

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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May 26 2023

S.C. SUPREME COURT

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Honorable Clifton Newman, Circuit Court Judge

Appellate Case No. 2023-_____

Case No. 2020-CP-40-02745

PLANNED PARENTHOOD SOUTH ATLANTIC, on behalf of itself, its patients, and its physicians and staff; KATHERINE FARRIS, M.D., on behalf of herself and her patients; GREENVILLE WOMEN'S CLINIC, on behalf of itself, its patients, and its physicians and staff; and TERRY L. BUFFKIN, M.D., on behalf of himself and his patients, ... Respondents,

v.

STATE OF SOUTH CAROLINA; ALAN WILSON, in his official capacity as Attorney General of South Carolina; EDWARD SIMMER, in his official capacity as Director of the South Carolina Department of Health and Environmental Control; ANNE G. COOK, in her official capacity as President of the South Carolina Board of Medical Examiners; STEPHEN I. SCHABEL, in his official capacity as Vice President of the South Carolina Board of Medical Examiners; RONALD JANUCHOWSKI, in his official capacity as Secretary of the South Carolina Board of Medical Examiners; GEORGE S. DILTS, in his official capacity as a Member of the South Carolina Board of Medical Examiners; DION FRANGA, in his official capacity as a Member of the South Carolina Board of Medical Examiners; RICHARD HOWELL, in his official capacity as a Member of the South Carolina Board of Medical Examiners; ROBERT KOSCIUSKO, in her official capacity as a Member of the South Carolina Board of Medical Examiners; THERESA MILLS-FLOYD, in her official capacity as a Member of the South Carolina Board of Medical Examiners; JENNIFER R. ROOT, in his official capacity as a Member of the South Carolina Board of Medical Examiners; CHRISTOPHER C. WRIGHT, in his official capacity as a Member of the South Carolina Board of Medical Examiners; SAMUEL H. MCNUTT, in his official capacity as Chairperson of the South Carolina Board of Nursing; SALLIE BETH TODD, in her official capacity as a Member of the South Carolina Board of Nursing; TAMARA DAY, in her official capacity as a Member of the South Carolina Board of Nursing; JONELLA DAVIS, in her official capacity as a Member of the South Carolina Board of Nursing; KELLI GARBER, in her official capacity as a Member of the South Carolina Board of Nursing; LINDSEY K. MITCHAM, in her official capacity as a Member of the South Carolina Board of Nursing; REBECCA MORRISON, in her official capacity as a Member of

the South Carolina Board of Nursing; KAY SWISHER, in her official capacity as a Member of the South Carolina Board of Nursing; ROBERT J. WOLFF, in his official capacity as a Member of the South Carolina Board of Nursing; SCARLETT A. WILSON, in her official capacity as Solicitor for South Carolina’s 9th Judicial Circuit; BYRON E. GIPSON, in his official capacity as Solicitor for South Carolina’s 5th Judicial Circuit; and WILLIAM WALTER WILKINS III, in his official capacity as Solicitor for South Carolina’s 13th Judicial Circuit, ... Defendants,

HENRY MCMASTER, in his official capacity as Governor of the State of South Carolina; G. MURRELL SMITH, JR., in his official capacity as Speaker of the South Carolina House of Representatives; THOMAS C. ALEXANDER, in his official capacity as President of the South Carolina Senate, ...Intervenor–Defendants,

Of whom HENRY MCMASTER, in his official capacity as Governor of the State of South Carolina; G. MURRELL SMITH, JR., in his official capacity as Speaker of the South Carolina House of Representatives; THOMAS C. ALEXANDER, in his official capacity as President of the South Carolina Senate; STATE OF SOUTH CAROLINA; and ALAN WILSON, in his official capacity as Attorney General of South Carolina, are the Appellants.

APPENDIX TO
EMERGENCY MOTION TO TRANSFER AND
PETITION FOR WRIT OF SUPERSEDEAS

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**STATE OF SOUTH CAROLINA
RICHLAND COUNTY**

PLANNED PARENTHOOD SOUTH
ATLANTIC, on behalf of itself, its patients, and
its physicians and staff;

KATHERINE FARRIS, M.D., on behalf of
herself and her patients;

GREENVILLE WOMEN'S CLINIC, on behalf of
itself, its patients, and its physicians and staff; and,

TERRY L. BUFFKIN, M.D., on behalf of himself
and his patients,

Plaintiffs,

v.

STATE OF SOUTH CAROLINA;

ALAN WILSON, in his official capacity as
Attorney General of South Carolina;

EDWARD SIMMER, in his official capacity as
Director of the South Carolina Department of
Health and Environmental Control;

ANNE G. COOK, in her official capacity as
President of the South Carolina Board of Medical
Examiners;

STEPHEN I. SCHABEL, in his official capacity
as Vice President of the South Carolina Board of
Medical Examiners;

RONALD JANUCHOWSKI, in his official
capacity as Secretary of the South Carolina Board
of Medical Examiners;

GEORGE S. DILTS, in his official capacity as a
Member of the South Carolina Board of Medical
Examiners;

**IN THE COURT OF COMMON
PLEAS FOR THE FIFTH
JUDICIAL CIRCUIT**

C/A No.: 2023-CP-40-002745

**ORDER GRANTING
PRELIMINARY INJUNCTION**

DION FRANGA, in his official capacity as a Member of the South Carolina Board of Medical Examiners;

RICHARD HOWELL, in his official capacity as a Member of the South Carolina Board of Medical Examiners;

ROBERT KOSCIUSKO, in his official capacity as a Member of the South Carolina Board of Medical Examiners;

THERESA MILLS-FLOYD, in her official capacity as a Member of the South Carolina Board of Medical Examiners;

JENNIFER R. ROOT, in her official capacity as a Member of the South Carolina Board of Medical Examiners;

CHRISTOPHER C. WRIGHT, in his official capacity as a Member of the South Carolina Board of Medical Examiners;

SAMUEL H. McNUTT, in his official capacity as Chairperson of the South Carolina Board of Nursing;

SALLIE BETH TODD, in her official capacity as Vice Chairperson of the South Carolina Board of Nursing;

TAMARA DAY, in her official capacity as Secretary of the South Carolina Board of Nursing;

JONELLA DAVIS, in her official capacity as a Member of the South Carolina Board of Nursing;

KELLI GARBER, in her official capacity as a Member of the South Carolina Board of Nursing;

LINDSEY K. MITCHAM, in her official capacity as a Member of the South Carolina Board of Nursing;

REBECCA MORRISON, in her official capacity as a Member of the South Carolina Board of Nursing;

KAY SWISHER, in her official capacity as a Member of the South Carolina Board of Nursing;

ROBERT J WOLFF, in his official capacity as a Member of the South Carolina Board of Nursing;

SCARLETT A. WILSON, in her official capacity as Solicitor for South Carolina's 9th Judicial Circuit;

BYRON E. GIPSON, in his official capacity as Solicitor for South Carolina's 5th Judicial Circuit; and

WILLIAM WALTER WILKINS III, in his official capacity as Solicitor for South Carolina's 13th Judicial Circuit,

Defendants,

and

THOMAS C. ALEXANDER, in his official capacity as President of the South Carolina Senate; and

G. MURRELL SMITH, JR., in his official capacity as Speaker of the South Carolina House of Representatives; and

HENRY MCMASTER, in his official capacity as Governor of the State of South Carolina.

Intervenors.

This matter came before this Court on May 26, 2023, upon the request of Plaintiffs Planned Parenthood South Atlantic, on behalf of itself, its patients, and its physicians and staff; Katherine

Farris, M.D., on behalf of herself and her patients; Greenville Women’s Clinic, on behalf of itself, its patients, and its physicians and staff; and Terry L. Buffkin, M.D., on behalf of himself and his patients (collectively, “Plaintiffs”), as set forth in their Complaint for Declaratory and Injunctive Relief and Emergency Motion for a Temporary Restraining Order, filed May 25, 2023.

The Motion seeks relief under Rule 65 of the South Carolina Rules of Civil Procedure. Specifically, Plaintiffs seek an order to enjoin Defendants the State of South Carolina, Alan Wilson, Edward Simmer, Anne G. Cook, Stephen I. Schabel, Ronald Januchowski, George S. Dilts, Dion Franga, Richard Howell, Robert Kosciusko, Theresa Mills-Floyd, Jennifer R. Root, Christopher C. Wright, Samuel H. McNutt, Sallie Beth Todd, Tamara Day, Jonella Davis, Kelli Garber, Lindsey K. Mitcham, Rebecca Morrison, Kay Swisher, Robert J Wolff, Scarlett A. Wilson, Byron E. Gipson, and William Walter Wilkins III, all in their official capacities and their agencies (collectively, “Defendants”) from enforcing South Carolina Senate Bill 474, 125th Gen. Assembly., Special Sess. (S.C. 2023) (herein after “S.B. 474” or the “Act”), which bans abortion after the detection of fetal cardiac activity, subject to exceptions..

At the hearing of this matter, the court granted the motions to intervene of Thomas C. Alexander, in his official capacity as President of the South Carolina Senate, G. Murrell Smith, Jr., in his official capacity as the Speaker of the South Carolina House of Representatives, and Henry McMaster, in his official capacity as Governor of the State of South Carolina. Counsel for all parties were given notice of the hearing.

Having considered Plaintiffs’ Complaint, motion, and memorandum and affidavits in support, and for good cause shown, the Court hereby **GRANTS** a preliminary injunction as follows:

FINDINGS AND CONCLUSIONS

1. Plaintiffs operate the only three abortion clinics in South Carolina.
2. On May 23, 2023, the South Carolina Legislature adopted the Act, which Governor Henry McMaster signed on May 25, 2023, immediately banning abortion after the detection of fetal or embryonic “cardiac activity” which is typically six weeks (S.B. 474, § 2 (adding S.C. Code Ann. §44-41-630(B) (the “Six-Week Ban”)) with only narrow exceptions.
3. Violations of the Act carry criminal and civil penalties, including professional license revocation.
4. Defendants are various state and local officials responsible for enforcing S.B. 474.
5. Many people do not know they are pregnant at the point at which the Act would ban abortion.
6. Absent an injunction, Plaintiffs and their patients seeking abortion care will be irreparably harmed. Specifically, if permitted to remain in effect, the Act will leave some South Carolinians without any access to legal abortion.
7. Should South Carolina health care professionals violate the law, the Act provides for penalties, including prison terms, criminal fines, and loss of their professional licenses.
8. The South Carolina Supreme Court held in *Planned Parenthood South Atlantic v. State*, 438 S.C. 188, 882 S.E.2d 770 (2023), *reh’g denied* (Feb. 8, 2023) that S.B. 1, banning abortion after approximately six weeks of pregnancy, violated the right to privacy. Plaintiffs contend that S.B. 474 violates the constitutional rights of South Carolinians. Accordingly, Plaintiffs have stated sufficient likelihood of success for the issuance of this injunction.
9. Plaintiffs do not have an adequate remedy at law, as no amount of money or other damages would compensate Plaintiffs and their patients for the harms caused by S.B. 474.

10. Plaintiffs and their physicians, staff, and patients face immediate, irreparable harm if the Act is not preliminarily enjoined in its entirety. Specifically, they face felony criminal penalties, professional licensure revocation, and civil liability for violations of S.B. 474.

11. A preliminary injunction should be issued.

12. The South Carolina Supreme Court should resolve the constitutional issues in this case as the Court has ruled that a nearly identical law violated the right to privacy.

13. The status quo should be preserved while the South Carolina Supreme Court resolves this case in as expeditious manner as possible.

Accordingly, this Court **GRANTS** the following relief:

a. Defendants and their agencies, officers, employees, servants, agents, appointees, or successors, and anyone acting in conjunction with Defendants, are hereby **ENJOINED AND RESTRAINED** from administering, preparing for, enforcing, or giving effect to S.B. 474 and any other South Carolina statute or regulation that could be understood to give effect to S.B. 474, including through any future enforcement actions based on abortions performed during the pendency of this preliminary injunction;

b. The Court also hereby **ORDERS** Defendant State of South Carolina to provide a copy of this Order to all state, city, county, and local prosecutors; and,

c. This Order is effective immediately upon entry.

AND IT IS SO ORDERED.

Clifton Newman
Presiding Judge

Columbia, South Carolina

May 26, 2023



Richland Common Pleas

Case Caption: Planned Parenthood South Atlantic , plaintiff, et al vs State Of South Carolina , defendant, et al
Case Number: 2023CP4002745
Type: Order/Temporary Injunction

So Ordered

s/ Clifton B. Newman, 2127

Electronically signed on 2023-05-26 15:54:58 page 7 of 7

**STATE OF SOUTH CAROLINA
RICHLAND COUNTY**

PLANNED PARENTHOOD SOUTH
ATLANTIC, on behalf of itself, its patients, and
its physicians and staff;

KATHERINE FARRIS, M.D., on behalf of
herself and her patients;

GREENVILLE WOMEN'S CLINIC, on behalf
of itself, its patients, and its physicians and staff;
and;

TERRY L. BUFFKIN, M.D., on behalf of
himself and his patients.

Plaintiffs,

v.

SOUTH CAROLINA;

ALAN WILSON, in his official capacity as
Attorney General of South Carolina;

EDWARD SIMMER, in his official capacity as
Director of the South Carolina Department of
Health and Environmental Control;

ANNE G. COOK, in her official capacity as
President of the South Carolina Board of Medical
Examiners;

STEPHEN I. SCHABEL, in his official capacity
as Vice President of the South Carolina Board of
Medical Examiners;

RONALD JANUCHOWSKI, in his official
capacity as Secretary of the South Carolina
Board of Medical Examiners;

**IN THE COURT OF COMMON
PLEAS FOR THE FIFTH
JUDICIAL CIRCUIT**

C/A No.: 2023-CP-[]-_____

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

GEORGE S. DILTS, in his official capacity as a Member of the South Carolina Board of Medical Examiners;

DION FRANGA, in his official capacity as a Member of the South Carolina Board of Medical Examiners;

RICHARD HOWELL, in his official capacity as a Member of the South Carolina Board of Medical Examiners;

ROBERT KOSCIUSKO, in his official capacity as a Member of the South Carolina Board of Medical Examiners;

THERESA MILLS-FLOYD, in her official capacity as a Member of the South Carolina Board of Medical Examiners;

JENNIFER R. ROOT, in her official capacity as a Member of the South Carolina Board of Medical Examiners;

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SAMUEL H. McNUTT, in his official capacity as Chairperson of the South Carolina Board of Nursing;

SALLIE BETH TODD, in her official capacity as Vice Chairperson of the South Carolina Board of Nursing;

TAMARA DAY, in her official capacity as Secretary of the South Carolina Board of Nursing;

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SCARLETT A. WILSON, in her official capacity as Solicitor for South Carolina's 9th Judicial Circuit;

BYRON E. GIPSON, in his official capacity as Solicitor for South Carolina's 5th Judicial Circuit; and

WILLIAM WALTER WILKINS III, in his official capacity as Solicitor for South Carolina's 13th Judicial Circuit.

Defendants.

Plaintiffs Planned Parenthood South Atlantic; Katherine Farris, M.D.; Greenville Women's Clinic; and Terry L. Buffkin, M.D. ("Plaintiffs"), by and through their undersigned counsel and complaining of Defendants the State of South Carolina and Alan Wilson, Edward Simmer, Anne G. Cook, Stephen I. Schabel, Ronald Januchowski, George S. Dilts, Dion Franga, Richard Howell, Robert Kosciusko, Theresa Mills-Floyd, Jennifer R. Root, Christopher C. Wright, Samuel H. McNutt, Sallie Beth Todd, Tamara Day, Jonella Davis, Kelli Garber, Lindsey K. Mitcham, Rebecca Morrison, Kay Swisher, Robert J Wolff, Scarlett A. Wilson, Byron E. Gipson, and William Walter Wilkins III, all in their official capacities ("Defendants"), allege as follows:

1. Plaintiffs bring this action to challenge the constitutionality of South Carolina’s Senate Bill 474, 125th Gen. Assemb., Spec. Sess. (S.C. 2023) (hereinafter “S.B. 474” or the “Act”) (attached as Exhibit A), which bans abortion after the detection of fetal or embryonic cardiac activity—as early as approximately six weeks of pregnancy. S.B. 474, § 2 (adding S.C. Code Ann. § 44-41-630(B)). A violation of the Act carries felony criminal penalties, license revocation for a physician or other professionally licensed person, and civil liability. S.B. 474 took effect immediately upon the Governor’s signature today, decimating access to abortion in South Carolina.

2. Just four months ago, the South Carolina Supreme Court held that a nearly identical law banning abortion after approximately six weeks of pregnancy is an unreasonable invasion of privacy in violation of article I, section 10 of the South Carolina Constitution. *See generally Planned Parenthood S. Atl. v. State*, 438 S.C. 188, 882 S.E.2d 770 (2023), *reh’g denied* (Feb. 8, 2023) (hereinafter “*Planned Parenthood I*”). S.B. 474 blatantly disregards that precedent, which is squarely on point and dispositive of this case. For this reason alone, S.B. 474 should be enjoined.

3. The Act is an affront to the dignity and health of South Carolinians. Decisions related to having a family are some of the most personal that South Carolinians will ever make. Pregnancy itself is physically, emotionally, and financially challenging, and having a child is an enormous, life-altering decision. There are myriad factors that go into whether and when to have or add to a family.

4. In particular, the Act is an attack on families with low incomes, South Carolinians of color, and rural South Carolinians, who already face inequities in access to medical care and who will bear the brunt of the Act’s cruelties. While forced pregnancy carries health risks for everyone, it imposes greater risks for those already suffering from health inequities. Black

women,¹ who are more than twice as likely as white women to die during pregnancy and whose babies are more than twice as likely to die in infancy in South Carolina, will acutely feel the Act's harms, including being at greater risk of death. Furthermore, South Carolinians face a critical shortage of reproductive health care providers, including obstetrician-gynecologists, especially in rural areas.

5. Rather than working to end these preventable harms and giving due respect to South Carolinians' reproductive health care decisions, the Legislature has instead chosen to criminalize the vast majority of abortions, which will inevitably result in more preventable deaths and worse health outcomes, disrupt families, and take an economic toll on South Carolinians.

6. Beyond the harms the Act will impose on South Carolinians, S.B. 474 flies in the face of the South Carolina Supreme Court's ruling in *Planned Parenthood I*, which struck down Senate Bill 1, 124th Gen. Assemb., Reg. Sess. (S.C. 2021) (hereinafter "S.B. 1"), an abortion ban identical in all material respects, as a violation of South Carolinians' right to privacy.

7. Plaintiffs seek a temporary restraining order, followed by declaratory and injunctive relief, preventing enforcement of the Act to safeguard themselves, their patients, physicians, and other staff from this unconstitutional law which violates the South Carolina Constitution's right to privacy and its guarantees of equal protection and due process.

¹ Plaintiffs use "woman" or "women" as a short-hand for people who are or may become pregnant, but people of many gender identities, including transgender men and gender-diverse individuals, may become pregnant and seek abortion and are also harmed by the Act. *See Reprod. Health Servs. v. Strange*, 3 F.4th 1240, 1246 n.2 (11th Cir. 2021) ("[N]ot all persons who may become pregnant identify as female."), *reh'g en banc granted, opinion vacated on other grounds*, 22 F.4th 1346 (11th Cir. 2022), *and abrogated on other grounds by Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022).

PARTIES

8. Plaintiff Planned Parenthood South Atlantic (“PPSAT”) is a nonprofit corporation headquartered in North Carolina. It provides a range of family planning and reproductive health services and other preventive care in South Carolina, including well-person exams; contraception (including long-acting reversible contraception or “LARCs”) and contraceptive counseling; gender-affirming hormone therapy as well as menopausal hormone replacement therapy; screening for breast and cervical cancers; screening and treatment for sexually transmitted infections (“STIs”); pregnancy testing and counseling; physical exams; and abortion. PPSAT sues on its own behalf, on behalf of its patients, and on behalf of its physicians and staff.

9. Plaintiff Greenville Women’s Clinic, P.A. (“GWC”) is a health care facility in Greenville, South Carolina, that since 1976 has provided reproductive health care, including pregnancy testing, birth control, testing and treatment for STIs, general gynecological care, and abortion. GWC sues on its own behalf, on behalf of its patients, and on behalf of its physicians and staff.

10. PPSAT and GWC operate the only three abortion clinics in South Carolina. Each of PPSAT and GWC’s locations holds a state license to perform first-trimester abortions, *see* S.C. Code Ann. § 44-41-75(A), which corresponds to abortions up to 14 weeks as measured from the first day of a person’s last menstrual period (“LMP”), *id.* § 44-41-10;² *see also* S.C. Code Ann. Regs. 61-12.101(S)(4). At each of these facilities, physicians licensed to practice medicine in South Carolina provide abortions.

² Measuring the gestational age of a pregnancy following fertilization is different from measuring it from the date of a patient’s last menstrual period. For a patient with regular monthly periods, fertilization typically occurs two weeks after their last menstrual period (2 weeks LMP). Thus, while Section 44-41-10(i) refers to the first trimester as being through “twelve weeks of pregnancy commencing with conception,” (the Act equates “[c]onception” with fertilization, *see id.* § 44-41-10(g)), this is the equivalent to 14 weeks LMP.

11. PPSAT operates two health centers in the state, one in Columbia and the other in Charleston. At each location, absent the Act or its predecessor, S.B. 1, PPSAT has historically provided medication abortion up to 11 weeks LMP and abortion by procedure up to 14 weeks LMP.

12. GWC operates a clinic in Greenville, where absent the Act or its predecessor, S.B. 1, GWC generally provides medication abortion up through 10 weeks LMP and abortion by procedure up to 14 weeks LMP.

13. Katherine Farris, M.D., is a physician licensed to practice medicine in South Carolina and serves as the Chief Medical Officer for Plaintiff PPSAT. She is a board-certified physician in Family Medicine and a member of the American College of Obstetricians and Gynecologists, the National Abortion Federation, Physicians for Reproductive Health, and the American Academy of Family Physicians. In her role as Chief Medical Officer, Dr. Farris provides oversight, supervision, and leadership on all medical services provided by PPSAT at its South Carolina health centers, including abortion. She also provides direct medical services at PPSAT's South Carolina health centers, including abortion up to 14 weeks LMP. Dr. Farris brings this claim on behalf of herself and her patients.

14. Terry L. Buffkin, M.D., is a physician licensed to practice medicine in South Carolina and a co-owner of GWC. He is a board-certified obstetrician/gynecologist ("OB/GYN") who provides a range of reproductive health care to patients, including medication abortion up through 10 weeks LMP and abortion by procedure up to 14 weeks LMP. Dr. Buffkin brings this claim on behalf of himself and his patients.

15. Defendant State of South Carolina is a government entity charged with enforcing the laws of the State.

16. Defendant Alan Wilson is the Attorney General for the State of South Carolina. He is responsible for, among other duties, enforcing the civil and criminal laws of the State. Defendant Wilson has criminal and civil enforcement authority for violations of the Act, pursuant to S.C. Code Ann. § 1-7-40; S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-680). Moreover, he has the “exclusive right, in his discretion, to assign” solicitors in the State to criminal matters outside their circuits “in case of the incapacity of the local solicitor or otherwise.” S.C. Code Ann. § 1-7-350. He is sued in his official capacity.

17. Defendant Edward Simmer is the Director of the South Carolina Department of Health and Environmental Control (“DHEC”). He is responsible for directing all DHEC activities. DHEC is responsible for licensing abortion clinics, certifying that they are suitable for the performance of abortions, and taking related enforcement action. *See id.* §§ 44-41-70(b), 44-41-460(D). He is sued in his official capacity.

18. Defendant Anne G. Cook is the President of the South Carolina Board of Medical Examiners (“BME”), which is responsible for licensing and disciplining physicians who practice in South Carolina, pursuant to S.C. Code Ann. § 40-47-10. The Act mandates that, if a physician violates the Act, the BME revoke their license. S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-690). She is sued in her official capacity.

19. Defendant Stephen I. Schabel is Vice President of the BME, which is responsible for licensing and disciplining physicians who practice in South Carolina, pursuant to S.C. Code Ann. § 40-47-10. The Act mandates that, if a physician violates the Act, the BME revoke their license. S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-690). He is sued in his official capacity.

20. Defendant Ronald Januchowski is Secretary of the BME, which is responsible for licensing and disciplining physicians who practice in South Carolina, pursuant to S.C. Code Ann.

§ 40-47-10. The Act mandates that, if a physician violates the Act, the BME revoke their license. S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-690). He is sued in his official capacity.

21. Defendant George S. Dilts is a Member of the BME, which is responsible for licensing and disciplining physicians who practice in South Carolina, pursuant to S.C. Code Ann. § 40-47-10. The Act mandates that, if a physician violates the Act, the BME revoke their license. S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-690). He is sued in his official capacity.

22. Defendant Dion Franga is a Member of the BME, which is responsible for licensing and disciplining physicians who practice in South Carolina, pursuant to S.C. Code Ann. § 40-47-10. The Act mandates that, if a physician violates the Act, the BME revoke their license. S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-690). He is sued in his official capacity.

23. Defendant Richard Howell is a Member of the BME, which is responsible for licensing and disciplining physicians who practice in South Carolina, pursuant to S.C. Code Ann. § 40-47-10. The Act mandates that, if a physician violates the Act, the BME revoke their license. S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-690). He is sued in his official capacity.

24. Defendant Robert Kosciusko is a Member of the BME, which is responsible for licensing and disciplining physicians who practice in South Carolina, pursuant to S.C. Code Ann. § 40-47-10. The Act mandates that, if a physician violates the Act, the BME revoke their license. S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-690). He is sued in his official capacity.

25. Defendant Theresa Mills-Floyd is a Member of the BME, which is responsible for licensing and disciplining physicians who practice in South Carolina, pursuant to S.C. Code Ann. § 40-47-10. The Act mandates that, if a physician violates the Act, the BME revoke their license. S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-690). She is sued in her official capacity.

26. Defendant Jennifer R. Root is a Member of the BME, which is responsible for licensing and disciplining physicians who practice in South Carolina, pursuant to S.C. Code Ann. § 40-47-10. The Act mandates that, if a physician violates the Act, the BME revoke their license. S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-690). She is sued in her official capacity.

27. Defendant Christopher C. Wright is a Member of the BME, which is responsible for licensing and disciplining physicians who practice in South Carolina, pursuant to S.C. Code Ann. § 40-47-10. The Act mandates that, if a physician violates the Act, the BME revoke their license. S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-690). He is sued in his official capacity.

28. Defendant Samuel H. McNutt is the Chairperson of the South Carolina Board of Nursing (“BoN”), which is responsible for licensing and disciplining nurses who practice in South Carolina, pursuant to S.C. Code Ann. § 40-33-10. The Act mandates that, if a licensed professional violates the Act, the appropriate licensing board revoke their license. S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-690). He is sued in his official capacity.

29. Defendant Sallie Beth Todd is the Vice Chairperson of the BoN, which is responsible for licensing and disciplining nurses who practice in South Carolina, pursuant to S.C. Code Ann. § 40-33-10. The Act mandates that, if a licensed professional violates the Act, the appropriate licensing board revoke their license. S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-690). She is sued in her official capacity.

30. Defendant Tamara Day is the Secretary of the BoN, which is responsible for licensing and disciplining nurses who practice in South Carolina, pursuant to S.C. Code Ann. § 40-33-10. The Act mandates that, if a licensed professional violates the Act, the appropriate licensing board revoke their license. S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-690). She is sued in her official capacity.

31. Defendant Jonella Davis is a Member of the BoN, which is responsible for licensing and disciplining nurses who practice in South Carolina, pursuant to S.C. Code Ann. § 40-33-10. The Act mandates that, if a licensed professional violates the Act, the appropriate licensing board revoke their license. S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-690). She is sued in her official capacity.

32. Defendant Kelli Garber is a Member of the BoN, which is responsible for licensing and disciplining nurses who practice in South Carolina, pursuant to S.C. Code Ann. § 40-33-10. The Act mandates that if a licensed professional violates the Act, the appropriate licensing board revoke their license. S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-690). She is sued in her official capacity.

33. Defendant Lindsey K. Mitcham is a Member of the BoN, which is responsible for licensing and disciplining nurses who practice in South Carolina, pursuant to S.C. Code Ann. § 40-33-10. The Act mandates that, if a licensed professional violates the Act, the appropriate licensing board revoke their license. S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-690). She is sued in her official capacity.

34. Defendant Rebecca Morrison is a Member of the BoN, which is responsible for licensing and disciplining nurses who practice in South Carolina, pursuant to S.C. Code Ann. § 40-33-10. The Act mandates that, if a licensed professional violates the Act, the appropriate licensing board revoke their license. S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-690). She is sued in her official capacity.

35. Defendant Kay Swisher is a Member of the BoN, which is responsible for licensing and disciplining nurses who practice in South Carolina, pursuant to S.C. Code Ann. § 40-33-10. The Act mandates that, if a licensed professional violates the Act, the appropriate licensing board

revoke their license. S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-690). She is sued in her official capacity.

36. Defendant Robert J Wolff is a Member of the BoN, which is responsible for licensing and disciplining nurses who practice in South Carolina, pursuant to S.C. Code Ann. § 40-33-10. The Act mandates that, if a licensed professional violates the Act, the appropriate licensing board revoke their license. S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-690). He is sued in his official capacity.

37. Defendant Scarlett A. Wilson is the Solicitor for South Carolina's Ninth Judicial Circuit, which includes the City of Charleston, where PPSAT's Charleston health center is located. In cooperation with the Attorney General, she has criminal enforcement authority for violations of the Act, pursuant to S.C. Code Ann. § 1-7-320, as well as civil enforcement. S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-680). She is sued in her official capacity.

38. Defendant Byron E. Gipson is the Solicitor for South Carolina's 5th Judicial Circuit, which includes the portion of the City of Columbia where PPSAT's Columbia health center is located. In cooperation with the Attorney General, he has criminal enforcement authority for violations of the Act, pursuant to S.C. Code Ann. § 1-7-320, as well as civil enforcement. S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-680). He is sued in his official capacity.

39. Defendant William Walter Wilkins III is the Solicitor for South Carolina's 13th Judicial Circuit, which includes the City of Greenville, where GWC is located. In cooperation with the Attorney General, he has criminal enforcement authority for violations of the Act, pursuant to S.C. Code Ann. § 1-7-320, as well as civil enforcement. S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-680). He is sued in his official capacity.

JURISDICTION AND VENUE

40. This Court has jurisdiction and authority to adjudicate Plaintiffs' claims under South Carolina's Uniform Declaratory Judgments Act, S.C. Code Ann. § 15-53-20, and the Court's general legal and equitable powers, including its authority to enforce the South Carolina Constitution as against countervailing state law.

41. Venue is proper in this Court pursuant to S.C. Code Ann. § 15-7-20 because Defendant Byron E. Gipson initiates prosecutions in Richland County; the Board of Medical Examiners is headquartered in Richland County; PPSAT provides abortions prohibited by the challenged Act in Richland County; and many of Plaintiffs' patients in need of abortion reside in Richland County.

FACTUAL ALLEGATIONS

Prior South Carolina Abortion Law

42. Plaintiffs PPSAT and GWC operate the only abortion clinics in South Carolina. They do not provide abortion beyond the first trimester of pregnancy (beyond 14 weeks LMP).

43. A full-term pregnancy lasts approximately 40 weeks LMP.

44. Before the Act took effect, abortion was legal in South Carolina until 22 weeks LMP.

45. Still, South Carolinians had to overcome numerous barriers, including those imposed by state law, to access abortion. For example, a patient must have access to certain State-mandated materials at least 24 hours in advance of an abortion. S.C. Code Ann. § 44-41-330(A)(2), (C). Patients who are unable to have the opportunity to review the State's counseling materials before coming to Plaintiffs' offices must make two separate visits to the facility where they plan to get an abortion. Young people cannot obtain an abortion in South Carolina unless they first

notify a parent or obtain a court order. *See* S.C. Code Ann. §§ 44-41-31–32. Furthermore, South Carolina laws bars nurse practitioners and other qualified advanced practice clinicians from providing abortions, *see* S.C. Code Ann. § 44-41-20 (legal abortion must be performed by an “attending physician”), even though these clinicians are permitted to provide other health services of comparable complexity and risk, *see* S.C. Code Ann. §§ 40-33-34(D)(1) (providing that advanced practice clinicians may provide medical care pursuant to a practice agreement), 40-33-20(45) (defining practice agreement), and despite the fact that they fill critical gaps in medically underserved areas and can provide first-trimester medication and aspiration abortion as safely as physicians.³ Additionally, with very narrow exceptions, South Carolina bars coverage of abortion through its Medicaid program, S.C. Code Ann. § 1-1-1035, in health insurance plans offered to state employees, *id.*, and in health plans offered in the state insurance exchange, S.C. Code Ann. § 38-71-238.

46. On top of these restrictions, in 2021, South Carolina enacted S.B. 1, which—like the Act—banned abortion after approximately six weeks of pregnancy LMP. S.B. 1 also imposed new ultrasound, mandatory disclosure, recordkeeping, reporting, and written notice requirements.

47. S.B. 1 provided that “no person shall perform, induce, or attempt to perform or induce an abortion” where the “fetal heartbeat has been detected.” S.B. 1, § 3 (adding S.C. Code Ann. § 44-41-680(A)). Contrary to medical understanding and as discussed further below, it defined “fetal heartbeat” to include any “cardiac activity, or the steady and repetitive rhythmic

³ Nat’l Acads. of Scis., Eng’g, & Med., *The Safety and Quality of Abortion Care in the United States*, 14 (2018), available at <http://nap.edu/24950> (“Both trained physicians (OB/GYNs, family medicine physicians, and other physicians) and APCs (physician assistants, certified nurse-midwives, and nurse practitioners) can provide medication and aspiration abortions safely and effectively.”); Am. Coll. of Obstetricians & Gynecologists, *ACOG Committee Opinion No. 815*, 136 *Obstetrics & Gynecology* 107e (Dec. 2020), <https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2020/12/increasing-access-to-abortion> (replacing Committee Opinion No. 613 (Nov. 2014)).

contraction of the fetal heart, within the gestational sac.” *Id.* (adding S.C. Code Ann. § 44-41-610(3)). Also contrary to medical understanding, S.B. 1 defined “human fetus” to include an “individual organism of the species homo sapiens from fertilization [of an egg] until live birth.” *Id.* (adding S.C. Code Ann. § 44-41-610(6)).

48. S.B. 1 contained only narrow exceptions: (1) to save the life of the pregnant patient or to prevent certain types of irreversible bodily impairment to the patient; (2) in cases of a fetal health condition that is “incompatible” with sustaining life after birth, and (3) in narrow circumstances up to 22 weeks LMP where the pregnancy is the result of rape or incest. S.B. 1, § 3 (adding S.C. Code Ann. § 44-41-680(B) (cross-referencing S.C. Code Ann. §§ 44-41-430, -690)).

49. A physician performing an abortion and a clinic in which an abortion was performed risked severe penalties for violating S.B. 1, including a felony offense that carries a \$10,000 criminal fine and up to two years in prison, *Id.* (adding S.C. Code Ann. § 44-41-680(D)); *see also* S.C. Code Ann. § 16-1-40 (accessory liability), and revocation of a doctor’s medical license and a clinic’s license to perform abortions, S.C. Code Ann. §§ 40-47-110(A), (B)(2); 44-41-70; 44-41-75(A).

50. Prior to S.B. 1’s adoption, South Carolina did not require abortion providers to perform ultrasounds before an abortion, but Plaintiffs performed them when medically appropriate. For example, when patients are unsure of their last menstrual period, ultrasounds can be useful to pinpoint the gestational age of the pregnancy, which may affect, for example, whether medication abortion is available for the patient.

51. Ultrasounds may be transvaginal, meaning that a probe is inserted into the patient’s vagina, or, as a pregnancy progresses, Plaintiffs may perform transabdominal ultrasounds, which involve placement of a probe onto the patient’s bare abdomen.

52. The South Carolina Legislature adopted S.B. 1 in February 2021, and it took immediate effect upon the Governor's approval.

53. Shortly thereafter, Plaintiffs PPSAT, GWC, and Dr. Buffkin sued the Attorney General, the Director of the Department of Health and Environmental Control, the BME officers and members, and the Solicitors for South Carolina's 5th, 9th, and 13th Judicial Circuits in federal court, alleging that S.B. 1 violated the federal substantive due process rights of Plaintiffs' patients, as supported by nearly fifty years of precedent holding that states may not ban pre-viability abortion. The U.S. District Court preliminarily enjoined S.B. 1's enforcement. *See generally Planned Parenthood S. Atl. v. Wilson*, 527 F. Supp. 3d 801 (D.S.C. 2021), *aff'd*, 26 F.4th 600 (4th Cir. 2022). But after the U.S. Supreme Court's ruling in *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022), the District Court granted the defendants' emergency motion to stay the preliminary injunction, allowing S.B. 1 to take effect. The federal court then granted Plaintiffs' motion to dismiss that case without prejudice under Federal Rule of Civil Procedure 41.

54. Plaintiffs in this case then filed a new case in this Court against the State of South Carolina and Attorney General Alan Wilson, the Director of the South Carolina Department of Health and Environmental Control Edward Simmer, the BME officers and members, and the Solicitors for South Carolina's 5th, 9th, and 13th Judicial Circuits, all in their official capacities (all of whom are defendants in this case). The South Carolina Supreme Court agreed to hear the case in its original jurisdiction and unanimously granted a temporary injunction against S.B. 1's enforcement on August 17, 2022, at which point S.B. 1 had been in effect for 51 days.

55. On January 5, 2023, the South Carolina Supreme Court struck down S.B. 1, finding that it violated South Carolinians' right to privacy guaranteed by article I, section 10 of the State Constitution.

The Challenged Act Is Nearly Identical to S.B. 1.

56. The General Assembly adopted S.B. 474 on May 23, 2023, and it took immediate effect when Governor Henry McMaster signed it today, immediately banning constitutionally protected health care across South Carolina. Absent immediate relief from this Court, Plaintiffs will be forced to cancel appointments for patients scheduled to have abortions tomorrow morning. *See* S.B. 474, § 14 (“This act takes effect upon approval by the Governor.”).

57. The Act, like S.B. 1, imposes extreme limits on abortion access in South Carolina by banning abortion after roughly six weeks of pregnancy LMP (the “Six-Week Ban”). *Id.*, § 2 (adding S.C. Code Ann. § 44-41-630(B)). The Act also includes nearly identical ultrasound, recordkeeping, reporting, and written notice requirements to those imposed by S.B. 1 that are closely intertwined with the operation of the Six-Week Ban. *See, e.g., id.* (amending S.C. Code Ann. §§ 44-41-630, 44-41-640(B)–(C), 44-41-650(B), 44-41-660(B)).

58. The Six-Week Ban, like S.B. 1, provides that “no person shall perform or induce an abortion” where the “fetal heartbeat has been detected.” *Id.* (adding S.C. Code Ann. § 44-41-630(B)); S.B. 1, § 3 (adding S.C. Code Ann. § 44-41-680(A)). It, like S.B. 1, defines “fetal heartbeat” to include any “cardiac activity, or the steady and repetitive rhythmic contraction of the fetal heart, within the gestational sac.” S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-610(6)); S.B. 1, § 3 (adding S.C. Code Ann. § 44-41-610(3)). The term, therefore, covers not just a “heartbeat” in the lay sense, but also early electrical activity present before development of the cardiovascular system. Such cardiac activity may be detected by ultrasound as early as six weeks

of pregnancy LMP (and sometimes sooner). At six weeks, there is no detectable sound that can be heard by a medical provider or pregnant patient. Early in pregnancy, even with ultrasound, this activity would not be audible but would instead appear as a visual flicker. The “sound” audible at six weeks is the translated electrical impulses by the ultrasound machine itself. *Planned Parenthood I*, 438 S.C. at 222, 882 S.E.2d at 788 (Beatty, J., concurring).

59. The Act’s reference to a “fetal heartbeat” obscures the fact that the Act would ban abortion so early in pregnancy that neither a “fetus” nor a “heart”—much less a heartbeat—exists yet as a matter of accurate medical terminology. In the medical field, the developing organism present in the gestational sac during pregnancy is most accurately termed an “embryo” until at least 10 weeks LMP; the term “fetus” is appropriately used after that time. Despite this accepted distinction, the Act defines “[u]nborn child” to include an “individual organism of the species homo sapiens from conception until live birth.” S.B. 474, § 2 (adding S.C. Code Ann. § 44-41-610(14)); *accord* S.B. 1, § 3 (adding S.C. Code Ann. § 44-41-610(6)) (defining “[h]uman fetus” with nearly identical language).

60. The Act, like S.B. 1, requires health care providers to determine whether the Six-Week Ban applies by mandating the performance of an ultrasound. S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-630(A)); S.B. 1, § 3 (adding S.C. Code Ann. § 44-41-630).

61. The Act, like S.B. 1, requires that a physician or other health care professional inform the patient of their right to view the ultrasound, hear the “fetal heartbeat” if present, and have them explained. S.B. 474 (amending S.C. Code Ann. § 44-41-330(A)); S.B. 1, § 5 (amending S.C. Code Ann. § 44-41-330(A)). This is despite the fact that, if the ultrasound detects fetal or embryonic cardiac activity, the patient cannot have an abortion. While a patient may decline to

view the ultrasound images, listen to the “fetal heartbeat,” they must complete a form certifying that they are declining to do so.

62. The Six-Week Ban, like S.B. 1, contains only three narrow exceptions: (1) to save the life of the pregnant patient or to prevent certain types of irreversible bodily impairment to the patient (the “Death or Substantial Injury Exception”); (2) in cases of a fetal health condition that is “incompatible” with sustained life after birth (the “Fatal Fetal Anomaly Exception”), and (3) in narrow circumstances up to 12 weeks LMP where the pregnancy is the result of rape or incest (the “Reported Rape Exception”). S.B. 474, § 2 (amending S.C. Code Ann. §§ 44-41-610(9) (defining “[m]edical emergency”), 44-41-650, 44-41-660; adding S.C. Code Ann. 44-41-640(A)–(C)).

63. The Death or Substantial Injury Exception provides only a narrow exception for a physician to perform an abortion after the detection of fetal or embryonic cardiac activity where the abortion is necessary “due to a medical emergency or . . . to prevent the death of the pregnant woman or to prevent the serious risk of a substantial and irreversible impairment of a major bodily function” of the pregnant person. S.B. 474, § 2 (amending S.C. Code Ann. §§ 44-41-640(A), 44-41-640(B)(1) (permitting abortions where there is a “medical emergency”), 44-41-610(9) (defining “medical emergency”)); *see also* S.B. 1, § 3 (adding S.C. Code Ann. §§ 44-41-690(A), 44-41-660(A) (permitting abortions where there is a “medical emergency”), 44-41-610(8) (defining “medical emergency”)). The Exception also states, “It is not a violation of Section 44-41-630 for a physician to perform a medical procedure necessary in his reasonable medical judgment to prevent the death of a pregnant woman or the serious risk of a substantial and irreversible physical impairment of a major bodily function of the pregnant woman” S.B. 474, § 2 (adding S.C. Code Ann. § 44-41-640(C)(1)). Further, the Exception specifies that “[i]t is presumed that” certain medical conditions fall within the Death or Substantial Injury Exception: “molar pregnancy, partial

molar pregnancy, blighted ovum, ectopic pregnancy, severe preeclampsia, HELLP syndrome, abruptio placentae, severe physical maternal trauma, uterine rupture, intrauterine fetal demise, and miscarriage,” and that the enumerated conditions do not exclude other conditions that otherwise satisfy the Death or Substantial Injury Exception. *Id.* (adding S.C. Code Ann. § 44-41-640(C)(2)).

64. Under the Death or Substantial Injury Exception, however, suicidality and mental illness, even when it leads to physical harm, do not provide a basis to perform an abortion. S.B. 474, § 2 (amending S.C. Code Ann. §§ 44-41-610(9) (excluding “psychological or emotional conditions” from definition of “[m]edical emergency” and stating, “A condition must not be considered a medical emergency if based on a claim or diagnosis that a woman will engage in conduct that she intends to result in her death or in a substantial and irreversible physical impairment of a major bodily function.”), 44-41-640(C)(1) (excluding “psychological or emotional conditions”)); *see also* S.B. 1, § 3 (adding S.C. Code Ann. § 44-41-610(8) (identical language)). This eliminates a key exception that has existed in South Carolina since the State liberalized its abortion laws in 1970, prior to *Roe v. Wade* (except for the relatively brief period when S.B. 1 was in effect), effectively placing anyone suffering from suicidality and mental illness today in more danger than they were more than fifty years ago. *See* S.C. Code Ann. § 16-87(1) (1970) (allowing abortion if “there is substantial risk that continuance of the pregnancy would threaten the life or gravely impair the *mental* or physical health of the woman” (emphasis added)).

65. Many other serious medical conditions will not qualify for the Death or Substantial Injury Exception, endangering South Carolinians’ health by forcing them to remain pregnant, which is riskier to their health than abortion, or by forcing them to wait to terminate their pregnancies until the point at which their medical conditions escalate to a dangerous degree, with long-term effects.

66. The Death or Substantial Injury Exception also requires that a physician performing an abortion under it “make reasonable medical efforts under the circumstances to preserve the life” of the embryo or fetus “to the extent that it does not risk the death or physical impairment of a major bodily function of the pregnant woman, not including psychological or emotional conditions and in a manner consistent with reasonable medical practices,” S.B. 474, § 2 (adding S.C. Code Ann. § 44-41-640(B)(3)); *see also id.* (adding S.C. Code Ann. § 44-41-640(C)(2)), a requirement that was not in S.B. 1’s death or substantial injury exception. For pre-viability abortions (like those provided by Plaintiffs), this requirement could only result in harm to the pregnant person without any benefit to the fetus.

67. Like S.B. 1, the Fatal Fetal Anomaly Exception provides only a narrow exception for physicians to perform an abortion after the detection of fetal or embryonic cardiac activity when the physician determines “according to standard medical practice that there exists a fatal fetal anomaly,” *id.* (amending S.C. Code Ann. § 44-41-660(A)), which is defined as “in reasonable medical judgment, the unborn child has a profound and irremediable congenital or chromosomal anomaly that, with or without the provision of life-preserving treatment, would be incompatible with sustaining life after birth,” *id.* (amending S.C. Code Ann. § 44-41-610(5)); *see also* S.B. 1, § 3 (adding S.C. Code. Ann. §§ 44-41-680(B)(4) (permitting abortion after detection of fetal or embryonic cardiac activity where there is “a fetal anomaly, as defined in Section 44-41-430”)); S.C. Code Ann. § 44-41-430 (identical definition of “[f]etal anomaly”).

68. As under S.B. 1, the Reported Rape Exception applies only if, within 24 hours of the abortion, the physician reports the alleged rape or incest and the patient’s name and contact information to the sheriff in the county where the abortion was performed, irrespective of the patient’s wishes, where the alleged crime occurred, and whether the provider has already complied

with other mandatory reporting laws, where applicable. S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-650(B)); *see also* S.B. 1, § 3 (adding S.C. Code Ann. § 44-41-680(C)). The Exception makes no special provision for confidentiality, nor does it address whether the sheriff receiving the report would have authority to investigate if the rape or incest occurred in another county or state. *See* S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-650(B)). Moreover, the Act's reporting requirement applies only if the patient decides to have an abortion after being told that the rape will be reported; if the patient decides not to go forward, the reporting requirement does not apply. *Id.*

69. The Reported Rape Exception is even narrower than S.B. 1's rape or incest exception. Under the Act, people who are pregnant as a result of rape or incest can only obtain an abortion until 12 weeks LMP, a period more than two months shorter than the 22 weeks LMP allowed under S.B. 1's comparable exception. *Compare* S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-650(A)) *with* S.B. 1, § 3 (adding S.C. Code Ann. § 44-41-680(B)). Those who have become pregnant as a result of rape or incest may not learn that they are pregnant until later in pregnancy—often after 12 weeks LMP.

70. People who are pregnant as a result of rape or incest may also be subjected to retraumatization by having an instrument placed in their vagina, as with a transvaginal ultrasound.

71. Both the physician who performs an abortion and the clinic in which the abortion is performed risk severe penalties for violating the Six-Week Ban, as they would have under S.B. 1. Those penalties include a felony offense that carries a \$10,000 criminal fine and up to two years in prison. S.B. 474, § 2 (adding S.C. Code Ann. §§ 44-41-630(B), 44-41-640(B)); *see also* S.C. Code Ann. § 16-1-40 (accessory liability); S.B. 1, § 3 (adding S.C. Code Ann. §§ 44-41-650(B), 44-41-680(D)). Moreover, any licensed professional who performs an abortion in violation of the

Six-Week Ban will have their license revoked. S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-690).

72. Anyone performing an abortion in violation of the Six-Week Ban could also be subject to a civil suit brought by the person on whom the abortion was performed, their parent or guardian if they are a minor at the time of the abortion or died as a result of the abortion, a solicitor or prosecuting attorney, or the Attorney General. *Id.* (amending S.C. Code Ann. § 44-41-680). In addition to actual damages, the person performing the abortion could be liable for punitive damages, statutory damages of \$10,000 for each violation of the Six-Week Ban, and attorney’s fees and costs, all of which are not subject to the limitations of South Carolina’s medical malpractice laws. *Id.*

73. The Act also provides that “[n]o funds appropriated by the State for employer contributions to the State Health Insurance Plan may be expended to reimburse the expenses of an abortion,” except under the Six-Week Ban’s exceptions. *Id.*, § 3 (adding S.C. Code Ann. § 44-41-90(A)).

74. It further states that “[n]o state funds may, directly or indirectly, be utilized by Planned Parenthood for abortions, abortion services or procedures, or administrative functions related to abortions.” *Id.* (adding S.C. Code Ann. § 44-41-90(C) (the “Planned Parenthood Provision”)).

75. Finally, the Act contains legislative findings, including three nearly identical to ones in S.B. 1: (1) “[a] fetal heartbeat is a key medical predictor that an unborn child will reach live birth,” S.B. 474, § 1(1); *accord* S.B. 1, § 2(5); (2) “[c]ardiac activity begins at a biologically identifiable moment in time, normally when the fetal heart is formed in the gestational sac,” S.B. 474, § 1(2); *accord* S.B. 1, § 2(6); and (3) “[t]he State of South Carolina has a compelling interest

from the outset of a woman's pregnancy in protecting the health of the woman and the life of the unborn child," S.B. 474, § 1(3); *accord* S.B. 1, § 2(7).

Abortion in South Carolina

76. Legal abortion is one of the safest procedures in contemporary medical practice and is far safer than childbirth. A person's risk of death associated with childbirth is approximately fourteen times higher than that associated with abortion,⁴ and every pregnancy-related complication is more common among people having live births than among those having abortions.⁵

77. Based on a review of the available high-quality research, the National Academies of Sciences, Engineering, and Medicine concluded that abortion is safer than pregnancy. It found that the abortion-related mortality rate was only 0.7 deaths per 100,000 legal abortions, a fraction of the national mortality rate among individuals who carried their pregnancies to term, which is 8.8 deaths per 100,000 live births.⁶ South Carolina's maternal mortality rate exceeds the national average: between 2015 and 2019, the maternal mortality rate in South Carolina was 26.2 deaths per 100,000 live births.⁷ In other words, pregnancy and birth carries nearly three times the risk of maternal mortality in South Carolina than the national average. Moreover, South Carolina's infant

⁴ Elizabeth G. Raymond & David A. Grimes, The Comparative Safety of Legal Induced Abortion and Childbirth in the United States, 119 *Obstetrics & Gynecology* 215, 216 (2012); see also Nat'l Acads, *supra* note 3, at 75 tbls. 2-4 (finding the risk to be approximately twelve times higher).

⁵ Raymond & Grimes, *supra* note 4, at 216.

⁶ Nat'l Acads., *supra* note 3, at 74, 75 tbls. 2-4.

⁷ S.C. Maternal Morbidity & Mortality Rev. Comm., *Legislative Brief* (Mar. 2021), available at <https://scdhec.gov/sites/default/files/media/document/2021SCMMMRCLegislativeBrief.pdf>.

mortality rate has risen in recent years,⁸ and patients already face a shortage of OB/GYN physicians in the State.⁹

78. Abortion is also very common: approximately one in four women in this country will have an abortion by age forty-five.

79. People seek abortion for a range of reasons. The majority of people who seek abortions are already parents, and they may already struggle with basic unmet needs for their families. Other people decide that they are not ready to become parents because they are too young or want to finish school before starting a family. Some people have health complications during pregnancy that lead them to conclude that abortion is the right choice for them; indeed, for some, abortion is medically indicated to protect their lives and their health, including their reproductive health. Some people receive fetal diagnoses incompatible with sustained life after birth and wish to terminate the pregnancy rather than continue to carry a non-viable pregnancy and expose themselves to the physical and psychological changes associated with pregnancy. In some cases, people are struggling with substance abuse and decide not to become parents or have additional children during that time in their lives. Still others have an abusive partner or a partner with whom they do not wish to have children for other reasons.

80. Although patients generally obtain an abortion as soon as they are able, the vast majority of patients who obtain abortions in South Carolina are at least six weeks LMP by the time of the abortion.

⁸ S.C. Dep't of Health and Env't Control, *Infant Mortality and Selected Birth Characteristics: 2021 South Carolina Residence Data* (Apr. 2023), available at <https://scdhec.gov/sites/default/files/Library/CR-012142-2021.pdf> (finding that South Carolina's infant mortality rate rose by 12% from 2020 to 2021 and, since 2017, has grown by nearly 40% for infants born to non-Hispanic Black mothers).

⁹ Stephanie Moore, *Labor, Delivery Services 'Paused' at South Carolina Hospital*, <https://www.wyff4.com/article/south-carolina-laurens-hospital-labor-delivery-services/43804079> (last updated May 5, 2023).

81. There are many reasons why most patients do not obtain abortions before six weeks LMP. For a person with regular monthly periods, fertilization typically occurs two weeks after their last menstrual period (two weeks LMP) meaning that at six weeks LMP, the pregnancy is at an embryonic age of only four weeks of development measured from the date of conception. Thus, even a person with a highly regular, four-week menstrual cycle would already be four weeks LMP when they miss their period, generally the first clear indication of a possible pregnancy. At-home pregnancy tests are not generally effective until at least four weeks LMP.

82. As a result, even a person with highly regular menstrual cycles might have roughly two weeks to (1) learn they are pregnant; (2) decide whether to continue the pregnancy or have an abortion; (3) seek an appointment at one of the three available abortion clinics in South Carolina; (4) arrange for time off work, transportation, and childcare; (5) obtain access to state-mandated counseling materials; (6) wait 24 hours; and (6) go to the clinic for their abortion before the Six-Week Ban prohibits their abortion care. PPSAT's Charleston and Columbia health centers typically offer abortions only two days per week due to operational limitations. GWC typically offers abortion care six days a week, but only has one physician available to see patients each week.

83. The hurdles described above apply to patients who learn very early that they are pregnant. But many patients do not know they are pregnant until at or after six weeks LMP, especially patients who have irregular menstrual cycles or who experience bleeding during early pregnancy, a common occurrence that is frequently and easily mistaken for a period. Other patients may not develop or recognize symptoms of early pregnancy. Other factors, including younger age and use of hormonal contraceptives, can also result in delayed recognition of symptoms of early pregnancy.

84. Particularly for patients living in poverty or without insurance, travel-related and financial barriers also pose a barrier to obtaining an abortion before six weeks LMP. With very narrow exceptions, South Carolina bars coverage of abortion in its Medicaid program, in health insurance plans offered to state employees, and in private insurance plans offered on the State's Affordable Care Act exchange. S.C. Code Ann. §§ 1-1-1035, 38-71-238. Patients living in poverty or without insurance coverage available for abortion must often make difficult tradeoffs among other basic needs like food or rent to pay for their abortions. Many must seek financial assistance from extended family and friends or from local abortion funds to pay for care, a process that takes time. Moreover, many patients must navigate other logistics, such as inflexible or unpredictable job hours and childcare needs, that may delay the time when they are able to obtain an abortion.

85. As described in part above, South Carolina has enacted numerous medically unnecessary statutory and regulatory requirements that must be met before a patient may obtain an abortion, including that abortion providers ensure that patients had certain State-mandated information available to them at least 24 hours in advance of an abortion. *Id.* § 44-41-330(A)(2), (C). South Carolina also prohibits the use of telehealth for medication abortion, closing off a safe and effective option for many patients to obtain an abortion. *See id.* § 40-47-37(C)(6).

86. South Carolina also typically requires patients sixteen years old or younger to obtain written parental authorization for an abortion. Without such authorization, a patient must get a court order permitting them to obtain care, *see id.* § 44-41-31 to -33, which South Carolina law expressly recognizes could take as long as three days, *see id.* § 44-41-32(5), not including time for appeal. That process cannot realistically happen before a patient's pregnancy reaches six weeks

LMP. Moreover, minor patients without a history of pregnancy are less likely to recognize early symptoms of pregnancy than older patients who have become pregnant before.¹⁰

87. Patients whose pregnancies are the result of sexual assault or incest or who are experiencing interpersonal violence may also need additional time to access abortion services due to ongoing physical or emotional trauma. For patients who have decided they do not want their assaults reported or who are experiencing interpersonal violence but whose pregnancies are not the result of rape or incest, obtaining an abortion before six weeks LMP will be incredibly difficult, if not impossible. And for those patients whose pregnancies are a result of sexual assault or incest and who *have* decided to have an abortion despite the reporting requirement in the Reported Rape Exception, obtaining an abortion before twelve weeks LMP is still exceedingly difficult.

The Impact of the Act on Plaintiffs and Their Patients

88. As described above, the Act prohibits nearly all abortions after approximately six weeks LMP. Yet prior to the Act taking effect, the vast majority of people in South Carolina who obtained abortion did so after six weeks LMP.¹¹

89. Given its immediate effective date, without relief from this Court, Plaintiffs and their staff will, once again, be forced to turn away the vast majority of patients seeking abortions, or risk substantial criminal penalties, professional sanctions, and/or civil liability. When patients

¹⁰ An earlier version of S.B. 474 permitted minors to access abortion up to 12 weeks LMP with additional time to allow for minors to obtain a court order, if necessary. Senate Bill 474, 125th Gen. Assemb., Gen. Sess. (as passed by Senate, Feb. 9, 2023). S.B. 474, as codified, eliminates any recognition of the fact that minors will likely need additional time to learn of their pregnancies and obtain abortions, particularly if they are unable to obtain consent from their parents.

¹¹ See S.C. Dep't. of Health & Env't Control, *A Public Report Providing Statistics Compiled from All Abortions Reported to DHEC, 2021*, at tbl. 1 (2022), available at https://scdhec.gov/sites/default/files/media/document/2021-Abortion_SC-Report.pdf. State reporting data tracks the post-fertilization age rather than as dated from the patient's last menstrual period. See *supra* ¶ 81. Thus, the state reporting data shows that fewer than half of abortions in South Carolina occur before 8 weeks LMP, but an even smaller number occur before 6 weeks LMP.

with pregnancies with detectable cardiac activity seek abortions, Plaintiffs can provide care only where they can determine that one of the extremely narrow exceptions to the Six-Week Ban applies.

South Carolinians Will Suffer Irreparable Harm from Forced Pregnancy.

90. The Act makes it exceedingly difficult to access abortion in South Carolina. Patients who can scrape together the resources to access abortion are forced to travel hundreds of miles to out-of-state providers—if they can—and, as a result, will experience delays, expenses, and other harms. Research shows that barriers to abortion delay, and in some cases altogether prevent, people from accessing that care. Not only does delay potentially increase the cost of the medical procedure, but it also increases the risk of complications (though pre-viability abortion remains incredibly safe and safer than carrying a pregnancy to term). Those who are ultimately prevented from accessing care may choose to self-manage their abortion outside of the health care system, potentially increasing the risks to their health.¹² Others will be forced to carry pregnancies to term against their will.

91. While pregnancy can be a celebratory and joyful event for many families, even in an ideal scenario, pregnancy affects individuals' health and social circumstances during the pregnancy itself and for years afterwards.

92. Pregnancy challenges a person's entire physiology. Individuals experience a dramatic increase in blood volume, a faster heart rate, increased production of clotting factors, breathing changes, digestive complications, and a growing uterus. These and other changes put

¹² See Spencer Donovan & Eric Connor, *SC Woman Arrested for Abortion. What Does This Mean as Ban Debate Continues?*, Post and Courier Greenville (March 5, 2023), https://www.postandcourier.com/greenville/news/sc-abortion-arrest-raises-questions-about-criminalizing-women-for-ending-pregnancies/article_1c501f98-b929-11ed-8421-4757fecec31.html.

pregnant patients at greater risk of blood clots, nausea, hypertensive disorders, and anemia, among other complications. Although many of these complications can be mild and resolve without medical intervention, some require evaluation and occasionally urgent or emergent care to preserve the patient's health or to save their life.

93. Pregnancy can also aggravate preexisting health conditions, including hypertension and other cardiac disease, diabetes, kidney disease, autoimmune disorders, obesity, asthma, and other pulmonary disease. It can lead to the development of new and serious health conditions as well, such as hyperemesis gravidarum, preeclampsia, deep-vein thrombosis, and gestational diabetes. Many people seek emergency care at least once during a pregnancy, and people with comorbidities (either preexisting or those that develop as a result of their pregnancy) such as asthma, hypertension, or diabetes, are significantly more likely to need emergency care. Moreover, people who develop pregnancy-induced medical conditions are at an even higher risk of developing the same condition in subsequent pregnancies.

94. Pregnancy may also induce or exacerbate mental health conditions. A person with a history of mental illness may experience a recurrence of their illness during pregnancy. Pregnant patients regulating a mental health condition with medication that carries risk to the fetus may need to discontinue or modify their medication in order to avoid risking harm to the fetus, effectively increasing the likelihood that mental illness recurs both during and after pregnancy. These mental health risks can be higher for patients with unintended pregnancies, who may face physical and emotional changes and risks that they did not choose to take on.

95. Pregnant people with a prior history of mental health conditions also face a heightened risk of postpartum illness, which may go undiagnosed for months or even years.

96. Some pregnant patients also face increased risk of intimate partner violence, with the severity sometimes escalating during or after pregnancy. Homicide is a leading cause of maternal mortality; the majority are committed by an intimate partner.

97. Separate from pregnancy, labor and childbirth are themselves significant medical events with many risks, far greater than those for legal pre-viability abortion.

98. The risks and complications associated with pregnancy go beyond mortality. In some cases, labor must be medically or physically induced (for example, by physically rupturing the membranes), and labor can last hours or sometimes days and be tremendously painful. Even a pregnancy with no comorbidities or previous complications can suddenly become life-threatening during labor and delivery. For example, during labor, increased blood flow to the uterus places the patient at risk of hemorrhage and, in turn, death. Hemorrhage is the leading cause of severe maternal morbidity. Other unexpected adverse events include transfusion, ruptured uterus (the spontaneous tearing of the uterus), perineal laceration (the tearing of the tissue around the vagina and rectum), and unexpected hysterectomy (the surgical removal of the uterus).

99. The most severe perineal tears involve tearing between the vagina through the anal sphincter and into the rectum and must be surgically repaired. These can result in long-term urinary and fecal incontinence and sexual dysfunction. Moreover, vaginal delivery often leads to long-term internal injuries, such as bowel injury or injury to the pelvic floor, which can also lead to urinary incontinence, fecal incontinence, and pelvic organ prolapse.

100. In South Carolina, 33.5% of live births in 2021 were performed by cesarean section, as compared to 32.1% for the national average.¹³ A cesarean section is an open abdominal surgery

¹³ Ctrs. for Disease Control & Prevention, Nat'l Ctr. for Health Stats., *Cesarean Delivery Rate by State*, https://www.cdc.gov/nchs/pressroom/sosmap/cesarean_births/cesareans.htm (last reviewed Apr. 24, 2023); Ctrs. for Disease Control & Prevention, Nat'l Ctr. for Health Stats., *Births—Method of Delivery*, <https://www.cdc.gov/nchs/fastats/delivery.htm> (last reviewed Apr. 24, 2023).

that requires hospitalization for at least a few days and carries significant risks of hemorrhage, infection, venous thromboembolism (blood clots), and injury to internal organs. This surgery can also create long term risks, including an increased risk of placenta previa in later pregnancies (when the placenta covers the cervix, resulting in vaginal bleeding) and bowel or bladder injury in future deliveries. Individuals with a history of cesarean delivery are also more likely to need cesarean delivery for subsequent births.

101. The Act is particularly devastating for South Carolinians with low incomes, South Carolinians of color, and rural South Carolinians, who already face inequities in access to medical care and who will suffer the brunt of the Act's cruelties. As described above, the risk of death associated with childbirth is approximately fourteen times higher than that associated with abortion,¹⁴ and every pregnancy-related complication is more common in pregnancies ending in live births than among those ending through abortions.¹⁵

102. Forcing patients to carry their pregnancies to term places Black patients, in particular, at even greater risk of adverse health outcomes. Black South Carolinians are more likely to suffer from underlying chronic health conditions, such as diabetes, which 20.1% of non-Hispanic Black adults reported having compared to 12.2% of non-Hispanic white adults.¹⁶ Furthermore, in 2021, 47.9% of non-Hispanic Black South Carolinians reported having high blood pressure, compared to 36.6% of non-Hispanic white South Carolinians.¹⁷ Moreover, the maternal

¹⁴ Raymond & Grimes, *supra* note 6, at 216.

¹⁵ *Id.*

¹⁶ S.C. Dep't of Health & Env't Control, *Disparities in Health Outcome Data: Chronic Diseases*, <https://scdhec.gov/health/eliminating-health-disparities/disparities-health-outcomes-data> (last reviewed Apr. 24, 2023).

¹⁷ Ctrs. for Disease Control & Prevention, BRFSS Prevalence & Trends Data, *Adults who have been told they have high blood pressure, South Carolina 2021*, <https://rb.gy/6ku9l> (last reviewed Apr. 24, 2023) (at the dropdown menu next to "View by", select "Race/Ethnicity").

mortality rate in South Carolina is 2.4 times higher for Black women and other women of color as compared to white women.¹⁸

103. Pregnancy and childbirth are expensive and can carry unforeseen costs. Some side effects of pregnancy render patients unable to work, or unable to work the same number of hours that they otherwise would. This can cause job loss, especially for people who work unsteady jobs. In addition to job loss caused by the physical effects of pregnancy, pregnancy-related discrimination can result in lower earnings both during pregnancy and over time.

104. Further, South Carolina does not require employers to provide paid family leave, meaning that for many pregnant South Carolinians, time taken to recover from pregnancy and childbirth or to care for a newborn is unpaid.

105. Pregnancy-related health care and childbirth are some of the costliest hospital-based health services, particularly for complicated or at-risk pregnancies. While insurance may cover most of these expenses, many pregnant patients with insurance must still pay for significant labor and delivery costs out of pocket. In 2015, of the 98.2% of commercially insured women who had out-of-pocket spending for their labor and delivery, the mean spending for all modes of delivery was \$4,569; within that same group, the mean out-of-pocket spending was \$4,314 for vaginal birth and \$5,161 for C-section.¹⁹ Many South Carolinians lack insurance to help offset these costs, as 13% of all South Carolinians under 65 do not have insurance.²⁰ Despite the fact that

¹⁸ S.C. Maternal Morbidity and Mortality Rev. Comm., *supra* note 7 (comparing 18.0 deaths per 100,000 live births for white South Carolinians to 42.3 deaths per 100,000 live births for “Black & Other” South Carolinians).

¹⁹ Michelle H. Moniz et al., *Out-of-Pocket Spending for Maternity Care Among Women With Employer-Based Insurance, 2008–15*, 39 *Health Affairs* 18, 20 (2020).

²⁰ S.C. Revenue & Fiscal Affs. Off., *Estimated Number & Percent without Health Insurance by County 2019*, <https://rfa.sc.gov/data-research/population-demographics/census-state-data-center/socioeconomic-data/Estimated-Number-Percent-without-Health-Insurance-by-County-2019> (last accessed May 24, 2023).

many South Carolinians have incomes too high to qualify for Medicaid but too low to qualify for a subsidy for insurance plans offered in the state insurance exchange, South Carolina has not expanded Medicaid coverage for low-income residents.

106. Particularly for people already facing an array of economic hardships, the cost of pregnancy can have long-term and severe impacts on a family's financial security. For unintended pregnancies, these hardships may be even higher. People with low incomes experience unintended pregnancy at a disproportionately higher rate, due in large part to systemic barriers to contraceptive access.

107. Beyond childbirth, raising a child is expensive, due to both direct costs and lost wages. On average, women experience a large and persistent decline in earnings following the birth of a child, an economic loss that compounds atop the additional costs associated with raising a child. These costs can be particularly impactful for people who do not have partners or other support systems in place, such as single parents.

108. When compared to those who are able to access abortion, women who seek but are denied an abortion are more likely to moderate their future goals and less likely to be able to exit abusive relationships. Their existing children are also more likely to suffer measurable reductions in achievement of child developmental milestones and an increased chance of living in poverty. Finally, as compared to women who received an abortion, women who are denied abortions are less likely to be employed full-time, more likely to be raising children alone, more likely to receive public assistance, and more likely to not have enough money to meet basic living needs.

109. Each of these consequences constitutes irreparable harm to Plaintiffs' patients and constitutes a violation of the state constitutional rights to which they are entitled.

The Act's Narrow Exceptions Will Harm South Carolinians.

110. The Act's narrow exceptions to the Six-Week Ban do not cure these harms. Even patients who are able to qualify for one of the exceptions will have their decision to have an abortion—a deeply private decision—unnecessarily scrutinized. And because the Act further narrows the exceptions from S.B. 1, South Carolinians will suffer even more than they did under S.B. 1.

111. Pregnant people with rapidly worsening medical conditions—who, prior to the Act, could have obtained an abortion without explanation—may once again be forced to wait for care until their physician determines that their condition is deadly or threatens severe enough impairment so as to meet the Death or Substantial Injury Exception.

112. Under the Reported Rape Exception, health care professionals must disclose to the local sheriff the names and contact information of rape and incest survivors in order to provide abortions to these patients at or after approximately six weeks LMP. S.B. 474, § 3 (amending S.C. Code Ann. § 44-41-640(B)–(C)). The Act's reporting requirement applies only if the patient decides to have an abortion after being told that the rape will be reported; if the patient decides not to go forward, the reporting requirement does not apply. *Id.* This requirement blatantly intrudes on a patient's right to privacy by conditioning access to constitutionally protected health care on the disclosure of medical and other personal information, thereby discouraging patients from accessing abortion in South Carolina.

113. Conditioning abortion access on reporting sexual assault will deny care to survivors who do not want to involve law enforcement or do not want to talk about the circumstances of their pregnancies at all. National statistics from 2021 indicate that 78% of sexual assault incidents

were never reported to the police, a rate nearly two times higher than for other violent crimes.²¹ This is due to many factors both fear-based and personal: some fear retaliation from their offenders, some are financially dependent on the offender, some believe there will not be any benefit to reporting abuse, and some require time to process their feelings after the assault—time they may not be able to spare under the Act.

S.B. 1 Provides a Direct Preview of the Devastation that the Six-Week Ban Will Cause.

114. The harm inflicted by S.B. 1 provides a direct preview of the damage the Act will do to people and communities across South Carolina. During the time that S.B. 1 was in effect in South Carolina from June 27, 2022 until the South Carolina Supreme Court enjoined it on August 17, 2022, PPSAT's health centers in South Carolina had to cancel 490 scheduled abortions and turn away 513 additional pregnant South Carolinians seeking an abortion because they were beyond the gestational age limit. GWC similarly had to turn away the majority of patients seeking abortions during that period. These numbers do not account for the many patients who had heard about the six-week ban and did not seek care because they expected to be denied abortions due to the law, who sought abortions out of state if they could afford to do so, or who tried to self-manage their abortions outside of the medical system.

115. Each patient who was denied an abortion by PPSAT or GWC was faced with traveling out of state at a great personal and economic cost; carrying a pregnancy to term against their will with all of the physical, economic, and personal consequences described above; or attempting to self-manage their abortion.

116. Under S.B. 1, many South Carolinians seeking abortions were forced to travel out of state. But even patients who sought care out-of-state faced increased costs and delays, including

²¹ Alexandra Thompson & Susannah N. Tapp, U.S. Dep't of Just., *Criminal Victimization, 2021*, at 5 (Sept. 2022), available at <https://bjs.ojp.gov/content/pub/pdf/cv21.pdf>.

being delayed past the gestational age at which medication abortion is available.²² The barriers of travel are particularly difficult to overcome for patients with children, patients with low incomes, and patients with abusive family members or partners. These obstacles are nearly insurmountable for minors.

117. Additionally, while S.B. 1 was in force, pregnant patients in South Carolina faced significantly worsened health outcomes and delays to necessary medical care, harms that the exception for a medical emergency or to prevent death exception did not cure. Providers waited for patients' conditions to worsen before they could provide the necessary treatment. Some patients were permanently injured by delay. For example, while S.B. 1 was in effect, one pregnant 19-year-old's water broke at 15 weeks, leading her to nearly lose her uterus because "lawyers advised doctors that they could not remove the fetus, despite that being the recommended medical course of action."²³ The Act will likewise impose devastating harms on pregnant patients in need of urgent medical care.

118. The nearly identical exceptions in S.B. 1 forced other South Carolinians to travel to access necessary care. One patient whose fetus was diagnosed with hypoplastic left heart syndrome, a condition that is usually fatal before or immediately after birth and leaves the few survivors with severe life-long complications, had to delay her care for more than two weeks and undergo her abortion in another state, forced to recover from the procedure on the flight home. Although the patient sought care after S.B. 1 was enjoined by the South Carolina Supreme Court,

²² E.g., Jocelyn Grzeszczak & Seanna Adcox, *Explaining the Abortion Landscape in SC After the Supreme Court Made It a State Issue*, Post and Courier (Charleston) (July 16, 2022), https://www.postandcourier.com/politics/explaining-the-abortion-landscape-in-sc-after-the-supreme-court-made-it-a-state-issue/article_647d480a-0136-11ed-895e-dfaa316a0fc3.html.

²³ Dan Ladden-Hall, *Lawmaker Tearily Explains Teen Almost Lost Uterus Because of Abortion Law He Voted For*, Daily Beast (Aug. 17, 2022), <https://www.thedailybeast.com/neal-collins-south-carolina-pol-emotional-after-teen-almost-loses-uterus-due-to-abortion-law-he-voted-for>.

her providers at the Medical University of South Carolina (“MUSC”) were held to the terms of S.B. 1 due to South Carolina’s “legal volatility.” Despite the low likelihood that the fetus would survive after birth, MUSC determined that “the diagnosed fetal anomaly did not clearly meet” S.B. 1’s mandate that fetal anomalies be “incompatible with sustaining life after birth” to qualify for the fetal anomaly exception to the six-week ban. This travel placed a heavy burden on the patient. While she grieved and continued to carry the nonviable fetus, she was forced to make difficult and expensive logistical arrangements, including missing work and arranging flights and a hotel room.²⁴ Ultimately, seven weeks passed between her diagnosis and her abortion.²⁵

119. Plaintiffs have no adequate remedy at law.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

Six-Week Ban — Privacy

120. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

121. The South Carolina Constitution guarantees that “[t]he right of the people to be secure in their persons . . . [against] unreasonable invasions of privacy shall not be violated.” S.C. Const. art. I, § 10.

122. This guarantee is broad and encompasses “*the full panoply of privacy rights* Americans have come to enjoy over the history of our Nation.” *Planned Parenthood I*, 438 S.C. at 259–650, 882 S.E.2d at 808–09 (Few, J., concurring in the judgment) (emphasis added).

²⁴ Elizabeth Cohen, Naomi Thomas & Nadia Kounang, *This Conservative Christian Couple in South Carolina Have Become Outspoken Advocates for Abortion Rights*, CNN (Dec. 23, 2022), <https://www.cnn.com/2022/12/23/health/south-carolina-abortion-ivy-grace-project/index.html>.

²⁵ Anna Harris, *Lowcountry Woman Shares Her ‘Difficult Abortion Decision’*, WCSC (Charleston) (Jan. 5, 2023), <https://www.live5news.com/2023/01/06/live-5-exclusive-lowcountry-woman-shares-her-difficult-abortion-decision/>.

123. The South Carolina Supreme Court has recognized that this right to privacy includes the right to make choices about one's medical care and to preserve one's bodily integrity. *See Singleton v. State*, 313 S.C. 75, 89, 437 S.E.2d 53, 61 (1993); *Hughes v. State*, 367 S.C. 389, 398 n.2, 626 S.E.2d 805, 810 n.2 (2006).

124. “[A]ny medical procedures a pregnant woman chooses to have—including an abortion—or chooses not to have—implicate her privacy interests.” *Planned Parenthood I*, 438 S.C. at 269, 882 S.E.2d at 814 (Few, J., concurring in the judgment).

125. Decisions about whether to remain pregnant or end a pregnancy are inherently private decisions that patients have the right to make, free from government intrusion, in consultation with their health care provider and based on their individual circumstances. *See id.*, 438 S.C. at 276, 882 S.E.2d at 818 (“The choice of whether to continue a pregnancy or to have an abortion is an inherently private matter that implicates article I, section 10.”); *id.*, 438 S.C. at 210, 882 S.E.2d at 782 (Hearn, J.) (“[F]ew decisions in life are more private than the decision whether to terminate a pregnancy. Our privacy right must be implicated by restrictions on that decision.”).

126. The Act violates Plaintiffs’ patients’ right to privacy by banning abortion as early as six weeks LMP, before many South Carolinians even know they are pregnant, and by requiring pregnant people to remain pregnant and face increased medical risk associated with labor and delivery.

SECOND CAUSE OF ACTION

Six-Week Ban — Equal Protection

127. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

128. By banning abortion as early as six weeks LMP, before many South Carolinians even know they are pregnant, the Act violates the right of Plaintiffs' patients to equal protection under the law, as guaranteed by article I, section 3 of the South Carolina Constitution.

129. South Carolina's Equal Protection Clause provides that no person "shall . . . be denied the equal protection of the laws." S.C. Const. art. I, § 3.

130. South Carolina's Equal Protection Clause requires that all persons similarly situated be treated alike under the law. *In re Treatment & Care of Luckabaugh*, 351 S.C. 122, 147, 568 S.E.2d 338, 350–51 (2002). Any classification that impairs the exercise of fundamental rights and is not narrowly tailored to advance a compelling state interest violates South Carolina's Equal Protection Clause. *Id.*, 351 S.C. at 140–41, 568 S.E.2d at 347.

131. The Act deprives pregnant people who choose to terminate their pregnancies after six weeks LMP of their fundamental privacy right to make decisions about their bodies, while allowing pregnant people who want to continue their pregnancy the full enjoyment of that fundamental right, without sufficient justification. Accordingly, it violates the Equal Protection Clause. *See Planned Parenthood I*, 438 S.C. at 240–44, 882 S.E.2d at 798–800 (Beatty, C.J., concurring).

132. South Carolina's Equal Protection Clause also prohibits the State from employing suspect classifications, including gender-based classifications, that give legal force to stereotypes. *In Interest of Joseph T.*, 312 S.C. 15, 16, 430 S.E.2d 523, 524 (1993).

133. "For a gender-based classification to pass constitutional muster, it must serve an important governmental objective and be substantially related to the achievement of that objective." *Moore v. Moore*, 376 S.C. 467, 482, 657 S.E.2d 743, 751 (2008) (citing and quoting *State v. Wright*, 349 S.C. 310, 313, 563 S.E.2d 311, 312 (2002)).

134. By banning abortion as early as six weeks LMP, before many South Carolinians even know they are pregnant, the Act relies on and entrenches stereotypical, antiquated, and overbroad generalizations about the roles, abilities, and decision-making capacities of women. The Act also stereotypes anyone who may become pregnant as a woman despite the fact that people of many gender identities, including transgender men and gender-diverse individuals, may become pregnant and may seek abortions. *See Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 609 (4th Cir. 2020), *as amended* (Aug. 28, 2020), *cert. denied*, 141 S. Ct. 2878 (2021) (discussing sex stereotyping in the context of discrimination against transgender student and writing that “a central tenet of equal protection in sex discrimination cases [is] that states ‘must not rely on overbroad generalizations’ regarding the sexes” (quoting *United States v. Virginia*, 518 U.S. 515, 533 (1996))).

135. The South Carolina Supreme Court has rejected the outdated notion that women are in need of special State protection in order to make decisions in their best interest. *E.g.*, *Boan v. Watson*, 281 S.C. 516, 316 S.E.2d 401 (1984); *Wilson v. Jones*, 281 S.C. 230, 314 S.E.2d 341 (1984). The Act creates risks to physical and mental health, financial stability, and ability to seek out life opportunities for women and not men, which perpetuates the subordination of women.

136. Because the Act is a sex-based classification rooted in paternalistic and stereotypical ideas without sufficient justification, it violates the Equal Protection Clause.

THIRD CAUSE OF ACTION

Six-Week Ban — Substantive Due Process

137. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

138. The South Carolina Constitution's Due Process Clause states that no person "shall . . . be deprived of life, liberty, or property without due process of law." S.C. Const. art. I, § 3.

139. By banning abortion as early as six weeks LMP, before many South Carolinians even know they are pregnant, the Act violates Plaintiffs' patients' substantive due process rights to life and liberty, as guaranteed by article I, section 3 of the South Carolina Constitution.

140. The Due Process Clause's protection of individual liberty encompasses a person's right to make decisions about whether or not to terminate a pregnancy, free from unwarranted State intrusions. For decades, South Carolinians have relied on the availability of abortion in South Carolina, and they have the right to continue to do so. In other words, "the inherent right of women to make reproductive health decisions and to control their own bodies [is] 'deeply rooted.'" *Planned Parenthood I*, 438 S.C. at 253–54, 882 S.E.2d at 805 (Beatty, J., concurring).

141. In addition to the right to privacy under article I, section 10, South Carolinians possess liberty and privacy interests under article I, section 3. This includes the freedom and privacy to make decisions about their lives and health.

142. The Act infringes on this fundamental substantive due process right without adequate justification.

FOURTH CAUSE OF ACTION

Death or Substantial Injury Exception — Privacy

143. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

144. The South Carolina Constitution guarantees that "[t]he right of the people to be secure in their persons . . . against unreasonable . . . invasions of privacy shall not be violated." S.C. Const. art. I, § 10.

145. The Act, through its Death or Substantial Injury Exception, provides only a narrow exception for a physician to perform an abortion after the detection of fetal or embryonic cardiac activity where the abortion is “necessary in his reasonable medical judgment to prevent the death of a pregnant woman or the serious risk of a substantial and irreversible physical impairment of a major bodily function of the pregnant woman.” S.B. 474, § 2 (adding S.C. Code Ann. §§ 44-41-640(C)(1), 44-41-640(A), 44-41-640(B) (providing that Six-Week Ban does not apply in the case of a medical emergency), 44-41-610(9) (defining “[m]edical emergency”)).

146. The Exception expressly excludes psychological conditions as qualifying medical emergencies, even if suicidality and physical harm may result. S.B. 474, § 2 (adding S.C. Code Ann. § 44-41-640(B)(3)). The Exception, therefore, fails to account for the wide range of factors and medical conditions that make an abortion medically necessary for Plaintiffs’ patients, including serious and devastating conditions that do not rise to the level of threatening “irreversible” physical injury.

147. By depriving pregnant people of the right to decide when an abortion is medically necessary, in consultation with their health care providers, based on their individual circumstances, the Act violates the right to privacy.

148. By requiring that physicians performing pre-viability abortions “make reasonable medical efforts under the circumstances to preserve the life” of the embryo or fetus “to the extent that it does not risk the death of the pregnant woman or the serious risk of a substantial and irreversible physical impairment of a major bodily function of the pregnant woman, not including psychological or emotional conditions and in a manner consistent with reasonable medical practices,” *id.* (adding S.C. Code Ann. § 44-41-830(B)(3)), the Act further deprives pregnant

persons the ability to have the course of treatment they and their health care providers deem best for them, based on their individual circumstances.

149. In these ways, the State unreasonably intrudes into pregnant individuals’ private medical decisions and deprives patients from choosing, and doctors from providing, treatment that promotes patients’ overall health and safety. *See Planned Parenthood I*, 438 S.C. at 269, 882 S.E.2d at 814 (Few, J., concurring in the judgment) (“[A]ny medical procedures a pregnant woman chooses to have—including an abortion—or chooses not to have—implicate her privacy interests.”); *Hughes*, 367 S.C. at 398 n.2, 626 S.E.2d at 810 n.2 (recognizing the right “grounded in the state constitutional right to privacy . . . to be free from unwanted medical intrusions”).

FIFTH CAUSE OF ACTION

Death or Substantial Injury Exception — Equal Protection

150. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

151. South Carolina’s Equal Protection Clause provides that no person “shall . . . be denied the equal protection of the laws.” S.C. Const. art. I, § 3.

152. South Carolina’s Equal Protection Clause requires that all persons similarly situated be treated alike under the law. *Luckabaugh*, 351 S.C. 122 at 147, 568 S.E.2d at 350–51. Any classification that impairs the exercise of fundamental rights without sufficient justification violates South Carolina’s Equal Protection Clause. *Id.*, 351 S.C. at 140–41, 568 S.E.2d at 347.

153. The Act discriminates against those who seek abortions for reasons outside of the Death or Substantial Injury Exception and draws arbitrary distinctions between classes of South Carolinians based on the reasons they seek abortions. Furthermore, the Act discriminates against those who seek abortions for mental health reasons and draws arbitrary distinctions between

physical and mental health. The Death or Substantial Injury Exception lacks adequate justification for these distinctions and thus violates Plaintiffs' patients' rights to equal protection, as guaranteed by article I, section 3 of the South Carolina Constitution.

SIXTH CAUSE OF ACTION

Death or Substantial Injury Exception — Substantive Due Process

154. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

155. The South Carolina Constitution's Due Process Clause states that no person "shall . . . be deprived of life, liberty, or property without due process of law." S.C. Const. art. I, § 3.

156. By imposing unnecessarily narrow medical criteria for when pregnant people can seek an abortion without adequate justification, the Death or Substantial Injury Exception violates the substantive due process rights to life and liberty of Plaintiffs' patients, as guaranteed by article I, section 3 of the South Carolina Constitution.

157. Moreover, to the extent it bars the provision of abortion to pregnant people to treat emergent medical conditions that pose a risk to pregnant people's lives or health, including their mental health and fertility, the Death or Substantial Injury Exception violates Plaintiffs' patients' right to life and liberty, as guaranteed by article I, section 3 of the South Carolina Constitution.

158. By depriving South Carolina physicians of the ability to exercise their good faith medical judgment in caring for patients with emergent medical conditions, and excluding altogether their ability to consider patients' mental health, the Act violates the South Carolina Constitution by failing to further any legitimate state interest.

SEVENTH CAUSE OF ACTION

Death or Substantial Injury Exception — Vagueness

159. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

160. The South Carolina Constitution’s Due Process Clause states that no person “shall . . . be deprived of life, liberty, or property without due process of law.” S.C. Const. art. I, § 3.

161. The Due Process Clause is violated when a statute “either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application.” *State v. Sullivan*, 362 S.C. 373, 376, 608 S.E.2d 422, 424 (2005) (citing *Connally v. Gen. Constr. Co.*, 269 U.S. 385, 391 (1926)).

162. The Death or Substantial Injury Exception provides that physicians may perform an abortion where, in the physician’s reasonable medical judgment, the abortion is necessary “to prevent the death of the pregnant woman or to prevent the *serious* risk of a *substantial* and *irreversible* impairment of a major bodily function . . . of the pregnant woman.” S.B. 474, § 2 (adding S.C. Code Ann. §§ 44-41-640(A), 44-41-640(B)(1) (Six-Week Ban does not apply “if the physician determines according to standard medical practice that a medical emergency exists . . . that prevents compliance with the section.”), 44-41-610(9) (defining “medical emergency”)) (emphasis added).

163. The Exception is unconstitutionally vague because the statutory language does not permit a doctor of common intelligence to determine when a “medical emergency” based on the physician’s “reasonable medical judgment” is present, where the procedure is necessary to “prevent the death of the pregnant woman,” or when a “serious risk of a substantial and irreversible

impairment of a major bodily function” is present. *Id.* (adding S.C. Code Ann. §§ 44-41-640(A), 44-41-640(C)(1), 44-41-610(9)).

164. The Death or Substantial Injury Exception’s language regarding death or “serious risk of a substantial and irreversible impairment of a major bodily function” also conflicts with another provision within the same Exception providing that it is not a violation of the Six-Week Ban to perform an abortion “to prevent the death of a pregnant woman or the serious risk of a substantial and irreversible physical impairment of a major bodily function of the pregnant woman.” *Id.* (adding S.C. Code Ann. § 44-41-640(C)(1)).

165. The Death or Substantial Injury Exception also provides that when an embryo or fetus “is alive in utero, the physician must make all reasonable efforts to deliver and save the life” of the embryo or fetus “during the process of separating the unborn child from the pregnant woman, to the extent that it does not adversely affect the life or physical health of the pregnant woman, and in a manner that is consistent with reasonable medical practice.” *Id.* (adding S.C. Code Ann. § 44-41-640(C)(2)).

166. The Exception is also unconstitutionally vague because the statutory language does not permit a doctor of common intelligence to determine what constitutes “all reasonable efforts” or “reasonable medical practice,” or when “the process of separating the unborn child from the pregnant woman” would not “adversely affect the [pregnant person’s] life or physical health.” *Id.*

167. Furthermore, the Death or Substantial Injury Exception requires the physician performing an abortion to make “reasonable medical efforts” to preserve the life of the embryo or fetus “to the extent that it does not risk the death of the pregnant woman or the serious risk of a substantial and irreversible physical impairment of a major bodily function of the pregnant woman.” *Id.* (adding S.C. Code Ann. § 44-41-640(B)(3)).

168. It is also unconstitutionally vague because the statutory language does not permit a doctor of common intelligence to determine what “reasonable medical efforts” are or when those efforts would substantially risk a pregnant person’s death or substantial risk the impairment of a major bodily function such that the “reasonable medical efforts” are not required. *Id.* (adding S.C. Code Ann. § 44-41-640(C)(2)). It is further vague to the degree that S.B. 474, § 2 (adding S.C. Code Ann. § 44-41-640(C)(2)) and S.B. 474, § 2 (adding S.C. Code Ann. § 44-41-640(B)(3)) conflict.

169. Further, the Exception specifies that “[i]t is presumed that” certain medical conditions fall within the Death or Substantial Injury Exception, and that the enumerated conditions do not exclude other conditions that otherwise satisfy the Exception. *Id.* (adding S.C. Code Ann. § 44-41-640(C)(2)). It is thus vague how this presumption will apply and whether a prosecutor in a criminal case or a plaintiff in a civil case could rebut the presumption that any of the enumerated conditions in fact posed “a risk of death or serious risk of a substantial and irreversible physical impairment of a major bodily function.” *Id.*

170. Plaintiffs are subject to severe criminal penalties for performing an abortion that does not conform with the statute. *Id.* (adding S.C. Code Ann. § 44-41-630(B)).

171. By failing to set forth clear guidelines or criteria that would allow doctors of common intelligence to discern when the exception does and does not apply, chilling their ability to provide or refer for abortions under the Death or Substantial Injury Exception, Plaintiffs are subjected to criminal liability without “fair notice and proper standards for adjudication,” *Curtis v. State*, 345 S.C. 557, 571, 549 S.E.2d 591, 598 (2001) (citing *City of Beaufort v. Baker*, 315 S.C. 146, 152, 432 S.E.2d 470, 472 (1993)), in violation of their right to due process under article I, section 3 of the South Carolina Constitution.

EIGHTH CAUSE OF ACTION

Reported Rape Exception — Privacy

172. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

173. The South Carolina Constitution guarantees that “[t]he right of the people to be secure in their persons . . . against unreasonable . . . invasions of privacy shall not be violated.” S.C. Const. art. I, § 10.

174. By requiring physicians to report the name and contact information of the person whose abortion was performed subject to the Reported Rape Exception to the sheriff in the county where abortion was performed, irrespective of the patient’s wishes, *see* S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-650(B)), the Act violates the right of patients against unreasonable and unnecessary State intrusions into their private information.

NINTH CAUSE OF ACTION

Reported Rape Exception — Equal Protection

175. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

176. South Carolina’s Equal Protection Clause provides that no person “shall . . . be denied the equal protection of the laws.” S.C. Const. art. I, § 3.

177. The Act, through the Reported Rape Exception, deprives survivors of sexual violence who obtain an abortion of their fundamental right to informational privacy, while allowing survivors of sexual violence who do not obtain an abortion full recognition of that fundamental right.

178. Similarly, the Act distinguishes between sexual assault and incest survivors seeking abortion and survivors seeking other medical care by forcing only the former group to choose between maintaining their personal privacy and getting the medical care they need after an assault.

179. Through the Reported Rape Exception, the Act also violates the Equal Protection Clause by drawing a distinction between sexual assault and incest survivors who do not wish to report their assault and those who choose to report, in a way that infringes on the exercise of the fundamental privacy right to bodily integrity by conditioning their ability to obtain needed healthcare on their willingness to have Plaintiffs report their assault.

180. The State has no compelling, or even legitimate, interest in enforcing these distinctions and burdening pregnant persons' exercise of their fundamental privacy right through the Reported Rape Exception, which goes beyond the existing child-abuse and incest reporting requirements with which Plaintiffs already comply.

181. Moreover, the Reported Rape Exception conditions survivors' access to essential medical care on Plaintiffs' reporting the crime to law enforcement regardless of the survivors' legitimate reasons for choosing not to make this report. In doing so, the state codifies the paternalistic view that women should be controlled for their own good, a view rooted in "'old notions' . . . that females should be afforded special protection . . . because of their perceived 'special sensitivities.'" *In Interest of Joseph T.*, 312 S.C. at 16, 430 S.E.2d at 524 (citing *Craig v. Boren*, 429 U.S. 190 (1976)).

182. Furthermore, the Act treats those who have become pregnant as a result of rape or incest differently from those who seek an abortion for other reasons, displaying "arbitrary sympathy." *Planned Parenthood I*, 438 S.C. at 244, 882 S.E.2d at 800 (2023) (Beatty, J., concurring). It makes these distinctions without narrowly tailoring them (or adequately tailoring

them under constitutional standard) to the State's interests and thus violates the Equal Protection Clause.

TENTH CAUSE OF ACTION

Fatal Fetal Anomaly Exception — Privacy

183. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

184. The South Carolina Constitution guarantees that “[t]he right of the people to be secure in their persons . . . against unreasonable . . . invasions of privacy shall not be violated.” S.C. Const. art. I, § 10.

185. The Act, through its Fatal Fetal Anomaly Exception, provides only a narrow exception for physicians to perform an abortion “due to the existence of a fatal fetal anomaly,” which is defined as “a profound and irremediable congenital or chromosomal anomaly that, with or without the provision of life-preserving treatment, would be incompatible with sustaining life after birth.” S.B. 474, § 2 (amending S.C. Code Ann. §§ 44-41-660(A), 44-41-610(5)).

186. The Exception's narrow definition of fatal fetal anomaly fails to account for the wide range of factors and fetal medical conditions that make an abortion medically necessary for Plaintiffs' patients, including serious and devastating conditions that do not rise to the level of being “incompatible with sustaining life after birth.” By depriving pregnant people of the right to decide when an abortion is appropriate for them based on fetal diagnoses, in consultation with their health care providers and based on their individual circumstances, the Act violates the right to privacy.

187. In these ways, the State unreasonably intrudes into pregnant individuals' private medical decisions and deprives patients from choosing, and doctors from providing, treatment that

promotes patients’ overall health and safety as well as that of their fetuses or embryos. *See Planned Parenthood I*, 438 S.C. at 269, 882 S.E.2d at 814 (Few, J., concurring in the judgment) (“[A]ny medical procedures a pregnant woman chooses to have—including an abortion—or chooses not to have—implicate her privacy interests.”); *Hughes*, 367 S.C. at 398 n.2, 626 S.E.2d at 810 n.2 (recognizing the right “grounded in the state constitutional right to privacy . . . to be free from unwanted medical intrusions”).

ELEVENTH CAUSE OF ACTION

Fatal Fetal Anomaly Exception — Equal Protection

188. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

189. South Carolina’s Equal Protection Clause provides that no person “shall . . . be denied the equal protection of the laws.” S.C. Const. art. I, § 3.

190. South Carolina’s Equal Protection Clause requires that all persons similarly situated be treated alike under the law. *Luckabaugh*, 351 S.C. 122 at 147, 568 S.E.2d at 350–51. Any classification that impairs the exercise of fundamental rights without sufficient justification violates South Carolina’s Equal Protection Clause. *Id.*, 351 S.C. at 140–41, 568 S.E.2d at 347.

191. The Act discriminates against those who seek abortions for reasons outside of the Fatal Fetal Anomaly Exception and draws arbitrary distinctions between classes of South Carolinians based on the reasons they seek abortions. The Fatal Fetal Anomaly Exception lacks adequate justification for these distinctions and thus violates Plaintiffs’ patients’ rights to equal protection, as guaranteed by article I, section 3 of the South Carolina Constitution.

TWELFTH CAUSE OF ACTION

Fatal Fetal Anomaly Exception — Substantive Due Process

192. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

193. The South Carolina Constitution’s Due Process Clause states that no person “shall . . . be deprived of life, liberty, or property without due process of law.” S.C. Const. art. I, § 3.

194. By imposing unnecessarily narrow criteria for when pregnant people can seek an abortion based on fetal diagnoses without adequate justification, the Fatal Fetal Anomaly Exception violates the substantive due process rights to life and liberty of Plaintiffs’ patients, as guaranteed by article I, section 3 of the South Carolina Constitution.

THIRTEENTH CAUSE OF ACTION

Fatal Fetal Anomaly Exception — Vagueness

195. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

196. The South Carolina Constitution’s Due Process Clause states that no person “shall . . . be deprived of life, liberty, or property without due process of law.” S.C. Const. art. I, § 3.

197. The Due Process Clause is violated when a statute “either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application.” *Sullivan*, 362 S.C. at 376, 608 S.E.2d at 424 (citing *Connally*, 269 U.S. at 391).

198. The Fatal Fetal Anomaly Exception provides that physicians may perform an abortion if the physician “determines according to *standard medical practice* that there exists a fatal fetal anomaly,” S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-660(A)) (emphasis added),

which is defined as “in reasonable medical judgment, . . . a *profound and irremediable* congenital or chromosomal anomaly that, with or without the provision of *life-preserving treatment*, would be *incompatible with sustaining life after birth*.” *Id.* (amending S.C. Code Ann. § 44-41-610(5)) (emphasis added).

199. The Exception is unconstitutionally vague because the statutory language does not permit a doctor of common intelligence to determine when a fetal medical condition is “profound and irremediable” such that it would be “incompatible with sustaining life after birth.” *Id.* (amending S.C. Code Ann. § 44-41-610(5)).

200. The Fatal Fetal Anomaly Exception also includes conflicting standards by which physicians are to evaluate fetal conditions: “standard medical practice” and “reasonable medical judgment.” *Compare id.* (amending S.C. Code Ann. § 44-41-610(5)) *with id.* (amending S.C. Code Ann. § 44-41-660(A)).

201. Plaintiffs are subject to severe criminal penalties for performing an abortion that does not conform with the statute. *Id.* (adding S.C. Code Ann. § 44-41-630(B)).

202. By failing to set forth clear guidelines or criteria that would allow doctors of common intelligence to discern when the Exception does and does not apply, chilling their ability to provide or refer for abortions under the Fatal Fetal Anomaly Exception, Plaintiffs are subjected to criminal liability without “fair notice and proper standards for adjudication,” *Curtis*, 345 S.C. at 571, 549 S.E.2d at 598 (citing *City of Beaufort*, 315 S.C. at 152, 432 S.E.2d at 472), in violation of their right to due process under article I, section 3 of the South Carolina Constitution.

FOURTEENTH CAUSE OF ACTION

Planned Parenthood Provision — Bill of Attainder (on behalf of PPSAT)

203. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

204. South Carolina’s Bill of Attainder Clause provides that “[n]o bill of attainder . . . shall be passed.” S.C. Const. art. I, § 4.

205. A bill of attainder is “[a] special legislative act prescribing punishment, without a trial, for a specific person or group.” *Bill of Attainder*, *Black’s Law Dictionary* (11th ed. 2019).

206. By providing that “[n]o state funds may, directly or indirectly, be utilized by Planned Parenthood for abortions, abortion services or procedures, or administrative functions related to abortions,” S.B. 474, § 3 (adding S.C. Code Ann. § 44-41-90(C)), the Planned Parenthood Provision singles out Planned Parenthood and its affiliated organizations, including PPSAT, for punishment without a judicial trial in violation of article 1, section 4 of the South Carolina Constitution.

FIFTEENTH CAUSE OF ACTION

Planned Parenthood Provision — Equal Protection Clause (on behalf of PPSAT)

207. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

208. South Carolina’s Equal Protection Clause provides that no person “shall . . . be denied the equal protection of the laws.” S.C. Const. art. I, § 3.

209. By providing that “[n]o state funds may, directly or indirectly, be utilized by Planned Parenthood for abortions, abortion services or procedures, or administrative functions related to abortions,” S.B. 474, § 3 (adding S.C. Code Ann. § 44-41-90(C)), the Planned

Parenthood Provision irrationally singles out Planned Parenthood and its affiliated organizations, including PPSAT, for unfavorable treatment without adequate justification. It thus violates the Equal Protection Clause.

SIXTEENTH CAUSE OF ACTION

Planned Parenthood Provision — Medicaid Act (on behalf of PPSAT)

210. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

211. Federal law requires that state Medicaid programs allow recipients to obtain care from any provider who is “qualified to perform the service or services required” and “who undertakes to provide [] such services.” 42 U.S.C. § 1396a(a)(23) (the “Medicaid Act”).

212. As the U.S. Court of Appeals for the Fourth Circuit held in *Planned Parenthood South Atlantic v. Baker*, 941 F.3d 687 (4th Cir. 2019), and *Planned Parenthood South Atlantic v. Kerr*, 27 F.4th 945 (4th Cir. 2022), *pet. for cert. filed*, this federal free-choice-of-provider requirement prohibits South Carolina from removing PPSAT from the South Carolina Medicaid program on the basis of its status as an abortion provider, and South Carolina has, therefore, been “permanently enjoined from terminating or excluding Planned Parenthood from participation in the South Carolina Medicaid Program on the grounds it is an abortion clinic or provides abortion services.” *Kerr*, 27 F.4th at 951 (cleaned up).

213. By disallowing PPSAT from receiving reimbursements for abortions provided to Medicaid recipients, the Planned Parenthood Provision violates the Medicaid Act by denying PPSAT’s patients the right to obtain care from any willing, qualified health care provider in the Medicaid program as well as the terms of the permanent injunction issued by the U.S. District

Court for the District of South Carolina and affirmed by the U.S. Court of Appeals for the Fourth Circuit in *Kerr*.

SEVENTEENTH CAUSE OF ACTION

Void Ab Initio

214. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

215. Because it was not valid on the date of its enactment, the Act is void *ab initio*. The Act is nearly identical to S.B. 1, which was invalidated by the South Carolina Supreme Court in *Planned Parenthood I* and thus conflicts with binding state precedent. Accordingly, the Act “must be treated as though it never existed” and “is, in legal contemplation, as inoperative as though it had never been passed.” *Swicegood v. Thompson*, 435 S.C. 63, 65, 865 S.E.2d 775, 776 (2021) (per curiam) (second quoting *Norton v. Shelby County*, 118 U.S. 425, 442 (1886)).

WHEREFORE, Plaintiffs having respectfully complained, pray for judgment against Defendants, with the following relief:

- A. That, pursuant to the South Carolina Uniform Declaratory Judgments Act, S.C. Code Ann. §§ 15-53-10–140, the Court declare that S.B. 474 is invalid because laws banning abortion violate South Carolina’s right to privacy and guarantees of equal protection and substantive due process, because S.B. 474 is unconstitutionally vague, because S.B. 474 is an unconstitutional bill of attainder, and because S.B. 474 violates the Medicaid Act;
- B. That the Court issue a temporary restraining order followed by preliminary and permanent injunctions prohibiting Defendants and their officers, employees, servants, agents, appointees, or successors from administering, preparing for, enforcing, or

- giving effect to S.B. 474 and any other South Carolina statute or regulation that could be understood to give effect to S.B. 474, including through any future enforcement actions based on abortions performed during the pendency of an injunction;
- C. That the Court waive any security requirement for any injunction issued under S.C. R. Civ. P. 65(c);
 - D. That the Court retain jurisdiction of this action to render any further orders that this Court may deem appropriate;
 - E. That the Court award Plaintiffs costs and expenses; and
 - F. That the Court grant such other and further relief as the Court deems just and appropriate.

Respectfully submitted,

/s/ M. Malissa Burnette

M. Malissa Burnette (SC Bar No. 1038)
Kathleen McDaniel (SC Bar No. 74826)
Grant Burnette LeFever (SC Bar No. 103807)
Burnette Shutt & McDaniel, PA
P.O. Box 1929
Columbia, SC 29202
(803) 904-7913
mburnette@burnetteshutt.law
kmcDaniel@burnetteshutt.law
glefever@burnetteshutt.law

Attorneys for Plaintiffs

Catherine Peyton Humphreville*
Kyla Eastling*
Planned Parenthood Federation of
America
123 William Street
New York, NY 10038
(212) 965-7000
catherine.humphreville@ppfa.org
kyla.eastling@ppfa.org

*Attorneys for Plaintiff Planned
Parenthood South Atlantic and Dr.
Katherine Farris*

Caroline Sacerdote*
Center for Reproductive Rights
199 Water Street, 22nd Floor
New York, NY 10038
(917) 637-3646
csacerdote@reprorights.org

*Attorney for Plaintiffs Greenville
Women's Clinic and Dr. Terry L. Buffkin*

* *Pro hac vice motions to be filed*

Dated: May 24, 2023

**STATE OF SOUTH CAROLINA
RICHLAND COUNTY**

PLANNED PARENTHOOD SOUTH
ATLANTIC, on behalf of itself, its patients,
and physicians and staff, *et al.*,
Plaintiffs,

v.

SOUTH CAROLINA, *et al.*,
Defendants.

**IN THE COURT OF COMMON
PLEAS FOR THE FIFTH
JUDICIAL CIRCUIT**

C/A No.: 2023-CP-[]-_____

**PLAINTIFFS' EMERGENCY
MOTION FOR A TEMPORARY
RESTRAINING ORDER**

**EMERGENCY HEARING
REQUESTED**

Pursuant to Rule 65 of the South Carolina Rules of Civil Procedure, Plaintiffs move the Court for a Temporary Restraining Order to enjoin Defendants from enforcing South Carolina's Senate Bill 474, 125th Gen. Assemb., Spec. Sess. (S.C. 2023) (hereinafter "S.B. 474" or the "Act"), which bans abortion after approximately six weeks of pregnancy with very limited exceptions. Plaintiffs, the last remaining outpatient abortion providers in South Carolina, seek emergency relief to preserve the status quo as it stood prior to the Act's enactment. Plaintiffs request an emergency hearing on this motion at the Court's earliest convenience—today, if possible.

As explained in the accompanying memorandum in support, its attached affidavits and exhibits, the complaint, and its attached exhibit, injunctive relief is urgently necessary to prevent continued irreparable harm to Plaintiffs and their physicians, staff, and patients from S.B. 474 taking effect and banning the vast majority of abortions in South Carolina. Plaintiffs have numerous patients scheduled for abortion services in the coming days, including Thursday, May 24, 2023, and Friday, May 26, 2023. Most of these patients will almost certainly be past S.B. 474's gestational age limit. Unless S.B. 474 is enjoined, these patients will be forced to travel out of state and wait days or weeks for an abortion, if they can obtain an abortion at all, and endure financial,

physical, and emotional costs of forced pregnancy, for which they cannot be made whole after judgment.

In January, the South Carolina Supreme Court held that a virtually identical abortion ban violates the South Carolina Constitution's right to privacy. S.B. 474 suffers from the same infirmity. The Court should therefore block its enforcement immediately by granting Plaintiffs' motion for a temporary restraining order and enjoin Defendants and their officers, employees, servants, agents, appointees, or successors from administering, preparing for, enforcing, or giving effect to S.B. 474 and any other South Carolina statute or regulation that could be understood to give effect to S.B. 474, including through any future enforcement actions based on abortions performed during the pendency of an injunction.

A proposed order will be filed separately.

Respectfully submitted,

/s/ M. Malissa Burnette

M. Malissa Burnette (SC Bar No. 1038)
Kathleen McDaniel (SC Bar No. 74826)
Grant Burnette LeFever (SC Bar No. 103807)
Burnette Shutt & McDaniel, PA
P.O. Box 1929
Columbia, SC 29202
(803) 904-7913
mburnette@burnetteshutt.law
kmcDaniel@burnetteshutt.law
glefever@burnetteshutt.law

Attorneys for Plaintiffs

Catherine Peyton Humphreville*
Kyla Eastling*
Planned Parenthood Federation of
America
123 William Street
New York, NY 10038
(212) 965-7000
catherine.humphreville@ppfa.org
kyla.eastling@ppfa.org

*Attorneys for Plaintiff Planned
Parenthood South Atlantic and Dr.
Katherine Farris*

Caroline Sacerdote*
Center for Reproductive Rights
199 Water Street, 22nd Floor
New York, NY 10038
(917) 637-3646
csacerdote@reprorights.org
*Attorney for Plaintiffs Greenville
Women's Clinic and Dr. Terry L. Buffkin*

** Pro hac vice motions to be filed*

Dated: May 24, 2023

**STATE OF SOUTH CAROLINA
RICHLAND COUNTY**

PLANNED PARENTHOOD SOUTH
ATLANTIC, on behalf of itself, its patients,
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Plaintiffs,

v.

SOUTH CAROLINA, *et al.*,
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**IN THE COURT OF COMMON
PLEAS FOR THE FIFTH
JUDICIAL CIRCUIT**

C/A No.: 2023-CP-[]-_____

**PLAINTIFFS' MEMORANDUM IN
SUPPORT OF THEIR
EMERGENCY MOTION FOR A
TEMPORARY RESTRAINING
ORDER**

**EMERGENCY HEARING
REQUESTED**

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INTRODUCTION AND NATURE OF THE CASE

Just four months ago, the South Carolina Supreme Court struck down a ban on abortion after approximately six weeks of pregnancy, Senate Bill 1, 124th Gen. Assemb., Reg. Sess. (S.C. 2021) (“S.B. 1”), as an unconstitutional infringement on South Carolina’s fundamental right to privacy. *See generally Planned Parenthood S. Atl. v. State*, 438 S.C. 188, 882 S.E.2d 770 (2023), *reh’g denied* (Feb. 8, 2023) (hereinafter, “*Planned Parenthood I*”). The ink on the Supreme Court’s January 5, 2023 decision was barely dry before the Senate introduced a nearly identical law on February 1, Senate Bill 474, 125th Gen. Assemb., Spec. Sess. (S.C. 2023) (“S.B. 474” or the “Act”), again banning abortion after approximately six weeks. The General Assembly adopted S.B. 474 on May 23, 2023, and Governor Henry McMaster signed it today, immediately banning constitutionally protected health care across South Carolina. Many patients will come in for abortion care tomorrow morning, only to find out once they are already at the clinic that they can no longer access that care in South Carolina. Plaintiffs therefore seek emergency relief to prevent the widespread and irreversible harm that S.B. 474 is already inflicting and will inflict each day it remains in effect.

Without that relief, the Act will continue to cause immediate, irreparable harm to Plaintiffs, the last remaining outpatient abortion providers in South Carolina, and to their patients. Plaintiffs have numerous patients scheduled for abortion services in the coming days. But if the Act remains in effect, Plaintiffs will not be able to provide abortions to most of those patients. Relief is thus necessary to preserve the status quo as it has existed for nearly half a century.

This case is open and shut. The South Carolina Constitution contains a right to privacy. S.C. Const. art. I, § 10. And that right “has no meaning if [this State’s courts] fail to limit how closely the state may regulate our personal, medical, intimate, and moral decisions.” *Planned*

Parenthood I, 438 S.C. at 217, 882 S.E.2d at 786 (Beatty, C.J., concurring). Because decisions related to having a family are some of the most personal that South Carolinians will ever make, the Act is an unreasonable invasion of the constitutional right to privacy. *Id.*, 438 S.C. at 195, 882 S.E.2d at 774 (Hearn, J.); *Id.*, 438 S.C. at 223–24, 882 S.E.2d at 789 (Beatty, C.J., concurring); *Id.*, 438 S.C. at 268–69, 882 S.E.2d at 813–14 (Few, J., concurring in the judgment). And because this Court is bound by decisions of the South Carolina Supreme Court, it must find that this law, which is identical in all material respects to S.B. 1, likewise violates South Carolinians’ fundamental right to privacy.

If permitted to remain in effect, the Act will leave huge numbers of women¹ in South Carolina without any access to legal abortion in their communities, thus forcing people who are pregnant to carry a pregnancy to term against their will; to remain pregnant if and until they can travel out of state to access critical, time-sensitive abortion, at great cost to themselves and their families; or to attempt to self-manage their abortions outside the medical system. The Act is an affront to the dignity and health of South Carolinians. In particular, it is an attack on families with low incomes, South Carolinians of color, and rural South Carolinians, who already face inequities in access to medical care and who will bear the brunt of the law’s cruelties. South Carolinians already face a critical shortage of reproductive health care providers, including obstetrician-gynecologists, and the rate at which South Carolinians, particularly Black South Carolinians, die

¹ Plaintiffs use “woman” or “women” as a short-hand for people who are or may become pregnant, but people of many gender identities, including transgender men and gender-diverse individuals, may become pregnant and seek abortion and are also harmed by the Act. *See Reprod. Health Servs. v. Strange*, 3 F.4th 1240, 1246 n.2 (11th Cir. 2021) (“[N]ot all persons who may become pregnant identify as female.”), *reh’g en banc granted, opinion vacated on other grounds*, 22 F.4th 1346 (11th Cir. 2022), *and abrogated on other grounds by Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228 (2022) .

from pregnancy-related causes is already shockingly high. The Act will only exacerbate these serious problems unless it is enjoined.

Plaintiffs seek a temporary restraining order to prevent enforcement of S.B. 474 and to safeguard themselves and their patients from ongoing grave and irreparable harms.

STATEMENT OF FACTS

A. Access to Abortion Under Prior South Carolina Law

Plaintiffs Planned Parenthood South Atlantic (“PPSAT”) and Greenville Women’s Clinic, P.A. (“GWC”) are health care providers in South Carolina that offer a range of sexual and reproductive health services, including abortion. Decl. of Katherine Farris, M.D. (“Farris Decl.”) ¶ 21; Decl. of Terry L. Buffkin, M.D. (“Buffkin Decl.”) ¶¶ 2–3. PPSAT operates health centers in Columbia and Charleston, Farris Decl. ¶ 20, and GWC operates a clinic in Greenville, Buffkin Decl. ¶ 2. Working with physicians licensed to practice medicine in South Carolina, PPSAT and GWC run the only clinics in the state that provide abortion services to the public. Farris Decl. ¶¶ 26–27; Buffkin Decl. ¶ 15. They hold state licenses for each of their clinics to perform abortions through the end of the first trimester, *see* S.C. Code Ann. § 44-41-75(A), which corresponds to 14 weeks of pregnancy as measured from the first day of the last menstrual period (“LMP”), *id.* § 44-41-10; S.C. Code Ann. Regs. 61-12.101(S)(4); Farris Decl. ¶¶ 23, 26; Buffkin Decl. ¶ 7. Plaintiff Terry L. Buffkin, M.D., is one of the two physicians who provide care at GWC and a co-owner of the clinic. Buffkin Decl. ¶ 2. He is a board-certified obstetrician-gynecologist. *Id.* ¶ 1. Plaintiff Katherine Farris, M.D., is the Chief Medical Officer for PPSAT and is one of the physicians who provide abortion at PPSAT’s South Carolina health centers. Farris Decl. ¶ 1.

Plaintiffs’ patients seek abortions for a range of reasons. Most are already parents, having had at least one child, and they may struggle with basic unmet needs for their families. Farris Decl.

¶ 30; *see* Buffkin Decl. ¶ 35. Other patients decide that they are not ready to become parents because they are too young or want to finish school before starting a family. Farris Decl. ¶ 30; *see* Buffkin Decl. ¶ 35. Some patients have health complications during pregnancy that lead them to conclude that abortion is the right choice for them; indeed, for some, abortion is medically indicated to protect their lives and their health, including their reproductive health. Farris Decl. ¶ 30; Buffkin Decl. ¶ 35. Some people receive fetal diagnoses incompatible with sustained life after birth and wish to terminate the pregnancy rather than continue to carry a non-viable pregnancy and expose themselves to the physical and psychological changes associated with pregnancy. Farris Decl. ¶ 30; Buffkin Decl. ¶ 35. Others are struggling with substance abuse or have an abusive partner or a partner with whom they do not wish to have children for other reasons. Farris Decl. ¶ 30; Buffkin Decl. ¶ 35. Although patients generally obtain an abortion as soon as they are able, the vast majority of patients who seek abortions in South Carolina are at least six weeks pregnant by the time they do so. Farris Decl. ¶ 32; Buffkin Decl. ¶ 23. The difficulty of obtaining an abortion before they are six weeks LMP will be especially pronounced for marginalized South Carolinians, including those living in poverty and Black and Hispanic women. Farris Decl. ¶¶ 41–42. Accordingly, the vast majority of Plaintiffs’ patients will likely be unable to access abortion under the Act.

B. Legislative and Litigation History

S.B. 474 is the latest in South Carolina’s efforts to restrict access to abortion care. Following the U.S. Supreme Court’s ruling in *Dobbs v. Jackson Women’s Health Organization*, 142 S. Ct. 2228 (2022), S.B. 474’s predecessor—S.B. 1—went into effect on June 27, 2022, banning abortion in South Carolina after approximately six weeks LMP. Plaintiffs filed a challenge to S.B. 1 in this Court. By the time the South Carolina Supreme Court granted a temporary

injunction against S.B. 1's enforcement on August 17, 2022, the law had been in effect for 51 days. However, it did not take effect again because on January 5, 2023, the South Carolina Supreme Court permanently enjoined S.B. 1, finding that it impermissibly infringed upon South Carolinians' fundamental right to privacy as guaranteed in article I, section 10 of the South Carolina Constitution. Less than one month later, S.B. 474, which is virtually identical to S.B. 1, was introduced in the Senate. S.B. 474 was signed by Governor McMaster today and became immediately effective upon his signature.

C. The Act's Requirements and Impact on Plaintiffs and Patients

The Act imposes dramatic changes, almost identical to those imposed by S.B. 1, to South Carolina law by banning abortion after roughly six weeks LMP (the "Six-Week Ban"). S.B. 474, § 2 (adding S.C. Code Ann. § 44-41-630(B)). The Six-Week Ban provides that "no person shall perform or induce an abortion" where a "fetal heartbeat has been detected." *Id.*

The Act's reference to a "fetal heartbeat" is doubly inaccurate and misleading. First, the Act would ban abortion so early that the pregnancy is still an embryo, not yet a "fetus"; the developing pregnancy is an "embryo" until at least ten weeks LMP, only after which the term "fetus" is used. Farris Decl. ¶ 7. Despite this accepted distinction, the Act defines "[u]nborn child" to include an "individual organism of the species homo sapiens from conception until live birth." S.B. 474, § 2 (adding S.C. Code Ann. § 44-41-610(14)). Second, the Act would ban abortion upon the presence of any cardiac activity, even though no heart has yet developed. It defines "[f]etal heartbeat" to include any "cardiac activity, or the steady and repetitive rhythmic contraction of the fetal heart, within the gestational sac." *Id.* (amending S.C. Code Ann. § 44-41-610(6)). The term, therefore, covers not just a "heartbeat" in the lay sense, but also early cardiac activity present before development of any cardiovascular system. Farris Decl. ¶ 7. Such cardiac activity may be

detected by transvaginal ultrasound as early as six weeks LMP (and sometimes sooner). *Id.* ¶¶ 8, 25. Early in pregnancy, even with an ultrasound, this activity would not be audible but would instead appear as a visual flicker. *Id.*

The Act requires that a physician or other health care professional inform the patient of their right to view the ultrasound, hear the “fetal heartbeat” if present, and have them explained, all under the guise of “informed consent.” S.B. 474, § 2 (amending S.C. Code Ann. §§ 44-41-330(A), 44-41-630(A)). This is despite the fact that, if the ultrasound detects fetal or embryonic cardiac activity, the patient cannot have an abortion.

Both the physician who performs an abortion and the clinic in which the abortion is performed are subject to severe penalties for violating the Six-Week Ban. Those penalties include a felony offense that carries a \$10,000 criminal fine and up to two years in prison as well as revocation of professional licensure. *Id.* (adding S.C. Code Ann. §§ 44-41-630(B), 44-41-640(B), 44-41-650(C), 44-41-660(C); amending S.C. Code Ann. § 44-41-690)); *see also* S.C. Code Ann. § 16-1-40 (accessory liability). Anyone performing an abortion in violation of the Six-Week Ban could also be subject to a civil suit brought by the person on whom the abortion was performed, their parent or guardian if they are a minor at the time of the abortion or died as a result of the abortion, a solicitor or prosecuting attorney, or the Attorney General. *Id.* (amending S.C. Code Ann. § 44-41-680). In addition to actual damages, the person performing the abortion could be liable for punitive damages, statutory damages of \$10,000 for each violation of the Six-Week Ban, and attorney’s fees and costs, all of which are not subject to the limitations of South Carolina’s medical malpractice laws. *Id.*

The Six-Week Ban contains only a few narrow exceptions: (1) to save the life of the pregnant patient or prevent certain types of substantial physical impairment of a major bodily

function (the “Death or Substantial Injury Exception”) but expressly excluding any psychological conditions, emotional conditions, or suicidality of the pregnant person; (2) in cases of a fetal diagnosis that is “incompatible” with sustained life after birth (the “Fatal Fetal Anomaly Exception”); and (3) where the pregnancy is the result of rape or incest and is reported to law enforcement (the “Reported Rape Exception”). S.B. 474, § 2 (amending S.C. Code Ann. §§ 44-41-610(9) (defining “[m]edical emergency”), 44-41-650, 44-41-660; adding S.C. Code Ann. §§ 44-41-640(A)–(C)).

Of note, the Reported Rape Exception, similar to the one in S.B. 1, applies only if, within 24 hours of the abortion, the physician reports the rape or incest *and the patient’s name and contact information* to the sheriff in the county where the abortion was performed. *Id.* (amending S.C. Code Ann. § 44-41-650(B)); *see also* S.B. 1, § 3 (adding S.C. Code Ann. § 44-41-680(C)). This report must occur irrespective of the patient’s wishes and whether the provider has already complied with other applicable mandatory reporting laws. S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-650(B)). The exception makes no special provision for confidentiality. *See id.* Moreover, the Act’s reporting requirement applies only if the patient decides to have an abortion after being told that the rape will be reported; if the patient decides not to go forward, the reporting requirement does not apply. *Id.* In this way, the Act conditions the availability of abortion (but no other kind of health care) on the public disclosure of the patient’s private medical and other personal information. But unlike S.B. 1, which allowed abortions under its narrow rape and incest exception up to 22 weeks LMP, S.B. 474’s rape and incest exception is limited to 12 weeks LMP,

a window more than two months shorter. *Compare id.* (amending S.C. Code Ann. § 44-41-650(A)) with S.B. 1, § 3 (adding S.C. Code Ann. § 44-41-680(B)(1)–(2)).²

Now that the Act is in effect, Plaintiffs and their staff are forced to turn away South Carolinians in need of abortions who have a “fetal heartbeat” as defined in the Act, except for those who meet one of these very narrow exceptions. Farris Decl. ¶¶ 13, 51–54; Buffkin Decl. ¶¶ 10–11, 31. This is before many patients even know they are pregnant. Farris Decl. ¶¶ 33–37; Buffkin Decl. ¶¶ 24–28. People may not know they are pregnant until or after six weeks LMP for a range of reasons, including because of irregular menstrual cycles as a result of common medical conditions, contraceptive use, age, and breastfeeding; because many pregnant patients experience light bleeding when a fertilized egg is implanted in the uterus, which is often mistaken for a menstrual period; and because pregnancy is not always easy to detect. Farris Decl. ¶¶ 33–37; Buffkin Decl. ¶¶ 25–26. Even those who learn of their pregnancies before six weeks LMP may face additional logistical delays in arranging an appointment for an abortion, including raising money for the abortion and arranging time off work, transportation, and childcare. Farris Decl. ¶¶ 38–43, 45.

Based on their experience when S.B. 1 was in effect, Plaintiffs expect that most of the patients scheduled for abortions in the coming days will ultimately be ineligible for abortions under

² If denied an abortion, women whose pregnancies are the result of rape may be forced to share custody or otherwise parent the child with their rapist. South Carolina law permits, but does not require, a court to terminate a rapist’s parental rights only where the petitioning parent demonstrates by clear and convincing evidence (1) that the child was conceived as a result of criminal sexual conduct; (2) the rapist was convicted in a criminal court of competent jurisdiction for the criminal sexual conduct that led to the child’s conception; and (3) termination is in the best interest of the child. S.C. Code Ann. § 63-7-2570(11); *S.C. Dep’t of Soc. Servs. v. Smith*, 423 S.C. 60, 76, 814 S.E.2d 148, 156 (2018) (“The grounds for [termination of parental rights] must be proven by clear and convincing evidence.”). Some people forced to carry to term a pregnancy resulting from rape or incest will not be able to meet this strict evidentiary bar.

S.B. 474. Farris Decl. ¶ 8; Buffkin Decl. ¶ 31. For patients with detectable embryonic or fetal cardiac activity, these patients’ only option will be to remain pregnant until they are able to travel out of state to access critical, time-sensitive abortion, at great cost to themselves and their families; to carry to term and give birth against their will; or to attempt to self-manage their abortions outside the medical system. Without relief from this Court, the Act will cause grave and irreparable harm to Plaintiffs, their staff, and patients.

The devastating impact of the Act is certain and predictable based on the harms experienced while S.B. 1 was in effect. Banning abortion after approximately 6 weeks LMP forced Plaintiffs to turn away the majority of their patients seeking abortion care. Farris Decl. ¶ 51; Buffkin Decl. ¶ 29. Plaintiffs’ patients were forced to travel out of state to access abortion care if traveling was financially and logistically attainable. Farris Decl. ¶ 51. As with S.B. 1, the Act will disproportionately harm Plaintiffs’ patients with low incomes, patients of color, and patients in rural areas. Farris Decl. ¶ 52.

ARGUMENT

“The purpose of an injunction is to preserve the status quo and prevent possible irreparable injury to a party pending litigation.” *Greenville Bistro, LLC v. Greenville County*, 435 S.C. 146, 160, 866 S.E.2d 562, 569 (2021) (citing and quoting *AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 51, 674 S.E.2d 505, 509 (Ct. App. 2009)). A temporary restraining order is warranted where (1) it has a likelihood of success on the merits; (2) the plaintiff would suffer irreparable harm; and (3) there is no adequate remedy at law. *Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 586–87, 694 S.E.2d 15, 17 (2010). A “plaintiff is not required to prove an absolute legal right when seeking” temporary injunctive relief. *AJG Holdings*, 382 S.C. at 51, 674 S.E.2d at 509. A “reasonable question as to the existence of such a right” is sufficient. *Id.*

Here there can be no question of such a right when four months ago the South Carolina Supreme Court invalidated a virtually identical ban. Therefore, Plaintiffs are likely to succeed on the merits of their claim that the Act violates South Carolina's constitutional right to privacy. Moreover, the Act will inflict irreparable harm on Plaintiffs, their physicians and staff, and their patients, and there is no adequate remedy at law. Plaintiffs are therefore entitled to a temporary restraining order barring enforcement of the Act.

I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS OF THEIR RIGHT TO PRIVACY CLAIM.

Article I, section 10, of the South Carolina Constitution, unlike the U.S. Constitution, expressly guarantees a right to privacy. That section provides that “[t]he right of the people to be *secure in their persons*, houses, papers, and effects against unreasonable searches and seizures *and unreasonable invasions of privacy* shall not be violated” S.C. Const. art. I, § 10 (emphasis added). Earlier this year, the South Carolina Supreme Court held that a ban on abortion after approximately six weeks gestation violated that right. The Court recognized South Carolinians’ right to medical autonomy and “that the decision to terminate a pregnancy rests upon the utmost personal and private considerations imaginable.” *Planned Parenthood I*, 438 S.C. at 195, 882 S.E.2d at 774.

Despite this clear holding, the General Assembly has passed a law similar in all material respects to the invalidated ban, S.B. 1. It cannot be that a six-week ban can be unconstitutional one month and miraculously pass constitutional muster the next. The South Carolina Supreme Court’s ruling is unmistakably binding precedent, and thus, Plaintiffs are likely to succeed on the merits of their claim that the Act, like S.B. 1, impermissibly infringes on South Carolinians’ constitutional right to privacy.

S.B. 474, like S.B. 1, runs afoul of article I, section 10's broad textual guarantee of protections against unreasonable invasions of privacy and directly conflicts with precedent recognizing this strong privacy right under the South Carolina Constitution. *Planned Parenthood I* is controlling here: a law prohibiting abortion at the earliest weeks of pregnancy—foreclosing South Carolinians' autonomous medical decision-making about their own bodies and pregnancies—unreasonably invades South Carolinians' constitutional right to personal privacy. Finally, S.B. 474 is substantially identical to S.B. 1 and fails to cure the constitutional defects of S.B. 1 identified in *Planned Parenthood I*. For these reasons, it is unconstitutional.

A. The South Carolina Constitution Guarantees a Broad Right to Privacy.

In construing provisions of the state Constitution, South Carolina courts “‘look to the ordinary and popular meaning of the word used’ . . . [and] appl[y] rules of construction similar to those used to construe statutes.” *State v. Long*, 406 S.C. 511, 514, 753 S.E.2d 425, 426 (2014) (quoting *Richardson v. Town of Mount Pleasant*, 350 S.C. 291, 294, 566 S.E.2d 523, 525 (2002)); see also *Planned Parenthood I*, 438 S.C. at 232, 882 S.E.2d at 794 (Beatty, C.J., concurring) (“[W]e will look to the ordinary and plain meaning of the terms and employ rules similar to statutory construction”); *Planned Parenthood I*, 438 S.C. at 199, 882 S.E.2d at 776 (Hearn, J.) (“In interpreting this text, we must . . . give the words their plain and ordinary meaning”). “When a constitutional provision is clear, [courts] must discern the intent behind the provision only from its text, and should not resort to other evidence of intent.” *Planned Parenthood I*, 438 S.C. at 259, 882 S.E.2d at 808 (Few, J., concurring in the judgment); see also *Acker v. Cooley*, 177 S.C. 144, 145, 181 S.E. 10, 11 (1934) (acknowledging that “legislative interpretation of a constitutional provision should be given much weight” but declining to do so when the provision “is not ambiguous”).

Article I, section 10, of the South Carolina Constitution, unlike the U.S. Constitution, expressly guarantees a right to privacy. That privacy right is appropriately broad, as demonstrated by its text. “[T]he word ‘privacy’—though broad—is clear as to its scope: it includes *all forms of privacy*. . . . Thus, when used without limitation in article I, section 10, the term ‘privacy’ means *the full panoply of privacy rights* Americans have come to enjoy over the history of our Nation.” *Planned Parenthood I*, 438 S.C. at 260, 882 S.E.2d at 808-09 (Few, J., concurring in the judgment). And the text makes clear that any infringement of that right must not be “unreasonable.” S.C. Const. art. I, § 10. In other words, the “standard for reviewing the constitutionality of a statute under this provision is whether the privacy restriction is unreasonable as a matter of law.” *Planned Parenthood I*, 438 S.C. at 287, 882 S.E.2d at 823 (Few, J., concurring in the judgment); *see also Planned Parenthood I*, 438 S.C. at 238, 882 S.E.2d at 797 (Beatty, C.J., concurring) (“[R]easonableness provides a limiting princip[le.]”).

B. South Carolina Supreme Court Precedent Confirms that the Constitutional Right to Privacy Is Broad.

In addition to drawing on and being consistent with article I, section 10’s text, the South Carolina Supreme Court’s decision in *Planned Parenthood I* analyzed precedent recognizing that South Carolinians’ right to privacy is well established and includes the right to privacy in medical decision making.

In *Singleton v. State*, 313 S.C. 75, 88, 437 S.E.2d 53, 60 (1993), for example, the South Carolina Supreme Court ruled that article I, section 10 protects a person’s “right to decide what is to be done medically with one’s brain and body . . . and the freedom from unwarranted physical interference with one’s person.” In that case, a prisoner challenged the State’s efforts to forcibly medicate him to address his mental incompetence prior to execution. The Court held that “the South Carolina Constitutional right of privacy would be violated if the State were to sanction

forced medication solely to facilitate execution” *notwithstanding* his “very limited privacy interest when weighed against the State’s penological interest.” 313 S.C. at 89, 437 S.E.2d at 61.

The South Carolina Supreme Court has repeatedly reaffirmed *Singleton*. In *State v. Forrester*, the Court reiterated that article I, section 10 protects a privacy right broader than that guaranteed by the U.S. Constitution and that that right “applies both within and outside the search and seizure context.” 343 S.C. 637, 644, 541 S.E.2d 837, 841 (2001). In *Hughes v. State*, which considered the petitioner’s mental competence to waive his right to post-conviction relief, the Supreme Court echoed *Singleton*’s central holding that prisoners have a right “grounded in the state constitutional right to privacy . . . to be free from unwanted medical intrusions” such as forced medication. 367 S.C. 389, 398 n.2, 626 S.E.2d 805, 810 n.2 (2006). In *Planned Parenthood I*, too, the Supreme Court reaffirmed *Singleton*, explaining that “certain instances of medical intervention implicate the right to be secure in one’s person from unreasonable invasions of privacy.” 438 S.C. at 206, 882 S.E.2d at 780; *see also Planned Parenthood I*, 438 S.C. at 233, 882 S.E.2d at 794 (Beatty, C.J., concurring) (“Any objective reading of *Singleton* requires a conclusion that the Court officially recognized a right to bodily autonomy encompassed in our right to privacy that is protected by article I, section 10.”).

C. Restrictions on Abortion Infringe on South Carolinians’ Right to Privacy.

Restrictions on abortion infringe on the right to privacy because they encroach on the right to make decisions about what is done to one’s body. “[A]ny medical procedures a pregnant woman chooses to have—including an abortion—or chooses not to have—implicate her privacy interests.” *Planned Parenthood I*, 438 S.C. at 269, 882 S.E.2d at 814 (Few, J., concurring in the judgment). The decision whether to remain pregnant is in many ways no different than choosing to undergo other medical procedures, such as taking medication (as in *Singleton*), “organ transplants, blood

transfusions, [and] mental health treatment.” *Id.*, 438 S.C. at 252, 882 S.E.2d at 804 (Beatty, C.J., concurring). Although these procedures, like abortion, are “not specifically named in our constitution,” they nonetheless, also like abortion, “affect[] bodily integrity and medical care.” *Id.* (Beatty, C.J., concurring); *see also id.*, 438 S.C. at 206, 882 S.E.2d at 780 (“[I]n reaching [the] decision [in *Singleton*], we did not ask whether our constitution specifically prohibited forced medication of an inmate in order to carry out an execution. Just as the provision does not specifically refer to abortion, neither does it mention forcing medication on an inmate.”). Thus, as Justice Hearn recognized, courts in sister states have surveyed caselaw “where the privacy right was implicated in medical decision-making and concluded that abortion was no different.” *Id.*, 438 S.C. at 208, 882 S.E.2d at 781 (citing *Women of State of Minn. by Doe v. Gomez*, 542 N.W.2d 17, 27 (Minn. 1995)).

Indeed, there can be no question that abortion care implicates South Carolinians’ privacy rights. As the South Carolina Supreme Court has recognized, “the decision to terminate a pregnancy rests upon the utmost personal and private considerations imaginable.” *Id.*, 438 S.C. at 195, 882 S.E.2d at 774; *id.*, 438 S.C. at 217, 882 S.E.2d at 786 (Beatty, C.J., concurring) (“If the right of privacy *means anything*, it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so *fundamentally* affecting a person as *the decision whether to bear or beget a child*.” (quoting *Eisenstadt v. Baird*, 405 U.S. 438, 453 (1972))). “The privacy interests also arise in conversations a pregnant woman might have with her husband or boyfriend, her minister or other professional counselor, her doctor, and other loved ones and friends she might turn to for guidance and advice in making an informed choice about whether to continue the pregnancy.” *Id.*, 438 S.C. at 267, 882 S.E.2d at 813 (Few, J., concurring in the judgment); *see also id.*, 438 S.C. at 224, 882 S.E.2d at 789 (Beatty, C.J., concurring) (“These

decisions have traditionally been made in consultation with a woman’s medical provider, along with family, including a spouse or partner, and with considerations as to a woman’s existing physical and mental health, employment and school obligations, any existing children, and financial circumstances.”). In other words, “[t]he choice of whether to continue a pregnancy or to have an abortion is an inherently private matter that implicates article I, section 10.” *Id.*, 438 S.C. at 276, 882 S.E.2d at 818 (Few, J., concurring in the judgment).

D. The Act Reproduces S.B. 1’s Constitutional Defects.

Like S.B. 1, S.B. 474 infringes on South Carolinians’ right to privacy and is unreasonable as a matter of law. The Act imposes a ban on abortion—with narrow exceptions—at the earliest stages of pregnancy before many people even know they are pregnant. It thus entirely forecloses the opportunity for most South Carolinians to get an abortion.

In *Planned Parenthood I*, the South Carolina Supreme Court held that a law that does not allow South Carolinians a sufficient period of time to get an abortion unreasonably violates the constitutional right to privacy—and that, as a matter of law, a six-week limit is not reasonable. *E.g., id.*, 438 S.C. at 217, 882 S.E.2d at 786 (Any gestational-age based restriction on abortion “must afford a woman sufficient time to determine she is pregnant and to take reasonable steps to terminate that pregnancy. Six weeks is, quite simply, not a reasonable period of time for these two things to occur, and therefore the Act violates our state Constitution’s prohibition against unreasonable invasions of privacy.”). S.B. 474 simply duplicates S.B. 1’s unconstitutional ban on abortion after approximately six weeks LMP. S.B. 474 provides South Carolinians with a fleeting period in which to get an abortion—just four weeks after fertilization, as Justice Few recognized, and two or fewer weeks after missing a period. *See id.*, 438 S.C. at 276, 882 S.E.2d at 817–18 (Few, J., concurring in the judgment). “This is before many women . . . even know they are

pregnant.” *Id.* 438 S.C. at 195; 882 S.E.2d at 774; *accord id.*, 438 S.C. at 238, 882 S.E.2d at 797 (Beatty, C.J., concurring); *see also supra* at 8–9; Farris Decl. ¶¶ 33–37; Buffkin Decl. ¶¶ 24–28 (explaining why many do not know they are pregnant before six weeks LMP).

S.B. 474 is nearly identical to S.B. 1, and the differences between the two that do exist do not cure the constitutional defects of S.B. 1. To the contrary, S.B. 474 shortened the exception for South Carolinians who have become pregnant as a result of rape or incest from 22 weeks LMP to 12 weeks LMP. *Compare* S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-650(A)) *with* S.B. 1, § 3 (adding S.C. Code Ann. § 44-41-680(B)). Narrowing this window by more than two months makes S.B. 474 less reasonable than S.B. 1, not more so.

At bottom, because the Act is materially identical to S.B. 1, it cannot stand. Plaintiffs are likely to succeed on the merits of their constitutional right to privacy claim. A ban on abortion “usurps a woman’s authority to make medical decisions regarding her reproductive health, including the decision whether to have children, and places this power, instead, solely in the hands of a political body.” *See Planned Parenthood I*, 438 S.C. at 223, 882 S.E.2d at 789 (Beatty, C.J., concurring). By banning abortion upon identification of embryonic or fetal cardiac activity, the Act prevents pregnant people from exercising autonomy over their bodies, and in turn, the course of their lives. Plaintiffs are thus likely to prevail on their claim that the Act violates the right to privacy guaranteed by article I, section 10.

II. THE ACT WILL IRREPARABLY HARM PLAINTIFFS AND THEIR PATIENTS.

In addition to the irreparable harm of violating constitutional rights, S.B. 474 is already causing grave harm by forcing Plaintiffs to turn away the vast majority of South Carolinians seeking abortions. As noted above, Plaintiffs have many patients scheduled for abortion services during the remainder of this week; most of these South Carolinians will be beyond S.B. 474’s

gestational age limit, and few, if any, will fall within S.B. 474's narrow exceptions. As a result, Plaintiffs will be forced to turn them away. *See* Farris Decl. ¶¶ 13, 91; Buffkin Decl. ¶ 31.

“[W]hether a wrong is irreparable” is a question that is “not decided by narrow and artificial rules,” but instead determined based on the facts of the case. *Kirk v. Clark*, 191 S.C. 205, 211, 4 S.E.2d 13, 16 (1939); *see also Peek v. Spartanburg Reg'l Healthcare Sys.*, 367 S.C. 450, 626 S.E.2d 34 (Ct. App. 2005). “The Courts proceed realistically if the threatened wrong involves actual damage; the mere uncertainty of fixing the measure of such damage to the injured party may itself be sufficient to justify the exercise of equitable jurisdiction.” *Kirk*, 191 S.C. at 211, 4 S.E.2d at 16.

As an initial matter, an injunction is required to prevent a deprivation of Plaintiffs' patients' constitutionally protected right to privacy. *Planned Parenthood I*, 438 S.C. at 195, 882 S.E.2d at 774. Generally, when a plaintiff has demonstrated a loss of a constitutional right, no further showing of irreparable injury is required. *E.g., B. P. J. v. W. Va. State Bd. of Educ.*, 550 F. Supp. 3d 347, 357 (S.D. W. Va. 2021) (“When a party has shown a likelihood of a constitutional violation, the party has shown an irreparable harm.”); *Henry v. Greenville Airport Comm'n*, 284 F.2d 631, 633 (4th Cir. 1960) (“The District Court has no discretion to deny relief by preliminary injunction to a person who clearly establishes by undisputed evidence that he is being denied a constitutional right.”); 11A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2948.1 (3d ed. 2022) (collecting cases). The presumption of irreparable injury from a constitutional violation applies with special force in the context of abortion: “[T]he abortion decision is one that simply cannot be postponed, or it will be made by default with far-reaching consequences.” *Bellotti v. Baird*, 443 U.S. 622, 643 (1979); *see also Deerfield Med. Ctr. v. City of Deerfield Beach*, 661 F.2d 328, 338 (5th Cir. Unit B 1981) (infringement of constitutional right to

decide whether to have an abortion “mandates” a finding of irreparable injury because an infringement “cannot be undone by monetary relief”).³

But here, in addition, if left in place, S.B. 474 will be catastrophic for South Carolinians—as previewed with the devastating impact of S.B. 1 last year. The Act will force many people seeking abortion to carry a pregnancy to term against their will, with all of the physical, emotional, and financial costs that entails. Some South Carolinians will inevitably turn to self-managed abortion by buying pills or other items online and outside the U.S. healthcare system, which may in some cases be unsafe or expose them to criminal risk. Farris Decl. ¶ 51. And even South Carolinians who are ultimately able to obtain an abortion—either because they have been able to scrape together resources to travel out of state or if they are one of the very few who can satisfy one of the law’s narrow exceptions—will suffer irreparable harm. *Id.* ¶¶ 55–73. Finally, Plaintiffs and their staff will also suffer harms that cannot possibly be compensated after judgment.

A. South Carolinians Will Suffer Irreparable Harm from Forced Pregnancy.

The Act threatens severe, actual, and irreparable damage to South Carolinians’ lives and livelihood—harms that are more than sufficient to justify entry of injunctive relief. *See Kirk*, 191 S.C. at 211, 4 S.E.2d at 16.

The Act’s consequences for South Carolinians who lose access to time-sensitive abortion care or who are forced to seek it out of state, at great cost and delay, are substantial and entirely foreseeable. S.B. 1 was in effect from June 27, 2022 until August 17, 2022. During that time,

³ Where persuasive, South Carolina courts may look to federal case law, as well as precedent from other states, as to the scope of irreparable harm. *E.g.*, *Peek*, 367 S.C. at 455, 626 S.E.2d at 37 & n.2 (considering how other appellate courts have considered issues of loss of a professional practice to find that “[t]he complete loss of a professional practice can be an irreparable harm”); *Levine v. Spartanburg Reg’l Servs. Dist.*, 367 S.C. 458, 465 n.3, 626 S.E.2d 38, 42 n.3 (Ct. App. 2005) (citing other appellate courts’ decisions in finding that irreparable harm had occurred).

Plaintiffs—who previously provided the majority of abortions performed in South Carolina—were forced to turn away people seeking this vital health care. PPSAT was compelled to cancel 490 scheduled abortions and turn away 513 pregnant South Carolinians seeking abortions, while GWC had to turn away the vast majority of patients. Farris Decl. ¶ 51; Buffkin Decl. ¶ 29. These South Carolinians were forced to travel out of state for abortions, if they could afford to do so; to remain pregnant against their will; or to attempt to self-manage their abortions outside of the medical system. Farris Decl. ¶ 51.

If S.B. 474 remains in effect, South Carolinians will be forced to carry their pregnancies to term and give birth. *See id.* ¶ 58. For these patients, who will suffer a range of physical, mental, and economic consequences, there is no effective monetary remedy after judgment for the impact of forced pregnancy on health and bodily autonomy.

Even an uncomplicated pregnancy challenges a person's entire physiology. *Id.* ¶ 59. However, many pregnant people experience complications. *See id.* ¶¶ 59–61. Pregnancy can cause new and serious health conditions or aggravate pre-existing health conditions. *Id.* ¶ 61. It can also induce or exacerbate mental health conditions, which are excluded by the Act's Death or Substantial Injury Exception. *Id.* ¶ 62. Some pregnant patients also face an increased risk of intimate partner violence—including possible homicide, with the severity sometimes escalating during or after pregnancy. *Id.* ¶ 63. Indeed, homicide, most frequently caused by an intimate partner, is a leading cause of maternal mortality. *Id.*

Separate from pregnancy, labor and childbirth are themselves significant medical events with many risks. *Id.* ¶ 64. Between 2015 and 2019, the maternal mortality rate in South Carolina was 26.2 deaths per 100,000 live births, exceeding the national average. *Id.* And the risk of mortality from pregnancy and childbirth is approximately 14 times greater than for legal pre-

viability abortion. *Id.* ¶ 28. The health risks of childbirth also go beyond mortality. Complications from labor and childbirth occur at a rate of over 500 per 1,000 delivery hospital stays. *Id.* ¶ 65. Even a normal pregnancy with no comorbidities or complications can suddenly become life-threatening during labor and delivery. *See id.*

Patients of color are even more at risk for negative pregnancy and childbirth-related health outcomes. In particular, Black and Hispanic/Latina South Carolinians face heightened risks of pregnancy-related complications, compared to non-Hispanic white women. *Id.* ¶ 68. Maternal mortality rates in particular are especially high among people of color in South Carolina at 42.3 deaths per 100,000 live births, 2.4 times the rate for white women in the state. *Id.* ¶ 64 & n.55.

If the Act remains in effect, it will also lead to long-term negative impacts for people forced to give birth and for their existing children. Roughly 55% of PPSAT's South Carolina patients who have an abortion already have one or more children. *Id.* ¶ 30. Women who seek but are denied an abortion are, when compared to those who are able to access abortion, more likely to moderate their future goals, and less likely to be able to exit abusive relationships. *Id.* ¶ 73. Their existing children are also more likely to suffer measurable reductions in achievement of child developmental milestones and an increased chance of living in poverty. *Id.* As compared to women who received an abortion, women denied an abortion are also less likely to be employed full-time, more likely to be raising children alone, more likely to receive public assistance, and more likely to not have enough money to meet basic living needs. *Id.*

The economic impact of forced pregnancy, childbirth, and parenting will also have potentially exponential, negative effects on South Carolina families' financial stability. Some side-effects of pregnancy render people entirely unable to work, or unable to work the same number of hours as they otherwise would. *Id.* ¶ 69. Pregnancy-related discrimination can also result in lower

earnings for women during pregnancy, and the impacts of discrimination during pregnancy continue over time. *Id.* Further, South Carolina does not require private employers to provide paid family leave, meaning that for many pregnant South Carolinians, time taken to recover from pregnancy and childbirth or to care for a newborn is unpaid. *Id.* A typical South Carolinian who takes four weeks of unpaid leave could lose more than \$2,800 in income. *Id.*

Pregnancy-related health care and childbirth are also some of the costliest hospital-based health services, particularly for complicated or at-risk pregnancies. *Id.* ¶ 70. While insurance may cover most of these expenses, many pregnant patients with insurance must still pay for significant labor and delivery costs out of pocket, impacting a patient's existing children and other dependents. Beyond childbirth, raising a child is expensive in terms of direct costs and due to lost wages. *Id.* ¶ 71. In sum, pregnancy and parenting is hugely consequential in South Carolinians' lives, and being denied an abortion has long-term, negative effects on individuals' physical and mental health, economic stability, and the wellbeing of their families, including existing children.

In addition to these physical, mental, and economic injuries, the Act also imposes irreparable harm on Plaintiffs' patients by impinging on one of the most private and consequential decisions a person will make in a lifetime: whether to become or remain pregnant. *Planned Parenthood I*, 438 S.C. at 210, 882 S.E.2d at 782 (“[F]ew decisions in life are more private than the decision whether to terminate a pregnancy.”). In this way, the Act will have an impact on a person's existing family that cannot be compensated by future monetary damages. *See* Farris Decl. ¶¶ 69, 73. Many people decide that adding a child to their family is well worth the risks and consequences of pregnancy and childbirth. Conversely, together with their partners and with the support of other loved ones and trusted individuals, including religious and spiritual advisors,

thousands of South Carolinians each year determine that abortion is the right decision for them. *Id.* ¶ 30.

B. The Act Will Irreparably Harm Patients Forced to Try to Obtain Abortions Outside of South Carolina.

Although some of those forced to remain pregnant may eventually be able to obtain abortions out of state, they will also suffer irreparable injury if the Act remains in effect.

First, people will be forced to remain pregnant against their will, with all the attendant risks and medical consequences, until they can obtain out-of-state abortion care, likely later in pregnancy than if they had had abortion access in South Carolina. *Id.* ¶ 57.⁴

Second, these South Carolinians will suffer the additional costs and burdens associated with substantial travel. At this time, the nearest abortion providers outside of South Carolina to PPSAT’s Columbia health center are in Charlotte, North Carolina (the closest of which is about 98 miles away, one way); Asheville, North Carolina (about 160 miles away, one way); and Fayetteville, North Carolina (the closest of which is about 163 miles away, one way). *Id.* ¶ 55 And from PPSAT’s Charleston health center, the nearest abortion providers outside of South Carolina are in Wilmington, North Carolina (about 177 miles away, one way) and Fayetteville, North Carolina (the closest of which is about 201 miles away, one way). *Id.* The nearest abortion provider outside South Carolina to Greenville Women’s Clinic is about 65 miles away in Asheville, North Carolina. Buffkin Decl. ¶ 33.⁵ Under S.B. 1, some patients were delayed in their travel due to

⁴ See, e.g., Anna Harris, *Lowcountry Woman Shares Her ‘Difficult Abortion Decision’*, WCSC (Charleston) (Jan. 5, 2023), <https://www.live5news.com/2023/01/06/live-5-exclusive-lowcountry-woman-shares-her-difficult-abortion-decision/>; Elizabeth Cohen, Naomi Thomas & Nadia Kounang, *This Conservative Christian Couple in South Carolina Have Become Outspoken Advocates for Abortion Rights*, CNN (Dec. 23, 2022), <https://www.cnn.com/2022/12/23/health/south-carolina-abortion-ivy-grace-project/index.html>.

⁵ North Carolina has enacted a ban on abortion after 12 weeks LMP that will go into effect July 1, 2023. Senate Bill 20, 2023 Leg., 2023–24 Sess. (N.C. 2023) (“S.B. 20”). That act also contains additional restrictions that will make it particularly difficult to obtain abortion care in North

logistical and financial obstacles and could only access a more costly procedural abortion because they had exceeded the gestational age for which medication abortion is approved.⁶

Third, some patients may also be forced to compromise the confidentiality of their decision to have an abortion in order to obtain transportation or child care for their travel to an appointment out of state. Farris Decl. ¶ 56.

Each of these impacts constitutes irreparable harm. *See, e.g., Planned Parenthood of Kan. v. Andersen*, 882 F.3d 1205, 1236 (10th Cir. 2018) (“A disruption or denial of . . . patients’ health care cannot be undone after a trial on the merits.” (internal quotations omitted)); *Harris v. Bd. of Supervisors, L.A. Cnty.*, 366 F.3d 754, 766 (9th Cir. 2004) (irreparable harm where individuals would experience complications and other adverse effects due to delayed medical treatment); *Banks v. Booth*, 468 F. Supp. 3d 101, 123 (D.D.C. 2020) (same).

C. The Act’s Exceptions Do Not Cure These Irreparable Harms.

Even patients who might meet the Six-Week Ban’s limited exceptions will suffer irreparable harm in accessing abortions. Physicians caring for pregnant patients with rapidly worsening medical conditions—who, prior to the Act, could have obtained an abortion without explanation—may be forced to wait for care until their conditions become deadly or threaten substantial impairment of a major bodily function so as to meet the Death or Substantial Injury

Carolina. For example, it requires certain state-mandated information that must be given at least 72-hour prior to an abortion to be given in person, meaning people accessing abortion care in North Carolina may need to make *at least* two trips to the health center. *See* S.B. 20 (amending N.C. Gen. Stat. Ann. §§ 90-21.82(b)(1), 90-21.83A(b)(1)). In other words, the 98-mile journey from Columbia to Charlotte would actually require a South Carolinian to travel nearly 400 miles total. And while there are also abortion providers in Georgia, Georgia also currently bans abortions after about six weeks LMP. Farris Decl. ¶ 54 & n.46; Ga. Code Ann. § 16-12-141.

⁶ *See, e.g., Jocelyn Grzeszczak & Seanna Adcox, Explaining the Abortion Landscape in SC After the Supreme Court Made It a State Issue*, Post and Courier (Charleston) (July 16, 2022), https://www.postandcourier.com/politics/explaining-the-abortion-landscape-in-sc-after-the-supreme-court-made-it-a-state-issue/article_647d480a-0136-11ed-895e-dfaa316a0fc3.html.

Exception. Farris Decl. ¶ 84. Significantly, the Death or Substantial Injury Exception makes no allowances for risks to patients’ mental health, even when they are suicidal, making the Exception narrower—thereby placing more women in danger—than when South Carolina first liberalized its abortion laws in 1970, prior to *Roe v. Wade*. See S.C. Code Ann. § 16-87(1) (1970) (allowing abortion if “there is substantial risk that continuance of the pregnancy would threaten the life or gravely impair the *mental* or physical health of the woman”) (emphasis added). Again, this impact is not theoretical; while S.B. 1 was in effect, patients were forced to wait for their conditions to worsen before they could access necessary medical care, some with permanent consequences of that delay.⁷

Patients facing devastating fetal diagnoses will only be able to obtain abortions in cases of “fatal fetal anomal[ies].” S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-660). In such a case, a physician may have their “reasonable medical judgment” second guessed as to whether the fetus in fact “has a profound and irremediable congenital or chromosomal anomaly that, with or without the provision of life-preserving treatment, would be incompatible with sustaining life after birth.” *Id.* (amending S.C. Code Ann. § 44-41-610(5)).

⁷ See, e.g., Claire Donnelly, *South Carolina OB-GYNs Are Consulting Criminal Attorneys Post-Roe*, WFAE (Sept. 8, 2022), <https://www.wfae.org/health/2022-09-08/sc-ob-gyns-are-consulting-criminal-attorneys-post-ro> (“We have delayed care for other patients until they developed signs that they were sick enough for everyone to feel confident that they met the legal exception definition in the law.”); Becky Budds, *South Carolina OB-GYN Describes Practice Under Proposed Abortion Law*, WLTX (Sept. 9, 2022), <https://www.wltx.com/article/news/politics/south-carolina-ob-gyns-proposed-abortion-law/101-ea9bd1e9-c498-4457-9370-19d719a41501> (“We’ve had to stop and consult attorneys and delay people’s care while we tried to figure out if we were going to lose our medical license or go to jail if we provided the care that [pregnant patients] needed.”); Dan Ladden-Hall, *Lawmaker Tearily Explains Teen Almost Lost Uterus Because of Abortion Law He Voted For*, Daily Beast (Aug. 17, 2022), <https://www.thedailybeast.com/neal-collins-south-carolina-pol-emotional-after-teen-almost-loses-uterus-due-to-abortion-law-he-voted-for>.

Sexual assault survivors in South Carolina will be faced with choosing between abortion services and maintaining their privacy in deciding whether to come forward about the assault, a “choice” forced on no other autonomous patient in South Carolina’s medical system. Farris Decl. ¶¶ 76–81. Moreover, their opportunity to access abortion services will be further curtailed by the Act’s narrowed Reported Rape Exception that only extends until 12 weeks LMP compared to the 22-week LMP period imposed by S.B. 1.⁸

D. The Act Will Irreparably Harm Plaintiffs and Their Staff.

Plaintiffs and their physicians and staff will also be irreparably injured by the Act, which eliminates their ability to offer abortion to many South Carolinians who need it. The Act interferes with the ability of Plaintiffs—and their physicians and staff—to provide medical care consistent with their medical judgment and in support of patient wellbeing. *See Joseph v. S.C. Dep’t of Lab., Licensing & Regul.*, 417 S.C. 436, 452, 790 S.E.2d 763, 771 (2016) (recognizing physicians’ “right to practice medicine in the best interests of their patients”). Plaintiffs and staff will also face reputational harm and harm to their professional licenses from the threat of severe criminal and licensing penalties posed by the Act. These harms too are irreparable. *Peek*, 367 S.C. at 455, 626 S.E.2d at 37 (holding that a physician’s “loss of professional practice and career” was an irreparable harm); *Levine*, 367 S.C. at 465 n.3, 626 S.E.2d at 42 n.3 (same).

⁸ S.B. 1 tied its rape and incest exceptions to the “post-fertilization” age of the fetus rather than the gestational age as calculated from the first day of the last menstrual period of the pregnant person. *Compare* S.B. 1, § 3 (adding S.C. Code Ann. § 44-41-680(B)) (“the probable post-fertilization age of the fetus is fewer than twenty weeks”) *with* S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-610(7)) (defining “[g]estational age” . . . as calculated from the first day of the last menstrual period of a pregnant woman”). Twenty weeks post-fertilization roughly correlates to 22 weeks LMP. *See* Compl. for Declaratory & Injunctive Relief at 6 n.2.

III. PLAINTIFFS DO NOT HAVE AN ADEQUATE REMEDY AT LAW.

“Equitable relief is generally available only where there is no adequate remedy at law.” *Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm’n*, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989). “An ‘adequate remedy’ at law is one which is as certain, practical, complete and efficient to attain the ends of justice and its administration as the remedy in equity.” *Id.* (citing 27 *Am. Jur. 2d Equity* § 94 (1966)).

No damages award could compensate Plaintiffs and their patients for the harms inflicted by S.B. 474. In the absence of equitable relief from this Court, Plaintiffs do not have an adequate remedy at law to prevent Defendants from enforcing the Act and violating the rights of Plaintiffs’ patients under the South Carolina Constitution.

CONCLUSION

In January, the South Carolina Supreme Court made clear that a ban on abortion after approximately six weeks of pregnancy violates South Carolinians’ rights. By enacting S.B. 474, a law nearly identical to S.B. 1, the General Assembly and the Governor have disregarded this coordinate branch of government and again unreasonably infringed on South Carolinians’ right to privacy. This Court should thus grant Plaintiffs’ motion for a temporary restraining order, followed by a preliminary injunction, and enjoin Defendants and their officers, employees, servants, agents, appointees, or successors from administering, preparing for, enforcing, or giving effect to S.B. 474 and any other South Carolina statute or regulation that could be understood to give effect to S.B. 474, including through any future enforcement actions based on abortions performed during the pendency of an injunction. Plaintiffs respectfully request that the Court waive any security under S.C. R. Civ. P. 65(c), in light of the constitutional interests at stake and Plaintiffs’ critical role in

providing medical services to South Carolinians who might otherwise not have access to these services.

Respectfully submitted,

/s/ M. Malissa Burnette

M. Malissa Burnette (SC Bar No. 1038)
Kathleen McDaniel (SC Bar No. 74826)
Grant Burnette LeFever (SC Bar No. 103807)
Burnette Shutt & McDaniel, PA
P.O. Box 1929
Columbia, SC 29202
(803) 904-7913
mburnette@burnetteshutt.law
kmcDaniel@burnetteshutt.law
glefever@burnetteshutt.law

Attorneys for Plaintiffs

Catherine Peyton Humphreville*
Kyla Eastling*
Planned Parenthood Federation of
America
123 William Street
New York, NY 10038
(212) 965-7000
catherine.humphreville@ppfa.org
kyla.eastling@ppfa.org

*Attorneys for Plaintiff Planned
Parenthood South Atlantic and Dr.
Katherine Farris*

Caroline Sacerdote*
Center for Reproductive Rights
199 Water Street, 22nd Floor
New York, NY 10038
(917) 637-3646
csacerdote@reprorights.org

*Attorney for Plaintiffs Greenville
Women's Clinic and Dr. Terry L. Buffkin*

* *Pro hac vice motions to be filed*

Dated: May 24, 2023

STATE OF SOUTH CAROLINA
RICHLAND COUNTY

PLANNED PARENTHOOD SOUTH
ATLANTIC, on behalf of itself, its patients,
and physicians and staff, *et al.*,
Plaintiffs,

v.

SOUTH CAROLINA, *et al.*,
Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

C/A No.: 2023-CP-[XX]-_____

**DECLARATION OF KATHERINE
FARRIS, M.D., IN SUPPORT OF
PLAINTIFFS' EMERGENCY
MOTION FOR A TEMPORARY
RESTRAINING ORDER**

I, Katherine Farris, M.D., declare as follows:

1. I am a plaintiff in this case, and I serve as the Chief Medical Officer for Plaintiff Planned Parenthood South Atlantic ("PPSAT"). In this position, I provide oversight, supervision, and leadership on all medical services we provide, including abortion. As part of my role, I collaborate with other members of PPSAT senior management to develop policies and procedures to ensure that the medical services we provide follow evidence-based guidelines and comply with all relevant laws. I also provide direct medical services for PPSAT, including abortion services at PPSAT's South Carolina health centers.

2. The facts I state here and the opinions I offer are based on my education, my years of medical practice, my expertise as a doctor and specifically as an abortion provider, my personal knowledge, my review of PPSAT business records, information obtained through the course of my duties at PPSAT, and my familiarity with relevant medical literature and statistical data recognized as reliable in the medical profession.

3. A copy of my *curriculum vitae* is attached as **Exhibit A**.

4. I am a plaintiff in this case and submit this declaration in support of Plaintiffs' Emergency Motion for a Temporary Restraining Order to prevent enforcement of Senate Bill 474, 125th Gen. Assemb., Spec. Sess. (S.C. 2023) (hereinafter, the "Act" or "S.B. 474").

5. I understand that the Act bans the provision of abortion in South Carolina as soon as a "fetal heartbeat" is detected, as that term is defined by the Act.¹

6. As I understand the Act, "fetal heartbeat" includes any "activity . . . within the gestational sac."²

7. The term, therefore, covers not just a "heartbeat" in the medical sense, but also early cardiac activity present before development of any cardiovascular system. Moreover, as I understand the Act, a "fetal heartbeat" is not actually limited to a fetus. In the field of medicine, the developing organism present in the gestational sac during pregnancy is most accurately termed an "embryo" before approximately 10 weeks of pregnancy, as measured from the first day of a patient's last menstrual period ("LMP").³ The term "fetus" is used during pregnancy after this time. Contrary to these medical classifications, my understanding is that the Act defines "unborn child" to mean "an individual organism of the species homo sapiens from fertilization [of an egg] until live birth."⁴

8. Accordingly, as I understand the Act, it prohibits abortion any time after identification of embryonic or fetal cardiac activity. Based on my medical experience and expertise, that activity may be detected by vaginal ultrasound as early as six weeks of pregnancy LMP (and sometimes sooner). By that point in pregnancy, a vaginal ultrasound may reveal a ring,

¹ S.B. 474, § 2 (adding S.C. Code Ann. § 44-41-630(B)).

² *Id.* (amending S.C. Code Ann. § 44-41-610(6)).

³ The LMP method of pregnancy dating can be accomplished by patient self-reporting and, when appropriate, confirmed via ultrasound.

⁴ S.B. 474, § 2 (adding S.C. Code Ann. § 44-41-610(14)).

which represents the round sac within the uterus, and an electrical impulse that appears as a visual flicker on the edge of the sac and therefore, although this is not what one would think of as a “heartbeat,” the Act’s restrictions would begin to apply at this extremely early stage.⁵ This activity cannot be made audible at that stage of pregnancy.⁶ As described further below, most patients do not realize they are pregnant until after six weeks LMP.

9. My understanding is that the Act’s exceptions are very narrow. A physician could provide an abortion after embryonic or fetal cardiac activity is detectable only if the abortion is necessary to save the patient’s life, to prevent limited types of harm to the pregnant patient, and in other narrow circumstances involving rape, incest, and fatal fetal anomalies.⁷

10. I understand that the Act’s ban on abortion after the detection of cardiac activity comes with heavy penalties. A physician’s violation of the Act is a felony, carrying up to a two-year prison sentence and a fine of \$10,000.⁸ A physician will also have their license revoked and may also be civilly liable if they are found to have violated the Act.

11. I understand that, to comply with this ban on abortion after detectable cardiac activity, the Act requires the abortion provider or a trained colleague to perform an ultrasound before every abortion to determine whether embryonic or fetal cardiac activity can be detected, and that it is a felony to perform the abortion without taking this step, except in a medical emergency.⁹

⁵ Panos Antsaklis et al., *Early Pregnancy Scanning: Step-by-Step Overview*, 13 Donald Sch. J. of Ultrasound in Obstetrics & Gynecology 236, 237 (2019).

⁶ Saeed Abdulrah Alnuaimi et al., *Fetal Cardiac Doppler Signal Processing Techniques: Challenges and Future Research Directions*, 5 Frontiers in Bioengineering & Biotechnology 3 (2017).

⁷ S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-650).

⁸ *Id.* (adding S.C. Code Ann. § 44-41-630(B)).

⁹ *Id.*

12. I further understand that the Act requires that a physician or other health care professional inform the patient of their right to view the ultrasound, hear the “fetal heartbeat” if present, and have them explained.¹⁰

13. By banning abortion at a point in pregnancy before most patients even realize they are pregnant, the Act prohibits the majority of abortions in South Carolina. Because of this law, PPSAT has already been forced to turn away numerous patients. PPSAT has 77 patients scheduled for abortion for the remainder of this week. In my clinical experience, most of these patients will be at least six weeks LMP and will not be able to obtain abortion care in the state of South Carolina, including at PPSAT’s clinics. Very few, if any, of the patients with pregnancies with detectable fetal or embryonic cardiac activity will qualify for one of the Act’s limited exceptions.

14. I anticipate that patients who can scrape together the resources will be forced to travel out of state for medical care, and many others who cannot do so will be forced to carry a pregnancy to term against their will or seek ways to end their pregnancies without medical supervision, some of which may be unsafe. I am gravely concerned about the effect that the Act has on South Carolinians’ emotional, physical, and financial wellbeing and the wellbeing of their families.

My Background

15. I am licensed to practice medicine in South Carolina, North Carolina, Virginia, and West Virginia. I am board-certified in Family Medicine. I am a member of the American College of Obstetricians and Gynecologists (“ACOG”), the National Abortion Federation, Physicians for Reproductive Health, and the American Academy of Family Physicians.

¹⁰ *Id.* § 10 (amending S.C. Code Ann. § 44-41-330(A)).

16. I obtained a bachelor's degree in molecular and cellular biology from Northwestern University in 1995 and a medical degree from Northwestern University Medical School in 2000. I completed an internship and residency in Family Medicine at Valley Medical Center in Renton, Washington. I served as Chief Resident from 2002 to 2003.

17. I have worked for PPSAT and a predecessor organization since 2009. Throughout that time, I have provided comprehensive family planning services, including medication abortion and abortion by procedure. I have also served in a range of leadership positions, including as Laboratory Director, Acting Vice President of Patient Services, and as an Interim Abortion Facility Administrator.

18. Before joining PPSAT, I provided full-spectrum family medicine in private practice and in a hospital setting in Massachusetts. That practice included comprehensive family planning and reproductive health care, as did my work in an earlier position with Planned Parenthood League of Massachusetts. I have provided medication abortion and abortion by procedure since 2003.

PPSAT and Its Services

19. PPSAT is a not-for-profit corporation that is headquartered in North Carolina.

20. PPSAT and its predecessor organizations have provided health care in South Carolina for more than four decades. We have two health centers in South Carolina—one in Columbia and the other in Charleston. I provide abortion services as needed for PPSAT in South Carolina, among other locations.

21. We offer our patients a range of family planning and reproductive health services and other preventive care at these centers. This care includes well-person exams; contraception (including long-acting reversible contraception or "LARC") and contraceptive counseling; gender-

affirming hormone therapy, as well as menopausal hormone replacement therapy; screening for breast and cervical cancers; screening and treatment for sexually transmitted infections (“STIs”); pregnancy testing and counseling; physical exams; and medication abortion and abortion by procedure.

22. Medication abortion involves the use of medication taken to safely and effectively end an early pregnancy in a process similar to a miscarriage. Abortion by procedure involves the use of gentle suction and/or the insertion of instruments through the vagina to empty the contents of a patient’s uterus. Although sometimes known as “surgical abortion,” abortion by procedure does not involve surgery in the conventional sense. It does not require an incision into the patient’s skin or a sterile field.

23. At both the Columbia and Charleston health centers, PPSAT provides abortion only in the first trimester of pregnancy. Before the Act took effect, and other than when S.B. 1, 124th Gen. Assemb., Reg. Sess. (S.C. 2022) (“S.B. 1”), was in effect last summer, PPSAT has generally provided medication abortion up to 11 weeks of pregnancy LMP) and abortion by procedure up to 14 weeks LMP. As a point of reference, a full-term pregnancy typically lasts approximately 40 weeks LMP.

24. Prior to the Act taking effect, and other than when S.B. 1 was in effect last summer, on the day of a patient’s abortion appointment, PPSAT staff would perform an ultrasound if medically indicated.

25. At four weeks LMP, a transvaginal ultrasound might show the gestational sac as a ring within the uterus, but the yolk sac and embryo likely would not yet be visible. At five weeks LMP, the ultrasound might show the yolk sac as well as the gestational sac. By six weeks LMP, the ultrasound image would include the gestational sac, the yolk sac, and the embryo, and the

electrical impulse that constitutes embryonic cardiac activity at this stage would usually be visible as a flicker within the embryo. Sometimes this flicker is visible as early as partway through the fifth week LMP.

26. PPSAT's health centers are licensed as "abortion clinic[s]" under South Carolina law, a license that is required for any facility other than a hospital that performs five or more first-trimester abortions in a month or any second-trimester abortions.¹¹ PPSAT's physicians at the Columbia and Charleston health centers are licensed to practice medicine in South Carolina.

27. According to South Carolina's Department of Health and Environmental Control, there is only one abortion clinic in South Carolina other than PPSAT.¹² That provider, Greenville Women's Clinic, is also a plaintiff in this case.

Access to Abortion in South Carolina

28. Legal abortion is one of the safest procedures in contemporary medical practice and is far safer than childbirth.¹³ Less than 1% of women obtaining abortions experience a serious complication.¹⁴ The risk of a patient experiencing a complication that requires hospitalization is even lower, approximately 0.3%.¹⁵ A woman's risk of death associated with childbirth nationwide is approximately fourteen times higher than that associated with abortion,¹⁶ and every pregnancy-

¹¹ S.C. Code Ann. § 44-41-75(A).

¹² *Find a Facility: Abortion Clinics*, S.C. Dep't of Health & Env't Control, Health Facilities & Servs., <https://sc-dhec.maps.arcgis.com/apps/webappviewer/index.html?id=e8b4eea83cab491bb3e3663093e14656> (last visited May 24, 2023).

¹³ See, e.g., Nat'l Acads. of Scis., Eng'g, & Med. ("Nat'l Acads."), *The Safety and Quality of Abortion Care in the United States*, at 10, 59, 79 (2018), available at <http://nap.edu/24950>.

¹⁴ Ushma Upadhyay et al., *Incidence of Emergency Department Visits and Complications After Abortion*, 125 *Obstetrics & Gynecology* 175, 175 (2015).

¹⁵ *Id.*

¹⁶ Elizabeth G. Raymond & David A. Grimes, *The Comparative Safety of Legal Induced Abortion and Childbirth in the United States*, 119 *Obstetrics & Gynecology* 215, 216 (2012); see also Nat'l Acads., *supra* note 13, at 75 tbls. 2-4 (finding the risk to be approximately twelve times higher).

related complication is more common among women having live births than among those having abortions.¹⁷

29. Abortion is also very common: approximately one in four women in this country will have an abortion by age forty-five.¹⁸

30. Patients' decisions to have an abortion often involve multiple considerations.¹⁹ The majority—55% in 2022—of PPSAT's South Carolina patients who have an abortion are already parents. Our patients with children understand the obligations of parenting and decide to have an abortion based on what is best for them and their existing families, which may already struggle to make ends meet. Other patients decide that they are not ready to become parents because they are too young or want to finish school before starting a family. Some patients have health complications during pregnancy that lead them to conclude that abortion is the right choice for them. In some cases, patients are struggling with substance abuse and decide not to become parents or have additional children during that time in their lives. Still others have an abusive partner or a partner with whom they do not wish to have children for other reasons. In all of these cases, our patients decide that abortion is the best option for themselves and their families.

31. Regardless of the reasons that bring a patient to us, PPSAT is committed to providing high-quality, compassionate abortion services that honor each patient's dignity and autonomy. PPSAT trusts its patients to make the best decisions for themselves and their families.

¹⁷ Raymond & Grimes, *supra* note 16, at 216.

¹⁸ Rachel K. Jones & Jenna Jerman, *Population Group Abortion Rates and Lifetime Incidence of Abortion: United States, 2008–2014*, 107 Am. J. Pub. Health 1904, 1907 (2017).

¹⁹ See, e.g., M. Antonia Biggs et al., *Understanding Why Women Seek Abortions in the US*, 13 BMC Women's Health 1 (2013).

Timing of and Barriers to Abortion Services in South Carolina

32. Most patients obtain an abortion as soon as they are able, and the vast majority of abortions in the United States and in South Carolina take place in the first trimester of pregnancy.²⁰ According to data from the South Carolina Department of Health and Environmental Control from 2021, approximately 6,300 abortions were performed across the state in 2021, of which more than 99% occurred before approximately 15 weeks LMP.²¹

33. Many patients do not learn they are pregnant before six weeks LMP, with many patients facing physiological limitations in pregnancy detection. Some people have fairly regular menstrual cycles; a four week cycle is common. For a person with a regular four week cycle, fertilization typically occurs at two weeks LMP. Thus, a person with a highly regular, four week cycle would already be four weeks LMP when she misses her period, and before that time, most over the counter pregnancy tests would not be sufficiently sensitive to detect her pregnancy.

34. People can also have regular cycles of different lengths. Some individuals can go six to eight weeks, or even more, without experiencing a menstrual period.

35. For those who menstruate, it is also extremely common to have irregular cycles for a variety of reasons, including certain common medical conditions, contraceptive use, and age. Breastfeeding can suppress menstruation for weeks or months, after which someone's menstrual cycle may return but be irregular for a period of time. Those who have had a miscarriage in the last six months may also have a higher likelihood of an irregular period contributing to delayed

²⁰ Ctrs. for Disease Control & Prevention ("CDC"), *Reproductive Health: CDC's Abortion Surveillance System FAQs*, https://www.cdc.gov/reproductivehealth/data_stats/abortion.htm (last reviewed November 22, 2021) ("Nearly all abortions in 2020 took place early in gestation: 93.1% of abortions were performed at ≤ 13 weeks' gestation."); S.C. Dep't of Health & Env't Control, *A Public Report Providing Statistics Compiled from All Abortions Reported to DHEC—2021* (2022), available at https://scdhec.gov/sites/default/files/media/document/2021-Abortion_SC-Report.pdf (providing data for abortions performed before 13 weeks "postfertilization," i.e., 15 weeks LMP).

²¹ S.C. Dep't of Health & Env't Control., *supra* note 20.

pregnancy detection.²² Cycle irregularity is more common among young women, Hispanic women, and women with common health conditions, such as diabetes and polycystic ovary syndrome.²³

36. Some pregnant patients experience light bleeding that occurs when a fertilized egg is implanted in the uterus. This implantation bleeding is often mistaken for a menstrual period. Further, although some pregnant people experience nausea and vomiting early in pregnancy, many do not.

37. Also, pregnancy itself is not always easy to detect. On average, people are unaware of their pregnancies until between five and six weeks gestation.²⁴ However, various individual characteristics during pregnancy, including younger age, lower educational attainment, and lower poverty-income ratios, are associated with later pregnancy awareness.²⁵ Use of hormonal contraceptives is also associated with delayed pregnancy awareness.²⁶

38. Moreover, even after a patient learns that she is pregnant, arranging an appointment for an abortion may take some time as the logistical process presents its own delays. Logistical delays are often most pronounced for women with two or more children, minors, Black non-Hispanic women, and those living in poverty.²⁷

39. There are only three abortion clinics in South Carolina. Due to provider availability and operational demands, each of PPSAT's health centers generally provides abortion only two

²² Lawrence B. Finer et al., *Timing of Steps and Reasons for Delays in Obtaining Abortions in the United States*, 74 *Contraception* 334, 338 (2006).

²³ Jenna Nobles et al., *Menstrual Irregularity as a Biological Limit to Early Pregnancy Awareness*, 119 *Proc. of the Nat'l Acad. of Scis.* 1 (2022).

²⁴ Amy M. Branum & Katherine A. Ahrens, *Trends in Timing of Pregnancy Awareness Among US Women*, 21 *Maternal & Child Health J.* 715 (2017).

²⁵ Finer et al., *supra* note 22 (finding that minors took a week longer than all other age groups to suspect they had become pregnant).

²⁶ Branum et al., *supra* note 24.

²⁷ Finer et al., *supra* note 22, at 339.

days per week. As a result, even assuming that we have sufficient appointments to meet patient demand each week, patients generally cannot obtain an appointment immediately (even assuming they have met the requirements of South Carolina's twenty-four hour mandatory delay law, as discussed below).

40. For patients living in poverty or without insurance, travel-related financial barriers also help explain why the majority of our patients do not—and realistically could not—obtain abortions before detection of embryonic or fetal cardiac activity.

41. South Carolina has the nation's tenth highest rate of poverty among women: nearly 15% of women in South Carolina live in poverty, exceeding the national average of 12%,²⁸ and that rate rises to more than 22% among Black women, 19% among Latina women, and over 36% for Native women in South Carolina.²⁹ More than 38% of female-headed households in South Carolina live in poverty,³⁰ and South Carolina has the tenth highest rate of children living in poverty in the nation, at nearly 20%.³¹

42. These patients face particularly high barriers to obtaining abortions, including, but not limited to raising money for the abortion and associated travel and childcare costs and inability to take time off work.

43. The lack of comprehensive insurance coverage also poses a barrier to South Carolina women confirming they are pregnant and obtaining abortion coverage when they need it.

²⁸ *South Carolina*, Nat'l Women's L. Ctr., <https://nwlc.org/state/south-carolina> (last visited May 24, 2023).

²⁹ *Women in Poverty, State by State 2021*, Nat'l Women's L. Ctr. (Oct. 7, 2022), <https://nwlc.org/resource/women-in-poverty-state-by-state-2022/>.

³⁰ *Id.*

³¹ United Health Found., Am.'s Health Rankings, *2022 Health of Women and Children Report*, at 83 (2022), available at https://assets.americashealthrankings.org/app/uploads/ahr_2022_hwc_executive_brief.pdf.

Notably, South Carolina is one of just twelve states that have not expanded Medicaid,³² and uninsured rates among South Carolina women of reproductive age (15.8%) are worse than the national average of 11.7%.³³ Unsurprisingly, more than 18% of women in South Carolina reported not receiving health care in the prior 12 months due to cost.³⁴ Even those patients who *do* have health insurance rarely have access to abortion coverage. With very narrow exceptions, South Carolina bars coverage of abortion in its Medicaid program, and it prohibits coverage of abortion in private insurance plans offered on the state's Affordable Care Act exchange,³⁵ an important source of health insurance for individuals who do not have access to employer-sponsored health coverage and who do not qualify for Medicaid.

44. South Carolina's lack of investment in health care is reflected in health outcomes. Since 1990, South Carolina has been among the ten worst states in overall health outcomes; it currently ranks 41st out of 50.³⁶ Meanwhile, South Carolina has the tenth highest rate of mortality for women ages 20 to 44³⁷ and the seventh highest rate of mortality for infants under age one,³⁸

³² *Status of State Medicaid Expansion Decisions: Interactive Map*, Kaiser Fam. Found. (Mar. 27, 2023), <https://www.kff.org/medicaid/issue-brief/status-of-state-medicaid-expansion-decisions-interactive-map/>.

³³ Urb. Inst., *Insurance Coverage Among Women of Reproductive Age in South Carolina*, at 1 (2019), available at <https://www.urban.org/sites/default/files/2019/07/24/factsheet-uninsured-women-sc.pdf>.

³⁴ *South Carolina*, Nat'l Women's L. Ctr., *supra* note 28.

³⁵ Kaiser Fam. Found., *supra* note 32; *Regulating Insurance Coverage of Abortion*, Guttmacher Inst., <https://www.guttmacher.org/state-policy/explore/regulating-insurance-coverage-abortion> (last updated Mar. 1, 2023).

³⁶ United Health Found., *Overall in South Carolina*, Am.'s Health Rankings, <https://www.americashealthrankings.org/explore/measures/Overall/SC> (last visited May 24, 2023).

³⁷ United Health Found., *Mortality Rate—Women in South Carolina*, Am.'s Health Rankings, https://www.americashealthrankings.org/explore/measures/mortality_women/SC (last visited May 24, 2023).

³⁸ United Health Found., *Infant Mortality in South Carolina*, Am.'s Health Rankings, https://www.americashealthrankings.org/explore/measures/IMR_MCH/SC (last visited May 24, 2023).

with a rate of 7.3 infant deaths per 1,000 live births among all women.³⁹ And even this unacceptably high rate of death conceals a stark racial disparity: while South Carolina's infant mortality rate is 5.2 infant deaths per 1,000 live births among white women, that rate rises to 12.7 infant deaths per 1000 live births among Black women.⁴⁰

45. Patients living in poverty and without insurance must often make difficult tradeoffs of other basic needs to pay for their abortions. Many patients must seek financial assistance from extended family and friends to pay for care as well—a process that takes time. Many patients, and especially patients who already have children, must navigate other logistics, such as inflexible or unpredictable job hours and childcare needs, that may delay the time when they are able to obtain an abortion.⁴¹

46. In addition to the medical and practical impediments to patients' obtaining an abortion—particularly before six weeks LMP—that I have just described, South Carolina has also enacted numerous medically unnecessary statutory and regulatory requirements that must be met before a patient may obtain an abortion. For example, South Carolina requires PPSAT to ensure that patients have available, at least twenty-four hours in advance of an abortion, certain state-mandated information designed to discourage them from having an abortion.⁴² Practically speaking, the effect of this twenty-four hour delay law lasts far longer than one day, which may push even patients who have discovered they are pregnant, decided to have an abortion, and

³⁹ S.C. Dep't of Health & Env't Control, *Infant Mortality and Selected Birth Characteristics: 2021 South Carolina Residence Data* (Apr. 2023), available at <https://scdhec.gov/sites/default/files/Library/CR-012142-2021.pdf>.

⁴⁰ *Id.*

⁴¹ Lawrence B. Finer et al., *Timing of steps and reasons for delays in obtaining abortions in the United States*, 74 *Contraception* 334, 343 (2006).

⁴² S.C. Code Ann. § 44-41-330(C).

scheduled an appointment prior to six weeks LMP past the six week limitation by the time they actually arrive at the health center for their abortion appointment.

47. The impossibility of obtaining an abortion within the time permitted by the Act is all the more clear for our minor patients who are under seventeen. Minor patients without a history of pregnancy may be less likely to recognize early symptoms of pregnancy than older patients who have been pregnant before. Furthermore, some of these patients cannot obtain written parental authorization for an abortion as required by state law and must obtain a court order permitting them to receive care.⁴³ A court may take up to seventy-two hours to rule on a patient's petition to bypass the state's parental-consent law for abortions,⁴⁴ not including any time that may be necessary for a minor patient to appeal an unfavorable decision. That process cannot realistically happen before a patient's pregnancy reaches six weeks LMP.

48. South Carolina law also prohibits the use of telemedicine for the provision of medication abortion, closing off a safe and effective option for many patients to obtain an abortion.

49. For patients who would not qualify for the rape exception—either because they decided they do not want their assaults reported or they are experiencing interpersonal violence but have not become pregnant as the result of rape or incest—obtaining an abortion before six weeks LMP will be exceedingly difficult, if not impossible. For patients who qualify for the rape exception because they have become pregnant as a result of sexual assault or incest and they decide to have an abortion despite the mandatory reporting requirement, obtaining an abortion before twelve weeks LMP is still incredibly difficult.

50. For all of these reasons, prior to S.B. 474 taking effect, the majority of PPSAT's abortion patients in South Carolina did not obtain an abortion until after six weeks LMP.

⁴³ See *id.* §§ 44-41-31 to 33.

⁴⁴ See *id.* § 44-41-32(5).

The Act's Effects

51. The devastating effects of banning abortion are not theoretical; S.B. 1, which banned abortion after approximately six weeks LMP, was in effect in South Carolina from June 27, 2022 to August 17, 2022, when it was enjoined by the South Carolina Supreme Court. It forced PPSAT to stop providing the majority of all abortions we previously performed in South Carolina,⁴⁵ to the detriment of our patients' health, wellbeing, and financial security. During the 51 days that S.B. 1 was in effect, PPSAT had to cancel 490 scheduled abortions and turn away 513 additional pregnant South Carolinians seeking an abortion because they were beyond the gestational age limit. These numbers do not account for patients who scheduled abortions in other states—if they could afford to do so—rather than coming to our health centers because they knew they had passed S.B. 1's gestational age limit. They also do not include South Carolinians who remained pregnant against their will or tried to self-manage their abortions outside of the medical system.

52. As with S.B. 1, the Act's impact will be harshest for our patients with low incomes, patients of color, and patients who live in rural areas. Roughly half of our abortion patients in our South Carolina health centers are Black, and in 2022, those health centers provided abortion services to patients residing in all but three South Carolina counties.

53. As described above, the earliest a person could reasonably expect to learn that she is pregnant is at four weeks LMP. Accordingly, a South Carolinian would have roughly two weeks to learn she is pregnant, decide whether to have an abortion, secure the money to pay for the

⁴⁵ See S.C. Dep't. of Health & Env't Control, *A Public Report Providing Statistics Compiled from All Abortions Reported to DHEC, 2021*, at tbl. 1 (2022), available at https://scdhec.gov/sites/default/files/media/document/2021-Abortion_SC-Report.pdf (reporting number of abortions provided in South Carolina before six weeks post-fertilization (8 weeks LMP) for 2019–21).

abortion and associated care and travel, and seek and obtain an abortion at one of the three available locations in South Carolina. Based on my experience, the majority of patients, even those who suspect that they are pregnant at a very early stage, could not realistically take all of these steps before embryonic cardiac activity could be detected around six weeks LMP.

54. As described above, many other patients do not learn that they are pregnant until after six weeks LMP. Under the Act, these patients could *never* access abortion in South Carolina unless they fall into one of the Act's narrow exceptions.

Out-of-State Travel and Related Burdens

55. Under the Act, I anticipate that most South Carolinians will be forced to seek abortions in other states (if they are able to undertake the necessary travel at all), increasing their burdens and costs. Others will be denied access to abortion care entirely. From PPSAT's Columbia health center, the nearest abortion providers outside of South Carolina are in Charlotte, North Carolina (the closest of which is about 98 miles away, one way); Asheville, North Carolina (about 160 miles away, one way); and Fayetteville, North Carolina (the closest of which is about 163 miles away, one way). From our Charleston health center, the nearest abortion providers outside of South Carolina are in Wilmington, North Carolina (about 177 miles away, one way) and Fayetteville, North Carolina (the closest of which is about 201 miles away, one way). Of course, this assumes that abortion remains legal and accessible in North Carolina.⁴⁶

⁴⁶ North Carolina's ban on abortion after 12 weeks LMP as well as additional restrictions that will make accessing abortion care there particularly difficult, will soon be in effect. Senate Bill 20, 2023 Leg., 2023–24 Sess. (N.C. 2023) ("S.B. 20"). For example, the bill requires certain state-mandated information that must be given at least 72-hour prior to an abortion to be given in person, meaning anyone accessing abortion care in North Carolina may need to make *at least* two trips to a health center. *See* S.B. 20 (amending N.C. Gen. Stat. Ann. §§ 90-21.82(b)(1), 90-21.83A(b)(1)). Although there are also abortion providers in Georgia—for example, there is a clinic in Augusta that is about 77 miles from PPSAT's Columbia clinic, one way, and about 151 miles from our Charleston clinic, one way, Georgia currently bans abortions at about six weeks LMP. Ga. Code

56. The necessary travel caused by the Act will carry with it associated costs, such as lodging, gas, food, time off work, and childcare for the patient's other children. The logistics required for out-of-state travel may also force some patients to explain the reason for their travel, thus compromising the confidentiality of their decision to have an abortion in order to obtain transportation or childcare.

57. Given the logistical hurdles of traveling out of state, I expect that pregnant people able to obtain an abortion through another provider in a different state will do so later in pregnancy than they would have had they had access to care in South Carolina. The likelihood of delay is particularly high given the fact that North Carolina imposes a 72-hour waiting period on patients seeking abortion.⁴⁷ While S.B. 1 was in effect, I and other providers at PPSAT routinely witnessed patients struggle to overcome all of the barriers associated with out-of-state travel and have to delay their care by weeks or more in the process. Although abortion is very safe, the physical risks associated with abortion—as is true with pregnancy generally—do increase with gestational age.⁴⁸ Accordingly, even for patients able to travel to another state, the delays created by the Act will still increase those patients' risk of experiencing pregnancy- and abortion-related complications and prolong the period during which they must carry a pregnancy that they have decided to end. Because the cost of abortion services also increases with gestational age,⁴⁹ delays in access to care caused by the Act may impose additional financial costs on patients related to the abortion service itself.

Ann. § 16-12-141. It is thus unlikely that someone who is unable to obtain an abortion in South Carolina would travel to a Georgia clinic.

⁴⁷ See N.C. Gen. Stat. Ann. § 90-21.82.

⁴⁸ Nat'l Acads., *supra* note 12, at 77–78.

⁴⁹ R.K. Jones et al., *Differences in Abortion Service Delivery in Hostile, Middle-ground, and Supportive States in 2014*, 28 Women's Health Issues 212, 215 (2018).

Forced Pregnancy and Parenthood

58. I also expect, as a result of the Act, many patients will be unable to travel out of state to obtain an abortion in light of the costs and coordination required and will be forced to carry pregnancies to term against their will.

59. Pregnancy affects an individual's health and social circumstances. The effects of pregnancy include a dramatic increase in blood volume, an increased heart rate, increased production of clotting factors, changes in breathing, digestive complications, substantial weight gain, and a growing uterus. As a result of these and other changes, pregnant patients are at a greater risk of blood clots, nausea, hypertensive disorders, and anemia, among other complications. Some of these changes require evaluation and occasionally urgent or emergent care in order to preserve the patient's health or to save their life.

60. Many people seek emergency care at least once during a pregnancy, and people with comorbidities (either preexisting or those that develop as a result of their pregnancy), such as asthma, hypertension, or diabetes, are significantly more likely to do so.

61. Pregnancy can also aggravate preexisting health conditions, including hypertension and other cardiac disease, diabetes, kidney disease, autoimmune disorders, obesity, asthma, and other pulmonary disease. New and serious health conditions can result, including preeclampsia, deep-vein thrombosis, hyperemesis gravidarum, and gestational diabetes. People who develop pregnancy-induced medical conditions are also at higher risk of developing the same condition in subsequent pregnancies.

62. Pregnancy may also induce or exacerbate mental health conditions. A person with a history of mental illness may experience a recurrence or worsening of their illness during pregnancy. These mental health risks can be higher for patients with unintended pregnancies. In

South Carolina, 39% of pregnancies among women of reproductive age were unwanted or mistimed as of 2017.⁵⁰ For Black and Hispanic/Latino women, the rates of unintended pregnancy are likely to be even higher.⁵¹

63. Some pregnant patients also face increased risk of intimate partner violence, and the severity of the risk can escalate during or after pregnancy. Homicides, the majority of which are caused by an intimate partner, are a leading cause of maternal mortality. Compared to women who are able to receive a wanted abortion, women denied wanted abortions are more likely to experience continued intimate partner violence from the man involved in the pregnancy.⁵²

64. Labor and childbirth are significant medical events that carry risks greater than those for legal abortion in the first and second trimesters. The abortion-related mortality rate for legal abortions is only 0.7 deaths per 100,000 procedures, as compared to the national mortality rate among individuals who carry their pregnancies to term, which is 8.8 deaths per 100,000 live births.⁵³ South Carolina's maternal mortality rate exceeds the national average: between 2015 and

⁵⁰ Kathryn Kost et al., *Pregnancies and Pregnancy Desires at the State Level: Estimates for 2017 and Trends Since 2012*, Guttmacher Inst., at fig.2 (Sept. 2021), <https://www.guttmacher.org/report/pregnancy-desires-and-pregnancies-state-level-estimates-2017>.

⁵¹ See e.g. Charvonne N. Holliday et al., *Racial/Ethnic Differences in Women's Experiences of Reproductive Coercion, Intimate Partner Violence, and Unintended Pregnancy*, 20 J. of Women's Health 828, 828 (2017) (finding higher incidence of unintended pregnancy among Black and multiracial women in California in 2009); Lawrence B. Finer & Mia R. Zolna, *Declines in Unintended Pregnancy in the United States, 2008–2011*, 374 New Eng. J. of Med. 843, 850 fig.3 (2016) (finding that Black and Hispanic women of reproductive age have higher unintended pregnancy rates than their white non-Hispanic peers); Guttmacher Inst., *Unintended Pregnancy in the United States*, at 1 (Jan. 2019), available at <https://www.guttmacher.org/sites/default/files/factsheet/fb-unintended-pregnancy-us.pdf> (“At 79 per 1,000, the unintended pregnancy rate for non-Hispanic black women in 2011 was more than double that of non-Hispanic white women (33 per 1,000).”).

⁵² Sarah C.M. Roberts et al., *Risk of violence from the man involved in the pregnancy after receiving or being denied an abortion*, 12 BMC Med. 1 (2014) (finding a statistically significant reduction in physical violence over time for women who received an abortion but no such decrease for those who were denied an abortion).

⁵³ Nat'l Acads., *supra* note 13, at 74, 75 tbls. 2–4.

2019, the maternal mortality rate in South Carolina was 26.2 deaths per 100,000 live births.⁵⁴ The maternal mortality rate in South Carolina was 2.4 times higher for Black and other women of color as compared to white women.⁵⁵

65. Other complications resulting from labor and childbirth occur at a rate of over 500 per 1,000 delivery hospital stays.⁵⁶ Hemorrhage is the leading cause of severe maternal morbidity. During labor, increased blood flow to the uterus places the patient at risk of hemorrhage and possibly death. Other unexpected adverse events include transfusion, ruptured uterus (the spontaneous tearing of the uterus) or liver, stroke, perineal laceration (the tearing of the tissue around the vagina and rectum), and unexpected hysterectomy (the surgical removal of the uterus). The most severe perineal tears involve tearing between the vagina through the anal sphincter and into the rectum and must be surgically repaired. These can lead to long-term urinary and fecal incontinence and sexual dysfunction. Vaginal delivery can also lead to long-term internal injuries, including injury to the bowel and the pelvic floor, causing urinary incontinence, fecal incontinence, and pelvic organ prolapse. Anesthesia or an epidural administered during labor can create additional risks, including infection, severe headaches, and nerve damage. Women who become pregnant during their teens or after age 35 are more likely to experience complications, placenta previa and preterm labor.

⁵⁴ S.C. Maternal Morbidity & Mortality Rev. Comm., *Legislative Brief* (Mar. 2021), available at <https://scdhec.gov/sites/default/files/media/document/2021SCMMMRCLegislativeBrief.pdf>.

⁵⁵ *Id.*

⁵⁶ Anne Elixhauser & Lauren M. Wier, Stat. Br. No. 113, *Complicating Conditions of Pregnancy and Childbirth*, Healthcare Cost & Utilization Proj., at 2 tbl. 1, 5 tbl. 2 (May 2011), available at <https://www.hcup-us.ahrq.gov/reports/statbriefs/sb113.pdf>.

66. In South Carolina, 33.5% of live births in 2017 (approximately 19,000 births in all)⁵⁷ were the result of a cesarean section, as compared to 31.7% for the national average.⁵⁸ Because a cesarean section is an open abdominal surgery, patients must be hospitalized for at least a few days afterwards and the procedure carries significant risks of hemorrhage, infection, blood clots, and injury to internal organs. Cesarean sections also carry long-term risks, including an increased risk of placenta previa in later pregnancies (when the placenta covers the cervix, resulting in vaginal bleeding and requiring bed rest), increased risk of placenta accreta (when the placenta grows into and possibly through the uterine wall, potentially necessitating complicated surgical interventions, massive blood transfusions, hysterectomy, and risk of maternal death), and bowel or bladder injury in future deliveries. Individuals with a history of cesarean delivery are also more likely to need cesarean delivery with subsequent births.

67. Pregnant people with a prior history of mental health conditions also face a heightened risk of postpartum illness, which may go undiagnosed for months or even years.

⁵⁷ *S.C. Vital Records Data and Statistics, 2018 Birth Statistics*, S.C. Dep't. of Health & Env't Control., <https://scdhec.gov/vital-records/parentage/sc-vital-records-data-and-statistics> (last accessed May 24, 2023); Nat'l Ctr. for Health Stats., *Stats of the State of South Carolina, 2017*, CDC, <https://www.cdc.gov/nchs/pressroom/states/southcarolina/southcarolina.htm> (last visited May 24, 2023) (together, calculating approximate number of cesarean sections based on 2018 birth statistics and 2017 cesarean rate).

⁵⁸ Michelle J.K Osterman et al., *Births: Final Data for 2020*, 70 Nat'l Vital Stats. Reps. 1, 6 (2022), available at <https://www.cdc.gov/nchs/data/nvsr/nvsr70/nvsr70-17.pdf>.

68. In South Carolina, rates of pregnancy-related complications, including diabetes⁵⁹ and chronic hypertension;⁶⁰ postpartum depression;⁶¹ and maternal mortality⁶² are higher for Black and Hispanic/Latina women compared to non-Hispanic white women.

69. Due to structural barriers that limit access to contraceptives,⁶³ people with lower incomes experience disproportionately high rates of unintended pregnancies.⁶⁴ For people already facing an array of economic hardships, the cost of pregnancy can have especially long-term and severe impacts on their family's financial security. Many of the side-effects of pregnancy prevent patients from working the same number of hours that they had prior to pregnancy or working altogether, and patients can lose their jobs as a result. For example, some patients with hyperemesis gravidarum must adjust work schedules because they vomit throughout the day. Patients with preeclampsia must severely limit activity for a significant amount of time. Even in the absence of pregnancy-related side effects, pregnancy-related discrimination can result in lower earnings both during pregnancy and over time.⁶⁵ South Carolina does not require private employers to provide

⁵⁹ Cheryl P. Lynch et al., *Increasing Prevalence of Diabetes During Pregnancy in South Carolina*, 24 J. of Women's Health 316, 320 tbl.2 (2015).

⁶⁰ Sarah B. Laditka et al., *Racial and Ethnic Disparities in Potentially Avoidable Delivery Complications Among Pregnant Medicaid Beneficiaries in South Carolina*, 10 Maternal & Child Health J. 339, 343 (2006).

⁶¹ Michael Smith et al., *Postpartum Depression Symptoms in South Carolina, 2004-2005*, S.C. Dep't of Health & Env't Control (Dec. 2007), https://dc.statelibrary.sc.gov/bitstream/handle/10827/39022/DHEC_PRAMS_Postpartum_Depression_2007-12.pdf?sequence=1&isAllowed=; CDC, *Prevalence of Self-Reported Postpartum Depressive Symptoms—17 States, 2004–2005*, 57 Morbidity & Mortality Weekly Rep. 361, 363 tbl.1 (2008).

⁶² S.C. Maternal Morbidity & Mortality Rev. Comm., *supra* note 39, at 1.

⁶³ ACOG, *Comm. Op. No. 615: Access to Contraception* (Jan. 2015), available at <https://www.acog.org/-/media/project/acog/acogorg/clinical/files/committee-opinion/articles/2015/01/access-to-contraception.pdf>; *see also* May Sudhinaraset et al., *Women's Reproductive Rights Policies and Adverse Birth Outcomes: A State-Level Analysis to Assess the Role of Race and Nativity Status*, 59 Am. J. Preventive Med. 787, 788 (2020).

⁶⁴ Guttmacher Inst., *supra* note 50, at 1.

⁶⁵ *See, e.g.,* Nat'l P'ship for Women & Fams., *By the Numbers: Women Continue to Face Pregnancy Discrimination in the Workplace*, at 1–2 (Oct. 2016), available at <https://nationalpartnership.org/wp-content/uploads/2023/02/by-the-numbers-women-continue-to->

paid family leave, meaning that for many pregnant South Carolinians, time taken to recover from pregnancy and childbirth or to care for a newborn is unpaid.⁶⁶ On average, a person in South Carolina who takes four weeks of unpaid leave loses more than \$2,800 in income.⁶⁷

70. Aside from lost wages, pregnancy-related health care and childbirth are some of the costliest hospital-based health services, particularly for complicated or at-risk pregnancies. Many pregnant patients must pay for significant labor and delivery costs out of pocket, even with insurance coverage. In 2015, of the 98.2% of commercially-insured women who had out-of-pocket spending for their labor and delivery, the mean spending for all modes of delivery was \$4,569; the mean out-of-pocket spending for that same group of women for vaginal birth, specifically, was \$4,314; and for C-section, specifically, it was \$5,161.⁶⁸ And the average proportion of delivery costs paid by patients has increased over time.⁶⁹ Many South Carolinians lack insurance to help offset these costs at all—for example, 4 in 10 Hispanic women of reproductive age in South Carolina report not having health insurance to pay for even prenatal care, nearly triple the national average.⁷⁰

71. Beyond childbirth, raising a child is expensive, both in terms of direct costs and due to lost wages. On average, women experience a large and persistent decline in earnings following the birth of a child, an economic loss that compounds the additional costs associated

face-pregnancy-discrimination-in-the-workplace.pdf; Jennifer Bennett Shinall, *The Pregnancy Penalty*, 103 Minn. L. Rev. 749, 787–89 (2018).

⁶⁶ Nat'l P'ship for Women & Fams., *Paid Leave Means a Stronger South Carolina*, at 1 (Feb. 2022), available at <https://www.nationalpartnership.org/our-work/resources/economic-justice/paid-leave/paid-leave-means-a-stronger-south-carolina.pdf>.

⁶⁷ *May 2021 State Occupational Employment and Wage Estimates, South Carolina (Median Income, All Occupations)*, U.S. Bureau of Lab. Stat, https://www.bls.gov/oes/current/oes_sc.htm#00-0000 (last visited May 24, 2023).

⁶⁸ Michelle H. Moniz et al., *Out-of-Pocket Spending for Maternity Care Among Women With Employer-Based Insurance, 2008*, 39 Health Affrs. 18, 20 (2020).

⁶⁹ *Id.*

⁷⁰ Urb. Inst., *supra* note 33.

with raising a child.⁷¹ In South Carolina, the average cost of infant care is more than \$7,000 per year, meaning it would take a minimum wage worker 24 weeks working full time to afford childcare for a single infant.⁷² These costs can be particularly impactful for people who do not have partners or other support systems in place.⁷³

72. Most abortion patients do not consider adoption an equally acceptable substitute for abortion.⁷⁴ Placing a child for adoption can be very emotionally challenging for patients.⁷⁵ Adoption can also be also expensive, involving medical, legal, and counseling costs. Patients who choose to place their infant for adoption also face the physical risks of full-term pregnancy, labor, and delivery. In South Carolina, at least 72 children are currently waiting for adoption⁷⁶ and 3,786 children are in foster care.⁷⁷ In fiscal year 2022, 504 children of any age were adopted.⁷⁸

⁷¹ Amanda Fins, Nat'l Women's L. Ctr, *Effects of COVID-19 Show Us Equal Pay Is Critical for Mothers* (May 2020), available at <https://nwlc.org/wp-content/uploads/2020/05/Moms-EPD-2020-v2.pdf> (analyzing the U.S. Census Bureau, 2018 Current Population Survey and determining that mothers in the U.S. are paid 71 cents for every \$1 fathers make, about \$16,000 a year in lost wages).

⁷² *Child Care Costs in the United States, The cost of child care in South Carolina*, Econ. Pol'y Inst., <https://www.epi.org/child-care-costs-in-the-united-states/#/SC> (last updated Oct. 2020).

⁷³ *Id.*

⁷⁴ Liza Fuentes et al., “Adoption is just not for me”: How abortion patients in Michigan and New Mexico factor adoption into their pregnancy outcome decisions, 5 *Contraception: X* 1 (2023).

⁷⁵ Gretchen Sisson, “Choosing Life”: Birth Mothers on Abortion and Reproductive Choice, 25 *Women's Health Issues* 349, 351–52 (2015) (majority of 40 study participants describing adoption experiences as “predominantly negative,” including those who “felt they had no options available to them other than adoption,” and finding “lack of employment” as an “enduring variable[] that led participants to consider adoption despite their desire to parent”); see also Gretchen Sisson, *Who Are the Women Who Relinquish Infants for Adoption? Domestic Adoption and Contemporary Birth Motherhood in the United States*, 54 *Persps. on Reprod. Health* 46, 50 (2022) (majority of birth mothers who chose adoption reported annual income under \$5,000).

⁷⁶ *Children Eligible for Adoption*, S.C. Dep't of Soc. Servs., <https://portal.dss.sc.gov/adoptioninquiry/Search.aspx> (last visited May 24, 2023).

⁷⁷ *Foster Care Services*, S.C. Dep't of Soc. Servs., <https://reports.dss.sc.gov/ReportServer/Pages/ReportViewer.aspx?/Foster+Care> (last visited May 24, 2023).

⁷⁸ S.C. Dep't of Soc. Servs., *Report 4—Number of Adoptions Finalized, “Legally Free” Determinations, and “All Parent TPRd/Relinquished” Rulings during Each State Fiscal Year (State Total, Finalized Adoptions, Previous SFY)* (Aug. 1, 2022), available at <https://dss.sc.gov/media/3847/completed-adoptions-and-tprs-sfy-2021-2022.pdf>.

73. Women who seek but who are denied an abortion are, when compared to those who are able to access abortion, more likely to moderate their future goals and less likely to be able to exit abusive relationships. Their existing children are also more likely to suffer measurable reductions in achievement of child developmental milestones and an increasing chance of living in poverty. Finally, as compared to women who received an abortion, women who are denied abortions are less likely to be employed full-time, more likely to be raising children alone, more likely to receive public assistance, and more likely to not have enough money to meet basic living needs.⁷⁹

Other Harmful Impacts

74. Even where it is possible for patients to have an abortion in compliance with the Act and in light of all the other legal and logistical barriers, the Act will also force patients to race to a health center for an abortion to avoid missing the narrow window when abortion is legally available to them. Although patients who obtain abortions demonstrate a strong level of certainty with respect to the decision, some patients take longer to make a decision than others. And patients in South Carolina are already required to have the opportunity to review state mandated information at least twenty-four hours before obtaining an abortion.⁸⁰

75. The Act will force some South Carolinians who cannot travel out of state for care to seek abortions outside the medical system using pills or other methods that may in some instances be unsafe. People who seek abortion in these ways may also be at risk of criminal prosecution and incarceration.⁸¹ Women have already been prosecuted in a number of states,

⁷⁹ Diana Greene Foster et al., *Socioeconomic Outcomes of Women Who Receive and Women Who Are Denied Wanted Abortions in the United States*, 108 Am. J. Pub. Health 407, 409, 412–13 (2018).

⁸⁰ S.C. Code Ann. § 44-41-330(C).

⁸¹ S.C. Code Ann. § 44-41-80.

including in South Carolina, for self-managing an abortion based on offenses, such as fetal homicide and failure to report a death to a coroner.⁸²

76. The Act's exception for certain sexual assault and incest survivors will be functionally inaccessible to most affected patients—even more inaccessible than under the terms of S.B. 1. That is because the Act requires the abortion provider, when counseling a patient, to notify the patient in advance of the abortion that if she has the abortion a report to law enforcement will be required. If she goes through with the procedure, the physician will then have to report the sexual assault or incest allegation, along with the patient's name and contact information, to the county sheriff where the rape or incest occurred within twenty-four hours of the abortion. I also understand that, under S.B. 1's rape and incest exception, affected patients could obtain an abortion for up to twenty-two weeks LMP, whereas under the Act, they can only receive an abortion until twelve weeks LMP.

77. I have cared for a sizeable number of patients who have been raped. I ask all of my patients if they have a history of violence, abuse, or coercion as a screener to see if they have other needs to attend to. Sometimes, in responding to that question, a patient will tell me that the pregnancy is a result of rape or incest. Sometimes I am the first person a patient has told. We already comply with mandatory reporting obligations in South Carolina for minors and certain vulnerable adults who have experienced sexual abuse, but those reporting requirements apply based on a health care provider's knowledge of the abuse, irrespective of whether someone ultimately receives health care from us.

⁸² Andrea Rowan, *Prosecuting Women for Self-Inducing Abortion: Counterproductive and Lacking Compassion*, 18 Guttmacher Pol. Rev. 70 (2015), available at https://www.guttmacher.org/sites/default/files/article_files/gpr1807015.pdf.

78. The Act's reporting requirement will undermine patient safety because physician-patient confidentiality is critical to providing medical care. In addition, by conditioning the availability of abortion on reporting of sexual assault, the Act will deny needed care to survivors who do not wish to involve law enforcement or who do not wish to discuss the circumstances of their pregnancy as a mandatory condition of obtaining abortion. In the United States, statistics show that 78% of rape cases are never reported to the police, due to factors including trauma and fear of violent retaliation from the abuser.⁸³

79. Telling my patients who are survivors of sexual assault that they must file a police report in order for me to care for them goes against the standard of care, preventing me from providing medical care as soon as clinically appropriate, regardless of whether law enforcement is involved. In addition, the Act's mandatory ultrasound requirement will pose another barrier for patients who are survivors of rape or incest who may fear retraumatization by having an instrument placed in their vagina.

80. The Act's reporting requirement conflicts with guidelines from leading medical organizations, such as the American Medical Association, which recommends disclosure of patients' medical information without the patient's specific consent in emergent situations only to third parties "situated to mitigate the threat" and where there is a reasonable probability that the patient will seriously hurt herself or other identifiable people.⁸⁴ Similarly, the American College of Obstetricians and Gynecologists advises that physicians provide "trauma-informed care," which focuses on maintaining trust and prioritizing patient autonomy.⁸⁵ When patients cannot rely on

⁸³ Alexandra Thompson & Susannah N. Tapp, U.S. Dep't of Just., *Criminal Victimization, 2021*, at 5 (Sept. 2022), available at <https://bjs.ojp.gov/content/pub/pdf/cv21.pdf>.

⁸⁴ Am. Med. Ass'n., *Code of Med. Ethics Op. 3.2.1(e), Confidentiality*, available at <https://www.ama-assn.org/delivering-care/ethics/confidentiality> (last visited May 24, 2023).

⁸⁵ ACOG, *Comm. Op. No. 777: Sexual Assault*, 133 *Obstetrics & Gynecology* e296, e298 (2019).

their doctors to keep medical information private, they may withhold medical information, and this can lead to negative health outcomes.

81. Based on my experience treating survivors of sexual violence, I know that many fear the involvement of law enforcement so much that they would choose to forgo the abortion rather than trigger a mandatory report to law enforcement, especially if the report will reveal their name, address, and the fact that they terminated a pregnancy. These patients, too, will be forced to carry to term the pregnancy resulting from their sexual abuse, to try and access care in another state, or to otherwise self-manage their abortions.

82. The Act's exception for a medical emergency or to prevent death will also be functionally inaccessible to many patients with medical needs. The exception allows physicians to perform an abortion after the detection of fetal or embryonic cardiac activity only where the procedure is necessary to prevent a pregnant person's death or where there is a "serious risk of a substantial and irreversible physical impairment of a major bodily function . . . of the pregnant woman."⁸⁶

83. While the Act lists certain conditions that are "presumed" to meet this standard, it does not provide an explicit exception for them. It seems like I could still be second-guessed that the abortion was needed to prevent death or impairment even if the patient had one of those conditions. Moreover, pregnancy can pose a wide range of health problems that are not necessarily encapsulated by this exception. For example, pregnancy may exacerbate diabetes, hypertension, or multiple sclerosis, or cause an autoimmune disorder, such as Crohn's disease, to flare. Diabetic patients with depression or another underlying mental health condition can find their diabetes extremely challenging to manage during pregnancy.

⁸⁶ S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-640).

84. Further, pregnant patients with rapidly worsening medical conditions—who, prior to the Act, could have obtained an abortion without explanation—may be forced to wait for care until a physician determines that their conditions become deadly or threaten substantial and irreversible impairment so as to meet the exception.

85. I also expect that the Act's exclusion of psychological or emotional conditions, including suicidal ideation, as those that would not qualify under the medical exception, will harm our patients.⁸⁷ For example, psychiatric disorders may emerge for the first time during pregnancy, especially among people who have had negative reactions to hormonal contraception in the past or due to psychosocial risk factors, such as youth, poverty, substance use, or a lack of family support. These psychiatric issues can range from worsening anxiety and mood disorders to active suicidal ideation with intentions to self-harm or psychotic symptoms, such as hallucinations or intrusive thoughts. Someone with a documented history of mental illness whose condition is stable before pregnancy may experience a worsening of mental illness as a result of the hormonal and neurochemical changes to their body and stress and anxiety relating to pregnancy. Moreover, women regulating a mental health condition with medication that carries risk to the fetus may need to discontinue or modify their medication in order to avoid risking harm to the fetus, but this will significantly increase the likelihood that mental illness recurs. In these situations, the pregnant person faces an increased risk of mental illness both during and after pregnancy because it is more difficult to return to equilibrium after relapse than it is to maintain a stable condition. My understanding is that these women would not qualify for abortion services under the Act's exception for certain medical conditions.

⁸⁷ *Id.*

86. The Act also contains another new wrinkle on this exception that was not included in S.B. 1. If a patient does qualify for a medical exception, I still must “make reasonable medical efforts under the circumstances to preserve the life of the pregnant woman’s unborn child, to the extent that it does not risk the death of the pregnant woman or the serious risk of a substantial and irreversible physical impairment of a major bodily function of the pregnant woman, not including psychological or emotional conditions and in a manner consistent with reasonable medical practices.”⁸⁸ However, all abortions at PPSAT’s South Carolina facilities are provided in the first trimester, prior to fetal viability (i.e., when there is a reasonable chance of survival). Yet, the Act seems to dictate the method of abortion used or the manner in which it is performed in ways that I do not understand but about which the physician could later be second-guessed.

87. As physicians, we work with patients to identify a medical plan that best addresses the patients’ goals and risk tolerance, but we are not always able to predict when serious, potentially life-threatening complications will occur. When they do, we put the patients’ health and safety at the center of our care. By excluding all conditions but the most serious and severe physical ones from abortion eligibility and trying to dictate how we practice medicine, the Act would prevent physicians from providing treatment that is in our patients’ health and safety interest and force us to go against our oath to first do no harm.

88. The Act will also add to the pain of patients and their families who receive fetal diagnoses later in pregnancy, nearly all of which would likely not meet the Act’s narrow exception. There is no prenatal testing for fetal anomalies available at six weeks LMP or earlier. Indeed, some anomalies cannot be identified until eighteen to twenty weeks LMP. Often, these pregnancies are wanted throughout the first trimester of pregnancy and into the second. Patients facing devastating

⁸⁸ *Id.*

fetal diagnoses, and their physicians, will be forced to prove that the fetus “has a profound and irremediable congenital or chromosomal anomaly that, with or without the provision of life-preserving treatment, would be incompatible with sustaining life after birth.”⁸⁹

89. Even those patients able to qualify for one of the Act’s narrow exceptions to the six week ban would be harmed. Instead of being able to make their own personal decision whether to have an abortion, based on their own needs, values, and goals, these patients will find that decision closely scrutinized.

* * *

90. For all of these reasons, I believe that the Act will deprive PPSAT’s patients of access to critical health care and will threaten their health, safety, and lives.

91. This Court’s intervention to bar enforcement of the Act and prevent these grave harms is urgently needed: PPSAT already has abortions scheduled for 77 patients for the remainder of this week. Most of these patients’ pregnancies are likely to be at or beyond six weeks LMP, such that these patients will be prohibited from obtaining abortions if S.B. 474 remains in effect. And for some patients, leaving S.B. 474 in place for even a matter of days would effectively preclude them from obtaining an abortion in South Carolina. Many of these patients will be just days away from reaching the second trimester of pregnancy, at which point—consistent with PPSAT’s abortion clinic license—we could not provide abortion services to them in South Carolina, nor could Greenville Women’s Clinic. It is unlikely that any of these patients meet one of the Act’s limited exceptions.

92. Even if S.B. 474 is later enjoined, these patients would need to leave the state to obtain an abortion, assuming they could do so. Leaving the Act in place, even for a matter of days,

⁸⁹ *Id.* (amending S.C. Code Ann. § 44-41-610).

would also impose additional and substantial logistical, emotional, and financial burdens on patients. As discussed above, many of our patients must make advance preparations to have abortions, including by finding childcare, asking for time off work and missing out on earnings for that time, and potentially traveling long distances to reach our health centers. It is critically important that PPSAT be able to assure patients relying on their upcoming appointments that abortion services in South Carolina will remain available as planned.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: May 24, 2023


Katherine Farris, M.D.

NOTARY PUBLIC

State of NC

County of Catawba

The foregoing instrument was acknowledged before me this May 24 2023 (date) by Dr.
Katherine Farris.





Commission exp: 10/28/2027

Exhibit A

Employment

Planned Parenthood South Atlantic

Winston-Salem/Raleigh, NC

Chief Medical Officer: April 2020 – present

Duties of Affiliate Medical Director with increased focus on strategic planning, oversight of new service lines including Primary Care, and increased advocacy work in support of PPSAT mission.

Affiliate Medical Director: December 2014 – April 2020

Clinical, policy, and administrative oversight for 14 health centers located throughout NC, SC, VA, and WV.

Laboratory Director: December 2014 – present

Oversight of non-waived laboratories WS, NC; AVL, NC; WILM, NC; CLT, NC; waived laboratory VIE, WV

Infection Control Professional: 2014-present

Serves as consultant and expert on any infection prevention concerns as per medical training.

Interim Abortion Facility Administrator: December 2019 – March 2020

Acting Vice President of Patient Services: March – June 2016; May – August 2017

Interim Affiliate Medical Director: July 2013 – December 2014

Reproductive Health Care: September 2009-present

Provision of comprehensive family planning services to women of all ages as well as STI counseling, testing and treatment to men and women.

PPFA Succession Planning Task Force, Member: April 2017 – March 2021

Task force was charged with addressing some of the systemic challenges of abortion provider training and recruitment at Planned Parenthood affiliates.

Medical Directors Council (MeDC), Mentor: 2015 – present

Serve as mentor to new Medical Directors/Chief Medical Officers at other PPFA Affiliates.

BetterHealth IT Board of Directors,

Member: September 2020 – present

Chair, Compliance Committee: January 2023 – present

Board member for the organization responsible for providing revenue cycle services and supporting and rolling out Epic electronic medical records system across PPFA affiliates.

(Prior to merger and name change January 2015, organization was named Planned Parenthood Health Systems, Inc.)

Heywood Medical Group/Henry Heywood Hospital

Westminster/Gardner, MA

Family Practice/Obstetrics: August 2003 – May 2007

Meetinghouse Family Practice; 16 Wyman Rd.; Westminster, MA 01473

Provision of full-spectrum family medicine including comprehensive family planning and reproductive health care.

Planned Parenthood League of Massachusetts

Boston/Worcester, MA

Reproductive Health Care: August 2003 – May 2007

Provision of comprehensive family planning services to women of all ages.

Education

Valley Medical Center Family Practice Residency

Renton, WA

Chief Resident: 2002-2003

Residency: 2001-2003

Internship: 2000-2001

Northwestern University Medical School

Chicago, IL

Degree: MD, 1995-2000

Northwestern University College of Arts and Sciences

Evanston, IL

Degree: BA, 1991-1995

Major: Molecular and Cellular Biology

Minor: Religion Studies

Certifications/Special Training

Physician for Reproductive Health, Leadership Training Academy Fellow 2018-2019

Basic Life Support/AED, Provider: renewed 10/2021

Title X Family Planning Program Training, Provider: 2015

CLIA Laboratory Director Training, Training for non-waived laboratory director: 2013

Single-rod Hormonal Implant Insertion Training, Provider: 2011, Certificate #30001820273

Professional Organizations / Positions

American Academy of Family Physicians (AAFP): 1995-present

North Carolina Academy of Family Physicians: 2007-present

National Abortion Federation (NAF): 2003-2005, 2018-present

Physicians for Reproductive Health: 2018-present

American College of Obstetricians and Gynecologists: 2020-present

Massachusetts Academy of Family Physicians: 2003-2007

Washington Academy of Family Physicians (WAFP): 2000-2003

American Medical Women's Association (AMWA): 1995-2000

Northwestern University Chapter President: 1997-1998

Vice-President: 1996-1997

Licenses

NC Physician License, active: 143375-2009

WV Physician License, active: 26126

VA Physician License, active: 0101265486

SC Physician License, active: MMD.84073 MD

American Board of Family Physicians, Board Diplomate

Honors/Awards

Sylvia Clark Award for Creativity in Clinical Services – Recipient 2023

Honors a clinical services provider team from a Planned Parenthood affiliate who, through their creativity in clinical services, have demonstrated special commitment and ingenuity in applying the PPFA mission to ensure access to reproductive and sexual health care for all.

Press Ganey Patient Experience Top Performing Provider 2020

Ranked in the top 10% of providers across the country for providing the highest level of patient experience.

2002 Roy Virak Memorial Family Practice Resident Scholarship Recipient

Awarded by the Washington Academy of Family Practice on the basis of academic achievement, excellence in patient care, and strong service to the community.

**STATE OF SOUTH CAROLINA
RICHLAND COUNTY**

PLANNED PARENTHOOD SOUTH
ATLANTIC, on behalf of itself, its patients,
and physicians and staff, *et al.*,
Plaintiffs,

v.

SOUTH CAROLINA, *et al.*,
Defendants.

**IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT**

C/A No.: 2023-CP-[XX]-_____

**DECLARATION OF TERRY L.
BUFFKIN, M.D., IN SUPPORT OF
PLAINTIFFS' EMERGENCY
MOTION FOR A TEMPORARY
RESTRAINING ORDER**

I, Terry L. Buffkin, M.D., declare and state as follows:

1. I am a board-certified obstetrician/gynecologist ("OB/GYN") licensed to practice medicine in the State of South Carolina. I received my M.D. from Medical University of South Carolina in Charleston, South Carolina, in 1974. I completed an OB/GYN residency at Greenville Hospital System (currently known as Prisma Health) in South Carolina, which included training in the performance of abortions. Over the course of my medical career, I have regularly provided first-trimester abortions.

2. I am the co-owner of Greenville Women's Clinic ("the Clinic"), a healthcare facility in Greenville, South Carolina. I have been providing abortion services at Greenville Women's Clinic since 1976 along with Dr. Thomas W. Campbell, the other co-owner of the Clinic.

3. The Clinic has provided reproductive health care including pregnancy testing, birth control, testing and treatment for sexually transmitted diseases, general gynecological care, and abortions to patients since 1976.

4. I submit this declaration in support of Plaintiffs' Emergency Motion for a Temporary Restraining Order barring enforcement of South Carolina Senate Bill 474 ("S.B. 474")

or “the Act”). I understand that the Act bans abortions in the state, with extremely limited exceptions, as early as the detection of what the Act calls a “fetal heartbeat.” In order to effectuate this ban, the Act requires providers to, among other things, determine, by ultrasound, whether the fetus or embryo has a “detectable heartbeat.”

5. The Act places me in an impossible position: risk criminal, civil, and professional penalties for providing abortion care once cardiac activity is detected, which I cannot do, or withhold the abortion care my patients seek and need.

Background

6. Dr. Campbell and I are the only two physicians who work at the Clinic. We both provide pregnancy testing, birth control, testing and treatment for sexually transmitted diseases, general gynecological care, and abortion services.

7. The Clinic is licensed to provide first-trimester abortion care in South Carolina. Absent the Act, abortion care has historically been available at the Clinic from approximately 5 weeks LMP through 14 weeks, 0 days LMP.¹ I have generally provided medication abortion up through 10 weeks LMP and abortion by procedure up to 14 weeks, 0 days LMP.

8. The Clinic is open six days per week. Abortion care is typically provided in the mornings and early afternoons, and there is usually only one physician available at the clinic to see patients each week. We have provided abortions to thousands of patients over the years. For instance, the Clinic provided approximately 2,000 abortions in 2020 and approximately 2,500 abortions in 2021.

¹ “LMP” refers to “last menstrual period.” Pregnancy is commonly measured by the number of days or weeks that have passed since the first day of a woman’s last menstrual period. LMP may also be understood as roughly two weeks prior to fertilization.

9. The Clinic has had to double its staff to meet the influx of patients seeking abortion care in the wake of the U.S. Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*. We provided approximately 3,700 abortions in 2022, despite being unable to provide abortion care after approximately 6 weeks LMP between June 27, 2022 and August 17, 2022—the period when a nearly identical ban on abortion after approximately 6 weeks LMP was in effect before its enforcement was blocked by the South Carolina Supreme Court. So far, in 2023, the Clinic has provided approximately 2,700 abortions. Of these, a large majority of abortions were provided to patients who were beyond 6 weeks, 0 days LMP.

10. Because of the Act, we are forced to turn away most patients in need of abortions. But for the Act, the Clinic would provide abortions past detectable cardiac activity.

11. Very few, if any, of our abortion patients with detectable cardiac activity will fall within the Act's extremely narrow exceptions. As a result, the vast majority of our patients will be unable to obtain an abortion in South Carolina. Some may be able to scrape together the necessary resources to travel out of state, while many others will have no choice but to carry their pregnancies to term against their wills.

The Existing Landscape in South Carolina

12. Prior to passage of the Act, our patients already faced extreme obstacles to accessing abortion. South Carolina has imposed numerous laws that delay or impede patients from accessing abortion care. For example, South Carolina has a mandatory, twenty-four-hour waiting period before a patient can receive abortion care.

13. Outpatient abortion facilities are subject to onerous regulations and licensing requirements that do not apply to other healthcare providers.

14. And although South Carolina specifically encourages the use of telemedicine for many other types of medical care, and telemedicine is used in other states to provide medication abortions, telemedicine cannot lawfully be used in South Carolina to provide abortion care.

15. The Clinic is one of just three licensed first-trimester abortion clinics in the entire state. Our patients already face multiple challenges arranging appointments around work, school, and childcare, and obtaining transportation to the clinic. With very narrow exceptions, South Carolina bars coverage of abortion in its Medicaid program, and it even prohibits coverage of abortion in private insurance plans offered on the state's Affordable Care Act exchange. While we offer discounts to many patients, patients must pay out of pocket or seek private financial assistance for the remainder.

S.B. 474's Impact on the Clinic, Its Practices, and Patients

16. I understand that the Act bans the provision of abortion care in South Carolina upon detection of any embryonic or fetal cardiac activity, which in my experience occurs very early in pregnancy, potentially as early as 6 weeks LMP, and many months before a fetus could be viable.

17. The Act contains only narrow exceptions that will not apply to the vast majority of patients who seek abortion care after detection of a "fetal heartbeat." The Act contains an exception to prevent "the death of the pregnant woman" and to prevent "the serious risk of a substantial and irreversible impairment of a major bodily function" of the pregnant woman. S.B. 474 § 2 (amending S.C. Code Ann. § 44-41-640(A)).

18. The Act prevents physicians from acting in patients' best interests even when they are ill and facing serious health risks—unless and until the point at which the patient's life is threatened or they are faced with "substantial and irreversible impairment of a major bodily function." *Id.* In addition, the Act's narrow medical exception deliberately excludes

“psychological or emotional conditions,” cruelly depriving patients at risk of self-harm from accessing abortion care. *Id.*

19. I also understand that the Act would permit abortions in the case of a “fatal fetal anomaly,” which it defines to mean “a profound and irremediable congenital or chromosomal anomaly that, with or without the provision of life-preserving treatment, would be incompatible with sustaining life after birth.” *Id.* (amending S.C. Code Ann. §§ 44-41-610(5), 44-41-660).

20. I understand that if a patient’s pregnancy was the result of rape or incest, the physician may perform an abortion only where the pregnancy is “not more than twelve weeks” and only if they report the allegation (including the patient’s name and contact information) to the sheriff in the county where the rape or incest occurred within 24 hours, notify the patient before performing the abortion that the allegation will be reported to the sheriff, and declare in writing that the abortion was performed pursuant to this exception and that these criteria have been satisfied. *Id.* (amending S.C. Code Ann. § 44-41-650). This requirement is particularly disturbing, as patients who are victims of rape and incest present extremely sensitive situations, and the Act’s reporting requirement applies regardless of the patient’s age and even over the patient’s objection. Over the years, I have treated patients who have experienced sexual violence, and, in my experience, most of these patients do not want to file a report with law enforcement, for safety or other reasons. A physician’s approach to care for these patients should be guided by patients’ best interests within the bounds of existing reporting laws.

21. I understand that the Act also requires a physician or other health professional to inform the patient of her right to view the live ultrasound images and to “hear” the “fetal heartbeat” if present and “have them explained to her.” If the patient declines, she must complete a form

acknowledging that she declined to do so and that her decision was not based on any “undue influence” from another person. *Id.* § 10 (amending S.C. Code Ann. § 44-41-330(A)(1)(b)–(d)).

22. I understand that violations of the Act are subject to felony liability, as well as civil and professional penalties. *Id.* § 2 (amending S.C. Code Ann. §§ 44-41-630 through 44-41-660, 44-41-680 through 44-41-690); S.C. Code Ann. § 44-41-80. Given the serious nature of the penalties imposed, neither Dr. Campbell nor I would provide abortion care in violation of the Act.

23. The vast majority (over approximately three-quarters) of the Clinic’s patients seek abortion care after 6 weeks, 0 days LMP. If the ban remains in effect, most patients seeking abortions at the Clinic will not be able to obtain abortion care and will be forced to either carry their pregnancy to term and give birth against their will or go out of the state to obtain an abortion. In addition, I fear that some patients may resort to unsafe means to terminate their pregnancies.

24. Many women, including many of my patients, have no reason to suspect they may be pregnant as early as 6 weeks LMP. For a woman with an average menstrual cycle of a period every 28 days, 6 weeks LMP is just two weeks past a missed period.

25. Many women also do not have any of the physical indicators of pregnancy, including a missed period, during early pregnancy. Many women do not menstruate at regular intervals and/or sometimes go beyond 6 weeks without experiencing a menstrual period, and therefore may not realize they are pregnant when they miss a period for that reason. In addition, many women experience bleeding in early pregnancy, called implantation bleeding, that is easily and frequently mistaken for a period.

26. Further, women who have certain medical conditions, who are breastfeeding, or who are using hormonal contraceptives may not notice a missed menstrual period at 6 weeks LMP. Breastfeeding may suppress menstruation for weeks or months, and even when a woman’s period

returns, it may continue to be irregular. It is not uncommon for women who are breastfeeding to have no period for weeks or months, have irregular periods, skip periods, or have their period return and then go months before the next one. Women with certain medical conditions may have irregular periods or non-menstrual bleeding. Anxiety may cause irregular periods. And women using hormonal contraceptives can get pregnant but may not have regular periods or experience a period at all.

27. In addition, although some women experience nausea and vomiting during early pregnancy, many do not, or do not develop these symptoms until after 6 weeks LMP.

28. For all these reasons, many women may be at least 6 weeks pregnant but not realize they are pregnant.

29. When South Carolina's previous 6-week ban on abortion went into effect for nearly eight weeks in June through August of 2022, the Clinic had to turn away the majority of patients who came in seeking abortion care. In July 2022, when that ban was in effect, the Clinic was only able to provide abortion care to approximately one-third of the number of patients it served in May 2022 (immediately prior to the ban) and to approximately one-quarter of the number of patients it would go on to serve in August 2022 (the month after the ban was blocked).

30. Many patients who came to the Clinic for abortion care during that time were past the gestational limit of the 6-week ban. After having already taken time off from work or school, arranging for childcare, and finding transportation to the clinic, they would have to do it all again, but this time they would have to travel out of state to get care. This was devastating to my patients.

31. Because of the Act, we will have to turn away patients again. The Clinic already has 16 patients scheduled for procedural abortions through the end of this week and would likely have provided medication abortion to approximately 45-65 patients during that same period. Based

on my multiple decades of experience with the Clinic, most of these patients will be past 6 weeks LMP and therefore will not be able to obtain abortion care at the Clinic, or in the State at all, because of the Act.

32. Many patients will come in for abortion care this week, only to find out once they are already at the clinic that they can no longer access that care in South Carolina.

33. The closest abortion provider outside South Carolina to the Clinic is about 65 miles away in Asheville, North Carolina.² For those patients who are able to travel out of state, they will need to pay for the additional costs of travel and will likely face delays in accessing care we could have otherwise provided.

34. Many of our patients will not be able to travel out of state. A significant percentage of the Clinic's patients are enrolled in Medicaid. Patients who cannot travel will be forced to continue their pregnancies or may attempt to self-manage their abortions.

35. In my experience, women decide to have abortions for a variety of reasons, including to protect or preserve their physical or mental health; to provide care to existing children—many patients already have at least one child—and family members; to avoid forgoing educational or economic opportunities due to unplanned childbirth; and to avoid raising children with absent, unwilling, or abusive partners, just to name a few. Access to safe and legal abortion benefits the health and wellbeing of my patients and their families. For some, abortion is medically indicated to protect their lives and their health, including their reproductive health. Some people receive fetal diagnoses incompatible with sustained life after birth and wish to terminate the

² I understand that North Carolina has passed a ban on abortions after 12 weeks LMP that will go into effect on July 1, 2023.

pregnancy rather than continue to carry a non-viable pregnancy and expose themselves to the physical and psychological changes associated with pregnancy.

36. Women who are pregnant should have the ability to make their own decisions about their pregnancies, taking into account their unique values, goals, and circumstances. The Act takes that decision out of the hands of the woman and gives it to the State instead.

37. The narrow exceptions would still not allow for abortions in the vast majority of circumstances, and the patients who require abortions to avert the risk of death or to prevent substantial impairment of a major bodily function would likely need to receive care in a hospital on an emergency basis. If the Act goes into effect, it would force the Clinic to end the vast majority of its abortion care. Neither I nor the other clinician at the Clinic can risk the potential criminal, civil, and professional liability that the Act imposes.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: May 23, 2023

Terry L. Buffkin
Terry L. Buffkin, M.D.

NOTARY PUBLIC

State of SC

County of Greenville

The foregoing instrument was acknowledged before me this 5/23/2023 (date)

by Dr. Terry L. Buffkin.

Kathy Adams
(notary signature)

Kathy Adams Kathy Adams
(notary name)

My Commission Expires
January 21, 2025

(Seal)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
RICHLAND COUNTY	)	
	)	CASE NO.: 2023-CP-40-02745
	)	
PLANNED PARENTHOOD	)	
SOUTH ATLANTIC, on behalf of itself,	)	
its patients, and physicians and staff,	)	
<i>et al.</i> ,	)	
	)	Response to Emergency Motion
Plaintiffs,	)	
	)	
v.	)	
	)	
SOUTH CAROLINA, <i>et al.</i> ,	)	
	)	
Defendants.	)	

Defendants State of South Carolina and Attorney General Alan Wilson (collectively “the State”) hereby submit the following response to Plaintiffs’ Emergency Motion for a Temporary Restraining Order and/or Preliminary Injunction (“Emergency Motion”).¹ Plaintiffs in this case seek the extraordinary relief of an injunction based on meritless constitutional claims and a misreading of the South Carolina Supreme Court’s decision in *Planned Parenthood South Atlantic v. State*, 438 S.C. 188, 882 S.E.2d 770 (2023). *See Planned Parenthood South Atlantic v. State*, 438 S.C. 188, 288, 882 S.E.2d 770, 824 (2023) (Few, J., concurring in result) (“[T]here is no constitutional right to an abortion [in the South Carolina Constitution].”).

Because Plaintiffs fail to establish the required elements for a temporary injunction, this Court should deny Plaintiffs’ Emergency Motion.

¹ The State submits this memorandum in response to Plaintiffs’ Emergency Motion for a Temporary Restraining Order. In submitting this memorandum, the State reserves its right to later file a Motion to Dismiss and/or Answer within the time allowed by the South Carolina Rules of Civil Procedure. Given the accelerated timeline requested by Plaintiffs, the State also reserves the right to submit a supplemental memorandum or surreply on any topics raised by Plaintiffs’ Complaint or Motion or any topics raised at a hearing.

BACKGROUND

I. *Planned Parenthood South Atlantic v. State*, 438 S.C. 188, 882 S.E.2d 770 (2023)

On July 29, 2022, Petitioners Planned Parenthood South Atlantic, Greenville Women’s Clinic, Katherine Farris, M.D., and Terry Buffkin, M.D. filed an original jurisdiction action, asking the South Carolina Supreme Court to declare the 2021 Fetal Heartbeat and Protection from Abortion Act (the “2021 Act”) invalid because it violates “South Carolina’s right to privacy and guarantees of equal protection and substantive due process, and because [the 2021 Act] is unconstitutionally vague.”

Two of the main purposes of the 2021 Act were to protect unborn life and to protect maternal health. *See* Act No. 1, § 2 (“The General Assembly hereby finds, according to contemporary medical research . . . the State of South Carolina has legitimate interests from the outset of a pregnancy in protecting the health of the pregnant woman and the life of the unborn child who may be born . . .”). The General Assembly also included a stated finding in the 2021 Act that the act was in part intended to assist a woman in making “an informed choice about whether to continue” her pregnancy. *See id.*

In order to accomplish these purposes, Section 3 of the 2021 Act limited when a provider of abortion services may perform an abortion. Under that provision, once a fetal heartbeat has been detected, an abortion provider is generally prohibited from “perform[ing], induc[ing] or attempt[ing] to perform or induce an abortion on a pregnant woman with the specific intent of causing or abetting the termination of the life of the human fetus the pregnant woman is carrying” Act No. 1, § 3. The 2021 Act included certain exceptions to this general prohibition, including exceptions related to pregnancies that involve rape, incest, fetal anomalies, or pregnancies that pose a serious risk of death or permanent injury to the pregnant woman. *Id.*

On January 5, 2023, the South Carolina Supreme Court issued its decision in the case in five separate opinions. Three of the opinions concluded that the 2021 Act was unconstitutional but did so under three distinct—and at times, conflicting—legal theories. *See Planned Parenthood South Atlantic*, 438 S.C. at 258, 882 S.E.2d at 808 (Few, J., concurring in result) (“As our five separate opinions indicate, we do not agree on the answers to the legal questions we confront, or even as to the principles of law we believe lead to those answers.”). In determining that the 2021 Act was unconstitutional, no one theory commanded a majority of support from the Court.

The narrowest legal opinion—authored by Justice Few—solely addressed “purely legal questions arising from Planned Parenthood’s challenged to the 2021 [Act].” 438 S.C. at 257, 882 S.E.2d at 807 (Few, J., concurring in result). Justice Few’s narrow decision concluded that the 2021 Act was unconstitutional because “the General Assembly’s failure to consider the necessary factual question as a predicate to its policy judgment was arbitrary” 438 S.C. at 285, 882 S.E.2d at 822 (Few, J., concurring in result). Specifically, Justice Few faulted the General Assembly for its alleged arbitrary failure to determine whether a woman could actually exercise her “informed choice about whether to continue a pregnancy.” *See* Act No. 1, § 2 (“The General Assembly hereby finds, according to contemporary medical research . . . in order to make an informed choice about whether to continue a pregnancy, a pregnant woman has a legitimate interest in knowing the likelihood of the human fetus surviving to full-term birth based upon the presence of a fetal heartbeat.”).

Despite Justice Few’s opinion on this narrow legal issue, a majority of the Court actually rejected most of Petitioners’ constitutional claims. A majority of the Court concluded that article I, section 10 of the South Carolina Constitution does not encompass a right to abortion. *See Planned Parenthood South Atlantic*, 438 S.C. at 287, 882 S.E.2d at 824 (Few, J., concurring in

result) (“With my vote the argument [that article I, section 10 does not encompass a right to abortion] holds a majority position.”).² A majority of the Court also concluded that Petitioners’ arguments regarding the Equal Protection Clause and Due Process Clause were “without merit.” 438 S.C. at 259, 882 S.E.2d at 808 (Few, J., concurring in result).

II. The 2023 Act

On May 25, 2023, South Carolina enacted Senate Bill 474, 125th General Assembly, Special Session (the “2023 Act”). Subject to certain exceptions, the 2023 Act prohibits a person from performing or inducing “an abortion on a pregnant woman with the specific intent of cause or abetting an abortion if the unborn child’s fetal heartbeat has been detected in accordance with Section 44-41-330(A).” *See* 2023 Act, § 2, S.C. Code Ann. § 44-41-630.

The 2023 Act contains several exceptions to this general prohibition, including exceptions for rape, incest, medical emergencies, and certain fetal anomalies.

Significantly for purposes of this case, the 2023 Act expressly repeals Section 2 of the 2021 Act, which contained the legislative findings discussed by Justice Few in the *Planned Parenthood South Atlantic* case.

The 2023 Act also repealed S.C. Code Ann. §§ 44-41-10 and -20, which had adopted an abortion regulatory scheme that mirrored the framework adopted by the United States Supreme Court in the now-overturned *Roe v. Wade*, 410 U.S. 113 (1973).

ARGUMENT

To be granted a temporary restraining order or temporary injunction, Plaintiffs must establish: (1) they will likely succeed on the merits of the litigation; (2) they would suffer

² To the extent this Court disagrees with the State’s interpretation of the *Planned Parenthood South Atlantic* decision and concludes that the decision supports a constitutional right to abortion, the State maintains and intends to argue that the decision was erroneous and should be overruled.

irreparable harm if the injunction is not granted; and (3) there is no other adequate remedy at law. *Scratch Golf Co. v. Dunes West Residential Golf Properties, Inc.*, 361 S.C. 117, 131, 603 S.E.2d 905, 907 (2004). If Plaintiffs fail to establish any of these three elements, they are not entitled to injunctive relief. *See Compton v. S.C. Dep't of Corrections*, 392 S.C. 361, 366, 709 S.E.2d 639, 642 (2011) (describing required elements of injunctive relief).

I. Plaintiffs are not likely to succeed on the merits of their claims because the 2023 Act is constitutional.³

In their Emergency Motion, Plaintiffs solely argue that they are likely to succeed on the merits of their right to privacy claim.

At the outset, the State emphasizes two fundamental and foundational points of constitutional law that must be considered as part of the standard of review in evaluating Plaintiffs' claims. Both points inform the basic principle that this Court must not sit as "super-legislature" to judge the wisdom or desirability of legislative policy determinations. *See Samson v. Greenville Hosp. System*, 295 S.C. 359, 367, 368 S.E.2d 665, 669 (1988).

First, the State emphasizes that the power of our state legislature is plenary, meaning that our General Assembly may enact any laws not expressly prohibited by the state or federal constitutions. *See City of Rock Hill v. Harris*, 391 S.C. 149, 154, 705 S.E.2d 53, 55 (2011); *see also Smith v. Tiffany*, 419 S.C. 548, 559, 799 S.E.2d 479, 485 (2017).

Second, the State emphasizes that courts are generally reluctant to find a statute unconstitutional. *Knotts v. S.C. Dept. of Natural Resources*, 348 S.C. 1, 6, 558 S.E.2d 511, 513 (2002). When the validity of a statute is questioned, "it is a cardinal principle that courts will

³ As noted above, the State reserves its right to file a Motion to Dismiss. Thus, although the State's response primarily focuses on the substantive merits of Plaintiffs' privacy claim, Plaintiffs may also lack standing to bring their claims.

presume the legislative act to be constitutionally valid, and every intendment will be indulged in favor of the act's validity by the courts." *Richland County v. Campbell*, 294 S.C. 346, 349, 364 S.E.2d 470, 472 (1988). If possible, courts will construe a statute to render it valid. *Harris*, 391 S.C. at 154, 705 S.E.2d at 55. The statute will be declared unconstitutional only if there is no room for "reasonable doubt" as to its validity. *Id.* Plaintiffs bear the burden of demonstrating the unconstitutionality of the statute. *See Knotts*, 348 S.C. at 6, 558 S.E.2d at 513.

A. The 2023 Act does not violate the South Carolina Constitution's right to privacy.

South Carolina's constitutional right to privacy is found in article I, section 10 of the South Carolina Constitution. Section 10 provides the following:

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures and unreasonable invasions of privacy shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, the person or thing to be seized, and the information to be obtained.

S.C. Const. art I, § 10. The guarantee against an "unreasonable invasion of privacy" was added in 1971 when an amendment to the section was ratified as article I, section 10.

Section 10 does not provide for a state constitutional right to abortion. A majority of the South Carolina Supreme Court refused to recognize such an alleged right in *Planned Parenthood South Atlantic v. State*, 438 S.C. 188, 882 S.E.2d 770 (2023). And the text and history of section 10 squarely foreclose any argument that the section provides for a right to abortion.

1. *Planned Parenthood South Atlantic* does not control.

In their Emergency Motion, Plaintiffs argue that *Planned Parenthood South Atlantic* is "unmistakabl[e] binding precedent," which demonstrates that Plaintiffs are likely to succeed on the merits of their claim. *See Planned Parenthood South Atlantic*, Emergency Motion at p. 10. Plaintiffs' argument on this point is wrong in multiple respects. First, it is incorrect to describe

Planned Parenthood South Atlantic as a single, binding precedent. As noted above, the *Planned Parenthood South Atlantic* decision consists of five separate legal opinions—with no single opinion identified as controlling. As a result, no one opinion can be said to establish a precedential rule of law. Only the South Carolina Supreme Court can definitively resolve which opinion is binding and controls.

To the extent this Court seeks to discern a majority opinion, it is important to note that a majority of the South Carolina Supreme Court rejected many of Plaintiffs’ claims, including Plaintiffs’ claim regarding the privacy provision. A majority of the Court expressly held that article I, section 10 does not encompass a right to abortion. *See Planned Parenthood South Atlantic*, 438 S.C. at 287, 882 S.E2d at 824 (Few, J., concurring in result) (“With my vote the argument [that article I, section 10 does not encompass a right to abortion] holds a majority position.”). Three justices separately agreed with this proposition. *See* 438 S.C. at 287, 882 S.E2d at 824 (Few, J., concurring in result) (“[T]he State and the dissenting Justices argue the article 1, section 10, ‘unreasonable invasion of privacy’ provision does not encompass a ‘right to abortion.’ I wholeheartedly agree.”); 438 S.C. at 294, 882 S.E.2d at 827 (Kittredge, J., dissenting) (“In my firm judgment, Petitioners have failed to establish that the state constitution mandates a right to abortion.”); 438 S.C. at 351, 882 S.E.2d at 857 (“It is clear the framers did not intend to create a full panoply of privacy rights, much less the right to bodily autonomy or the right to have an abortion.”). Those decisions alone should demonstrate that Plaintiffs are not likely to succeed on the merits of their constitutional privacy claim.

Despite Plaintiffs’ claim to the contrary, Justice Few’s narrow opinion does not compel a different result because Justice Few’s decision was narrowly focused on alleged defects associated with the 2021 Act specifically. His central objection to the 2021 Act pertained to that specific act’s

legislative finding regarding a pregnant woman’s ability to make an informed choice to continue her pregnancy. *See* Act No. 1, 2021 S.C. Acts, § 2.

Significantly, Justice Few’s concerns are not present in this case. The 2023 Act expressly repealed the legislative findings regarding informed choice. And unlike the 2021 Act, the 2023 Act contains no legislative findings that suggest the General Assembly made a “policy judgment” to provide women with the opportunity to make an informed choice about whether to continue a pregnancy.

Instead, the 2023 Act’s primary purpose is to protect unborn life and maternal health. And even if this Court finds that the act does not completely accomplish that purpose, this Court should still defer to the General Assembly’s reasonable policy decision. *See Williamson v. Lee Optical of Oklahoma Inc.*, 348 U.S. 483, 489, 75 S. Ct. 461, 465, 99 L. Ed. 563 (1955) (“[R]eform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind.”). As other courts have recognized, a prohibition on abortions after detectable human heartbeat is “rational.” *See SisterSong Women of Color Reprod. Just. Collective v. Governor of Georgia*, 40 F.4th 1320, 1326 (11th Cir. 2022) (“Georgia’s prohibition on abortions after detectable human heartbeat is rational.”).

If this Court concludes that the issue of informed choice is somehow germane to the 2023 Act—a point which the State does not concede—the 2023 Act still provides women with a meaningful opportunity to obtain an abortion prior to the detection of a fetal heartbeat. *See Webster v. Reproductive Health Services*, 492 U.S. 490, 569 (1989) (Steven, J., concurring in part and dissenting in part) (“Focusing our attention on the first several weeks of pregnancy is especially appropriate because that is the period when the vast majority of abortions are actually performed.”); *see also* Jessica Silbey, *Picturing Moral Arguments in A Fraught Legal Arena*:

Fetuses, Photographic Phantoms and Ultrasounds, 16 GEO. J. GENDER & L. 593, 603 (2015) (“Indeed, many fetal heartbeats are indiscernible at early stages of pregnancy when most abortions are conducted.”).

In fact, the 2023 Act adopts a specific definition of “clinically diagnosable pregnancy,” which is defined to mean “the point in time when it is possible to determine that a woman is pregnant due to the detectible presence of human chorionic gonadotropin (hCG).” Under this definition of pregnancy, the vast majority of pregnant women have the ability to learn if they are pregnant through widely available at-home pregnancy tests.

In the separate federal litigation over the 2021 Act, the State introduced the expert report of Dr. Ingrid Skop, a board-certified obstetrician and gynecologist. In her expert report, Dr. Skop affirmatively stated that “based on [her] clinical experience treating thousands of pregnant women, there is no doubt that the vast majority of women have sufficient time to obtain an abortion prior to the point of a detectable fetal heartbeat.” (Skop Report ¶ 8, attached hereto as **Exhibit A**). These changes from the General Assembly confirm that women do have the opportunity to obtain an abortion under the 2023 Act, and the act is therefore necessarily not arbitrary. *See* *Arbitrary*, BLACK’S LAW DICTIONARY (11th ed. 2019) (“of, relating to, or involving a determination made without consideration of ore regard for facts”).

In these and other respects, the General Assembly intentionally sought to address any infirmities associated with the 2021 Act in the 2023 Act, which is presumed valid. *See Cabiness v. Town of James Island*, 393 S.C. 176, 712 S.E.2d 416 (2011).

2. The text and history of section 10 do not support a right to abortion.

Section 10 obviously contains no explicit reference to abortion and is thus silent on the topic. *See Grant v. Grant*, 12 S.C. 29, 31 (1879) (“[T]he constitution is wholly silent on this

subject. There is, therefore, nothing in the constitution tending to deprive the legislature of full power of granting or withholding such remedy which the legislature primarily possesses.”).

In search of a textual hook, Plaintiffs argue the word privacy in section 10 should be defined to include a right to abortion. To determine the definition of privacy as used in section 10, this Court is obligated to consider the history of that section. This obligation derives from two separate principles of constitutional interpretation.

First, in defining privacy, this Court is bound to apply “the ordinary and popular meaning” of the word as “used *by those who framed and those who adopted the constitution.*” *City of Charleston v. Oliver*, 16 S.C. 47, 52 (1881) (emphasis added); *see also State v. Shaw*, 9 S.C. 94, 106 (1878) (“[T]he state of the public mind at the time of the adoption of the Constitution of 1868 renders us legitimate assistance in the construction and interpretation of its provisions.”). Stated differently, in defining the word privacy, this Court may not apply its own—or even a contemporarily popular—definition of that term. Under South Carolina Supreme Court precedent, this Court is bound to apply the meaning used by those who framed and adopted Section 10’s language regarding “unreasonable invasions of privacy.”

This obligation is entirely consistent with this Court’s responsibility to give effect to the intent of the framers and the people who adopted a given constitutional provision. *See State v. Long*, 406 S.C. 511, 514, 753 S.E.2d 425, 26 (2014); *Miller v. Farr*, 243 S.C. 342, 133 S.E.2d 838, 841 (1963) (the intent of the framers of a constitutional provision and the people who adopted it determine the meaning of the provision).

Second, this Court must also consider the history of section 10 if it concludes that the word privacy is “of doubtful import.” *See Reese v. Talbert*, 237 S.C. 356, 358, 117 S.E.2d 375, 376–77 (1960) (“When the language of a constitutional amendment is of doubtful import, the object of

judicial inquiry as to its meaning is to ascertain the intent of its framers and of the people who adopted it. And in attempting to attain that object, the courts may consider the history of the times in which the amendment was framed, the object sought to be accomplished, and legislative interpretation of its provisions.”).⁴

The history of section 10 conclusively demonstrates that its privacy provision does not encompass a right to abortion. *See Planned Parenthood South Atlantic*, 438 S.C. at 316–17, 882 S.E.2d at 839 (Kittredge, J., dissenting) (“Given the history associated with the adoption of the privacy provision, I conclude the privacy provision does not include a right to abortion.”); *Planned Parenthood South Atlantic*, 438 S.C. at 351, 882 S.E.2d at 857 (James, J., dissenting) (“It is clear the framers did not intend to create a full panoply of privacy rights, much less the right to bodily autonomy or the right to have an abortion.”).

Prior to the litigation surrounding the 2021 Act, no one in South Carolina—not the drafters of the provision, not legislators, not members of the judiciary, and not the public that adopted the provision—suggested that section 10 confers a state constitutional right to abortion.

Beginning with the drafters of the provision, section 10 was amended in 1971 at the recommendation of the West Committee, which engaged in a three-year study of the South Carolina Constitution at the request of the South Carolina General Assembly. *See Adams v. McMaster*, 432 S.C. 225, 240, 851 S.E.2d 703, 710 (2020).⁵ The General Assembly asked the

⁴ And even if this Court concludes that section 10’s use of the term privacy is unambiguous, it is still bound to apply the original public meaning of that term—not a contemporarily popular definition of the term. *See Oliver*, 16 S.C. at 52.

⁵ Under binding precedent of the South Carolina Supreme Court, the work of the West Committee provides evidence of the meaning behind the 1971 constitutional amendments. *See, e.g., Sloan v. Sanford*, 357 S.C. 431, 436–37, 593 S.E.2d 470, 473 (2004); *Diamonds v. Greenville Cnty.*, 325 S.C. 154, 158–59, 480 S.E.2d 718, 720 (1997); *Hosp. Ass’n of S.C., Inc. v. Cnty. of Charleston*, 320 S.C. 219, 224–25, 464 S.E.2d 113, 117 (1995). To the extent *Planned Parenthood South Atlantic* called those decisions into question, that finding was erroneous and should be overruled.

committee to make recommendations as to whether “a series of general amendments can be proposed which will eliminate the archaic provisions of the existing Constitution and strengthen it in such other areas, so that it will provide a workable framework with proper safeguards for sound State, County and local governments.” *Final Report of the Committee to Make a Study of the S.C. Const. of 1895*, at 3 (1969), <https://hdl.handle.net/2027/uc1.b4181710>. (**Exhibit B**).

Among its many recommendations, the West Committee proposed an amendment to what is now section 10 to include a “constitutional protection from an unreasonable invasion of privacy of the State.” *Final Report*, at 15. In describing the purpose of this amendment, the committee noted: “[t]his additional statement is designed to protect the citizen from improper use of electronic devices, computer data banks, etc.” *Id.* Significantly, improper electronic surveillance was the committee’s sole concern regarding invasions of privacy. The committee simply did not intend or understand the provision to extend any further. It certainly did not intend to confer a state constitutional right to abortion.

The minutes of the West Committee also indicate that section 10’s privacy right was to be narrowly construed. Those minutes provide the following: “The committee agreed that . . . [the section] should be revised to take care of the invasion of privacy through modern electronic devices. All committee members agreed that this further protection was needed.” Constitutional Revision Committee, “September 15, 1967 Minutes of Committee Meeting,” *Minutes, August 25, 1966 to October 7, 1967*, 62. (**Exhibit C**).

In further support of the argument that the West Committee did not intend to enshrine a right to abortion in the state constitution, it is important to note that abortion was illegal in South Carolina in 1971. It is nearly inconceivable to think that the West Committee could propose legalizing abortion via constitutional amendment without any public (or private) discussion or

even outcry. *See* S.C.A.G. Op. dated Mar. 17, 1971 (concluding that abortion is illegal in South Carolina with no reference to or discussion of possible effect of Section 10); *see also* 1 S.C. Jur. Abortion § 8 (describing history of anti-abortion legislation in South Carolina prior to *Roe*). In short, the idea that the West Committee could propose a constitutional amendment enshrining a right to abortion sub silentio is simply beyond belief.

Turning to the legislature, since section 10 was ratified, the South Carolina General Assembly has repeatedly acted to regulate and limit abortions in South Carolina. In doing so, the General Assembly has never acknowledged or recognized that Section 10 imposes any limitations on its ability to regulate abortion. First, in 1974, the General Assembly enacted S.C. Code § 44-41-20, which “rigidly adopted” the *Roe* trimester scheme. *See* 1 S.C. Jur. Abortion § 9; *see also McKnight v. State*, 378 S.C. 33, 53, 661 S.E.2d 354, 364 (2008) (“In 1974, the General Assembly amended the criminal abortion statute to its current form in accordance with the United States Supreme Court’s decision in *Roe v. Wade*.”).

With respect to the judiciary—even after the *Planned Parenthood South Atlantic* decision—no South Carolina court has ever interpreted section 10 to confer a constitutional right to abortion. *See supra*. Instead, South Carolina courts have repeatedly emphasized that the chief purpose of section 10 was to address concerns about electronic surveillance by the government. *See State v. German*, -- S.E.2d ---, 2023 WL 3129475, at *10 (2023) (“The drafters of our constitutional provision were concerned with the emergence of new technology enabling more invasive searches”); *see also State v. Forrester*, 343 S.C. 637, 647, 41 S.E.2d 837, 842 (2001) (noting that the “drafters of our state constitution’s right to privacy provision were principally concerned with the emergence of new electronic technologies that increased the government’s ability to conduct searches.”).

The South Carolina Supreme Court's decision in *Singleton v. State*, 313 S.C. 75, 437 S.E.2d 60 (1993) is easily distinguishable because it "did not involve an interest in protecting the life of an unborn child." See *Planned Parenthood South Atlantic*, 438 S.C. at 316 n. 91, 882 S.E.2d at 839 n. 91 (Kittredge, J., dissenting).

Tellingly, around the same time section 10 was adopted, the South Carolina Supreme Court considered a challenge to the State's then-existing abortion law in *State v. Lawrence*, 261 S.C. 18, 198 S.E.2d 253 (1973). In *Lawrence*, the South Carolina Supreme Court held that the challenged law was unconstitutional in light of the United States Supreme Court's decision in *Roe*. In doing so, the Court did not even mention the possibility that section 10 could be an independent source of a right to abortion.

Finally, with respect to the public, no contemporaneous accounts of section 10 even hinted at the possibility that the section would confer a state constitutional right to abortion. As reported by *The State* newspaper, section 10 "would add protections against unreasonable invasion of privacy" and "would protect against improper use of 'bugging devises' and data banks" Edward D. Harrill, "Voters to Decide on 6 Amendments," *The State* (Oct. 25, 1970) (**Exhibit D**). In a more detailed report on the proposed amendment, *The State* reported:

In addition to the search-and-seizure section of the constitution the special study committee has recommended that "the right of the people to be secure from unreasonable invasions of privacy shall not be violated." "This additional statement is designed," according to the committee report, "to protect the citizen from improper use of electronic devices, computer data banks, etc." Although the new provision would be vague it was deliberately recommended that way "since it is almost impossible to describe all of the devices which exist or which may be perfected in the future . . ." Details of regulation would be left to statutory laws and court decisions.

Edward D. Harrill, "New Constitution Would Protect People's Rights," *The State* (Feb. 21, 1969) (**Exhibit E**). Indeed, as abortion was debated throughout the 1970s, no one in South Carolina

thought section 10 was remotely relevant to the abortion debate. Douglas Mauldin, “Crowd Hears Anti-Abortion Views,” *The State* (Jan. 23, 1976) (**Exhibit F**) (describing the views of State Representatives Theo W. Mitchell and Ralph K. Anderson and describing abortion battle as occurring at “national level” without reference to any state law issues).

The meaning of the word privacy in section 10 must be understood in light of this history. And this history is uniform in demonstrating that the people who framed and adopted section 10 did not ascribe to privacy a meaning that includes a right to abortion. *See City of Charleston*, 16 S.C. at 52; *see also Talbert*, 237 S.C. at 358, 117 S.E.2d at 376–77.

3. Alternatively, *Planned Parenthood South Atlantic* should be overruled.

Alternatively, to the extent this Court concludes that *Planned Parenthood South Atlantic* represents a binding precedent and stands for the proposition that the South Carolina Constitution guarantees a constitutional right to abortion, the State maintains that the *Planned Parenthood South Atlantic* decision was erroneous and should be overruled. *See McLeod v. Starnes*, 396 S.C. 647, 655, 723 S.E.2d 198, 203 (2012) (describing the circumstances in which stare decisis may be inapplicable). The State intends to argue that the *Planned Parenthood South Atlantic* decision does not represent a single precedent and that multiple opinions issued in that case perpetuate both legal and factual errors.

II. Plaintiffs fail to establish irreparable harm.

In addition to showing a likelihood of success on the merits, Plaintiffs must also establish that they will suffer irreparable harm if the TRO or injunction is not granted. In support of their argument on this point, Plaintiffs in part argue they will suffer irreparable harm because the 2023 Act violates the South Carolina Constitution. Here again, Plaintiffs assume their own conclusion. While an alleged violation of an established constitutional right can be evidence of irreparable

harm, an alleged violation of an alleged or speculative constitutional right is not. *See Justice v. West Virginia AFL-CIO*, 246 W.Va. 205, 866 S.E.2d 613, 628 (2021) (rejecting plaintiffs’ claim of irreparable harm where plaintiffs fail to show a violation of established constitutional rights).

Plaintiffs also argue that they may demonstrate irreparable harm on the basis of alleged third party injuries—citing alleged injuries to “South Carolinians” generally. However, third party injuries are not a proper basis upon which to find irreparable harm. *See Alcresta Therapeutics, Inc. v. Azar*, 318 F.Supp.3d 321, 326 (D.D.C. 2018) (“injuries to third parties are not a basis to find irreparable harm.”)

However, even if that Court considers those third-party injuries, there is reason to think Plaintiffs overstate the extent of those injuries. In her expert report, Dr. Skop affirmatively stated that “based on [her] clinical experience treating thousands of pregnant women, there is no doubt that the vast majority of women have sufficient time to obtain an abortion prior to the point of a detectable fetal heartbeat.” (**Exhibit A**, Skop Report ¶ 8).

Additionally, this Court may properly consider and weigh harm to the State in considering whether to grant injunctive relief. *See Hunnicutt v. Rickenbacker*, 268 S.C. 511, 515-16, 234 S.E.2d 887, 889 (1977) (“The issuance of a mandatory injunction depends upon the equities between the parties, and it rests in the sound judicial discretion of the court whether such an injunction should be granted. Where a great injury will be done to the defendant, with very little if any [benefit] to the plaintiff, the courts will deny equitable relief.”).

Here, the State will suffer irreparable harm if the injunctive relief is granted for at least two reasons. First, the State will suffer a sovereign injury because the injunction will prevent the State from enforcing its own legal code. *See Alfred L. Snapp & Son, Inc. v. Puerto Rico, ex rel., Barez*, 458 U.S. 592, 601, 102 S.Ct. 3269, 3265, 73 L.Ed.2d 995 (1982) (recognizing a state’s sovereign

power to enforce its own legal code). Second, and relatedly, because the injunctive relief will prevent the State from enforcing the 2023 Act, the purposes of the act will be frustrated. As a result, unborn life will be afforded less protection in this State.

Because Plaintiffs overstate the threat of irreparable harm and because the State will suffer irreparable harm as a result of the proposed injunction, this Court should deny Plaintiffs' Emergency Motion.

III. Plaintiffs have other adequate remedies at law.

As a third element, Plaintiffs must also demonstrate that they have no other adequate remedy at law. *See Scratch Golf Co.*, 361 S.C. at 121, 603 S.E.2d at 908. Here, Plaintiffs do have an adequate remedy at law because a person prosecuted under the 2023 Act could raise his constitutional claim as a defense to prosecution. *See Nivens v. Gilchrist*, 444 F.3d 237, 241 (4th Cir. 2006). Accordingly, this element fails.

IV. The status quo ante favors the State.

Finally, it is worth emphasizing that the general purpose of a preliminary injunction is to preserve the status quo ante. *See Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 586, 694 S.E.2d 15, 17 (2010) ("A preliminary injunction should issue only if necessary to preserve the status quo ante . . ."). Injunctive relief in this case would not serve to maintain the status quo ante.

Since at least the 1800s, abortion has been heavily regulated in South Carolina. Consequently, an injunction in this case would significantly disrupt the history, tradition, and policy of abortion regulation in our State. By issuing an injunction, this Court would remove from the people the question of when and how to regulate the abortion procedure. Such a ruling would be disruptive to the democratic process and to our system of separation of powers. *See Smith v.*

Tiffany, 419 S.C. 548, 559, 799 S.E.2d 479, 485 (2017) (“[W]e must defer to the will of the legislature as expressed in the Act. If the policy balance struck by the legislature in [the] Act is to be changed, that prerogative lies exclusively within the province of the Legislative Branch.”). In *Dobbs v. Jackson Women’s Health Organization*, the United States Supreme Court determined that it was improper for the federal judiciary to arrogate the authority of the states to regulate and prohibit abortion. *Dobbs v. Jackson Women’s Health Organization*, 142 S.Ct. 2228, 2284. As a result, the Court returned the power to regulate abortion to the “people and their elected representatives.” *Id.* This Court should do the same.

CONCLUSION

Because Plaintiffs have failed to establish the necessary elements for injunctive relief, this Court should deny Plaintiffs’ Emergency Motion.

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT D. COOK
Solicitor General
S.C. Bar No. 1373
s/ J. Emory Smith, Jr.
J. EMORY SMITH, JR.
Deputy Solicitor General
S.C. Bar No. 5262
THOMAS T. HYDRICK
Assistant Deputy Solicitor General
S.C. Bar No. 103198
JOSEPH D. SPATE
Assistant Deputy Solicitor General
S.C. Bar No. 103734
P. O. Box 11549
Columbia, SC 29211
(803) 734-3680

May 25, 2023

Attorneys for the State of South Carolina
and Attorney General Alan Wilson

EXHIBIT A
to Motion
Skop Report
Planned Parenthood v. State
2023CP4002745

ELECTRONICALLY FILED - 2023 May 25 4:38 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4002745

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Planned Parenthood South Atlantic, etc.,	)	
et al.	)	
	)	
Plaintiff,	)	Civil Action No. 3:21-cv-00508-MGL
	)	
v.	)	EXPERT REPORT OF DR. INGRID
	)	SKOP
Alan Wilson, in his official capacity as	)	
Attorney General of South Carolina, et al.	)	
Defendants.	)	
	)	

I, Ingrid Skop, state that I am of at least 18 years of age, and I am competent to testify.

BACKGROUND AND QUALIFICATIONS

1. I have been a board-certified obstetrician and gynecologist since 1998. I received a Bachelor of Science in physiology from Oklahoma State University, and a Doctorate of Medicine from Washington University School of Medicine. I completed a residency in obstetrics and gynecology at the University of Texas Health Science Center at San Antonio. I have been a partner in an Obstetrics and Gynecology group practice in San Antonio since 1998 and I have delivered over five thousand babies in my career. I care for women with complicated pregnancies daily and I have extensive experience caring for unborn children at the gestational ages discussed in this legislation. A copy of my C.V. is attached to this report as Appendix A.

2. I have been asked to provide expert witness testimony in the above-referenced case with respect to the protection of human life at the point of a detectable fetal heartbeat and early detection of pregnancy. In preparation for this report, I have reviewed South Carolina SB1 and I understand that it bans elective abortions after fetal cardiac activity (i.e., a heartbeat) can be detected. I have also reviewed the complaint filed in this action by the plaintiffs. In formulating

the opinions expressed in this report I have relied upon my years of experience in research and clinical practice, and numerous sources referenced in my C.V.

3. As part of my preparation of this report, I have reviewed the following materials, in addition to the references cited in my report:

- a. The Complaint
- b. The Plaintiffs' Memorandum
- c. The Response in Opposition to Motion for Preliminary Injunction
- d. South Carolina abortion regulations, including SB1

SUMMARY OF OPINIONS

4. Basic embryology textbooks teach that life begins with fertilization.¹ For practical reasons, some medical organizations have redefined life to begin at the time of implantation in the uterus, when the presence of the embryo can be detected through biologic tests such as serum beta human chorionic gonadotropin (BHCG). It is widely accepted among scientists and physicians that the growth, cellular differentiation, metabolism and nutrient consumption of the genetically unique individual implanted within his mother's uterus constitutes a human life.

5. In SB1, the state of South Carolina has made the judgment that human life should be protected at the point of a detectable fetal heartbeat. Although scientific literature would support an earlier point of protection because many signs of life are seen even earlier, this is a reasonable judgment consistent with medical approaches to human life. Death is diagnosed when cardiac activity has ceased; it seems reasonable to conclude that life may be diagnosed (and protected) when cardiac activity has begun.

6. There are other medically sound reasons to use this milestone. Although spontaneous pregnancy losses (miscarriages) are estimated to occur in 10-15% of clinically recognized

¹ Moore K. The Developing Human: Clinically Oriented Embryology. WB Saunders Co. Philadelphia. 1988. P. 28.

pregnancies,² losses after cardiac motion has been detected are rare, estimated at 2-3%.³ Thus, the fetal human being who has progressed in development to the point that a functioning cardiovascular system can be detected can reasonably be expected to reach birth and entry into human society unless an external action causes his demise. The state can reasonably conclude that these are human lives worthy of the state's protection.

SB1 ALLOWS, BUT LIMITS ABORTIONS

7. SB1 limits elective abortions to the time before cardiac activity (i.e., a heartbeat) can be detected, which is an attribute universally recognized as a sign of human life. The law further allows for later abortions in limited circumstances.

8. Based on my clinical experience treating thousands of pregnant women, there is no doubt that the vast majority of women have sufficient time to obtain an abortion prior to the point of a detectable heartbeat. Clinical recognition of pregnancy can be detected by readily available, over-the-counter urine pregnancy tests when BHCG levels range as low as 6.5-100 mIU/ml. This occurs by 3-4 weeks gestational age, based on last menstrual period (LMP), or 1-2 weeks post-conception (ovulation and fertilization usually occur about two weeks after the LMP).⁴ Even earlier detection is possible; serum BHCG levels can be detected at > 5 mIU/ml, which occurs by 5-8 days after fertilization, almost immediately after the embryo implants into the uterus.⁵

² Anderson AM, Wohlfahrt J, Christens P, Olsen J, Melbye M. Maternal age and fetal loss: A registration-based records linkage study. *BMJ* 2000;320(7251):1708-1712; Wilcox AJ, Weinberg CR, Wehmann RE, Armstrong EG, Canfield RE, Nisula BC. Measuring early pregnancy loss: laboratory and field methods. *Fertil Steril* 1985;44:366-74.

³ Wilson RD, Kendrick V, Wittmann BK, McGillivray B. Spontaneous abortion and pregnancy outcome after normal first trimester ultrasound examination. *Obstet Gynecol.* 1986;67(3):352-355; Simpson JL, Mills J, Holmes L. Low fetal loss rates after ultrasound proved viability in first trimester. *JAMA.* 1987;258(18):2555-2557. doi:10.1001/jama.1987.03400180089033

⁴ Gnoth C, Johnson S. Strips of hope: Accuracy of home pregnancy tests and new developments. *Gebertshilfe Frauenhilfe.* 2014;74(7):661-669.

⁵ Montagnana M, Trenti T, Aloe R, Cervellin G, Lippe G. Human chorionic gonadotropin in pregnancy diagnostics. *Clin Chim Acta* 2011;412(17):1515-1520.

9. Cardiac activity, on the other hand, can be detected by transvaginal ultrasound by 6-7 weeks post LMP or 4-5 weeks post-conception. Detection by transabdominal ultrasound may be delayed by another week due to the decreased sensitivity of this modality.⁶

10. In addition to a missed menstrual period, there are many other signs that can signal to a woman that a pregnancy has begun. Extreme fatigue and nausea may alert a woman to a pregnancy. Breast tenderness, emotional lability and food cravings or aversions are also common signs that BHCG is rising. The ready availability of inexpensive, over-the-counter pregnancy tests and free pregnancy testing centers give a woman many early opportunities to confirm a pregnancy.

11. Thus, for a woman who discovers a pregnancy early, South Carolina law permits a window of between two to five weeks for the woman to decide on and procure an abortion. Many abortion clinics offer same-day appointments. State law requires only a 24-hour waiting period after abortion counseling to allow a woman to consider all of her options.⁷ Based on my professional experience, I believe there is ample time for most women to obtain an elective abortion under the South Carolina law after learning they are pregnant.

CONCLUSION:

12. The state of South Carolina has passed legislation prohibiting an elective abortion after a fetal heartbeat is detected, with a few exceptions. Absent abortion, 97-98% of these immature human lives will develop to birth. This legislation does not prohibit a woman from obtaining an elective abortion; it just requires that she do so at an early gestational age. The vast majority of women who become pregnant can successfully detect pregnancy and obtain an abortion within

⁶ Hertzberg BS, Mahony BS, Bowie JD. First trimester fetal cardiac activity: Sonographic documentation of a progressive early rise in heart rate. *J Ultrasound Medicine*. 1988;7(10):573-575.; Rodgers SK, Chang C, Bardeleben JT, Horrow M. Normal and abnormal US findings in early first trimester pregnancy: Review of the society of radiologists in ultrasound 2012 consensus panel recommendations. *Radiographics*. 2015;35(7):online.

⁷ <https://www.guttmacher.org/state-policy/explore/counseling-and-waiting-periods-abortion>

the time allowed by South Carolina law, and there are other options within women's control to reduce the need for elective abortions in the first place.

COMPENSATION

13. My compensation is \$300/hour review/writing, \$350/hour deposition/testimony, in addition to travel.

14. My compensation does not depend on the outcome of the case.

PREVIOUS EXPERIENCE TESTIFYING

15. In the past four years, I provided expert testimony in one case, Mary Ann De La Garza v. Carolina Praderio, M.D., Cause No. 2015DCV-3922-H (347th Judicial District Court. I have also submitted reports in SisterSong Women of Color, etc. et al. v. Kemp, C/A No. 1:19-cv-02973 (NDGA), and in Planned Parenthood Association of Utah v Joseph Minor, et al, Case No. 2:19-cv-00238.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.



Ingrid Skop, M.D.

2/26/21

EXHIBIT C
to Response to Motion
COMMITTEE MINUTES
September 15, 1967

Planned Parenthood v. State

2023CP4002745

[NOTE Exhibit B is a hyperlink]

MINUTES OF COMMITTEE MEETING

The Committee to Make a Study of the Constitution of South Carolina, 1895, met in the Wallace Room of the State Board of Health Building, Columbia, South Carolina on Friday, September 15, 1967 and Saturday, September 16, 1967.

The following members were present:

Senators -

Richard W. Riley
John G. Lindsay (Saturday)
John C. West, Lieutenant Governor

Representatives -

J. Malcolm McLendon
W. Brantley Harvey, Jr.

Governor's Appointees -

Miss Sarah Leverette
T. Emmet Walsh
W. D. Workman, Jr.

Staff Consultant -

Robert H. Stoudemire

The meeting was called to order by the Chairman at 10:30 a.m.

Mr. Stoudemire had received a letter from Speaker Blatt in which he stated that he would not be able to attend and expressed his keen interest in the working of the Committee. Lieutenant Governor West informed the Committee that Mr. Huger Sinkler had expressed his regrets by telephone.

After brief opening remarks, the Chairman ruled that the Committee would follow the proposed agenda for September 15 and 16, which was mailed to each member on August 6.

The committee proceeded to discuss the report on the Preamble and the Declaration, which was compiled by Mr. Stoudemire and mailed to each member on September 6.

September 15, 1967

The adoption above is subject to further consideration, depending upon Mr. Stoudemire's checking out the state's statutes on the subject to make sure that there is no conflict between the constitutional wording and the statute.

Section 14. Departments separate. - In the government of the State the legislative, executive and judicial powers of the Government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other.

Mr. Stoudemire pointed out that in Kentucky and some other constitutions, there was a move to make a separate Article to deal with the separation of powers clause and the general powers of government. Some discussion ensued on the need for a separate Article. Mr. Workman moved that the current wording of this section be retained in the Declaration of Rights or some other place. He further moved that a comma be inserted after the word "executive" in the second line. Both of these motions passed. Although not specifically stated, the consensus of opinion seemed to be that Section 14 be retained in the Declaration of Rights and that a separate Article not be created.

Section 15. Courts - remedy. - All Courts shall be public, and every person shall have speedy remedy therein for wrongs sustained.

Mr. Stoudemire pointed out that this appears to be a good section and that South Carolina varies from most states in requiring ALL courts be public. He noted that most states used the word "public" in association with criminal prosecutions. He further stated that there was some question about the use of the word "public" with juvenile and domestic relations courts. He stated further that research on how the word "public" as used in Section 15 would apply to juvenile and domestic relations courts had revealed essentially nothing.

Mr. Workman expressed his concern over the application of the word "public" to court proceedings. It was agreed that

this question had not really been decided by our courts. The committee agreed that the constitutional statement should require that all courts be public. The committee agreed that Section 15 would remain as currently stated in the Constitution.

Section 16. Searches and seizures. - The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized.

The committee agreed that Section 16 should remain, but that it should be revised to take care of the invasion of privacy through modern electronic devices. All committee members agreed that this further protection was needed. After some discussion, the committee thought that the phraseology of the proposed Maryland Constitution adequately covered the subject. Mr. Workman raised the question as to whether or not the phraseology would impede the task of the law enforcement officers. The Maryland section was approved by the committee. After this approval, the question was raised by Mr. Riley if the word "interception" in the Maryland draft was the best one which could be used. Mr. West raised the question if the word "invasion" may not be a better one. No decision was made, but Mr. Stoudemire was instructed to submit the Maryland proposal to the Attorney General for his comments. (A further recommendation will be made on the use of the word "interception" or the word "invasion" when the Attorney General has had time to comment.) The Maryland proposal, which was adopted, follows: "The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures and in their oral or other communications against unreasonable interceptions shall not be violated. No search warrant shall be issued except upon probable cause supported by oath or affirmation, and the place to be searched, the persons or things to be seized, or the communications sought to be intercepted shall be particularly described in the warrant."

Section 17. Presentment of grand jury - not tried twice - private property. - No person shall be held to answer for any crime where the punishment exceeds a fine of two hundred dollars or imprisonment for thirty days, with or without hard labor, unless on a presentment or indictment of a grand jury of the County where the crime shall have been committed, except in cases arising in the land or naval forces or in the militia when in actual service in time or war or public danger, nor shall any person be subject for the same offense to be twice put in jeopardy of life or liberty, nor shall be compelled in any criminal case to be a witness against him self. Private property shall not be taken for private use without the consent of the owner, nor for public use without compensation being first made therefor.

Mr. Stoudemire pointed out that Section 17 contains three major thoughts, namely, grand jury indictment, double jeopardy and private property. He suggested that the three be discussed separately and this was agreed.

1. Grand Jury and Indictment.

Mr. Stoudemire called attention to the fact that most states associate grand jury indictment with felonies or infamous crimes whereas South Carolina requires it for many crimes not classed as felonies. He pointed out that many states are re-evaluating the need for grand jury indictments and that many states are now allowing the defendants the privilege of waiving the indictment except perhaps for certain capital cases. A general discussion ensued concerning the need for grand juries and the possibility of waiving indictments. It was pointed out that under South Carolina statutes indictments could be waived at the present time. Mr. Stoudemire stated that the New York Courts had ruled that indictments could not be waived if required in the constitution and he was wondering if STATE VERSUS HANN, decided by the South Carolina Supreme Court, might not interfere with waiving the indictment.

A discussion ensued on the need for grand juries and whether or not indictments should be fixed by a specified amount of money as now provided in the constitution. It was pointed out by Mr. Workman that the monetary value as expressed in 1895 would be far greater today. The committee

**EXHIBIT D
to Response to Motion**

**Voters to Decide on 6 Amendments Article
October 2, 1970**

Planned Parenthood v. State

2023CP4002745

publican Inez C. Eddings. Also in the race this year is Elizabeth F. Hough, the Independent nominee.

Incumbent Democrat O. Frank Thornton is opposed by Republican Jack E. Shaw for Secretary of State. Incumbent Democrat Daniel R. McLeod is opposed by Independent Rhoden Shelley for Attorney General.

Democrat Robert L. McCrady is opposed by Independent C. C. Dillingham for State Adjutant General. The incumbent Democrat, Frank D. Pienkney is retiring.

The race for the 2nd. district Congressional seat, being vacated by Rep. Watson shapes up as the closest of the four, contested House races. Rated a toss-up are Republicans Floyd D. Spence and Democrat Heyward McDonald. Also in the race is Independent Donald R. Cole.

Three Democratic Incumbents—John L. McMillan of the 6th district, Bryan Dorn of the 3rd. district and Thomas S. Gettys of the 5th district—are favored to win reelection.

McMillan is opposed by Republican

next week—the first overall review in 75 years.

At stake will be six of the 17 articles in the S. C. Constitution of 1895 which still stands as the basic charter of this state's government.

When voters finish casting their ballots for political candidates on Nov. 3 there will be another booth nearby for voting on the constitutional questions.

Over the years, there have been many separate amendments to the constitution but never have whole articles been put on the block for voter approval. Single amendments, changing specified items within the constitutional articles, have been approved 330 times. There will be a half dozen of those up for approval again this time.

But the basic review of whole articles in the constitution next week will be the first time that just about anybody will remember.

The remainder of the 17 articles are supposed to be on the ballot in 1972. If the legislature can grind through those left for consideration. Those left for leg-

islation, the proposed amendments will give more citizen protections.

Titles of the articles include (1) Declaration of Rights, (2) Right of Suffrage, (3) Corporations, (4) Functions of Government, and (5) Impeachment.

The proposed article on "rights" retains all the basic rights of freedom of speech and worship, among others. But it also would add protections against unreasonable invasions of privacy and protection against arbitrary administrative procedures.

It would protect against improper use of "bugging" devices and data banks, as well as providing appeal procedures for citizens who get adverse rulings from government agencies.

The "suffrage" article would reduce residency requirements for voting from one year in the state, six months in the county, and three months in the precinct to six months in the state, three months in the county, and 30 days in the precinct. Nonvoters to the state, if otherwise qualified, could vote for president and vice president after 30 days. The proposed article would also give the legislature the authority to decide crimes

by legislation. It gives the legislature the power to regulate, by statutes, the corporations, utilities, and common carriers which operate in the state.

The "functions of government" provision is also considerably shortened. It would direct the legislature to establish agencies to administer programs for health, safety, welfare and natural resources. It would also prohibit a child under 17 from being put in prison with other inmates.

The "impeachment" article would spell out more clearly the officials subject to such action, including all officials elected statewide, all state judges, and other state officers directed by the legislature.

Major constitutional changes which are yet to be thrashed out by the legislature for submission to the S. C. voters in 1972 include those defining powers and prerogatives of the three major branches of state government as well as local governments.

The single-item amendments on a separate ballot for next week's voting involve such things as prisoner rehabili-

as a requirement for voting although the 19th Amendment to the U.S. Constitution invalidated that requirement in 1920.

Another would allow the Department of Corrections to transfer certain inmates to other states for treatment or rehabilitation when in the interest of the inmate.

Another proposed change would allow the legislature to permit homestead tax exemptions.

Another one which passed in 1968 but had a flaw in its provisions would allow local governments to join regional councils of government for problems of mutual interest. It would authorize financial contributions to support the projects but would not permit the councils to levy taxes.

Another proposed amendment would remove restrictions on certain types of unclaimed property that generally go to the state.

There are also two proposed amendments which will require statewide approval although they would apply in (See CONSTITUTIONAL, 3-B, Col. 1)

20. 1967-1968 CONSTITUTIONAL AMENDMENTS will allow.

The 11 goals for 1975 on which Busbee has campaigned are reducing drop-outs by 50 per cent, reducing first grade failures, a statewide kindergarten program, improvement in basic instruction skills, occupational training available to all high school students, increase in post high school enrollments, more programs for the handicapped, double adult education enrollments, qualified professional personnel, better planning and evaluation and a minimum education program in each district.

Busbee received his bachelor's degree from the University of South Carolina when he was 18 and later earned a master's degree there. USC and Wofford College have given him honorary doctorates.

There have been virtually no issues and an absence of political rhetoric in the other statewide constitutional races.

In the race for secretary of state, Shaw says he is running because "it is time we had a change in all constitution-

(See DESEGREGATION, 6-B, Col. 2)

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EXHIBIT E
to Response to Motion

New Constitution Article
February 21, 1969

Planned Parenthood v. State

2023CP4002348

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New Constitution Would Protect People's Rights



A NEW CONSTITUTION.
BLUEPRINT
FOR CHANGE
By Edward D. Harrell
Governmental Affairs Staff

Last in a six part series on the S.C. Constitution.

Political power in a free society comes from the people. All the traditional protections of those rights, and some important new ones, would be in the new constitution proposed for South Carolina.

Several significant changes in South Carolina's constitutional guarantees would provide new protections in two important areas and unblock one nagging election problem.

The growth of electronics and

computerization led to constitutional concern over "unreasonable invasion of privacy" in the proposed state charter.

In an addition to the search-and-seizure section of the constitution the special study committee has recommended that "the right of the people to be secure from unreasonable invasions of privacy shall not be violated."

"This additional statement is designed," according to the committee report, "to protect the citizen from improper use

of electronic devices, computer data banks, etc."

Although the new provision would be vague it was deliberately recommended that way "since it is almost impossible to describe all of the devices which exist or which may be perfected in the future..."

Details of administrative divisions are more significant than laws enacted by the General Assembly or decisions made by the courts...

This provision is recommended as a safeguard for the protection of liberty and

property of citizens."

Details of such provisions would be left to statute. Consistent with tradition and long-standing constitutional direction, the new charter would reinforce the election provisions for secret voting but public counting.

It would, however, unblock one nagging election problem—the residency requirements. From 1865 until 1961 the voters of South Carolina, by constitutional requirement, must have

(See Constitution, 2-D, Col. 1)

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(See Constitution, 2-D, Col. 1)



Time Limit Denied

Reps. Preston H. Callison of Lexington, left, George H. Grant of Aiken and Hayward Belser of Richland listen Thursday as Rep. David Harwell of

Florence calls for a time limit on an 8 per cent interest ceiling in South Carolina. Harwell's proposed amendment was killed. (AP Photo)

S.C. House Approves Interest Ceiling Hike

The S.C. House of Representatives approved Thursday an increase to 8 per cent on maximum interest on loans below \$40,000.

The present ceiling is 7 per cent.

The House approved the Judiciary Committee measure by voice vote after defeating several amendments, one of which would have set the ceiling at 7.5 per cent and another which would have raised it to 9 per cent. The measure will be up for what is expected to be a final reading Tuesday and then will go to the Senate.

Rep. Preston H. Callison, D-Lexington, urged that the House pass the 8 per cent limit, because "that is something our lending institutions can adjust to."

"Before this session is over, we might see it fit to raise it to 9 per cent," he said, "but if we trim it any closer than 8 per cent now, we are going to do damage to the home building industry in South Carolina."

Richland Rep. C. Hayward Belser, chairman of the Judiciary Committee, told the House that persons are finding it hard to borrow money in South Carolina because lending agencies are getting their money in states that have higher interest rates.

The House defeated by an 83-to-27 vote an amendment by Rep. William W. Dear Jr. to set the limit on interest rates at 7.5 per cent. Defeated Wednesday

was an amendment by Rep. John Hagins Jr., D-Kershaw, to raise the rate to 9 per cent.

Other efforts were made to increase the limit on interest rates for a one or two-year period only and then have the House review the matter after that period.

Rep. George H. (Buck) Grant, D-Aiken, told the House, "It is a great mistake to say

that we are not stable enough... that we would have to take another look at this in another year. We can't go with reservations on this. We have got to go to 1 per cent without reservations."

Reps. Leonard Krauchack of Charleston and David W. Harwell of Florence tried without success to amend the bill to make the 8 per cent rate ceiling temporary.

Harwell's amendment to restrict the higher rate to one year was defeated, 83-23. Krauchack's amendment calling for a two-year limitation met the same fate, 79 to 31.

Krauchack took exception to claims by proponents of the legislation that supply and demand factors govern the interest rate on most loans and the maximum rate is the exception rather than the rule.

The State

Washington, Piedmont, Pee Dee, and West Carolina Bureaus

Section D Columbia, S. C., Friday, February 21, 1969 Page 1

McNair Welcomes Attack On Hunger

Related Story, 1-A

By LEVONA PAGE
Governmental Affairs Staff

Gov. Robert E. McNair said Thursday that he welcomes any new efforts to solve the state's hunger problems that have been a "longstanding and continuing concern" of his.

He referred to announcements from Washington Wednesday by U. S. Sen. Ernest F. Hollings, D-S.C., that he will seek free food stamps for the needy in Beaufort and Jasper counties.

"The recent situation directed toward the problems of malnutrition in two of our counties is clear evidence that many persons share our long-standing and continuing concern over the health and education of our people," McNair said in a statement issued by his office.

"We welcome any new efforts to bring us assistance and we stand ready now to implement any new program made available to us, including a pilot program of free food for Beaufort and Jasper counties."

His statement did not specifically mention Hollings by name, but staffers said the governor had talked with the senator by phone Wednesday night.

While he welcomed the new efforts, McNair called attention to things already being done. He listed the statewide food stamp program implemented last year, a statewide malnutrition study to be started in the spring, and a new "food by prescription" program that is soon to begin.

For long range improvement, he said the state had undertaken a comprehensive adult education program, which has more than 40,000 persons enrolled and the compulsory school attendance law passed two years ago.

"We welcome now the full involvement of all segments of our public and private community in helping to meet the problems of South Carolina."

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"We welcome now the full involvement of all segments of our public and private community in helping to meet the problems of South Carolina."

Rebuff To Hollings

McNair: Nothing But Truth Needed

In a rebuff to U. S. Sen. Ernest F. Hollings, D-S.C., Gov. Robert E. McNair said Thursday he never found it necessary to tell prospective new industries anything but the truth about health conditions in South Carolina.

"We feel that these people should know the full story about the plant in New York to know the burdens we have been telling it like it is," he said in a statement.

Testifying before the U. S. Senate Select Committee on Nutrition and Human Needs, Hollings said when he was governor the need for industrial development plus state pride resulted in "the public policy of covering up the problem of hunger. We don't want the vice president of the plant in New York to know the burdens we have been telling it like it is," he said in a statement.

McNair commented, "We feel that nothing can be accomplished through telling only a partial story about ourselves, particularly to persons who

ability to make productive citizens may take another crack at the pari-mutuel betting issue next week.

Rep. Thomas F. Hartnett, D-Charleston, moved Thursday to have the House reconsider the vote Wednesday whereby it killed a resolution to set up a committee to study legalized pari-mutuel betting.

The Senate-passed resolution was defeated Wednesday by a

In Wake Of Ice Storm

30,000 Homes Still Dark

By THE ASSOCIATED PRESS

More than 30,000 homes, businesses, offices and institutions in the Pee Dee area of North Carolina and South Carolina remained cold and dark Thursday, and an official of the Rural Electrification Administration warned that the five-day power black-out could become a health hazard.

Electricity to more than 100,000 customers was knocked out by the weekend snow and ice storm in which tons of frozen precipitation collapsed utility poles, steel towers, buildings and trees.

EMERGENCY POWER

Emergency Civil Defense generators were set up at Ellerbe, N.C., a town completely without power, and elsewhere people flocked to National Guard armories and schools for shelter.

Workers for Carolina Power and Light Co. and the REA worked day and night to restore power. Little by little, the customers were being brought back into service.

"The situation is deplorable," said Gwyn Price of Raleigh, head of the REA in North Carolina. "I'm really concerned about it because it might become a health hazard. Some people are without running wa-

ter and refrigerators."

Watt Hurley of CPAL estimated Thursday that 15,000 to 20,000 of his company's customers were still out and Price said 12,000 to 14,000 REA customers were without electricity. Price said about half the REA customers were in the Lumber River section of North Carolina in rural areas around Red Springs, Lumberton and Fayetteville.

HARDEST HIT

But hardest hit were the Pee Dee counties of Richmond, Scotland, Anson, Moore and like in North Carolina and the nearby South Carolina Counties of Chesterfield, Williamsburg, Darlington, Florence and Sumter.

Price said about 200 REA linesmen were working in the Lumber River section and about 200 in the other area. They include emergency crews brought in from Virginia.

Price said C & PL has about 2,000 men working to restore power, including about 1,000 extra from other areas. Neither Price nor Hurley could predict when full service will be restored.

"It's the worse we've ever been hit by a storm," said Hurley. "There were no official estimates of damage from the storm, but it probably will amount to millions of dollars."

Some buildings caved in under the weight of the ice and snow. The tops fell out of trees and onto yards and highways and streets. One man said it cost him \$30 to have enough debris removed from his yard to allow him to remove his car.

A number of fires, possibly caused by short circuits, were reported. One destroyed a home

in Hamlet. Another destroyed a furniture store in Laurinburg. Another did \$2,000 worth of damage to a rent home in Laurinburg, but there were no injuries.

Mostly fair weather has prevailed in the area since Monday, but temperatures are dipping to freezing at night. The forecast called for fair weather Friday with highs in the 40s and 50s in the area.

Thurmond Seeks Government Assistance For Pee Dee Area

Washington Bureau

WASHINGTON — Sen. Strom Thurmond, R-S.C., has been pressing federal authorities to provide maximum emergency assistance and funds to the northeast area of South Carolina for damage caused by recent severe snow and tidal storms.

"It's the worse we've ever been hit by a storm," said Hurley. "There were no official estimates of damage from the storm, but it probably will amount to millions of dollars."

In an effort to bring immediate and long term relief to the people and cities, Thurmond has been in contact with an office of Civil Defense, U. S. Army and the Office of Emergency Preparedness.

He stated that all have been immediately responsive with assistance. Emergency power and the restoration of power and water supply received first priority.

The Army responded immediately to the senator's request for emergency generators in the towns of Hartsville and Bennettsville to provide electricity and power

sources for water at hospitals and old age homes.

Thurmond is pressing for federal funds to help the disaster areas. OEP representatives are surveying the areas now for estimated damage and costs for services.

According to the senator's sources, it is expected to go well over \$15 million with the damage caused by tidal storms on the coast.

The senator will seek federal funds for all costs above that amount since the state has to bear this amount before federal funds are authorized under OEP.



SEN. STROM THURMOND

Richland, Lexington, Fairfield, Newberry

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**EXHIBIT F
to Response to Motion**

**Crowd Hears Anti-Abortion Views Article
January 23, 1976**

Planned Parenthood v. State

2023CP4002745

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16-A THE STATE — Columbia, S.C., Friday, January 23, 1976



Taking A Stand

Four-year-old Daniel Day of Columbia carries a sign at a "Right to Life" rally at the State House Thursday, leaving no doubt about his sentiments, shared by his mother Virgie Day. (Staff Photo by Maxie Roberts).

Crowd Hears Anti-Abortion Views

Related Story 4-A

By DOUGLAS MAULDIN
Governmental Affairs Staff

A chilled, orderly crowd of about 200 persons demonstrated peacefully at the State House Thursday in a plea to Congress to overrule a U.S. Supreme Court decision legalizing abortion.

The demonstration, coinciding with the third anniversary of the landmark decision and with similar protests around the country, urged Congress to approve a "human life" amendment which would protect lives of unborn children and others with no power to protest.

State Reps. Ralph K. Anderson, D-Flower, and Theo W. Mitchell, D-Greenville, who addressed the rally briefly, promised to introduce a resolution in the House Tuesday calling on Congress to approve an anti-abortion amendment.

The lawmaker told the rally that "your cause is right and there are some members of the General Assembly, particularly the House, who believe that Book (the Bible). 'I believe in the right to life based on that Book and not on the basis of state or national laws not based on the Book.'"

Anderson said the abortion battle, however, "is difficult" and must be won on the national level to overturn the "ignominious decision that abortion is legal."

He pledged to co-sponsor a resolution memorializing Congress to adopt an amendment to return the abortion issue to states.

Roman Catholic Bishop Ernest F. Untermyer of the diocese of Charleston told the audience that the Supreme Court "built its case on the issue of privacy and personal property, and we consider that those issues are unfounded."

"Our constitution speaks of respect for life and liberty as does our Declaration of Independence which are built on the dignity of the human person," he said. "Our whole system of democracy is built on the dignity of the human person."

The bishop warned that unrestrained abortions "will lead to mercy killings and ultimately to genocide."

Talks Under Way

On Catawba Sale

CHARLOTTE (UPI) — Negotiations began Thursday between Duke Power Co. and municipal electric systems and rural cooperatives in the two Carolinas for the sale of the proposed Catawba Nuclear Station on Lake Wylie.

A new organization of municipal electric systems served by Duke was recently formed to act in behalf of the cities. It is known as North Carolina Municipal Power Agency No. 1.

The talks were scheduled to continue Friday.

"We're concerned that abortion demand is no longer a crime," the bishop said.

A Columbia Baptist pastor, Dr. David Wood, lashed out at increasing government controls over individuals and a loosening of the country's moral and spiritual fabric.

"The Bible teaches God is against murder and there are those who would take life," the pastor of Harbor Baptist Church said. "The Bible teaches life begins at the time of conception."

He said it is "time for Christians to stand up for the Bible and say we want morality and the Word of God."

abc southeastern Theatres

Palmetto 2nd GREAT WEEK 3-5 7-9

REMEMBER

HUMPHREY BOGART AND THE MALTESE FALCON?

...THIS IS THE SAME THING ONLY FUNNY AS HECK!!!

George SEGAL

THE BLACK BIRD

GET YOUR PAPER ON THE WAY IN 'CASE YOU DON'T WANT TO MISS IT! IT'S FANTASTIC!!

LATE SHOW 11:15 P.M. YES-SONGS

QUAD. IT'S BLOWING

RICHMOND MALL

5th BIG WEEK!

The Great Entertainment Adventure of Our Time!

TWO YEARS IN THE MAKING... PRESENTED AT A COST OF \$10,000,000.

George C. Scott

"The Hindenburg"

SHOWS 2:30 4:45 7:00 9:15

LATE SHOW 11:15 "FRIENDS"

MUSIC BY TONY MONTY

RICHMOND MALL

5th HEARNOUS WEEK!

"IT'S WILD, ZANY, ABSURD, WICKED AND WACKY — FULL OF LAUGHS, VISUAL AND VERBAL MADNESS KAHN AND GENE WILDER ARE HILARIOUS — THEY ROB YOU OF BREATH AS YOU LAUGH YOURSELF WEARY."

—FRANKS TAYLOR

Gene Wilder Madeline Kahn

Marty Feldman

SHERLOCK HOLMES' SMARTER BROTHER

SHOWS 3:30 5:30 7:30 9:30

LATE SHOW 11:15 "FRIENDS"

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RICHMOND MALL

5th HEARNOUS WEEK!

Legislators Begin Eyeing Appointment To Judgeships

By AL LAMIER
AP Capital Correspondent

Four state senators and two house members are more than mildly interested in becoming circuit judges, and four of the six are almost assured of election to the judgeships by their fellow legislators.

Nine new circuit judgeships would be created under the judicial reform bill to be introduced in both the House and Senate next week. The judgeships pay \$37,762 annually.

The Associated Press has learned that Sen. Robert C. Lake of Newberry and Paul Moore of Spartanburg, and Reps. Ernest A. Finney of Sumter and Lee Chandler of Darlington are candidates for judgeships in their judicial circuits. At this point they have no opposition.

Sen. Walter J. Bristow Jr., D-Richland, may face formidable opposition in his circuit from Richland County Judge Owens T. Cobb.

And Sen. Albert J. Dooley, D-Lexington, and Mortimer Smith of West Columbia, the family court judge of Lexington County, are possible contenders for the judgeship from their circuit.

Asked if he is a candidate for that judgeship, Dooley said: "If I had to decide right now, I'd say no." He said he

would prefer to serve four more years in the Senate and would be inclined to support Smith, considered a political independent, for the judgeship.

But Dooley did not rule out the possibility he may decide to seek the judgeship.

A legislative source said there is as yet no announced opposition to the probable candidates for the other three judgeships.

They are Clyde Robinson of Charleston, former U.S. district attorney; Greenville County Judge James Price; and Lowell Ross, a former House member from Oconee County.

The nine additional circuit judgeships — plus a completely new statewide family court system with 40 judges — would be created under the legislation recommended by the Judicial Reform Study

Committee, headed by Sen. Richard W. Riley, D-Greenville.

The committee's majority report was formally presented to the House and Senate Thursday.

SKYWAY DRIVE-IN THEATRE CARLOAD 2 HITS

THEY SCORED IN EVERY CLASS

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the woman every woman wants to be and every man wants to have

Diana Ross

Mahogany

ALSO: DUSTIN HOFFMAN "STRAW DOGS"

START 7:00 — Rated R

BELTLINE DRIVE-IN THEATRE

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Senate Delays

More Debate

On Key Bills

By LINDA KUNTZ LOGAN
United Press International

The South Carolina Senate postponed further debate Thursday on several crucial bills, including one which earlier sparked controversy over possible reapportionment.

The Senate proposed debate on a measure to rewrite the legislative article to the State Constitution, as well as delaying discussion on a bill to re-vamp the State Dairy Commission.

Discussion Wednesday on the legislative article saw the Senate begin to draw lines

LUXURIOUS, SASSY & A LOT OF FUN!

THEY'RE GOING TO MAKE A FORTUNE!

If the Feds don't stop them...

If the Coast Guard doesn't catch them...

If the Syndicate doesn't get them...

LIZA MINNELLI

BURT REYNOLDS