No. 2023-000856

The Supreme Court of the State of South Carolina

PLANNED PARENTHOOD SOUTH ATLANTIC, ET AL.,
RESPONDENTS,

v.

STATE OF SOUTH CAROLINA, ET AL.,
APPELLANTS.

RECEIVED
Jun 15 2023
S.C. SUPREME COURT

APPEAL FROM RICHLAND COUNTY
COURT OF COMMON PLEAS
HON. CLIFTON NEWMAN, CIRCUIT COURT JUDGE

PETITION FOR REHEARING OF SOUTH CAROLINA ASSOCIATION OF PREGNANCY CARE CENTERS, DAYBREAK LIFECARE CENTER, AND AMERICAN COLLEGE OF PEDIATRICIANS ON MOTIONS FOR LEAVE TO FILE BRIEFS AS *AMICI CURIAE* IN SUPPORT OF APPELLANTS

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Under South Carolina Appellate Court Rule 240(j), the South Carolina Association of Pregnancy Care Centers, Daybreak LifeCare Center, and the American College of Pediatricians (collectively, "*amici*") petition for rehearing by the full Court of this Court's orders denying *amici*'s unopposed motions for leave to file *amicus* briefs in support of the Appellants in this case.

On June 6, the Court accepted jurisdiction in this case and required the Appellants' briefs to be served by 5:00 pm on June 14. *Amici* obtained consent from all Appellants and all Respondents to file *amicus* briefs in support of the Appellants. A day before the Appellants' brief was due—and within a week of this Court accepting jurisdiction—*amici* submitted unopposed motions for leave to file two *amicus* briefs, along with copies of the proposed briefs. The unopposed motions and briefs are attached to this petition. Those briefs complied with all Court rules and presented significant arguments for the Court's consideration. They were drafted *pro bono* on an expedited basis by counsel with expertise in the relevant legal areas. The briefs are not frivolous, irrelevant, or duplicative. The Court denied leave to file both *amicus* briefs.

The full Court should reconsider these denials. This Court routinely permits *amici* to provide their perspectives on important legal issues, especially ones concerning constitutional rights. *See, e.g.*, *State v. Langford*, 400 S.C. 421, 433, 735 S.E.2d 471, 477 (2012); *Ex Parte Brown*, 393 S.C. 214, 216, 711 S.E.2d 899, 900

(2011); *see also Savannah Riverkeeper v. S.C. Dep't of Health & Env't Control*, 400 S.C. 196, 207, 733 S.E.2d 903, 909 (2012) (Kittredge, J., dissenting) (referring to the Court's "standard practice of accepting amici briefs," and emphasizing that "we have an obligation to consider an issue fully before making a decision."). The Court received briefs from multiple *amici* in *Planned Parenthood South Atlantic v. State*, 438 S.C. 188, 882 S.E.2d 770 (2023), and cited those briefs repeatedly. The proposed briefs here are meritorious and provide important additional information relevant to the Court's consideration of the issues presented. As explained in the attached motions for leave to file, similar briefs by the American College of Pediatricians have been accepted for filing in courts across the country. And the standing issues raised by Pregnancy Care Centers' brief implicate major subject-matter jurisdiction questions before the Court. *See State v. Gentry*, 363 S.C. 93, 100, 610 S.E.2d 494, 498 (2005) ("The lack of subject matter jurisdiction may not be waived, even by consent of the parties, and should be taken notice of by this Court.").

There is no good reason to deny *amici*'s timely, unopposed motions for leave to file legitimate briefs. "If an *amicus* brief that turns out to be unhelpful is filed, the [Court], after studying the case," can "simply disregard" it. *Neonatology Assocs., P.A. v. Comm'r*, 293 F.3d 128, 133 (3d Cir. 2002) (Alito, J.). "On the other hand, if a good brief is rejected, the [Court] will be deprived of a resource that

might have been of assistance." *Id.* Presumably for this reason, "[e]ven when the other side refuses to consent to an amicus filing, most courts of appeals freely grant leave to file, provided the brief is timely and well-reasoned." *Id.* (quoting Michael E. Tigar & Jane B. Tigar, *Federal Appeals—Jurisdiction & Practice* 181 (3d ed. 1999)); *see, e.g.*, *Mass. Food Ass'n v. Mass. Alcoholic Beverages Control Comm'n*, 197 F.3d 560, 567 (1st Cir. 1999) ("[A] court is usually delighted to hear additional arguments from able amici that will help the court toward right answers."); *Lefebure v. D'Aquilla*, 15 F.4th 670, 675 (5th Cir. 2021) ("[C]ourts should welcome amicus briefs for one simple reason: '[I]t is for the honour of a court of justice to avoid error in their judgments.'").

"No benefit would be served by depriving the [C]ourt of the opportunity to engage with" the arguments presented in these *amicus* briefs. *Id.* at 674. "[T]o the contrary, that would contradict the whole point of our adversarial legal system, which relies on the robust exchange of competing views to ensure the discovery of truth and avoid error." *Id.* In addition, "[a] restrictive policy with respect to granting leave to file may" "create at least the perception of viewpoint discrimination," and "[u]nless a court follows a policy of either granting or denying motions for leave to file in virtually all cases, instances of seemingly disparate treatment are predictable." *Neonatology Assocs.*, 293 F.3d at 133. Finally, denying leave to file "may also convey an unfortunate message about the openness of the [C]ourt." *Id.*

For these reasons, the full Court should reconsider and grant *amici*'s unopposed motions for leave to file *amicus* briefs.

Respectfully submitted,

s/ *Christopher Mills*
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