDKEEPING
REQUIREMENT FOR ABORTION
PROVIDERS, THEN THE STATE ONLY
HAS TO SHOW THAT IT
SUBSTANTIALLY FURTHERS AN
IMPORTANT STATE INTEREST WHICH
IS ITSELF A SEARCHING STANDARD,
HEIGHTENED SCRUTINY.
BUT IT DREW THAT DISTINCTION.
NOW, I DO WANT TO BE CLEAR
THAT--
>> WELL, BUT CITY OF AKRON,
AGAIN, AS YOU SAY, IT'S A
FEDERAL CASE.
AND IN CASEY AS FAR AS SOME OF
THE LAW, THE SUPREME COURT
EITHER EVOLVED OR DEVOLVED
DEPENDING ON HOW YOU LOOK AT IT.
WE'RE TALKING HERE ABOUT
FLORIDA'S FREE-STANDING RIGHT TO
PRIVACY.
AND THE RIGHT OF A WOMAN TO
CHOOSE TO HAVE AN ABORTION AFTER

A NEUTRAL INFORMED CONSENT LAW
WHICH WAS, OF COURSE, UPHELD IN
PRESIDENTIAL WOMEN'S BECAUSE IT
WAS A NEUTRAL INFORMED CONSENT
LAW.
THAT IS, AND I THINK THERE'S
SOME ARGUMENT THAT SOMEHOW
PRESIDENTIAL WOMEN CHANGES THE
LAW.
BUT ISN'T, THEREFORE, BY RELYING
ON AKRON GOING BACK TO ALL A OF
OUR OTHER CASES ON RIGHT OF
PRIVACY, IS THERE ANY REASON TO
PUT A DIFFERENT START, A HIGHER
STANDARD FOR WOMEN TRYING TO
CHALLENGE AN ABORTION REGULATION
THAN ON ANY OTHER RIGHT OF
PRIVACY?
>> I THINK YOUR HONOR IS EXACTLY
RIGHT.
AKRON IS THE FLOOR.
THIS COURT HAS MADE ABUNDANTLY
CLEAR FOR 30 YEARS THAT THE
EXPLICIT RIGHT TO PRIVACY
PROVIDES MUCH BROADER, STRONGER
PROTECTIONS THAN THE IMPLICIT
RIGHT TO PRIVACY IN THE FEDERAL
CHARTER WHICH IS WHY IT CAN'T BE
THE CASE THAT A 24-HOUR
MANDATORY DELAY LAW WOULD FALL
IN CITY OF AKRON BUT NOT FALL
UNDER FLORIDA'S MUCH STRONGER
RIGHT.
AND I THINK IT WOULD BE
PERFECTLY APPROPRIATE FOR THIS
COURT TO CLARIFY THAT THE
SIGNIFICANT RESTRICTIONS
THRESHOLD QUESTION IS NOT MEANT
TO BE THE HIGH BART THAT THE--
HIGH BAR THAT THE STATE PURPORTS
IT TO BE.
THIS IS NOT MEANT TO BE
EQUIVALENT TO THE QUESTION OF
WHETHER A LAW IS, IMPOSES AN
UNDUE BURDEN AND PUTS A
SUBSTANTIAL OBSTACLE IN THE PATH
OF A WOMAN SEEKING AN ABORTION
WHICH IS THE FEDERAL TEST.
THIS IS MERELY A THRESHOLD
QUESTION TO INSURE THAT ANY LAW

THAT INFRINGES THE RIGHT TO
PRIVACY IS SUBJECT TO STRICT
SCRUTINY.
I THINK THAT CLARIFICATION IS
EXACTLY RIGHT, YOUR HONOR.
NOW, I WANT TO JUST MAKE ONE
POINT ABOUT WHY THIS LAW CANNOT
SURVIVE STRICT SCRUTINY IN
ADDITION TO THE FACT THAT IF--
>> WELL, YOU WOULD AGREE THAT
ALTHOUGH WE'RE HERE, WE'RE HERE
BECAUSE THE FIRST DISTRICT
REVERSED A TEMPORARY INJUNCTION
ON THIS STATUTE WHERE THERE WAS
EVIDENCE, AS YOU SAY, PRESENTED
THROUGH THE AFFIDAVIT.
WE ARE NOT HERE TO DECIDE
WHETHER THE LAW IS
CONSTITUTIONAL OR NOT.
>> YES--
>> IS THAT CORRECT?
>> WE HAVE ASKED THE COURT TO
AFFIRM THE TEMPORARY INJUNCTION
AND MAKE CLEAR THAT THIS OVERT
AND DIRECT INTRUSION INTO A
WOMAN'S PRIVATE ABORTION
DECISION IS SUBJECT TO STRICT
SCRUTINY.
>> SO THE-- BOTH SIDES WILL
HAVE THE OPPORTUNITY AT A FULL
EVIDENTIARY HEARING TO PRESENT
WHAT OTHER ADDITIONAL EVIDENCE
THEY WANT.
>> THAT'S RIGHT.
WE'VE ONLY ASKED FOR THE T.I. TO
BE AFFIRMED, BUT ALSO FOR THE
APPROPRIATE CONSTITUTIONAL
STANDARD TO BE CLARIFIED SO THAT
WE'RE NOT UP HERE AGAIN ON THE
EXACT SAME QUESTION.
CLEARLY, THE DCA MISINTERPRETED
THIS COURT'S ABORTION
JURISPRUDENCE, AND IT IS
NECESSARY AND APPROPRIATE FOR
THIS COURT TO CLARIFY THAT.
NOW, I SEE THAT I'M CUTTING INTO
MY REBUTTAL TIME, SO I ARE
RESERVE THE REMAINDER.
THANK YOU-- SO I WILL RESERVE
THE REMAINDER.

THANK YOU.
>> MR. CHIEF JUSTICE AND MAY IT PLEASE THE COURT, I'M DENISE HARLE FOR THE STATE OF FLORIDA.
THERE ARE TWO REASONS WHY THIS COURT SHOULD NOT QUASH THE DECISION BELOW.
FIRST, THE DCA'S DECISION IS CORRECT, BECAUSE IT WAS PROCEDURALLY IMPROPER FOR THE TRIAL COURT TO ISSUE AN INJUNCTION IN THESE CIRCUMSTANCES.
SECOND, ON THE MERITS ALTHOUGH THE DCA DID NOT REACH THE QUESTION, THE LEGISLATURE COULD HAVE PERMISSIBLY CONCLUDED THAT A VERY SHORT CONSENT PERIOD IS REASONABLY NECESSARY TO EFFECTUATE THE INFORMED CONSENT STATUTE THAT THIS COURT HAS ALREADY UNANIMOUSLY UPHELD.
>> WELL, LET'S JUST-- THE, THE INFORMED CONSENT STATUTE THAT WAS PASSED IN 1997 SPECIFICALLY FOR ABORTIONS WAS LITIGATED IN THE APPELLATE COURTS FOR ABOUT NINE YEARS WHERE DURING THAT TIME BECAUSE THERE WAS SOME SPECIFIC CLAIMS THAT THERE WAS, IT WAS MORE THAN JUST A NEUTRAL INFORMED CONSENT LAW, THAT STATUTE WAS STAYED X. BE ONLY AFTER-- AND ONLY AFTER IN 2006 WHEN IT CAME TO THIS COURT AND THE STATE CONCEDED THAT IT WAS SIMPLY A, JUST LIKE EVERY OTHER INFORMED CONSENT LAW WHICH ALLOWED OR REQUIRED THE DOCTOR TO ADVISE THE PATIENT SO THAT THE PATIENT COULD MAKE AN INFORMED CONSENT LAW WAS THAT STATUTE UPHELD.
THEN NINE YEARS LATER, IN--
WAIT, NO.
HOW MANY YEARS?
2006, NINE YEARS?
2015.
OUT OF NOWHERE, THE LEGISLATURE PASSES WITHOUT FINDINGS, WITHOUT

A STATEMENT OF PURPOSE A 24-HOUR
WAITING PERIOD WITHOUT MAKING
ANY FINDINGS, AND THE STATE GOES
TO THE TRIAL COURT AND DOES NOT
TRY TO GIVE A REASON, A
COMPELLING REASON WHY THIS
MANDATORY DELAY LAW WOULD BE
NOT, WOULD BE CONSTITUTIONAL.
I DON'T, I'M-- SO I'M SORT OF
WONDERING WHAT WAS GOING ON FOR
THE STATE WHEN THE STATE WAS
TOLD THAT EITHER SIDE OR BOTH
SIDES COULD PRESENT ADDITIONAL
EVIDENCE, PRESENTS NOTHING, AND
WHY THEN THE NORTH FLORIDA CASE
WHICH SAYS THAT A LAW THAT
IMPLICATES THE RIGHT OF PRIVACY
IS PRESUMPTIVELY INVALID, WHY
THERE WASN'T ANY OBLIGATION ON
THE STATE TO PRESENT CONTRARY
EVIDENCE AS TO WHY THERE WAS A
COMPELLING STATE INTEREST THAT
WAS FURTHERED BY THIS
LEGISLATION IN THE LEAST
RESTRICTIVE MEANS.
>> WELL, I THINK THERE MAY BE
FOUR OR FIVE QUESTIONS PACKED IN
THERE--
>> PROBABLY ARE, WAS I'M JUST--
[LAUGHTER]
BECAUSE YOU'RE SAYING
PRESIDENTIAL WOMENS SAID
SOMETHING THAT IT DIDN'T SAY,
AND I THINK THIS IS--
>> WELL.
>>-- YOU'RE MAKING THAT
ARGUMENT HERE.
>> LET'S START THERE.
SO PRESIDENTIAL WOMENS CENTER,
THAT INFORMED CONSENT STATUTE
WAS NOT LIKE EVERY OTHER.
IT WAS NEUTRAL.
IT STILL IS OUTCOME-NEUTRAL, BUT
IT DID CONTAIN SEVERAL
ABORTION-SPECIFIC PROVISIONS.
IT NOW INCLUDES THE ULTIMATE
THAT SOUND AS-- ULTRASOUND AS
WELL WHICH PLAINTIFFS ARE NOT
INCLUDING, BUT IT INCLUDED
DETAILED INFORMATION ABOUT

MEDICAL ASSISTANCE BENEFITS FOR
NEONATAL AND PRENATAL CARE, IT
INCLUDED REQUIRING THE DOCTOR IN
PERSON TO TELL THE WOMAN ABOUT
ENTITIES THAT OFFER ALTERNATIVES
TO ABORTION INCLUDING ADOPTION
AGENCIES AND SO FORTH.
SO IT WAS ABSOLUTELY
ABORTION-SPECIFIC, AND THESE
SAME FOLKS, I MEAN, THE SAME
COUNSEL-- DIFFERENT ABORTION
PROVIDERS-- CAME INTO THIS
COURT AND SAID MA MERELY
REQUIRING A DOCTOR TO GIVE
SPECIFIC INFORMATION IN PERSON
TO A WOMAN UNDERGOING A
PROCEDURE AND OBTAIN HER
INFORMED CONSENT WAS THIS
OBSTACLE AND INTRUSION ON THE
RIGHT OF PRIVACY.
AND THIS COURT UNANIMOUSLY
REJECTED THAT IN REVERSING WHAT
THE 4TH DCA HAD DONE.
NOW AS TO THE TIMING OF THE
LEGISLATURE, WHAT I DO KNOW IS
THAT THERE ARE NOW 28 STATES
THAT HAVE VERY SHORT WAITING
PERIODS FOR ABORTION, AND
FLORIDA IS COMING IN LINE WITH
THE MAJORITY OF STATES THIS IN
THAT WAY.
THE UNITED STATES SUPREME COURT
HAS SPOKEN APPROVINGLY OF IT,
AND SO I DON'T KNOW THE
SPECIFICS OF THE--
>> THEY JUST WERE FOLLOWING
OTHER LEGISLATURES.
BUT WHAT EVIDENCE, WHAT HAPPENED
BETWEEN WHEN ABORTION BECAME
LEGAL AND 30 YEARS LATER THAT
JUSTIFIED TO HAVE THIS PROCEDURE
UNLIKE ANY OTHER PROCEDURES, AS
I SAY, WHETHER IT'S A
HYSTERECTOMY, A D AND C, A
VASECTOMY TO SAY AFTER YOU HAD
YOUR INFORMED CONSENT IN PERSON
WITH THE DOCTOR, YOU HAD TO WAIT
24 HOURS AND COME BACK.
IS THERE ANY-- WHAT-- SO IS
THE ARGUMENT THAT BECAUSE THE

OTHER LEGISLATURES WERE DOING
IT, THAT THAT'S WHY THE FLORIDA
LEGISLATURE FOLLOWED SUIT?
>> WELL, WE CAN CERTAINLY LOOK
TO WHAT OTHER STATES ARE DOING
AS GOOD PUBLIC POLICY, BUT THE
COMPARABLES HERE AND THE WAITING
PERIOD IS NOT BECAUSE IT'S A
MEDICAL PROCEDURE.
IT'S A WAITING PERIOD BECAUSE
THIS IS AN IRREVERSIBLE,
LIFE-ALTERING DECISION ON THE
ORDER OF THINGS LIKE MARRIAGE,
DIVORCE, GIVING UP YOUR CHILD
FOR ADOPTION AND OTHER CONTEXTS
WHERE THE STATE IMPOSES A VERY
BRIEF WAITING PERIOD FOR MAJOR
LIFE DECISIONS BECAUSE THERE IS
A SOCIETAL INTEREST IN PEOPLE
ENTERING INTO THOSE DECISIONS
WITH DUE DELIBERATION.
AND THE BURDEN IS ON THE
PLAINTIFFS WHO ARE SEEKING AN
EXTRAORDINARY REMEDY.
THE LAW ENJOYS A PRESUMPTION OF
CONSTITUTIONALITY--
>> THAT'S WHAT I'M ASKING YOU.
EXCEPT THAT NORTH FLORIDA SAYS
THAT IT'S REVERSED, THAT THIS
LAW BECAUSE IT IMPLICATES THE
RIGHT OF PRIVACY IS
PRESUMPTIVELY INVALID, AND THE
STATE HAS THE OBLIGATION TO SHOW
WHY IT IS NOT THAT THERE'S A
COMPELLING STATE INTEREST AND
THAT THIS IS FOSTERED THROUGH
THE LEAST RESTRICT I MEANS.
>> SO T.W. AND NORTH FLORIDA
BOTH SAY THAT IF THE LAW CREATES
A SIGNIFICANT RESTRICTION, THEN
STRICT SCRUTINY APPLIES.
THAT IS THE ONLY TEST THIS COURT
HAS ARTICULATED--
>> [INAUDIBLE]
>> HAVE TO MEAN SOMETHING.
>> YOU HEARD-- I KNOW.
BUT YOU DO SEE THAT THERE IS THE
STATEMENT AND THEN THERE'S THE
LATER STATEMENT OF
INJECTING UNDUE BURDEN.

NO QUESTION THAT THIS COURT
REJECTED UNDUE BURDEN.
>> THAT'S RIGHT.
>> SO SOMEHOW SIGNIFICANT
RESTRICTION IS LESSER THAN UNDUE
BURDEN, AND ISN'T THE
INSIGNIFICANT RESTRICTIONS
THINGS THAT ARE NEUTRAL SUCH AS,
AS WE, YOU KNOW, A NEUTRAL
INFORMED CONSENT LAW IS A, NOT A
SIGNIFICANT RESTRICTION.
BASICALLY, THAT'S A WHAT
PRESIDENTIAL WOMENS HAD TO SAY
BECAUSE WE DIDN'T DISCUSS RIGHT
OF PRIVACY IN THERE.
>> THERE'S NO HOLDING FROM THIS
COURT, NO PRECEDENT FROM THIS
COURT SAYING INSIGNIFICANT
RESTRICTION ONLY MEANS NEUTRAL.
HOWEVER, THE STATE IS NOT TRYING
TO ENCOURAGE OR DISCOURAGE
ABORTIONS JUST AS THE STATE IS
NOT TRYING, ATTEMPTING TO
DISCOURAGE MARRIAGE OR ANYTHING
ELSE--
>> YOU KNOW, I APPRECIATE YOU
HAVE TO ARGUE THIS FOR THE
STATE, BUT IN ALL DUE RESPECT,
IF YOU READ AND THE AFFIDAVIT OF
DR. CURRY'S, YOU REALLY CAN'T
REACH THAT CONCLUSION.
AND IT WOULD HAVE HELPED THE
STATE IF THEY HAD PUT ON SOME
EVIDENCE TO SUPPORT WHAT YOU'RE
NOW SAYING, AND YOU'LL HAVE THAT
CHANCE IF WE QUASH THE 1ST
DISTRICT TO DO THAT AT A
FULL-BLOWN HEARING ON A
PERMANENT INJUNCTION, CORRECT?
IT DOESN'T FORECLOSE YOU.
>> SURE.
SO IF WE GO BACK TO WHAT THE
TRIAL COURT SAID, THE TRIAL
COURT SAID IT ONLY HAD ONE PIECE
OF EVIDENCE IN FRONT OF IT.
SO REGARDLESS OF WHETHER THE
STATE, YOU KNOW, OBJECTED OR NOT
TO THE PLAINTIFF'S EVIDENCE,
NONE OF THAT EVIDENCE WAS ACTUAL
FACT OR-- ABOUT AN ACTUAL

BURDEN ON ANY WOMAN.
IT WAS ALL ASSERTIONS,
HYPOTHETICAL BURDENS
NOT SUPPORTED BY FACTS.
SO SO FAR WE HAVE A RECORD THAT
IS DEVOID OF EVIDENCE OF ANY
SIGNIFICANT RESTRICTION AS TO
ANY WOMAN.
SO THE ONE PIECE OF EVIDENCE
THAT THE TRIAL COURT LOOKED TO
WAS THE FACT THAT THERE ARE NO
OTHER GYNECOLOGICAL PROCEDURES
IN HER UNDERSTANDING THAT
REQUIRE WAITING PERIODS.
AND THAT DOESN'T GO TO THE
QUESTION OF WHETHER THE
RESTRICTION ITSELF IS
SIGNIFICANT WHICH IS THE
PLAINTIFF'S BURDEN TO SHOW.
AND, FRANKLY, THE IF IT IS
SENATE, THEY SHOULD BE ABLE--
SIGNIFICANT, THEY SHOULD BE ABLE
TO COME FORWARD WITH ONLY
EVIDENCE OF THAT.
AGAIN, THESE LAWS HAVE BEEN
AROUND FOR QUITE SOME TO TIME IN
MANY PLACES, AND SO FAR EVEN
CASEY WHERE THERE WAS AN
EXTENSIVE RECORD, THE UNITED
STATES SUPREME COURT, THE
JUSTICES JOINING THE PLURALITY
SAID THAT THE 24-HOUR WAIT
PERIOD BECAUSE IT FACILITATES
THE WISE EXERCISE OF THE RIGHT
TO ABORTION, IS NOT PROPERLY
CONCEPTUALIZED AS A RESTRICTION
ON THAT RIGHT.
>> IT SEEMS TO ME THAT STILL
GOES--
[INAUDIBLE]
FLORIDA WOMEN'S THAT SAYS, YOU
KNOW, RIGHT TO PRIVACY ONCE
YOU'RE TALKING ABOUT AN ISSUE
THAT INVOLVES THE RIGHT OF
PRIVACY, THEN IT REALLY IS THE
ASTRONAUT'S BURDEN.
NOT THE-- STATE'S BURDEN.
NOT THE POLICE OFFICER'S BURDEN,
IT'S THE STATE'S BURDEN TO SHOW
THAT THAT RESTRICTION ON THE

RIGHT TO PRIVACY IS A
COMPELLING--
[INAUDIBLE]
THE STATE TO STEP IN AND DECIDE
WHEN THIS PROCEDURE SHOULD TAKE
PLACE, IT'S THE STATE THAT HAS
TO SHOW THAT THERE'S A
COMPELLING INTEREST.
AND WHAT-- WAS THERE ANY
ATTEMPT TO SHOW A COMPELLING
INTEREST AT THE TRIAL COURT
LEVEL?
>> WE SET OUT OUR COMPELLING
INTERESTS, BUT THE FOCUS--
>>
[INAUDIBLE]
>> WELL, THE COMPELLING INTEREST
IS IN INSURING INFORMED CONSENT
AND PROTECTING INDIVIDUALS FROM
UNDERGOING SERIOUS LIFE
DECISIONS WITHOUT SOME MINIMAL,
ADEQUATE TIME TO DELIBERATE IT.
IT'S PART OF REGULATING THE
MEDICAL PROFESSION, IT'S PART OF
MAINTAINING THE WELFARE AND
SAFETY OF THE PEOPLE, AND THIS
COURT HAS FOUND THAT THE STATE
HAS COMPELLING INTERESTS IN THE
PRIVACY CONTEXT IN THINGS LIKE
REGULATING THE LEGAL PROFESSION,
REGULATING THE GAMBLING
PROFESSION AT WINFIELD.
BUT WHAT THE TRIAL COURT DID WAS
THE TRIAL COURT--
>> [INAUDIBLE]
PRIVACY INTERESTS WHETHER OR NOT
SHE'S GOING TO HAVE AN ABORTION.
>> AND THAT MIGHT BE A QUESTION
FOR ANOTHER DAY, BUT THE
PLAINTIFFS HAVEN'T SHOWN THAT
THERE'S A SIGNIFICANT
RESTRICTION, AND THE TRIAL COURT
PUT THE BURDEN ON COMPLETELY THE
WRONG PARTY.
THE TRIAL COURT SAID THE STATE
HASN'T--
>> I GUESS THAT'S WHERE I'M
HAVING THE TROUBLE S THAT THE
BURDEN HAS TO BE ON THE STATE TO
SHOW THAT THERE WAS A COMPELLING

INTEREST.
>> THAT'S NOT THE LAW FROM IN
THIS COURT.
>> WELL, IT SEEMS TO ME THAT IN
NORTH FLORIDA THAT'S WHAT IT
SAYS, THAT ONCE YOU-- WHEN THE
PRIVACY INTEREST IS A
FUNDAMENTAL RIGHT WHICH WE
BELIEVE DEMANDS THE COMPELLING
STATE INTEREST FINISH.
[INAUDIBLE]
THE BURDEN OF PROOF TO THE STATE
TO JUSTIFY AN INTRUSION ON
PRIVACY.
>> ONCE, ONCE IT HAS BEEN SHOWN
THAT THE LAW ACTUALLY IS A
SIGNIFICANT RESTRICTION.
BECAUSE ANY GOVERNMENT
REGULATION OR MANY GOVERNMENT
REGULATIONS DO INCIDENTALLY
BURDEN THEIR INTRUSIONS IN OUR
PRIVACY AND IN OUR
CONSTITUTIONAL RIGHT, AND THAT
CERTAINLY DOESN'T MEAN THEY'RE
PROPERLY CHARACTERIZED AS A
RESTRICTION OF THE PRIVACY
RIGHT.
>> HOW DO YOU READ-- AND I LOOK
BACK AT PRESIDENTIAL WOMENS AND
THE CONCURRENCE THAT I WROTE
WHERE JUSTICE QUINCE AND JUSTICE
ANSTEAD JOINED IN WHERE WITH WE
BASICALLY SAID IF IT WAS NOT A
NEUTRAL INFORMED CONSENT LAW
WITH THE SUBSTANTIAL CONCESSIONS
MADE BY THE STATE FINALLY BEFORE
THE SUPREME COURT, LAW WOULD
HAVE BEEN UN-- THIS LAW WOULD
HAVE BEEN UNCONSTITUTIONAL.
AND THE MAJORITY AS I READ IT,
GOES OUT OF ITS WAY TO TALK
ABOUT THAT THE INFORMED CONSENT
PURPOSE IS FOR THE PATIENT TO
MAKE THE DECISION AND THAT,
THEREFORE, IT HAS TO DO WITH
MEDICAL RISKS, NOT SOCIAL AND
PSYCHOLOGICAL RISKS WHICH YOU'RE
NOW TALKING ABOUT WHEN YOU TALK
ABOUT THIS IS A DECISION
EQUIVALENT TO WHETHER YOU GET

MARRIED OR DIVORCED AND,
THEREFORE, THE STATE HAS SOME
INTEREST IN REGULATING IT.
SO I DON'T KNOW THAT BY READING
PRESIDENTIAL WOMENS IN THIS
HELPS YOU AT ALL AS FAR AS THAT
THIS LAW IS NOT A-- YOU'RE
SAYING IT ENHANCES INFORMED
CONSENT, BUT WITHOUT ANY
EVIDENCE THAT IT DOES.
AND THAT'S WHERE I THINK WE'RE,
WE'RE KIND OF WORKING AT
CROSS-PURPOSES.
>> SO I THINK I READ YOUR
CONCURRENCE AND PRESIDENTIAL IN
A WAY THAT UNDERSCORES THE FACT
THAT BECAUSE THE WAITING PERIOD
IS NEUTRAL, THAT IS YET ANOTHER
FACTOR WHY THERE'S NO
CONSTITUTIONAL CONCERN.
>> I THINK THE IDEA OF
NEUTRALITY WAS THAT IT IS
APPLYING TO ABORTION AND NOT TO
OTHER PROCEDURES WHICH COULD BE,
YOU KNOW, HAVING A HYSTERECTOMY,
HAVING A-- ANY KIND OF WAITING
PERIOD.
DECIDING TO HAVE, IN BREAST
CANCER, THERE'S A BREAST
CANCER-SPECIFIC STATUTE, BUT
IT'S NOT A WAITING PERIOD AFTER
YOU DECIDE YOU'RE GOING TO HAVE,
YOU KNOW, LOSE YOUR BREAST TO A
MASTECTOMY THAT YOU'VE GOT TO
NOW WAIT ANOTHER 24 HOURS BEFORE
YOU GO THROUGH THAT PROCEDURE.
NOT THAT YOU HAVEN'T THOUGHT
ABOUT IT UP UNTIL THAT TIME AS
IF YOU JUST GO IN COLD.
SO THIS IS, THAT'S WHY IT'S NOT
NEUTRAL, IS BECAUSE IT'S
SINGLING OUT THIS DECISION TO
SAY THE STATE HAS THIS
COMPELLING INTEREST IN MANDATING
THAT WOMEN WAIT 24 HOURS AND NOT
EVEN-- AGAIN, THERE WERE SOME
AMENDMENTS THAT SAID, WELL,
MAYBE THEY COULD DO THE FIRST
ONE BY PHONE.
NO, THIS IS TWO, THIS MEANS TWO

IN-PATIENT, I MEAN, PHYSICAL
VISITS TO A DOCTOR AT AN
ABORTION CLINIC.
AND SO, THEREFORE, IT'S NOT
NEUTRAL.
IT IS-- AND THAT'S MY CONCERN,
AND I THINK THAT WAS WHAT JUDGE
FRANCIS' CONCERN WAS BASED ON
WHAT THE DOCTOR HAD TESTIFIED TO
IN HER AFFIDAVIT.
>> OKAY.
I THINK THAT'S THREE MORE
QUESTIONS.
>> OKAY, GOOD.
I'M GLAD YOU'RE COUNTING.
>> SO IT IS NEUTRAL BECAUSE IT'S
NOT ENCOURAGING OR DISCOURAGING
A PARTICULAR OUTCOME.
THE STATUTE IN PRESIDENTIAL WAS
COMPLETELY ABORTION-SPECIFIC,
AND IT DID SINGLE OUT ABORTION
FOR ALL SORTS OF SPECIFIC--
>> YEAH.
BUT THE ISSUE WASN'T REALLY
ABOUT WHETHER THE ULTRASOUND
SHOULD BE, YOU KNOW, THAT YOU
COULD WAIVE SEEING THE
ULTRASOUND.
REALLY THE ISSUE WAS WHETHER
THERE WERE OTHER-- THEY THOUGHT
IT WAS VAGUE BECAUSE THERE MIGHT
BE MORE, THAT IS, THE 4TH
DISTRICT DID, THAT THERE MIGHT
HAVE BEEN OTHER REQUIREMENTS
ABOUT THE SOCIAL AND
PSYCHOLOGICAL--
>> AND THERE STILL IS NOT IN THE
STATUTE.
I DO THINK THE LEGISLATURE COULD
PERMISSIBLY CONCLUDE THAT THERE
MAY BE SOME OTHER MEDICAL
PROCEDURES THAT IMPLICATE REALLY
IMPORTANT THINGS AND HAVE GREAT
CONSEQUENCES MAYBE IN THE
TERMINATION OF LIFE DECISIONS OR
SOMETHING LIKE THAT WHERE A WAIT
PERIOD IS PRAGMATIC AND
BENEFICIAL, AND I DON'T THINK
THAT THE LEGISLATURE WOULD HAVE
TO ENACT ALL OF THOSE STATUTES

AT THE SAME TIME.
BUT, YES, I MEAN, I CERTAINLY DO
THINK IT IS-- WOULD BE
PERMISSIBLE FOR OTHER EXTREMELY,
EXTRAORDINARILY DIFFICULT
DECISIONS.
AS THIS COURT HAS RECOGNIZED IS.
I MEAN, IN T.W. THIS COURT'S
LANGUAGE WAS SPECIFIC THAT
ABORTION INVOLVES UNIQUE
PHYSICAL, PSYCHOLOGICAL, VERY
PERSONAL, PRIVATE
CONSIDERATIONS.
AND WHAT THE LEGISLATURE IS
THINKING ABOUT IS WOMEN THAT ARE
GOING INTO A CLINIC ARE JUST
CONFIRMING THAT THEY'RE
PREGNANT, ARE RECEIVING THIS
HUGE DATA DUMP, ARE UNDERGOING
AN ULTRASOUND AND GIVEN THE
OPPORTUNITY TO VIEW THE IMAGE
AND ARE ASKED ON THE SPOT FOR A
DECISION, AND IT'S REASONABLE TO
CONCLUDE THAT PERHAPS INFORMED
CONSENT MAY NOT BE
INSTANTANEOUS.
AND BECAUSE IT IS AN
IRREVERSIBLE DECISION THAT A
VERY SHORT CONSENT PERIOD LIKE
WE HAVE FOR OTHER MAJOR LIFE
DECISIONS IS REASONABLY
NECESSARY TO INSURE THAT IT IS
GENUINELY A VOLUNTARY DECISION
TO EXERCISE BE HER RIGHT--
EXERCISE HER RIGHT RATHER THAN
HAVE OTHER FACTORS IN THAT
INHERENTLY INFLUENTIAL SETTING
DICTATE HER DECISION.
>> WHAT ARE THE, WHAT DID THE
1ST DISTRICT MEAN WHEN THEY SAID
THE TRIAL COURT DID NOT ADDRESS
THE EVIDENCE OF INTENT REFLECTED
IN THE STATE'S MANY POST-1980
LAWS AND REGULATIONS SPECIFIC TO
EVIDENCE, NOR THE EVIDENCE OF
VOTER INTENT REFLECTED IN THE
2004 ADOPTION OF ARTICLE X,
SECTION 32 WHICH, IN EFFECT,
OVERRULED NORTH FLORIDA WOMEN'S
AND AUTHORIZED A REQUIREMENT OF

PARENTAL NOTICE?
WHAT WAS IT THAT-- WHAT IS THE
ARGUMENT AFTER THIS, IF THIS
STANDS, ABOUT WHAT THE ARTICLE
X, SECTION 32 WHICH WAS VERY
SPECIFIC AS TO EXEMPTING
PARENTAL NOTIFICATION FROM THE
RIGHT OF PRIVACY, BUT AS COUNSEL
HAS ARGUED, SAYS NOTHING,
CHANGES NOTHING ABOUT THE
UNFETTERED RIGHT OF PRIVACY THAT
IS CONTAINED IN ARTICLE I,
SECTION 23?
WHAT DOES THAT STATEMENT MEAN,
AND WHAT WOULD THE TRIAL
COURT KNOW WHAT TO DO UPON
REMAND WITH THAT STATEMENT?
>> SO MY UNDERSTANDING IS
BECAUSE AN ARGUMENT BASED ON THE
RIGHT OF PRIVACY LOOKS TO THE
PRIVACY CLAUSE AND PART OF THAT
IS THINKING ABOUT WHAT THE VOTER
INTENT WAS BEHIND THAT TO
DETERMINE WHAT THE PRIVACY
CLAUSE MEANS, AN APPLICATION OF
THAT WAS IN NORTH FLORIDA WHEN
THIS COURT SAID THAT THE
PARENTAL NOTIFICATION STATUTE
VIOLATED THE RIGHT OF PRIVACY.
THE VOTERS CAME BACK THE NEXT
YEAR, ADDED A CONSTITUTIONAL A
AMENDMENT AND EXPRESSLY SAID WE
DO NOT INTEND THE PRIVACY
AMENDMENT TO BE SO BROAD AS TO
PRECLUDE THIS SORT OF COMMON
SENSE REGULATION OF ABORTION.
>> THEY DIDN'T--
[LAUGHTER]
THEY SPECIFICALLY SAID, THEY
DIDN'T TALK ABOUT CHANGING
ARTICLE I, SECTION 23, WHICH
REJECTS ANYTHING THAT SAYS
THERE'S GOT TO BE, YOU KNOW,
IT'S MAYBE ONLY UNREASONABLE
GOVERNMENT INTRUSION OR
UNNECESSARY GOVERNMENT
INTRUSION.
S IT IS A FREE-STANDING RIGHT TO
SAY THAT THE RIGHT OF PRIVACY
EXISTS FREE FROM ANY GOVERNMENT

INTRUSION.
THAT HAS NEVER BEEN CHANGED
SINCE THE VOTERS ADOPTED THAT IN
1980.
CORRECT?
>> THAT'S RIGHT.
AND THE RIGHT OF PRIVACY
INCLUDES NOT THE RIGHT TO
ABORTION ON DEMAND, BUT A
WOMAN'S RIGHT TO DECIDE WHETHER
TO TERMINATE HER PREGNANCY WHICH
IS SUBJECT TO REASONABLE
REGULATIONS BY THE STATE.
>> LET'S JUST MAKE SURE WE
UNDERSTAND, BECAUSE THERE'S BEEN
A LOT OF RHETORIC ABOUT
LATE-TERM ABORTIONS.
THIS HAS NOTHING-- THERE IS IN
THE STATE OF FLORIDA
RESTRICTIONS THAT ARE NOT BEING
ATTACKED ON THIRD TRIMESTER
POSTVIABILITY ABORTIONS, IS THAT
CORRECT?
THAT IS NOT THE SUBJECT OF THIS
CASE.
>> NO.
BUT THIS, THIS SPATIAL CHALLENGE
WOULD APPLY TO AN ABORTIONING
PERFORMED FROM THE DATE OF
CONCEPTION TO THE DATE OF BIRTH.
AND THAT'S ANOTHER PROBLEM HERE,
IS THAT THE EXAMPLES THAT
PLAINTIFFS HAVE BROUGHT ARE
HYPOTHETICAL INSTANCES WHERE
THEY MAY WANT TO LAUNCH AN
AS-APPLIED CHALLENGE, BUT
THERE'S CERTAINLY NO EVIDENCE
THIS THAT THIS LAW IS
UNCONSTITUTIONALLY APPLIED EVEN
IN A SINGLE INCIDENCE, MUCH LESS
IN EVERY SINGLE APPLICATION.
SO BECAUSE THE INJUNCTION WAS
NOT LEGALLY OR FACTUALLY
SUPPORTED, THE STATE WOULD ASK
THIS COURT TO DISCHARGE
JURISDICTION OR APPROVE THE 1
DISTRICT'S DECISION.
THANK YOU.
>> WHEN A WOMAN LEARNS THAT SHE
IS PREGNANT, SHE UNDERSTANDS

THAT SHE HAS TWO CHOICES;
CONTINUE THE PREGNANCY OR END
THE PREGNANCY.
THE UNREBUTTED RECORD EVIDENCE
IS THAT WOMEN THINK LONG AND
HARD ABOUT THIS DECISION AND
TAKE IT VERY SERIOUSLY.
AND UNDER EXISTING FLORIDA LAW,
BE A WOMAN AFTER RECEIVING
APPROPRIATE COUNSELING FROM HER
DOCTOR IS NOT YET READY TO MAKE
THIS IMPORTANT DECISION, SHE CAN
ABSOLUTELY TAKE ANOTHER 24 HOURS
OR MORE TO THINK ABOUT IT.
SO WHAT THAT MEANS IS THAT THIS
LAW ACTUALLY ONLY IMPACTS THE
WOMEN WHO ARE READY, THE WOMEN
WHO DO NOT WANT OR NEED TO DELAY
THEIR PROCEDURE ANY LONGER.
NOW, THE STATE ARGUES THAT THIS
MANDATORY DELAY LAW IS NOT
DESIGNED TO TRY TO ENCOURAGE OR
DISCOURAGE WOMEN FROM CHOOSING
ABORTION.
BUT THE ONLY WOMEN WHO ARE
IMPACTED ARE THE WOMEN WHO ARE
READY TO PROCEED, CLEARLY THE
STATE IS SENDING A MESSAGE THAT
IT WANTS WOMEN TO RECONSIDER
THEIR DECISIONS, THAT IT
DISAPPROVES OF THEIR DECISION,
THAT IT DOESN'T THINK WOMEN ARE
CAPABLE OF MAKING THIS DECISION
WITHOUT A GOVERNMENT—MANDATED
DELAY.
AND THAT IS NOT A LEGITIMATE
INTEREST UNDER IN THIS COURT'S
BINDING PRECEDENT PARTICULARLY
WHERE THIS LAW APPLIES FROM THE
VERY START OF PREGNANCY.
NOW, I WANT TO ACKNOWLEDGE THE
STATE'S ARGUMENT ABOUT THE OTHER
DELAY LAWS THAT EXIST IN FLORIDA
LAW WHICH HAVE NOT BEEN
CHALLENGED.
TO THE EXTENT THAT THE STATE IS
PREVENTING A PERSON FROM
EXERCISING A FUNDAMENTAL RIGHT,
THAT LAW WOULD LIKELY BE SUBJECT
TO STRICT SCRUTINY AS WELL IN

OTHER CONTEXTS.
THEN, OF COURSE, YOU HAVE TO
BALANCE THE STATE INTERESTS.
THE STATE CAN, OF COURSE, TRY TO
PRESENT EVIDENCE THAT A
MANDATORY DELAY LAW FOR MARRIAGE
OR FOR DIVORCE, FOR INSTANCE,
SERVES AN INTEREST THROUGH A
RESTRICTIVE MEANS.
THAT DOESN'T CHANGE THE FACT
THAT THIS IS A DIRECT
INTRUSIONING INTO A WOMAN'S
PRIVATE DECISION AND THAT IT
SHOULD BE SUBJECT TO STRICT
SCRUTINY.
AND FINALLY, I WANT TO MAKE A
POINT ABOUT THE ADEQUATE IS CITY
OF THE T.I. ORDER-- ADEQUACY OF
THE T.I. ORDER.
>> JUST SO WE UNDERSTAND, T.I.
MEANS TEMPORARY INJUNCTION.
>> YES.
THANK YOU, YOUR HONOR.
THERE ARE TWO QUESTIONS BEFORE
THIS COURT WHEN IT COMES TO THE
TEMPORARY INJUNCTION ORDER.
FIRST, IS IT CORRECT THAT
CONSTITUTIONAL INJURY IS
IRREPARABLE AND INJURY AND IS
PREVENTING INJURY SERVE THE
PUBLIC INTEREST?
IF THE ANSWER TO THOSE TWO
QUESTIONS IS YES THE TEMPORARY
INJUNCTION SHOULD BE AFFIRMED
AND WE KNOW THE ANSWER MUST BE
YES BECAUSE THE COURT HAS
PREVIOUSLY AFFIRMED AN
INJUNCTION BASED ON PRESUMPTION
THAT CONSTITUTIONAL INJURY IS
IRREPARABLE HARM THAT REDUCES
CLASS SIZE AND DEFENDANTS
CONCEDED THAT IF THIS LIES
ALLOWED TO TAKE EFFECT AND IS
FOUND TO BE UNCONSTITUTIONAL,
PLAINTIFFS AND WOMEN IN FLORIDA
HAVE NO ADEQUATE REMEDY AND THE
QUESTION OF ADEQUATE REMEDY IS
INTERWOVEN WITH IRREPARABLE
HARM.
FOR ALL THOSE REASONS THE TI

ORDER SHOULD BE AFFIRMED AND THE
COURT SHOULD CLARIFY THAT THIS
OVERT AND DIRECT INTERFERENCE
WITH THE PRIVATE DECISION TO
HAVE AN ABORTION IS SUBJECT TO
SCRIPT SCRUTINY.
>> COURT WILL BE IN RECESS FOR
TEN MINUTES.
>> ALL RISE.