

>> HERE YE, HERE YE. THE SUPREME COURT IS NOW IN SESSION.
GOD FAITH IN THE UNITED STATES THE GREAT STATE OF FLORIDA IN THIS HON.
COURT.

>> LADIES AND GENTLEMEN THE SUPREME COURT OF FLORIDA.
PLEASE BE SEATED.

>> GOOD MORNING AND WELCOME TO THE FLORIDA SUPREME COURT.
TODAY WE WILL TAKE UP CASE NO. SC22-1050.

PLANNED PARENTHOOD OF SOUTHWEST FLORIDA VERSUS THE STATE OF FLORIDA.

>> GOOD MORNING MR. JUSTICE MY NAME IS WHITNEY L. WHITE ON BEHALF OF THE
PLAINTIFF.

>> Whitney L. White: SORRY IS THIS BETTER?

>> MUCH BETTER THANK YOU.

>> Whitney L. White: WHITNEY L. WHITE ON BEHALF OF THE PLAINTIFFS.

FOR 4 DECADES FLORIDA'S CONSTITUTION HAS PROVIDED STRONG INDEPENDENT
PROTECTIONS FOR THE ONE-DIMENSIONAL PRIVACY RIGHT.

TO DECIDE FOR ONESELF WITHOUT GOVERNMENT INTERFERENCE.

WHETHER TO CONTINUE A PREGNANCY OR HAVE AN ABORTION.

DESPITE THAT HB FIVE'S ABORTION BAN HAS BEEN IN EFFECT NOW FOR MORE THAN
A YEAR VIOLATING FUNDAMENTAL RIGHTS AND SUBJECTING PREGNANT FLORIDIANS
TO SERIOUS AND UNNECESSARY RISK TO THEIR HEALTH AND INDEED THEIR LIVES.

NOW THE STATE IS ASKING THIS COURT NOT ONLY TO ALLOW THESE ARMS TO
CONTINUE BUT TO INTERACT HOLD THERE IS NO PRODUCTION FOR ABORTION
UNDER THE FLORIDA CONSTITUTION WHATSOEVER.

AND INDEED NO PROTECTION FOR ANY DECISIONAL PRIVACY RIGHTS AT ALL.

>> I'M SORRY TO MESS UP YOUR ORDER.

BUT COULD WE START WITH STANDING?

COULD YOU DESCRIBE A LITTLE BIT WHAT STANDARD YOU THINK SHOULD APPLY
HERE IN DETERMINING STANDING AND THEN WHAT FACTORS YOU WOULD MEET AS A
THIRD-PARTY STANDING FIRST PARTY STANDING.

IF YOU COULD ARTICULATE THAT TO START?

>> Whitney L. White: YES.

OF COURSE I WILL ADDRESS FIRST PARTY STANDING.

FIRST OF THE PLAINTIFFS HERE HAVE FACED A CLEAR INJURY IN FACT BECAUSE
THEY HAVE BEEN COERCED UNDER THREAT OF GOVERNMENT ENFORCEMENTS.
INTO COMPLYING HB FIVE EVEN THOUGH IT REQUIRES TO ACT IN WAYS THAT ARE
CONTRARY TO THEIR JUDGMENT AND ETHICAL OBLIGATIONS TO THEIR PATIENTS.
WITH RESPECT TO THIRD-PARTY STANDING.

I BELIEVE THERE IS NO DISPUTE IN THIS CASE ABOUT THOSE THREE PRONGED TEST
THAT APPLIES FOR THIRD-PARTY STANDING.

THAT IS THE TEST THAT THE TRIAL COURT APPLIED AND THE TRIAL COURT FOUND
FOR ALL THREE PRONGS INJURY IN FACT, CLOSENESS OF THE RELATIONSHIP HAVE
ESTABLISHED EACH OF THOSE FACTORS.

>> IS IT PLANNED PARENTHOOD POSITION THAT THE FEDERAL STANDARD FOR

STANDING APPLIES HERE?

AND THAT WE SHOULD APPLY IN THIS CASE?

>> Whitney L. White: I BELIEVE THAT IS THE APPROACH WE HAVE TAKE NUMEROUS CASES.

WHERE THE COURT HAS LOOKED TO FEDERAL LAW AND GENERALLY ACT OF THIRD PRINCIPLES THIRD-PARTY STANDING UNDER PRINCIPAL LAW.

IF I COULD RETURN TO THE QUESTION THE STATE HAS PUT THE COURT TO OVERRULE PRECEDENT.

THIS COURT SHOULD REFUSE TO DO SO FOR THREE MAIN REASONS.

THE FIRST IS THE PLAIN TEXT OF THE PRIVACY CLAUSE.

>> CAN I STOP YOU BEFORE YOU GO THERE?

MY QUESTION IS ABOUT IRREPARABLE HARM AND THE SHOWING OF HINDRANCE. IT SEEMS TO MEET THE PATIENT'S YOU PURPORT TO REPRESENT REPRESENT A HETEROGENEOUS CLASS OF PERSONS.

THEY ARE NOT ALL THE SAME.

COULD YOU IDENTIFY WHAT HINDRANCE IS COMMON TO ALL THE PATIENTS YOU PURPORT TO REPRESENT?

>> Whitney L. White: THE PATIENTS THAT ARE ISSUING IN THIS CASE IS THOSE WHO ARE IN NEED OF THE SEEKING ABORTIONS AFTER 15 WEEKS.

AND THE TRIAL COURT FOUND THERE ARE MANY FACTORS COMMON TO THAT GROUP THAT CREATE HINDRANCE.

FIRST IS THE TIME-LIMITED NATURE OF PREGNANCY.

THESE PATIENTS ARE ALREADY 15 WEEKS PREGNANT AND SEEKING AN ABORTION. AND ONLY HAVE A SET AMOUNT OF TIME BEFORE THEY WILL RADICALLY LOSE THEIR ABILITY TO RECEIVE RELIEF FROM A COURT.

>> WHICH IS THE STATE ARGUES WE HAVE A DOCTRINE ABOUT.

>> Whitney L. White: THERE IS A WITNESS DOCTRINE BUT IT DOES NOT AFFECT THE THIRD-PARTY STANDING.

ALL THAT IT PROVIDES IS A MECHANISM FOR A COURT TO HEAR A CLAIM AFTER AN INDIVIDUAL HAS ALREADY EROTICALLY LOST THE ABILITY TO RECOGNIZE THE CONSTITUTIONAL RIGHTS.

IT IS NOT RISK OF BEING FORCED TO CARRY A PREGNANCY TO TERM WITHOUT BEING ABLE TO RECEIVE RELIEF FROM THE COURT.

THAT THE TRIAL COURT FOUND SPECIFICALLY CREATES PART OF THE ENDURANCE FOR THESE INDIVIDUAL PATIENTS.

I ALSO WANT TO KNOW IT HAS NEVER BEEN THE CASE UNDER THE COURT'S PRECEDENTS THAT THERE HAS TO BE A SHOWING OF ABSOLUTE POSSIBILITY IN ORDER FOR THE ENDURANCE FACTOR TO BE MET.

THE COURT EMPHASIZES THE STANDARD IS WHETHER THERE IS SOME HINDRANCE.

ANY CASES LIKE POWERS VERSUS OHIO THE U.S. SUPREME COURT SPECIFICALLY RECOGNIZED THIRD-PARTY STANDING EVEN THOUGH THEY ALSO ACKNOWLEDGED THERE WERE RARE OCCASIONS IN WHICH THE INDIVIDUAL JURORS WHO WERE THE THIRD PARTIES ISSUING IN THAT CASE HAD BROUGHT CASES TO LITIGATE THEIR

OWN EQUAL PROTECTION RIGHTS.

BUT THOSE SORT OF RARE OCCASIONS DID NOT DESTROY THIRD-PARTY STANDING IN THAT CASE.

THAT IS THE STANDARD THAT APPLIES HERE.

THE TRIAL COURT HAS FOUND IN ADDITION TO THE TIME-LIMITED NATURE OF PREGNANCY MULTIPLE OTHER FACTORS THAT CREATE A HINDRANCE TO PREGNANT PATIENTS BEING ABLE TO LITIGATE THEIR OWN CLAIMS HERE.

I BELIEVE YOU ALSO HAD A QUESTION ABOUT IRREPARABLE HARM.

DID YOU WANT ME TO SPEAK ABOUT IRREPARABLE HARM GENERALLY?

THE TRIAL COURT FOUND IRREPARABLE HARM BOTH TO PLAINTIFFS THEMSELVES AND TO THEIR PATIENTS.

WITH RESPECT TO THE PLAINTIFFS THEMSELVES.

THE TRIAL COURT FOUND THAT HP FIVE WOULD FORCE THEM TO ACT IN WAYS THAT ARE CONTRARY TO THEIR PROFESSIONAL JUDGMENT AND ETHICAL OBSERVATIONS TO PROVIDE CARE TO THEIR PATIENTS.

>> John D. Couriel, Justice: YOU ARE NOT ARGUING THAT RIGHT OR THAT CAPACITY OF A POSITION IS PART OF THE PRIVACY RIGHT?

ARE YOU?

>> Whitney L. White: NO.

>> John D. Couriel, Justice: FROM WHEN THE RIGHT OF THE PHYSICIAN TO DELIVER CARE?

IS THAT A CONSTITUTIONAL RIGHT?

>> Whitney L. White: IT IS NOT A CONSTITUTIONAL RIGHT BUT IT QUALIFIES IRREPARABLE HARM BECAUSE THERE IS NO ADEQUATE REMEDY AT LAW FOR THAT. WITH THE EXERCISE OF PHYSICIAN'S PROFESSIONAL JUDGMENT CONSTITUTES THE MATERIAL INJURY.

THE TRIAL COURT FOUND THESE INJURIES PLAINTIFFS WILL FACE THEMSELVES. HAVE NO ADEQUATE REMEDY AT LAW AND THE STATE HAS NOT SUGGESTED THERE IS.

>> John D. Couriel, Justice: FOR EXAMPLE YOU WOULD CONCEDE THAT INDUSTRY IS NOT A FUNDAMENTAL RIGHT IN THE SAME WAY THAT YOU CLAIM THE PATIENT'S RIGHT AS A FUNDAMENTAL RIGHT?

>> Whitney L. White: THAT IS CORRECT.

WE ARE NOT CLAIMING A FUNDAMENTAL RIGHT ON BEHALF OF PHYSICIANS ALTHOUGH, I WOULD NOTE THE PART OF PHYSICIANS ARE FACING THEM SELVES IS RELATED TO CONSTITUTIONAL INQUIRIES.

THE TRIAL COURT FOUND A LIKELIHOOD OF SUCCESS IN THE MERIT MEANING THE CARE THAT PHYSICIANS ARE BEING PREVENTED FROM PROVIDING TO THEIR PATIENTS IS CARE THAT IS CONSTITUTIONALLY PROTECTED AND THEIR PATIENTS ARE CONSTITUTIONALLY ENTITLED TO RECEIVE.

WHILE THAT DOES NOT MEAN THE PHYSICIANS THEMSELVES HAVE A FUNDAMENTAL RIGHT ISSUE HERE.

IT DOES COLOR THE INQUIRY AND CERTAINLY UNDERSCORES THE IRREPARABLE

NATURE OF HARM.

>> DO AGREE NONE OF THE COURT'S PRECEDENTS AND CONTACTS OF ABORTION CASES ADDRESSES THE ISSUE?

>> Whitney L. White: THAT IS CORRECT.

THE COURT HAS NOT DIRECTLY RULED ON THIRD-PARTY STANDING AS PART OF ITS ABORTION PRECEDENTS.

THAT BEING SAID WITH RESPECT TO THIRD-PARTY STANDING THERE ARE GENERALLY APPLICABLE PRINCIPLES THAT I BELIEVE ARE NOT IN DISPUTED IN THIS CASE THAT APPLIES THERE.

AND THAT IS THE TEST OF THE TRIAL COURT APPLIED.

WITH RESPECT TO HEALTH THIRD-PARTY STANDING WITH IRREPARABLE HARM.

I WOULD NOTE THAT WHILE IT WAS NOT – THERE WAS A CLEAR CONFLICT WITH THIS COURT'S PRECEDENT IN GAINESVILLE WOMEN CARE.

WHERE PLAINTIFFS IDENTICALLY SITUATED TO THE PLAINTIFFS IN THIS CASE WERE SOLELY ASSERTING PRIVACY CLAIMS ON BEHALF OF THEIR PATIENTS.

BASED SOLELY ON THE HARM THAT HAD BEEN SHOWN THERE IS PRECEDENTS FOR INJUNCTIONS BEING GRANTED IN PRECISELY THE SITUATION.

IF I COULD RETURN TO THE CONSTITUTIONAL QUESTION.

THERE ARE THREE MAIN REASONS THAT THE COURT SHOULD NOT SET THE STATES INVITATION TO OVERRULE PRECEDENT AND SHOULD AFFIRM IT INSTEAD.

THE FIRST IS THE PLAIN TEXT OF THE PRIVACY CLAUSE ITSELF.

IT USES BROAD LANGUAGE AND WAS ADOPTED BY VOTERS IN 1980.

AT A TIME WHEN THE ESTABLISHED MEANING OF THE PRIVACY CAUSES TERMS UNEQUIVOCALLY INCLUDED THE RIGHT TO DECIDE FOR ONESELF WHETHER OR NOT TO CONTINUE A PREGNANCY.

THE SECOND, IN 2012 VOTERS WERE PRESENTED WITH AN OPPORTUNITY TO OVERRULE ABORTION PRECEDENTS BY CONSTITUTIONAL AMENDMENT.

>> TALK ABOUT THE PLAINTEXT.

YOU PRESENT A TEXTUAL BREAKDOWN DICTIONARY DEFINITIONS AND THAT SORT OF THING.

SO IF WE ARE LOOKING AT THE TEXT IN A VACUUM.

WHY DOES IT NOT CONNOTE A NEGATIVE IMPLICATION?

IT IS THE RIGHT TO BE LET ALONE FREE FROM GOVERNMENT INTRUSION AND HOW DOES THAT SQUARE IN THE ABORTION CONTEXT WHEN IT SEEMS LIKE YOUR CLIENTS ARE SEEKING A RIGHT TO PROCURE SOMETHING?

>> I THINK ABORTION IS COVERED BY THE PLAINTEXT OF THE PRIVACY CLAUSE.

>> Whitney L. White: THE PRIVACY CLAUSE REFERS TO THE RIGHT TO BE LET ALONE AND FREE FROM GOVERNMENT INTERFERENCE INTO A PERSON'S PRIVATE LIFE AND PRIVATE LIFE INCLUDES NOT JUST PRIVATE INFORMATION BUT PRIVATE ACTIVITIES AND DECISIONS.

THE TRIAL COURT SPECIFICALLY FOUND IN THIS CASE NEED ACCESS TO ABORTION HERE AND THERE IS NO BASIS IN THE TEXT TO EXCLUDE A DECISION AS DEEPLY PERSONAL AND PRIVATE AS THE DECISION OF WHETHER TO CONTINUE A

PREGNANCY FROM THE OTHERWISE BROAD PROTECTIONS FOR FREEDOM OF INTERFERENCE.

UNDER THE RESTORATION AMENDMENT AS PART OF THE PLAINTTEXT ANALYSIS THIS COURT HAS LOOKED TO CONTEMPORANEOUS CASE LAW INTERPRETING THE TERMS AND CONSTITUTIONAL AMENDMENT TO LOOK FOR THE ESTABLISHED DEMEANING OF THOSE TERMS AT THE TIME THEY WERE ADOPTED.

HERE IN 1980, THE GENERAL RIGHT OF PRIVACY AND SPECIFIC TERMS USED IN A PRIVACY CLAUSE WERE UNEQUIVOCALLY HAD AN ESTABLISHED MEETING THAT INCLUDED A RIGHT OF AN INDIVIDUAL TO DECIDE FOR THEMSELVES WHETHER OR NOT TO CONTINUE A PREGNANCY.

THAT ESTABLISHED MEANING AS PART OF THE PLAINTTEXT.

INDEED THE STATE GRACE. LOOKING TO THE SORT OF CONTEMPORANEOUS CASE LAW EVIDENCE IS AN IMPORTANT PART OF THE CONSTITUTIONAL ANALYSIS.

THAT IS AT PAGES 10 AND 26 OF THEIR BRIEF.

>> HOW WOULD YOU RESPOND TO THE FACT THAT THERE IS NO VIRTUAL ATTENTION TO THE SUBJECT IN 1980 AND THE STATE.

AND ALL OF THE EXTRA BRIEFS FILED HAVE PUT A LOT OF EMPHASIS ON WHAT WAS IN THE NEWSPAPER.

WHAT PEOPLE WERE TALKING ABOUT WITH THE LEGISLATURE WAS TALKING ABOUT AT THE TIME.

BUT YOUR BRIEF DOES NOT HAVE BEEN EIGHT VERY MANY SUPPORTING DOCUMENTS TO SHOW THAT WAS THE UNDERSTANDING IN THE STATE IN 1980 AND 1980.

WHY IS THERE NOT MORE THAT EMPHASIZES YOUR VIEW OF WHAT THAT TERM MEANT AT THE TIME.

>> Whitney L. White: FIRST YOUR HONOR.

I DO THINK THE HISTORICAL EVIDENCE IS CONSISTENT WITH PLAINTIFFS READING THE PRIVACY CLAUSE.

I WOULD ALSO UNDERScore THAT THIS COURT HAS REPEATEDLY EMPHASIZED THAT WHEN CONSIDERING A QUESTION OF CONSTITUTIONAL INTERPRETATION.

THE PLAINTTEXT IS PARAMOUNT.

AND THAT EVIDENCE OF INDIVIDUAL SUBJECTIVE INTENT OF DRAFTERS CANNOT OVERRIDE OTHERWISE BROAD PLAINTTEXT.

>> BETWEEN TEXT HAS A PUBLIC MEETING.

IF THE ORIGINAL PUBLIC MEETING OF THAT TEST, TEXT INCLUDED ABORTION.

WE WOULD EXPECT TO SEE PHYSICIANS FROM PLANNED PARENTHOOD AND NATIONAL RIGHT TO LIFE TO BEATING EACH OTHER ABOUT IT IN 1980.

YET WE DON'T REALLY SEE THAT.

HOW DO YOU EXPLAIN THAT ABSENCE?

>> Whitney L. White: I THINK THERE ARE A LOT OF REASONS WHY INDIVIDUALS FOR EXAMPLE INDIVIDUAL LEGISLATORS WERE NOT SUPPORTIVE OF ABORTION RIGHTS MAY HAVE NONETHELESS SUPPORTED THE PRIVACY CLAUSE.

THERE COULD HAVE BEEN A GENERAL ACCEPTANCE THAT ROE WAS THE LAW OF THE

LAND AT THE TIME.

SO THE PRIVACY CLAUSE INCORPORATING THAT STANDARD WOULD NOT NECESSARILY CHANGE THINGS PRACTICALLY.

I THINK YOUR HONOR, MY POINT IS THAT THE FACT THAT IT IS IMPOSSIBLE TO REALLY UNDERSTAND WHAT EXACTLY WAS GOING TO INDIVIDUALS HAD AT THE TIME IS ONE OF THE REASONS THIS COURT HAS CAUTIONED AGAINST LOOKING TO THAT SORT OF EVIDENCE FIRST AND FOREMOST.

AGAIN, I DO THINK THE STROKE WILL RECORD HERE IS CONSISTENT WITH PLAINTIFFS UNDERSTANDING.

THERE IS EVIDENCE IN THE HISTORICAL RECORD THAT LEGISLATORS WERE FULLY INFORMED AND FULLY ON NOTICE THAT THE TERMS OF THE PRIVACY CLAUSE WERE BROUGHT.

THAT THEY WOULD INCORPORATE EXISTING FEDERAL PRIVACY RIGHTS AND THAT INCLUDED DECISIONAL AUTONOMY RIGHT SUCH AS ABORTION.

LIKewise IN THE PUBLIC RECORD IN TERMS OF MEDIA COVERAGE BOTH OPPONENTS AND SUPPORTERS OF THE AMENDMENT REPEATEDLY DESCRIBED IT AS BEING BROAD AND DECISIONAL AUTONOMY RIGHTS I THINK RIGHTS THAT ALREADY EXISTED UNDER FEDERAL LAW AND THERE WAS CONTEMPORANEOUS COVERAGE IN THE NEWS OF A NUMBER OF DIFFERENT ABORTION ISSUES THAT REPEATEDLY IDENTIFIED THE FEDERAL RIGHT TO ABORTION AS ROOTED IN THE RIGHT TO PRIVACY.

THERE IS PLENTY OF EVIDENCE CONSISTENT WITH THE ORIGINAL UNDERSTANDING AND THE ORIGINAL ESTABLISHED MEANING OF THE PRIVACY CLAUSE TO INCORPORATE ABORTION RIGHTS.

>> Carlos G. Muniz, Justice: CAN I ASK YOU ABOUT COMPELLING INTEREST ON THE DEFINITION OF THE RIGHT SIDE OF THE SCALE.

IT SEEMS LIKE – I THINK EVERYBODY AGREES THAT IT'S KIND OF A FIXED TARGET. AND WE ARE TRYING TO FIGURE OUT WHAT THAT IS.

IT SEEMS LIKE ON THE COMPELLING INTEREST SIDE THAT MIGHT NOT BE THE CASE IN THE SENSE THAT WE HAVE HAD IN OUR COUNTRY KIND OF A 50 YEAR DEBATE OVER THIS.

THERE HAVE BEEN CHANGES IN SCIENTIFIC INFORMATION AND TO THE EXTENT IT SEEMS LIKE THE RECORD AT MOST SHOWS LEGAL SENSE PRIVACY MAY HAVE INCLUDED ABORTION BUT IT DOESN'T SEEM LIKE THE PEOPLE OF FLORIDA REALLY HAD AN ACTUAL DEBATE OVER THAT WHEN THIS WAS ADOPTED.

THEY CERTAINLY DID NOT HAVE A DEBATE THAT WOULD RESOLVE THE QUESTION OF HOW YOU BALANCE THE IMPORTANT INTEREST HERE.

SO, IF WE ARE TALKING ABOUT SOMETHING AS FUNDAMENTAL AS THE POSSIBILITY OF PROTECTING HUMAN LIFE VERSUS WHATEVER THE AUTONOMY INTEREST MIGHT BE.

HOW SHOULD OUR COURTS LOOK AT OUR ROLE IN OVERWRITING A LEGISLATIVE JUDGMENT ON COMPELLING INTEREST THAT IS NOT – IT IS NOT HEAT OF THE MOMENT WERE TIMES OR SOMETHING LIKE THAT.

THIS IS 850 YEAR REFLECTION BY OUR SOCIETY, BY OUR STATE.
THE PEOPLE'S ELECTED REPRESENTATIVES BELIEVE THERE IS A COMPELLING
INTEREST IN PROTECTING HUMAN LIFE.

WHY SHOULD WE AS A COURT NOT DEFER TO THAT?

>> Whitney L. White: YES YOUR HONOR.

WITH RESPECT TO FUNDAMENTAL RIGHTS.

THIS COURT HAS REPEATEDLY MADE CLEAR THAT LEGISLATIVE DIFFERENCE IN THAT
CONTEXT IS INAPPROPRIATE.

THE COURT'S PRIMARY DUTY IS THE MEETING THAT IS INCORPORATED IN THE
CONSTITUTION.

THE CONSTITUTION IN PARTICULAR THE RIGHTS AFFORDED BY THE DECLARATION OF
RIGHTS ACT RESTRAINTS ON LEGISLATIVE POWER.

AND WHEN THOSE RIGHTS ARE INFRINGED.

THE STATE BEARS A HEAVY BURDEN TO JUSTIFY THE INFRINGEMENT.

IT HAS NEVER BEEN THE CASE THAT DEFERENCE TO THE LEGISLATURE IS DEFICIENT
TO DISCHARGE THAT HEAVY BURDEN.

>> Carlos G. Muniz, Justice: IF THERE WASN'T SOME ROLE FOR LEGISLATIVE JUDGMENT
ON THAT SIDE OF THE EQUATION IT WOULD NOT BE OF COMPELLING INTEREST TO
US.

THERE WOULD JUST BE A STANDARD OF WHAT IS DEFINED THE RIGHT AND ITS
ABSOLUTE ETC. WE ALSO HAVE IN THE FLORIDA CONSTITUTION ALL NATURAL
PERSONS ARE EQUAL BEFORE THE LAW AND HAVE RIGHTS INCLUDING THE RIGHT TO
ENJOY AND DEFEND LIFE.

THE LEGISLATURE WE HAVE A CONSTITUTION THAT ARGUABLY SPEAKS TO BOTH
SIDES OF THIS.

WHY ISN'T THE LEGISLATURE THE APPROPRIATE ENTITY TO BALANCE THOSE
CONSIDERATIONS?

ESPECIALLY WHERE I CAN UNDERSTAND THE ROLE OF THE COURT AS PROTECTING
AGAINST SOME KIND OF SHORT TERM FRENZY OR SOMETHING LIKE THAT.

WHEN WE HAVE A SERIOUS OR MORAL DEBATE ON BOTH SIDES WITH VERY BASIC
FUNDAMENTAL QUESTIONS ABOUT WHAT KIND OF SOCIETY WE WANT TO HAVE AND
HOW WE BALANCE THESE THINGS.

WHY ISN'T THE LEGISLATURE IN THIS PARTICULAR CONTEXT.

ESPECIALLY WHEN THE PEOPLE REALLY – I WAS READING THIS SEEMS SHOCKINGLY
FOR LAW STUDENTS WHO SEEM TO BE A PRETTY MAJOR PLAYER WITH THIS ISSUE
THAT CAME UP INITIALLY.

HE SAYS ON THE FRONT HE SAYS IT IS THEORETICALLY POSSIBLE THAT THE STATE
OF RIGHT OF PRIVACY COULD HAVE SOME EFFECT IN THIS AREA BUT THE POINT IS
NO SIGNIFICANCE.

AS A PRACTICAL MATTER, THE FIELD IS SO THOROUGHLY PREEMPTED THAT NOTHING
REMAINS WHICH A STATE PRIVACY RIGHTS COULD OPERATE.

OBVIOUSLY THAT DOES NOT TAKE AWAY THE IDEA THAT THERE IS SOME SORT OF
UNDERLYING CORE THERE.

BUT IT DEFINITELY UNDERCUTS THE IDEA THAT THE PEOPLE OF FLORIDA BELIEVE THEY WERE MAKING SOME KIND OF DECISION ABOUT HOW WE ARE GOING TO BALANCE THESE VERY PROFOUNDLY WEIGHTY SERIOUS INTEREST ON THE SIDE.

>> Whitney L. White: I WILL TRY TO RESPOND TO ALL OF THEM.

I THINK WITH RESPECT TO THE COMPELLING INTEREST IT COMES BACK TO THE ESTABLISHED MEANING OF THE PRIVACY CLAUSES TERMS AT THE TIME ADOPTED. IN 1980 THE RIGHT TO PRIVACY INCLUDED A RIGHT TO DECIDE WHETHER OR NOT TO HAVE AN ABORTION UP UNTIL VIABILITY.

THIS COURT HAS CONSISTENTLY HELD ABORTION AND NON-ABORTION CASES ALIKE THE PRIVACY CLAUSE WHEN VOTERS ADOPTED EXPRESS AND FREESTANDING PRIVACY CLAUSE THAT HAVE NO ANALOG UNDER THE FEDERAL CONSTITUTION. IT PROVIDED GREATER PROTECTION FOR PRIVACY RIGHTS THAN WHAT EXISTED UNDER FEDERAL LAW IN 1980.

IT WOULD SIMPLY BE INCONCEIVABLE THAT WOULD BE THE CASE WITH RESPECT TO THE ISSUE OF ABORTION AND THE COMPELLING INTEREST THAT THERE WOULD SOMEHOW BE SIGNIFICANTLY LESS PROTECTION HERE BY ALLOWING A COMPELLING INTEREST TO OVERRIDE THE PRIVACY DECISION.

BEFORE VIABILITY.

I THINK WITH RESPECT TO THE COMMENTS OF GERALD COPE AND THE FIELD BEING PREEMPTED HERE.

I THINK THERE IS A COUPLE OF WAYS THAT QUOTE COULD BE INTERPRETED.

ONE IS THAT IT COULD BE SPEAKING AS A PRACTICAL MATTER THAT ROE ALREADY DIVIDED THESE STRONG PROTECTIONS.

SO THE FLORIDA LAW THE CONSTITUTIONAL AMENDMENT WOULD NOT NECESSARILY CHANGE THE IMPACT ON THE GROUND.

IF IT IS A STATEMENT ABOUT THE FACT OF THERE BEING FEDERAL CONSTITUTIONAL PROTECTION THE FEDERAL SYSTEM THAT STATES THE LIBERTY AND HAVE THE PREROGATIVE TO PROVIDE GREATER PROTECTION FOR INDIVIDUAL RIGHTS THAN WHAT EXISTS IN THE FEDERAL FLOOR.

PRECISELY WHAT FULLERENES HAVE DONE.

>> Carlos G. Muniz, Justice: THE ABILITY OF STATES TO GO BEYOND THE FEDERAL FLOOR.

THAT IS NOT IN DISPUTE.

I THINK SO MUCH.

A BIG THEME OF YOUR BRIEF IS DEFERENCE TO THE DEMOCRATIC DECISION-MAKING PROCESS.

IT SEEMS LIKE TO THE EXTENT THERE REALLY WAS A QUOTE UNQUOTE DECISION IT IS KIND OF ABSTRACT IN THE SENSE OF ASSUMING THAT PEOPLE HAD INTERNALIZED THIS SORT OF LEGAL UNDERSTANDING OF A RIGHT OF PRIVACY WHICH I THINK YOU WOULD HAVE TO ADMIT IS TERMINOLOGY THAT IN THE ABORTION CONTEXT IT IS NOT SEMANTICALLY A NATURAL WAY TO TALK ABOUT IT.

IT ARGUABLY USES EUPHEMISM TO KIND OF MASK THE REALITY OF WHAT THE CHOICES ARE THAT PEOPLE ARE HAVING TO FACE ON BOTH SIDES.

AND YOU KNOW, I THINK ONE OF THE REASONS THERE PROBABLY WAS NOT A LOT OF DEBATE OVER THIS IS ARGUABLY BECAUSE THE PEOPLE THOUGHT THE FEDERAL LAW HAD ESSENTIALLY MADE WHATEVER FLORIDA WAS GOING TO DO ON THIS IRRELEVANT.

I'M NOT SAYING THAT CHANGES THE MEANING OF WHAT PRIVACY ENDS GENERAL MEANT BUT I THINK TO THE EXTENT IN YOUR POSITION IS THERE IS SOME SORT OF DEMOCRATIC LEGITIMACY HERE THAT WE NEED TO RESPECT.

I THINK IT DOES INFORM WHAT THAT DEMOCRATIC CHOICE LOOKS LIKE.

>> Whitney L. White: YES.

I THINK WHEN IT COMES TO THE DEMOCRATIC LEGITIMACY POINT.

THERE IS BOTH THE MOMENT IN 1980 WHEN FLORIDIANS ADOPTED A CONSTITUTIONAL RIGHT THAT DID NOT EXIST UNDER THE FEDERAL CONSTITUTION. BUT THE COURT ALSO HAS SUBSEQUENT INFORMATION INCLUDING 2012 WHERE VOTERS WERE PRESENTED WITH THE OPPORTUNITY TO OVERRULE PRECEDENT IN PRECISELY THE WAY THE STATE.

FOR FLORIDA'S CONSTITUTION.

VOTERS REJECTED THAT.

THEY INSTEAD VOTED TO RETAIN INDEPENDENT PROTECTIONS UNDER THE STATE CONSTITUTION.

>> Carlos G. Muniz, Justice: YOU CAN SEE THAT DOESN'T TELL US ANYTHING ABOUT THE ORIGINAL PUBLIC MEETING.

>> Whitney L. White: YES.

IT IS EVIDENCE OF WHAT IT MEANT IN 1980 BUT WHERE IT BECOMES RELEVANT IS UNDER THE ANALYSIS THIS COURT APPLIED IN FULL.

THERE IS A TWO-PRONGED ANALYSIS.

FIRST, WHETHER THE POWER DECISION WAS INCORRECT OR CLEARLY ERRONEOUS AND NOT INTERPRETATION FOR THE PRIOR COURT TO HAVE REACHED.

THE COURT ALSO POINTED OUT THAT EVEN IF THE COURT WERE TO CONCLUDE NOW THAT A PRIOR DECISION IS ERRONEOUS THERE MAY NONETHELESS BE REASONS TO RETAIN IT.

ONE OF THOSE IS SOCIETAL RELIANCE INTEREST AND THE POOL COURT SUGGESTED THAT THE RULE OF LAW IS ONE OF THOSE INTERESTS.

SO HERE, WE HAVE A SITUATION IN WHICH VOTERS THROUGH THE DEMOCRATIC PROCESS WERE PRESENTED WITH AN OPPORTUNITY TO TELL THIS COURT THAT IT HAD GOTTEN ITS PRECEDENTS WRONG AND TO ADJUST THEM ACCORDINGLY.

THE VOTERS REFUSED TO DO THAT.

SO I THINK THAT PROVIDES ADDITIONAL EVIDENCE WEIGHING IN FAVOR OF ADHERING TO PRECEDENT NOW.

BECAUSE THIS COURT'S OVERRULING PRECEDENTS WILL BE DIRECTLY CONTRARY TO WHAT VOTERS DECIDE TO DO WHEN THEY CONSIDER THIS QUESTION AT THE BALLOT.

>> Carlos G. Muniz, Justice: ONE WAY COURTS HAVE TRIED TO PUT BOUNDARIES AROUND BIG LANGUAGE IF READ LITERALLY.

HAVE MEANINGS THAT NOBODY WOULD THINK IS REASONABLE.

IS TO ADOPT A MISCHIEF ROLE ANALYSIS.

IF WE WERE TO LOOK AT THIS PROVISION THAT WAY, WHAT WOULD YOU SAY IS THE MISCHIEF THAT THIS PROVISION WAS UNDERSTOOD TO BE ADDRESSING?

>> Whitney L. White: I THINK MULTIPLE THINGS.

IT IS ENTIRELY POSSIBLE FOR THE ORIGINAL MEANING TO HAVE ENCOMPASSED MULTIPLE DIFFERENT WAYS OF ENSURING INDIVIDUAL RIGHTS AGAINST GOVERNMENT INTERFERENCE.

RETURNING TO THE ESTABLISHED MEANING.

FREEDOM FROM GOVERNMENT INTERFERENCE MEANT A NUMBER OF THINGS AND CERTAINLY INCLUDES INFORMATIONAL PRIVACY PROTECTIONS THE STATE FOCUSED ON BUT IT ALSO INCLUDED A FREEDOM FROM GOVERNMENT INTERFERENCE.

WITH DEEPLY PERSONAL AND PRIVATE DECISIONS THAT AFFECT ONE'S HEALTH. ONES FAMILY.

ONCE FUTURE AND ABORTION THAT FOLLOWS SQUARELY WITHIN THAT PROTECTION.

>> Carlos G. Muniz, Justice: WE APPRECIATE THE ANSWER BUT IN TERMS OF THE SPECIFIC HISTORY OF OUR STATE.

OBVIOUSLY ONE OF THE GOOD AND BAD IS THERE IS A PRIVACY CLAUSE HERE. BUT IT IS ALSO THE PRODUCT OF A REAL LIVED EXPERIENCE AT THE STATE OF FLORIDA.

SO IS THERE ANYTHING MORE SPECIFIC FROM A MISCHIEF ROLE PERSPECTIVE THAT YOU COULD POINT TO IN TERMS OF OUR STATES CULTURE AND HISTORY AND 1980 THAT CAN SHED SOME LIGHT ON THE MISCHIEF THAT WAS BEING ADDRESSED BY THIS PROVISION?

>> Whitney L. White: YES.

AND SEVERAL PRECEDENTS LEADING UP TO 1980 THIS COURT HAD REJECTED THE NOTION THERE WAS A GENERAL RIGHT OF PRIVACY UNDER THE FLORIDA CONSTITUTION.

THAT GENERAL RIGHT OF PRIVACY IN CASES LIKE CHEVON AND VERSES STATE.

IT WOULD INCORPORATE THE MORE LIMITED PRIVACY RIGHTS THAT WERE UNDER PRIVACY LAW.

THERE IS QUITE CLEAR EVIDENCE OF PRIVACY LAWS INTENDED TO REMEDY THAT BY CREATING A GENERAL RIGHT OF PRIVACY.

THERE'S NO REASON TO CONCLUDE THAT GENERAL RIGHT WOULD HAVE EXCLUDED ONE OF THE CORE COMPONENTS OF THE EXISTING PRIVACY LANDSCAPE.

IN FACT WHEN THIS COURT WAS SURVEYING THE EXISTING LANDSCAPE OF PRIVACY RIGHTS THREE YEARS BEFORE ADOPTING THE MOMENT IT WAS THE STATEMENT SOME ROE VERSUS WADE WITH A DEFINITIVE STATEMENT OF LAW IN THIS AREA.

I SEE I'M RUNNING INTO MY REBUTTAL TIME.

AND I WANT TO MAKE SURE I HAVE A MOMENT WE TALKED A LITTLE BIT ABOUT THE HARMS TO PLAINTIFFS THEMSELVES.

I WANT TO CLOSE BY FOCUSING ON THE EVIDENCE OF HARM TO PLAINTIFFS PATIENTS.

IN THIS CASE THAT THE FIRST DCA UNJUSTIFIABLY IGNORED.

I WANT TO UNDERSCORE THE FIRST D.C.'S APPROACH HERE WOULD UNDERMINE THE ENTIRE PURPOSE OF THIRD-PARTY STANDING.

AND THE COURT'S INHERENT EQUITABLE POWERS.

IT'S ONLY WOULD MAKE NO SENSE TO HAVE A RULE THAT ALLOWS COURTS TO HEAR THIRD-PARTY CLAIMS BUT THEN FORCES THEM TO STAND ASIDE WHEN THE THREAT OF HARM TO THOSE THIRD PARTIES IS IMMINENT AND IRREPARABLE.

THERE CAN BE NO DOUBT BASED ON THE RECORD IN THIS CASE AND THE TRIAL COURT'S FINDINGS ABOUT THE HARMS PLAINTIFFS PATIENTS ARE FACING ARE INDEED IRREPARABLE.

THE FOUND HP FIVE WOULD FORCE PROVIDERS TO DENY AND DELAY HER TO PATIENTS AND WAYS THAT ARE RELATED TO PATIENT CARE.

I WANT TO REFER THE COURT TO THE AMICUS BRIEF FILED WITH THE REPRODUCTIVE FREEDOM WHICH DOCUMENTS NUMEROUS INSTANCES OVER THIS PAST YEAR IN WHICH DESPITE THEIR BEST EFFORTS.

PROVIDERS ARE FINDING THEIR HANDS TIED BY HB FIVE.

IT IS FORCING THEM TO WAIT FOR PATIENTS WHO ARE EXPERIENCING TREATABLE MEDICAL PREGNANCY COMPLICATIONS TO DETERIORATE TO THE POINT OF FOR EXAMPLE DEVELOPING LIFE-THREATENING CONDITIONS LIKE SEPSIS BEFORE PROVIDERS CAN INTERVENE AND FEEL CONFIDENT THEY CAN PROVIDE CARE UNDER HB5.

IN ANOTHER CASE A PROVIDER WAS FORCED TO DENY CARE TO A 14-YEAR-OLD RAPE SURVIVOR.

A CHILD WHO HAD ALREADY BEEN TRAUMATIZED BY THE ASSAULT AND A FORCED TO BEAR THE ADDITIONAL TRAUMA OF A CONTINUING PREGNANCY AGAINST HER WILL. THESE INJUSTICES HAVE BEEN ONGOING FOR A YEAR AND IF THIS COURT DOES NOT STEP IN NOW.

THERE IS EVEN MORE DANGEROUS SIX WEEK VAN WAITING IN THE WINGS.

FOR ALL OF THE REASONS WE'VE RAISED IN OUR BRIEFS THE PLAINTIFF'S ASKED THE COURT TO REVERSE THE FIRST DCA AND REINSTATE CONJUNCTION.

>> THANK YOU.

YOU CAN HAVE FIVE MINUTES FOR REBUTTAL.

>> Whitney L. White: I APPRECIATE THAT THANK YOU.

>> Henry C. Whitaker: DOES NOT SUPPORT THE RIGHT TO ABORTION AND PRECEDENTS THAT HOLD OTHERWISE.

THERE'S BEEN A LOT OF DISCUSSION IN THE OPENING ABOUT WHETHER IT WAS INCORPORATED ESSENTIALLY IN THE PRIVACY CLAUSE AND I THINK I WOULD LIKE TO BEGIN BY FOCUSING MY PRESENTATION ON THAT.

I THINK CONSISTENT WITH THE COURT'S ANALYSIS IN THE AMENDMENT FOR ADVISORY OPINION WHAT IS PARAMOUNT IN THIS CASE IS WHAT THE VOTERS UNDERSTOOD THE PRIVACY CLAUSE TO MEAN.

THERE IS NO INDICATION THAT THE PARTICULARLY TECHNICAL SENSE OF PRIVACY THAT ROE USED TO DERIVE AN ABORTION RIGHT.

WAS ADOPTED BY THE PEOPLE.

WAS ADOPTED AND UNDERSTOOD BY THE PEOPLE.

THERE IS NO EVIDENCE THAT USAGE WHICH WAS HIGHLY CONTROVERSIAL AT THE TIME AND DISPUTED EVEN BY SCHOLARS WHO SUPPORTED AN ABORTION RIGHT.

HENRY FINALLY COULD NOT GET THERE.

LAWRENCE TRIBE COULD NOT GET THERE.

AT LEAST NOT IN 1988.

JOHN HART ELY COULD NOT GET THERE WITH THE PRIVACY AMENDMENT.

I THINK AT SOME OF THE QUESTIONS HAVE HIGHLIGHTED.

ABORTION IS ONE OF THE MOST CONTROVERSIAL ISSUES AND OUR SOCIETY TODAY. CONTROVERSIAL AND HOTLY DEBATED.

THERE ALSO WAS A DEBATE ABOUT THE PRIVACY CLAUSE.

IT IS UNIMAGINABLE GIVEN THAT CONTROVERSY THAT IT WOULD HAVE INCLUDED ABORTION GIVEN THE NEAR ABSENCE OF REFERENCES IN THE PUBLIC DEBATE.

>> Carlos G. Muniz, Justice: I'M SORRY TO INTERRUPT YOU.

HOW SHOULD WE GO ABOUT THE PROCESS OF TRYING TO FIGURE OUT HOW A FLORIDIAN IN 1980 WOULD HAVE UNDERSTOOD THE CONCEPT OF A GOVERNMENT INTRUSION INTO A PERSON'S PRIVATE LIFE?

>> Henry C. Whitaker: I THINK YOU SHOULD USE THE TOOLS OF CONSTITUTIONAL INTERPRETATION THAT YOUR HONOR HAS ESTABLISHED IN AMENDMENT FOUR. IN FIGURE OUT THE ORDINARY PUBLIC MEANING OF THE TEXT.

WE PROVIDED A VARIETY OF TOOLS THE COURT CAN USE TO INTERPRET WHAT THOSE WORDS MEAN AND WHAT THE PEOPLE REASONABLY UNDERSTOOD THOSE WORDS TO MEAN.

WE PROVIDED DICTIONARY DEFINITIONS AND AN EMPIRICAL ANALYSIS.

>> Carlos G. Muniz, Justice: YOU CAN'T REALLY USE A DICTIONARY TO WHAT A PERSON THINKS A GOVERNMENTAL INTRUSION INTO MY PRIVATE LIFE.

THERE IS NO WAY YOU CAN SPLICE TOGETHER LOOKING UP A BUNCH OF DIFFERENT WORDS.

I DON'T KNOW THAT THE DICTIONARY HELPS SO MUCH.

HOW CAN WE – ONE THING OBVIOUSLY AS THIS SORT OF PUBLIC DEBATE OVER THIS AMENDMENT.

YOU GET INTO THE APPLICATION VERSUS MEANING TO THE EXTENT THAT WE BELIEVE IN THAT DISTINCTION.

OTHER THAN THE DICTIONARY.

WHAT ARE THE TOOLS?

HOW ARE WE SUPPOSED TO FIGURE THIS OUT?

>> Henry C. Whitaker: I THINK YOU SHOULD TRY TO FIGURE OUT WHAT THE MEANING IS.

ONE WAY OF LOOKING AT THE INTERPRETIVE QUESTION OF THE TEXT BEFORE YOUR HONORS IS YOU HAVE TWO DIFFERENT LURING CONCEPTS.

WHAT CONCEPT THAT PEOPLE ENSHRINED IN THE PRIVACY CLAUSE.

WE THINK IT WAS A PROTECTION AGAINST INFORMATIONAL PRIVACY.

RIGHTS TO SECLUSION.

THEY THINK IT PROTECTED DECISIONAL AUTONOMY.

THOSE ARE TWO VERY DIFFERENT CONCEPTS IN CENSUS.

>> Carlos G. Muniz, Justice: ALTHOUGH THEIR PETITION IS THAT IT IS BOTH.
TO BE FAIR TO THEM.

>> Henry C. Whitaker: IT IS THEIR POSITION.

I DON'T THINK IT REALLY MAKES ANY SENSE BECAUSE THEY ARE DISTINCT
CONCEPTS.

AND THINKING ABOUT HOW WE USE WORDS.

WORDS CAN HAVE DIFFERENT DISTINCT CONCEPTS DEPENDING ON THE CONTEXT.
THE WORD BANK CAN MEAN EITHER A FINANCIAL INSTITUTION OR IT CAN MEAN THE
SIDE OF A RIVER.

>> THE DISTINCTION AND CONCEPT HERE WE KEEP TALKING ABOUT THE RIGHT TO
PRIVACY BUT OUR CONSTITUTION ALSO INSTRUCTS US NOT TO USE TITLES AND
SUBTITLES IN THE CONSTRUCTION.

OF INTERPRETATION.

I THINK YOUR BRIEF FOCUSES ON THE TO BE LET ALONE PART AND THE SOIL THAT
COMES WITH THAT TERM.

SO IS THAT REVERSING THE DISTINCTION AND CONCEPTS?

OR IS IT SOMETHING ELSE?

>> Henry C. Whitaker: I THINK BOTH HALVES OF THE PRIVACY CLAUSE UNDISPUTED
HERE ARE GETTING AT THE SAME THING.

IT SAYS GOVERNMENTAL INTRUSION INTO A PERSON'S PRIVATE LIFE.

I THINK THAT SECOND HALF OF THE CLAUSE IS WHAT IS MOST PROVOCATIVE OF THE
INFORMATIONAL PRIVACY READING THAT WE ARE URGING TO YOU.

I THINK AS A MATTER OF COMMON SENSE.

INTRUSION.

NOT INTERFERENCE.

INTRUSION INTO A PERSON'S PRIVATE LIFE WHICH IS WHAT IT SAYS ARE WORDS
THAT ARE HISTORICALLY ASSOCIATED WITH INFORMATIONAL PRIVACIES.

ALMOST RIGHT FROM MORAN 1890 ARTICLE.

IT IS NOT THE CASE THAT.

>> Carlos G. Muniz, Justice: YOU DON'T WANT US TO THINK THAT THE PEOPLE OF
FLORIDA HAD INTERNALIZED EIGHT 1990 ARTICLE AND NOT ROE VERSUS WADE.
ROE MAY HAVE BEEN A ABOMINATION AND SEMANTICALLY ABSURD TO TALK ABOUT
THAT IN TERMS OF PRIVACY BUT FOR BETTER OR WORSE THAT WAS PART OF OUR
CULTURAL LEXICON RIGHT?

>> Henry C. Whitaker: FAIR ENOUGH.

BUT I DON'T THINK WHAT WAS PART OF OUR CULTURAL LEXICON MAYBE ROE
HOLDING WAS BUT ROE REASONING THE CONFOUNDING LEGAL ALCHEMY THROUGH
WHICH ROE DERIVED CERTAINLY WAS NOT.

AND OUR EMPIRICAL ANALYSIS SHOWS QUITE THE CONTRARY.

THE ORDINARY AND POPULAR UNDERSTANDING OF PRIVACY DID NOT INCORPORATE

IMPLICITLY ROE.

WHAT I'M TRYING TO ILLUSTRATE HERE IS EVEN IF ONE ASSUMES, URGING YOU TO ADOPT A LEGAL MEANING, WE CERTAINLY AT THE VERY LEAST HAVE ESTABLISHED AN ALTERNATIVE LEGAL TRADITION WITH WHICH THE WORDS USED IN THE PRIVACY CLAUSE WHICH ARE KIND OF DISTINCTIVE.

THEY ARE NOT REPEATED ELSEWHERE.

WE ARE NOT RELYING ON THE TITLE.

AND I UNDERSTAND WE CAN'T DO THAT UNDER THE FLORIDA CONSTITUTION.

THERE IS INTERPRETIVE PRINCIPLE THAT SAYS WE DON'T DO THAT IN FLORIDA.

I GET THAT.

BUT THE BALLOT SUMMARY CERTAINLY DID USE THE RIGHT OF PRIVACY AND I THINK THAT IS OBJECTIVE EVIDENCE ABOUT WHAT THE PEOPLE MEANT AT THE TIME.

THAT THEY INTENDED IT TO BE A RIGHT TO PRIVACY AND AGAIN IT SAYS PRIVATE LIFE RIGHT THERE IN THE TEXT.

AT A MINIMUM WE HAVE IDENTIFIED A COMPETING LEGAL TRADITION.

IF YOU ARE LOOKING AT LEGAL MEANING.

I THINK THAT IS AT BEST A PUSH.

OUR TEXTUAL ARGUMENT I THINK IS MUCH BETTER.

CONTEXTUALLY.

THE ONLY EXCEPTION THAT IS ENUMERATED IN THE PRIVACY CLAUSE IS FOR PUBLIC RECORDS.

PUBLIC RECORD.

THAT IS THE ONLY EXCEPTION.

WHICH IS CONTEXT THAT IS EVOCATIVE OF INFORMATION PRIVACY.

>> Carlos G. Muniz, Justice: .SECOND SENTENCE HAS ALWAYS BAFFLED ME.

IT SEEMS LIKE A NON SEQUITUR.

THE FIRST SENTENCE TALKS ABOUT INTRUSION BY GOVERNMENT AND THE SECOND SENTENCE TALKS ABOUT PUBLIC RECORD.

IT SEEMS LIKE ONCE THE GOVERNMENT HAS THE INFORMATION THEN IT JUST BECOMES KIND OF – I COULD UNDERSTAND IF THE FIRST SENTENCE HAD TALKED ABOUT DISSEMINATION OR PUBLICATION.

AND THEN YOU HAVE SOMETHING OF RECORD.

CAN YOU EXPLAIN JUST HOW THESE TWO THINGS EVEN FIT TOGETHER?

>> Henry C. Whitaker: AN IMPORTANT PART OF THE RIGHT OF PRIVACY PARTICULARLY EXISTED AT THE COMMON LAW WHICH HAD NOTHING TO DO WITH DECISIONAL AUTONOMY WAS A RIGHT TO DISCLOSE ROPE PRIVACY.

A RIGHT TO NOT HAVE INFORMATION ABOUT YOU DISSEMINATED.

ONE OF THE THINGS ESPECIALLY THAT THE PUBLIC RECORD SHOWS.

THE FRAMEWORK OF THE PRIVACY CLAUSE WE ARE INTENSELY CONCERNED WITH.

WAS THE GOVERNMENT COLLECTING RECORDS ABOUT THE PEOPLE.

AND THEN POTENTIALLY DISSEMINATING THEM.

THE FUNCTION OF THE EXCEPTION IS TO SHOW THAT NOTWITHSTANDING THE PRIVACY CLAUSE REGULATING THAT KIND OF GOVERNMENTAL CONDUCT.

YOU CAN HAVE A PUBLIC RECORDS LAW THAT MAY REQUIRE EXPOSURE OF INFORMATION AND REVEAL INFORMATION ABOUT PEOPLE THE GOVERNMENT MAY HAVE COLLECTED.

THIS IS NOT JUST IN 1890 YOUR HONOR.

THE RESTATEMENT IN 1977 USE LANGUAGE SIMILAR TO THE PRIVACY CLAUSE IN SPEAKING OF THE RIGHT OF PRIVACY AS IT EXISTED IN COMMON LAW.

I THINK THIS COURT MOST COMMONLY LOOKS TO THE COMMON LAW A LOT MORE THAN IT LOOKS TO EXTRAVAGANT DECISIONS BY THE WARREN COURT INTERPRETING LANGUAGE I THINK.

AND THAT IS WHAT THE COURT SHOULD DO HERE.

>> Jamie R. Grosshans, Justice: I THINK ONE THING THE STATES BRIEF DID NOT ADDRESS – IF WE AS A COURT ADOPT YOUR LEGAL APPROACH TO THIS AMENDMENT. IT AFFECTS DOZENS OF OTHER CASES OUTSIDE THE ABORTION CONTEXT.

AS IN OTHER SUBJECTS THAT RELATE I THINK MORE TO A DECISIONAL AUTONOMY THAN TO INFORMATIONAL.

THAT IS 30 YEARS OF PRECEDENT.

COMPLETELY UNDONE.

BY THIS ONE DECISION OF WHICH WE HAD NO BRIEFING.

OF WHICH WE'VE HAD NOT REALLY A LOT OF INFORMATION ON.

HOW WOULD THE STATE ADDRESS THAT?

>> Henry C. Whitaker: I THINK THERE IS A LOT LESS OF THAT CONCERN THAT MEETS THE EYE YOUR HONOR.

MANY OF THE COURTS DECISIONAL AUTONOMY PRECEDENTS ACTUALLY OUTSIDE OF THE ABORTION CONTEXT REALLY DON'T HAVE ORIGIN IN THE PRIVACY CLAUSE AT ALL.

IN ONE CASE THERE HAS BEEN A LOT OF DISCUSSION IN THE BRIEFS ABOUT THE CHEVRON CASE IN 1980 THERE WAS NOT A RIGHT TO INFORMATIONAL PRIVACIES. THE SAME DAY THIS COURT DECIDED SEVEN WHICH RECOGNIZED EVEN BEFORE THE ENACTMENT OF THE PRIVACY CLAUSE.

THERE IS A RIGHT UNDER THE FLORIDA CONSTITUTION TO REFUSE LIFESAVING MEDICAL USE OF AUTONOMY.

INDEPENDENT OF THE PRIVACY CLAUSE.

DITTO FOR THE RIGHT TO RAISE YOUR CHILDREN.

THAT SAYS NOTHING OF PRIVACY OR THE PRIVACY CLAUSE.

AND RELIES IN FACT ON MORE ANCIENT PRINCIPLES THAT PREDATED THE EXISTENCE OF THE PRIVACY CLAUSE.

I THINK THE CASE IN PARTICULAR ILLUSTRATES AN IMPORTANT PART OF A LEGAL BACKDROP TO THE EXTENT WITH THE VOTERS SOPHISTICATED UNDERSTANDING ABOUT LEGAL BACKDROP.

LET'S GO THERE.

AT THE TIME THE PRIVACY CLAUSE WAS ENACTED IN 1980.

THE STATE OF THE LAW WAS WE HAD SHEVAN.

NO RIGHT OF INFORMATIONAL PRIVACY AND WE HAD PROMOTER.

THERE WAS A RIGHT OF DECISIONAL AUTONOMY WITH THE PRIVACY CLAUSE.
WHATEVER THE STATE AND FEDERAL LAW.
WE CAN ARGUE ABOUT THAT.
THIS IS ULTIMATELY A QUESTION OF STATE LAW.
IT WOULD BE ODD TO ATTRIBUTE TO THE VOTERS AN ATTEMPT TO DUPLICATE
ESSENTIALLY WHAT THIS COURT HAD ALREADY HELD WAS INDEPENDENT HE
PROTECTED UNDER THE FLORIDA CONSTITUTION.
I THINK IT MAKES IT QUITE PLAUSIBLE WHAT THE PEOPLE WERE TRYING TO DO.
THEY WEREN'T TRYING TO BROADEN FLORIDA CONSTITUTIONAL LAW BUT
RELATIVELY NARROW AND RESPECT.
WITH RESPECT TO MY OPPOSING COUNSEL.
I DON'T THINK IT IS TENABLE TO READ THE TEXT OF THE PRIVACY CLAUSE IN THE
EXPANSIVE WAY THAT THEY DO.
THEY SAY BASICALLY IT IS A CHARTER OF NONINTERFERENCE IN ANY KIND OF A
PERSONAL DECISION.
WHICH THIS COURT HAS NEVER INTERPRETED THE PRIVACY CLAUSE TO SWEEP
THAT BROADLY AND THE CONSEQUENCES WOULD BE STRIKING.
I'M SURE MY FRIENDS ON THE OTHER SIDE WOULD NOT TAKE THIS POSITION BUT
THEY DO NOT PROVIDE A LIMITING PRINCIPLE TO DISTINGUISH ABORTION FROM
INFANTICIDE, FROM EUTHANASIA FROM SPOUSAL ABUSE.
THOSE ARE ALL INVOLVED PERSONAL DECISIONS THAT THE GOVERNMENT COULD BE
SAID TO BE INTERFERING WITH IN SOME SENSE.
WHEN THE LEGISLATURE TAKES ACTION TO REMEDY CHOICES THAT HARM OTHERS.
>> I LOOKED AT THE BRIEFS IN THE ATW.
I HAVEN'T LOOKED AT THE OTHER ABORTION CASES THE STATE OF FLORIDA.
NINE YEARS AFTER THIS BECAME LAW.
THE STATE OF FLORIDA DID NOT TAKE THE POSITION THAT SECTION 23 ONLY APPLIED
TO INFORMATIONAL PRIVACY.
THEY KIND OF ACCEPTED THE PREMISE THAT DECISIONAL PRIVACY WAS PART OF IT.
THEY WERE TRYING TO DEFEND THE LAW WITHIN THAT FRAMEWORK.
AT WHAT POINT DID THE STATE SHIFT TO THE POSITION THAT YOU HAVE NOW?
IS THIS THE FIRST TIME IN ONE OF THESE ABORTION CASES WHERE THE STATE HAS
ARGUED FOR INFORMATION FOR SECTION 23?
FROM THE STATE OF FLORIDA'S PERSPECTIVE THE STATES POSITION EARLIER THAN
THIS CASE.
>> I CAN'T THINK OF AN INSTANCE WHERE WE HAVE TAKEN THIS POSITION BEFORE.
I DID GO BACK AND LOOK AT SOME OF THE BRIEFS.
AND I DO BELIEVE THERE WERE BRIEFS THE COURT HAD IN FRONT OF IT.
>> Henry C. Whitaker: I AM NOT AWARE YOUR HONOR QUITE FRANKLY.
WHEN THIS ISSUE CAME UP.
BEFORE US WE DID TAKE A FRESH LOOK AT THIS ISSUE.
I THINK IT IS FAIR TO SAY THAT THE KIND OF HISTORICAL EVIDENCE WE HAVE REALLY
DONE A DEEP DIVE INTO HISTORICAL RECORD.

WHAT IT SHOWS IS PRETTY STRIKING ABOUT THE HISTORICAL BACKDROP.
BEHIND THE ENACTMENT OF THE PRIVACY CLAUSE.
WHAT IT SHOWS IN THE VAST MAJORITY OF CASES.
THE PRIVACY CLAUSE WAS EXPLAINED AND SOLD TO THE PEOPLE.
SOLELY IN INFORMATIONAL PRIVACY TERMS.
I THINK THAT IS QUITE SIGNIFICANT BECAUSE IF IT REALLY WERE THE CASE.
NOT EXCLUSIVELY.
THERE WERE INSTANCES WHERE DECISIONAL AUTONOMY WAS PRESENT.
IN THE ARGUMENTS OF WHICH THOSE APPEAR.
YOU ALSO SAW THE SPONSORS OF THE AMENDMENT SAYING THAT IS NOT WHAT WE
MEANT AT ALL.
THAT IS NOT WHAT WE ARE TALKING ABOUT.
THAT IS OFF THE WALL THAT IT WOULD REGULATE INTO INTIMATE CONDUCT.
THAT WOULD REGULATE DRUG USE.
THOSE ARE THE TWO EXAMPLES OF DECISIONAL AUTONOMY THAT REPEATEDLY
CAME UP.
I DON'T THINK THEY'RE ARGUING THE PRIVACY CLAUSE PROTECTS DRUG USE BUT
THEY ARE.
THE RESPONSES REPEATEDLY AGAIN AND AGAIN CAME BACK AND SAID THAT'S NOT
WHAT WE MEANT.
>> Jamie R. Grosshans, Justice: CAN WE SHIFT GEARS JUST A LITTLE AND TALK ABOUT
STANDING?
IT IS NOT REALLY THE SUBJECT OF YOUR BRIEF.
BUT WHAT DO YOU THINK IS THE DOCTRINE WE SHOULD APPLY TO DETERMINE
STANDING?
THAT IS QUESTION ONE AND FOLLOWING UP ON THAT WHY DOES PLANNED
PARENTHOOD NOT MEET THOSE STANDARDS?
>> Henry C. Whitaker:
>> WE ARE COMFORTABLE WITH THE COURT'S DECISION AND ALTERA.
>> WE ARE QUITE COMFORTABLE WITH THAT.
WE DID MAKE A STANDING ARGUMENT THAT WE HAVE FOCUSED CERTAINLY ON THE
PRESSING MERITS QUESTIONS IN THIS CASE CERTAINLY THAT IS THE DIRECTION WE
WOULD URGE.
>> YOU CONCEDED ONE PLANK OF THE STANDING ANALYSIS BELOW OF THE
CLOSENESS OF RELATIONSHIP BETWEEN DOCTOR AND PATIENT.
>> Henry C. Whitaker: WE DID CONCEDE THAT YOUR HONOR.
ALTHOUGH WE ONLY NEED TO WIN ON ONE.
ONE IS GOOD ENOUGH.
THE PRONG OF THE THIRD-PARTY STANDING ANALYSIS SINCE POWERS WE HAVE THE
CASE FROM 2004 FROM THE U.S. SUPREME COURT WHICH RELIED ON I THINK IF YOU
INSTANCES THE DEFENDANT WHO PLEADS GUILTY TO HAVE PAID COUNSEL ON
APPEAL.
AND THE COURT SAID DESPITE THE FACT THAT WHAT WE WERE TALKING ABOUT WAS

– THERE IS NOT A REAL HINDRANCE BECAUSE THERE ARE PLENTY OF EXAMPLES WHERE THERE ACTUALLY ARE AND THAT WRONG IS NOT SATISFIED. THE RECENT DECISION OF THE KENTUCKY SUPREME COURT AND THE CAMERON CASE. WHICH.

>> John D. Couriel, Justice: THEIR CONSTITUTIONAL PROVISION IS A LITTLE DIFFERENT FROM OURS THOUGH? ISN'T IT?

>> Henry C. Whitaker: IT IS.

IN ESSENCE APPLIED THE FEDERAL STANDARD.

ONE OF THE THINGS THE CAMERON CASE OBSERVED IS THE U.S. SUPREME COURT THIS OBVIOUSLY WASN'T THE MAIN THING THE COURT DECIDED BUT DIDN'T THROW A LOT OF SHADE ON THE U.S. SUPREME COURT THIRD-PARTY STANDING CASES IN THE ABORTION CONTEXT SETTING APPROVINGLY JUST AS THOMAS AND ALITO'S DISSENT IN THE JUNE CASE.

ONE OF THE THINGS THAT OUTLINE IS MANY EXAMPLES IN WHICH WOMEN CHALLENGING ABORTION RESTRICTION HAVE BEEN ABLE WITH THE FIRST DISTRICT. CITED ANOTHER ONE OF THOSE EXAMPLES AND I THINK THOSE ARE DECISIVE.

I DO NOT DENY THAT WOMEN WHO SEEK TO CHALLENGE AN ABORTION RESTRICTION MAY FACE – MAY HAVE ARGUMENTS THAT THEY FACE IRREPARABLE HARM. BUT THAT IS WHAT TIR FOUR.

>> Meredith L. Sasso, Justice: SPEAKING UP HOW DO WE STAND WITH THE COURT, HAVE THREE CASES NOW SAYING THIS CLASS AGAINST IS IRREPARABLY HARMED IN THE CONTEXT OF THIS PRECISE ISSUE ALMOST.

IF WE ISSUED AN OPINION IN THIS CASE SAYING THERE IS NO STANDING AND STOP. HOW DOES THE OPINION STAND WITH THE REST OF THIS COURT'S PRECEDENT IN THE ABORTION CONTEXT?

>> Henry C. Whitaker: I DON'T THINK IN THOSE PRIOR PRECEDENTS THAT YOU SQUARELY ADDRESSED THE IRREPARABLE HARM QUESTION THAT THE FIRST DISTRICT HAS TEED UP FOR YOU HERE.

I DON'T THINK THE STATE MADE THIS ARGUMENT WE ARE MAKING NOW BASED ON IRREPARABLE HARM.

>> Meredith L. Sasso, Justice: BUT THAT IS THE CONFLICT RIGHT?

THE CONFLICT AT LEAST ALLEGED WAS IT WAS – PATIENT CARE.

>> Henry C. Whitaker: THAT IS THE DIRECT CONFLICT.

WE TOLD THE FIRST WE DID NOT THINK THERE WAS A CONFLICT. LOOK.

I THINK THE POINT I WOULD STRESS IS EVEN IN THE THIRD-PARTY STANDING. YOU STILL NEED TO SHOW AN INJURY IN FACT.

THE REASON IS THIRD-PARTY STANDING IS NOT SIMPLY A DOCTRINE THAT PERMITS ONE LITIGANT TO SUE ON BEHALF OF ANOTHER.

RATHER IT IS A DOCUMENT THAT ALLOWS EIGHT LITIGANT WHO WANTS TO ASSERT HIS OWN TYPE OF CLAIM TO DISPENSE WITH THE ORDINARY RULES THAT SAY YOU

CANNOT ASSERT THE RIGHTS OF SOMEONE ELSE.
THERE IS ALWAYS THE REQUIREMENT FOR EXAMPLE AN INJURY.
AND THERE IS ALSO A PRINCIPAL THAT THE REMEDY FOLLOWS THE INJURY.
THE PURPOSE OF REMEDIES IS TO REMEDY AN INJURY.
I THINK IT IS ENTIRELY LOGICAL AND ASKING WHETHER A LITIGANT WHO IS
ASSERTING THIRD-PARTY STANDING ON BEHALF OF THE OTHERS.
WHETHER TO BE THAT LITIGANT HAS ASSERTED IRREPARABLE HARM THAT REMEDY
THE PARTICULAR INJURY IN FACT.
>> Meredith L. Sasso, Justice: DO YOU SEE AS JURISDICTIONAL AS CREDENTIAL?
>> Henry C. Whitaker: WE HAVE NOT TAKEN ISSUE WITH THIS COURT'S PRECEDENTS
ON THAT.
CONSISTENT WITH THE PAGE CASE FROM 2020.
CURRENTLY HOLD THAT STANDING IS NOT A JURISDICTIONAL ISSUE.
IT IS A WAIVABLE ISSUE.
WE HAVE NO QUARREL WITH THAT.
WE HAVE NOT PRESENTED ANY OTHER ARGUMENTS.
I UNDERSTAND THE SECRETARY STAY IN ANOTHER CASE PRESENTED A DIFFERENT
VIEW.
BUT WE HAVE NOT TAKEN THAT ON HERE.
WE WOULD ASK THE COURT TO APPLY ITS ESTABLISHED RESIDENT ON THAT.
I THINK THAT IS A COMPLICATED QUESTION.
I WOULD URGE THE COURT TO STEER CLEAR OF THAT.
IN THIS CASE.
WE DO THINK THAT THE COURT CAN ASSUME FOR THE SAKE OF ARGUMENT THAT
THE PLAINTIFFS HAVE A STANDING HERE.
AND I WOULD JUST SAY THAT I THINK IS WHAT THE COURT SHOULD DO.
AFTER THE SUPREME COURT DECISION IN DOBBS.
THE ONLY THING THAT IS BETWEEN THE LEGISLATURE AND REGULATING ABORTION
IN THE WAY THEY WOULD LIKE ARE THIS COURT'S PRECEDENTS.
OBVIOUSLY YOU HAVE A 15 WEEK LAW IN FRONT OF YOU AS PLAINTIFF NOTES THERE
IS A SIX WEEK LAW RIGHT AROUND THE CORNER AND I THINK THE CONTINUING
VITALITY OF THIS COURT'S PRECEDENTS ON ABORTION IS AN ISSUE THAT CRIES OUT
FOR RESOLUTION BY THIS COURT ON MERITS.
CHIEF JUSTICE YOU ARE CERTAINLY CORRECT THE STATE HASN'T RAISED THESE
ARGUMENTS BEFORE I THINK THAT IS CORRECT BUT I DO THINK IT IS FAIR TO SAY WE
DO RAISE REASONS WHY THERE IS NO ABORTION RIGHT UNDER THE FLORIDA
CONSTITUTION THAT HAVE NOT BEEN PRESENTED TO THIS COURT BEFORE.
FOR EXAMPLE, ONE OF THE PIECES OF EVIDENCE THAT HAS NEVER BEEN
PRESENTED TO THE SQUARE AS FAR AS I AM AWARE IS THAT DOZENS OF THE
LEGISLATORS WHO PUT THE PRIVACY AMENDMENT BEFORE THE PEOPLE IN THE 1978
AND 79 LEGISLATIVE SESSION VOTED TO CONVENE A NATIONAL PRO LIFE
CONVENTION TO ADD A PRO-LIFE AMENDMENT TO THE FEDERAL CONSTITUTION.
THE SAME LEGISLATURE THAT PUT THE PRIVACY AMENDMENT BEFORE THE PEOPLE.

AND ENACTED ABORTION RESTRICTIONS THAT WERE LATER STRUCK DOWN IN THE NAME OF THE VERY AMENDMENT THEY ASKED OF THE PEOPLE TO RATIFY. IN THE LEAD SPONSOR OF THE PRIVACY AMENDMENT IN THE SENATE. EXPLICITLY DISAVOWED ON THE FLOOR OF THE SENATE THAT IT HAD ANYTHING TO DO WITH ABORTION.

I DO THINK THAT IS EVIDENCE THAT I THINK THE PEOPLE WOULD HAVE NEVER UNDERSTOOD WHAT THEY WERE RATIFYING HAD ANYTHING WHATSOEVER TO DO WITH ABORTION.

HOW SHOULD WE –.

>> Carlos G. Muniz, Chief Justice: I THINK THAT IS ALL IMPORTANT BUT AT THE SAME TIME AND 89 WE HAD THE CHAIR OF CRC AND 78 THAT SAID ABORTION WAS ONE OF THE ISSUES.

WE HAVE EHRlich AND BASICALLY ALL THE JUSTICES MUCH CLOSER IN TIME THAN WE WERE.

WILLIAM DOUGLAS TYPES.

YOU DON'T GET THE SENSE IT IS AN IDEOLOGICAL THING.

IT SEEMS TO BE TAKEN AS A GIVEN THEY BELIEVE THAT WAS THE BASELINE.

HOW ARE WE IN A BETTER POSITION THAN THEY WERE TO UNDERSTAND WHAT THE COMMON UNDERSTANDING OF WHAT THE RIGHT WAS?

>> Henry C. Whitaker: YOUR HONOR, I THINK JUSTICE OVERTON SEEMED TO BE A SMART MAN.

HE WAS PROBABLY A GOOD GUY.

I DON'T THINK HIS OPINION, WITH ALL RESPECT REFLECTED HOW THE PEOPLE REASONABLY UNDERSTOOD.

WHAT THE WORDS OF THE AMENDMENT MEANT.

I DON'T THINK BEN OVERTON OR JOHN MILLS SECRET UNDERSTANDING OF WHAT THE PRIVACY AMENDMENT MEANT IS WHAT IS CONTROLLING.

I'M NOT SURE THAT JUSTICE OVERTON HAD BEFOREHAND ALL OF THE EVIDENCE THAT WE HAVE MARSHALED IN THAT REGARD.

YOU TALK ABOUT COMPELLING INTEREST?

THAT SEEMS TO ME IT SHOULD BE A MOVING TARGET.

WE HAVE A LONG TRADITION IN FLORIDA WHICH I DON'T THANK YOU GUYS HAVE EMPHASIZED THAT MUCH IN YOUR BRIEFING HERE.

THIS COURT ALMOST TAKING AT LEAST RHETORICALLY ADOPTING ALMOST A FAIR TYPE POSITION OF THINGS HAVE TO BE BEYOND A REASONABLE DOUBT UNCONSTITUTIONAL.

THAT SORT OF THING.

I KNOW IT IS KIND OF TOUCHED ON IN YOUR BRIEF.

THE COMPELLING INTEREST PART.

COULD YOU ELABORATE ON THAT?

>> Henry C. Whitaker: WE VERY MUCH EMBRACED THE FAIR IDEA THAT AN ACTIVE LEGISLATURE SHOULD NOT BE STRUCK DOWN UNLESS IT IS CLEARLY UNCONSTITUTIONAL AND RELY ON THAT PRINCIPLE IN THE BRIEF.

I THINK THAT IS SOMETHING THAT GOES INTO THE CALCULUS OF WHETHER TO OVERRULE PRECEDENT.

THAT INQUIRY HAS TO BE DONE AGAINST THE BACKDROP OF THAT DIFFERENCE TO THE LEGISLATURE.

I DO THINK WE WOULD WIN UNDER COMPELLING INTEREST AS WELL.

AND YOU CAN CERTAINLY CONSIDER CHANGING CIRCUMSTANCES.

ONE THING I WOULD LIKE TO STRESS ABOUT COMPELLING INTEREST IS WE HAVE OBVIOUSLY URGED A RETHINKING OF THE COURTS PRIVACY CLAUSE PRECEDENTS EVEN TAKING THEM AS GIVEN THOUGH.

THIS COURT HAS NOT RIGIDLY APPLIED MEANS AND SCRUTINY UNDER THE PRIVACY CLAUSE.

IT IS NOT REALLY – AS THIS COURT HAS APPOINTED OVER THE YEARS STRICT SCRUTINY IN A STRICT SENSE IF YOU WILL.

EVEN AS EARLY AS WINFIELD AND 1985.

WHICH UPHELD UNDER STRICT SCRUTINY.

A SUBPOENA BY GP PR OF BANK REFERENCE IN THE CONTEXT OF A GAMBLING.

WHEN THIS COURT IN THE EARLY 90s WAS FACED WITH THREE DIFFERENT PRIVACY CLAUSE CHALLENGES.

TO STATUTORY RAPE LAWS.

THIS COURT RELIED ON STRICT SCRUTINY THE STATE HAS A COMPELLING INTEREST IN ADVANCING THE WELFARE OF CHILDREN ALTHOUGH THE STATUTORY RATE STATUTE LOST IN ONE OF THOSE CASES.

SO TOO WITH THE COURTS ASSISTED SUICIDE CASE.

IN 1997.

WHERE THIS COURT UPHELD THE LEGISLATURE STATUE CRIMINALIZING ASSISTANT SUICIDE UNDER A FORM OF STRICT SCRUTINY THAT I THINK IS FAIR TO SAY IS NOT AS STRICT AS IT IS UNDERSTOOD TO BE AND MANY OTHER CONTEXT.

HERE WE THINK THE STATE HAS A COMPELLING INTEREST AT ALL STAGES OF PREGNANCY AND PRESERVING LIFE.

WHATEVER YOU THINK ABOUT THE STATUS OF AN UNBORN LIFE AT ANY PARTICULAR STAGE OF PREGNANCY IT IS A LIFE IN SOME SENSE AND IS UNQUESTIONABLY EXTINGUISHED BY THE ABORTION DECISION AND THE LEGISLATURE WAS ENTITLED TO TAKE THAT INTO ACCOUNT AND LEGISLATE.

I UNDERSTAND THE PLAINTIFFS HAD RAISED SUBSTANTIAL CONCERNS ABOUT WOMEN WE NEED TO HAVE ABORTIONS.

TERRIBLE THINGS.

AND THE LEGISLATURE WEIGHT AND BALANCE TO THOSE CONCERNS AGAINST THE INTEREST AND WEIGHING AND BALANCING LIFE.

THAT KIND OF WEIGHING AND BALANCING IS PRECISELY THE KIND OF THING THAT SHOULD BE DONE BY THE LEGISLATURE AND NOT THIS COURT.

THAT IS WHAT WE WOULD ASK THIS COURT TO DO.

ARE THERE FURTHER QUESTIONS?

I'M HAPPY TO SIT DOWN AT THE COURT HAS NO FURTHER QUESTIONS.

>> THANK YOU VERY MUCH.

>> Whitney L. White: THERE ARE A FEW POINTS I WANT TO TRY TO RESPOND TO. I WILL TRY TO MOVE RELATIVELY QUICKLY.

THE FIRST IS, THERE WAS A QUESTION ABOUT WHAT TOOLS THE COURT USES WHEN LOOKING TO UNDERSTAND WHAT VOTERS UNDERSTOOD.

AND THE VOTING RESTORATION AMENDMENT CASE PROVIDES A CLEAR EXAMPLE OF THAT.

PART OF WHAT THE COURT DID IN DETERMINING WHAT THE ORDINARY UNDERSTANDING WAS LIKELY TO BE WAS LOOKING TO CONTEMPORANEOUS CASE LAW.

AS PART OF THAT PLAINTEXT AND ORDINARY MEANING ANALYSIS.

HEAR THE CASE LAW CONTEMPORANEOUS CASE LAW FOR THE RIGHT OF ABORTION AND PART OF PRIVACY RIGHTS AND PRIVACY CLAUSES TERMS.

I WOULD ALSO UNDERScoreD THAT THE QUESTION HERE IN LIGHT OF THE DECISIVE ANALYSIS IS WHETHER THE PRIOR CONCLUSION THAT ABORTION WAS INCLUDED WAS CLEARLY ERRONEOUS.

AND HERE IN LIGHT OF THE PLAINTEXT EVIDENCE AND IN LIGHT OF THE ESTABLISHED MEANING IN 1980 IT WAS AT MINIMUM REASONABLE FOR THE PRIOR JUSTICES OF THIS COURT TO INCLUDE THAT IT WAS.

THAT COUNSEL IS IN FAVOR OF THIS COURT HEARING TO PRECEDENT.

IN FACT NOT ONLY WAS THE TW COURT UNANIMOUS IN CONCLUDING THE PRIVACY CLAUSE PROTECTED ABORTION AT LEAST AS STRONGLY AS UNDER ROE.

NO JUSTICE OF THIS COURT HAS SUBSEQUENTLY WRITTEN A DECISION CALLING THAT CONCLUSION INTO QUESTION.

I THINK THE WEIGHT OF THOSE CONSIDERED ADDITIONAL JUDGMENTS PROVIDES CLEAR EVIDENCE WITHOUT THE PRIOR CONCLUSIONS WERE INDEED REASONABLE AND FALL SHORT OF THE CLEARLY ERRONEOUS STANDARD.

I ALSO WANT TO ADDRESS THE STATE'S ARGUMENT TO LIMIT THE CLAUSE SOLELY TO INFORMATIONAL PRIVACY.

THIS IS A COMPLETELY A TEXTUAL READING OF WHAT THE PRIVACY CLAUSE SAID THE STATE WOULD HAVE THE COURT READ IT AS PROTECTED PRIVATE INFORMATION FROM GOVERNMENT SNOOPING.

THAT IS SIMPLY NOT THE WORD THAT THE PRIVACY CLAUSE TO CONSTRUE THE OBLIGATIONS WHERE THE TEXT ITSELF DOESN'T DO SO.

NOTHING IN THE TEXT EXCLUDES DECISIONAL AUTONOMY RIGHTS LIKE ABORTION. THE STATE MENTIONED THE SECOND SENTENCE.

I JUST WANT TO UNDERScoreD.

ALSO DISPENSES THE ARGUMENT.

THAT THE CASE MADE CLEAR THAT SPECIFIC TERM ONLY NARROWS A MORE GENERAL TERMS WHERE IT PRECEDES IT.

THAT IS NOT THE CASE WITH THE PRIVACY CLAUSE.

I WANT TO SPEAK FOR A MOMENT ALSO ABOUT THE IMPLICATIONS OF THE STATES ARGUMENTS THAT THE CLAUSE IS LIMITED TO INFORMATIONAL PRIVACY THIS WILL

HAVE AN IMPACT ON NUMEROUS OTHER AREAS.

THIS COURT HAS REPEATEDLY APPLIED THE PRIVACY CLAUSE OUTSIDE OF THE INFORMATIONAL PRIVACY CONTEXT.

MANY OF THOSE CASES DID RELY SPECIFICALLY ON PRIVACY CLAUSE UNDER THE PRIVACY OF THE FLORIDA CONSTITUTION AND THIS COURT HAS REPEATEDLY HELD THE PRIVACY CLAUSE IS BROADER AND MORE PROTECTIVE OF THOSE RIGHTS THAN FEDERAL LAW.

THE FLORIDA CONSTITUTION PRODUCTIONS FOR DECISIONAL AUTONOMY ARE NOT ALL DUPLICATES OF FEDERAL LAW AND IF THIS COURT WERE TO ACCEPT THE STATE'S ARGUMENT IT WOULD HAVE A DESTABILIZING EFFECT ON ALL OF THOSE OTHER RIGHTS THAT THIS COURT HAS HELD TO BE PROTECTED BY THE FLORIDA CONSTITUTION.

WITH RESPECT TO STANDING.

I WANTED TO KNOW THE STATE REFERRED TO THE KOWALSKI DECISION.

I WANT TO UNDERSCORE THAT DECISION SPECIFICALLY EMPHASIZED THAT IN CERTAIN CONTEXTS IN PARTICULAR WHERE A PARTY'S RIGHTS ARE HARMED BY THE DIRECT ENFORCEMENT OF LAW AGAINST SOMEBODY ELSE.

IN THOSE CIRCUMSTANCES THE THIRD-PARTY INQUIRY IS MORE FORGIVING.

IF ANYTHING KOWALSKI MAKES CLEAR IN CIRCUMSTANCES LIKE THIS PROVIDER THEMSELVES ARE THE ONES DIRECTLY SUBJECT TO RELEVANT SEVERE CRIMINAL POLICIES AND HAVE A CLEAR OUTCOME OF THIS CASE THE THIRD-PARTY STANDING INQUIRY.

IF ANYTHING IS MORE FORGIVING IN THE TRIAL COURT'S FINDINGS THAT PLAINTIFFS SATISFY IS MORE THAN SUFFICIENT.

TO AFFIRM.

I LASTLY JUST WANT TO ADDRESS THE STATE'S SUGGESTION THAT UPHOLDING PRIVACY RIGHTS FOR ABORTION HERE WOULD OPEN THE DOOR FOR OTHER THINGS LIKE INFANTICIDE.

FRANKLY THERE IS NO REASON FOR THE COURT TO BE CONCERNED ABOUT THAT. ABORTION WAS RECOGNIZED AS A FUNDAMENTAL PRIVACY RIGHT IN FLORIDA FOR DECADES.

IT HAS NEVER BEEN THE CASE THAT HAS LED TO A FREE-FOR-ALL ACCORDING TO PRIVACY RIGHTS PROTECTIONS FOR OTHER CRIMINAL RIGHTS LIKE INFANTICIDE.

THERE IS A CRIMINAL BASIS FOR THIS COURT TO DISTINGUISH.

THE PRIVACY CLAUSE WAS UNEQUIVOCALLY INCLUDED IN THE ESTABLISHED MEETING AND THAT IS SIMPLY NOT THE CASE FOR THESE OTHER EXTREME HYPOTHETICALS THAT THE STATE HAS PUT FORWARD.

>> Carlos G. Muniz, Chief Justice: SORRY, CAN I ASK YOU ABOUT DOBBS BEFORE YOU FINISH?

YOU ARE ASKING US TO ESSENTIALLY TAKE A WHOLE CLASS OF HUMAN BEINGS AND PUT THEM OUTSIDE OF THE PROTECTION OF THE LAW ESSENTIALLY IN THE SENSE IF THE LEGISLATURE WANTS TO PROTECT THOSE HUMAN BEINGS THEY ARE PRECLUDED BY THE CONSTITUTION OF FLORIDA FROM DOING THAT.

AT THE END OF THE DAY THE ARGUMENT AS TO WHY THAT WOULD BE RIGHT WOULD BE BASED ON LEGAL MEANING KIND OF UNDERSTANDING OF RIGHT OF PRIVACY. WE NOW KNOW THE SAME ENTITY THAT CREATED THE UNDERSTANDING OF THE RIGHT OF PRIVACY HAS TOLD US IT WAS A MIRAGE.

THEY EVISCERATED IT.

SHOULD WE TAKE THAT INTO ACCOUNT WHEN WE ARE TALKING ABOUT THIS DEMOCRATIC TYPE ISSUE.

SHOULD IT MATTER TO US THE ENTIRE FOUNDATION OF THE ASSERTED RIGHT HERE ESSENTIALLY THE SUPREME COURT WHICH CREATED THE THING IN THE FIRST PLACE.

HAS NOW SAID THAT IT WAS EGREGIOUSLY WRONG. FROM DAY ONE.

>> Whitney L. White: NOTE YOUR HONOR.

THERE ARE TWO POINTS I WANT TO RAISE.

FIRST.

I WANT TO UNDERSCORE THAT WHAT WOULD IN FACT BE UNIQUE HERE IS ALLOWING HB5 TO STAND BECAUSE THERE IS NO OTHER CONTEXT IN WHICH THIS COURT HAS HELD THAT THE STATE CAN CONSTITUTIONALLY FORCE AN INDIVIDUAL TO TAKE ON INCREASED AND SERIOUS MEDICAL RISK AND HARM FOR THE REPORTED BENEFIT OF OTHERS.

THAT IS PRECISELY WHAT HB5 FORCES PREGNANT WOMEN TO DO.

THE PROTECTION OF PRIVACY RIGHTS IN THIS COURT'S PRECEDENTS DO BALANCE THOSE INTERESTS AND RECOGNIZE THE STATES INTEREST AFTER THE POINT OF VIABILITY.

WITH RESPECT TO DOBBS SPECIFICALLY.

NOTHING EMPHASIZES THIS.

NOTHING IN THE DOBBS DECISION DISPLACES PRE-EXISTING STATE CONSTITUTIONAL PROTECTIONS FOR ABORTION.

THAT WERE MORE PROTECTIVE THAN THE FEDERAL LAW AND DOBBS REPEATEDLY MAKES CLEAR THAT IS A CORE PART OF OUR FEDERAL SYSTEM THAT STATES ARE FREE TO REQUIRE THAT LEVEL OF PROTECTION.

THAT IS PRECISELY WHAT FLORIDIANS HAVE DONE HERE.

FOR THOSE REASONS AND ALL OF THE OTHER REASONS STATED IN OUR BRIEF.

WE ASKED THE COURT TO REVERSE THE FIRST EDA AND INJUNCTION.

>> Carlos G. Muniz, Cheif Justice: WE APPRECIATE THE EXCELLENT ARGUMENT AND BRIEFING TODAY.

WE ARE ADJOURNED.
