

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Honorable Clifton Newman, Circuit Court Judge

Appellate Case No. 2023-000856

Case No. 2023-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.

MOTION TO ARGUE AGAINST PRECEDENT

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Appellants move under Rules 217 and 240 of the South Carolina Appellate Court Rules for leave to argue against precedent at oral argument on June 27, 2023.

Although Appellants will demonstrate that the Court's decision in *Planned Parenthood South Atlantic v. State*, 438 S.C. 188, 882 S.E.2d 770 (2023), does not control this case and that the 2023 Act is distinguishable from the 2021 Act in critical respects, Appellants will alternatively argue that the Court should overrule *Planned Parenthood South Atlantic v. State*. By this Motion, Appellants seek permission to make that alternative argument during oral argument.

This Motion is timely. Rule 217 requires a motion to argue against precedent to be filed 15 days before argument, and oral argument is now 15 days away.

This Court has regularly granted motions to argue against precedent when the question of whether to overrule a decision is directly presented by a case. *See, e.g., Moore v. Stirling*, 436 S.C. 207, 211, 871 S.E.2d 423, 425 (2022); *Stokes-Craven Holding Corp. v. Robinson*, 416 S.C. 517, 524, 787 S.E.2d 485, 489 (2016); *Bone v. U.S. Food Serv.*, 404 S.C. 67, 70, 744 S.E.2d 552, 554 (2013); *McLeod v. Starnes*, 396 S.C. 647, 651, 723 S.E.2d 198, 201 (2012). The question of whether to overrule *Planned Parenthood South Atlantic* will be squarely raised in Appellants' briefs as one basis on which the Court should hold that the 2023 Act is constitutional.

The Court should do so again here and grant the Motion.

Respectfully submitted,

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