STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
PLANNED PARENTHOOD SOUTH ATLANTIC, on behalf of itself, its patients, and physicians and staff, *et al.*, *Plaintiffs*, vs. SOUTH CAROLINA, *et al.*, *Defendants,* Henry McMaster, in his official capacity as Governor of the State of South Carolina, *Intervenor-Defendants*.	Civil Action No. 2024-CP-40-00762 **ORDER**

This matter is before the Court on a Motion for Preliminary Injunction filed by Plaintiffs Planned Parenthood South Atlantic, Katherine Farris, M.D., and Taylor Shelton. Plaintiffs seek to enjoin Defendants (numerous state officials, collectively, the "State") from enforcing South Carolina's Senate Bill 474, 125th Gen. Assemb., Spec. Sess. (S.C. 2023) (the "Act") as applied to abortions performed between approximately six and nine weeks last menstrual period (LMP). The Court heard this matter on May 2, 2024 and took the matter under advisement. For the reasons stated below, the Motion is **DENIED**.

I. Introduction

The issue of abortion is complex and deeply personal. The task before this Court is profound and it does not take this job lightly. This Court commends and appreciates the professionalism of counsel for both parties. South Carolinians from all backgrounds have deeply and sincerely held beliefs about this issue. As Justice Kittredge recently stated:

> We recognize the tendency of many to view the divisive issue of abortion through a lens shaped by their own politics or personal preferences. To be clear, our decision today is in no way intended to denigrate or exalt any of the valid concerns on either side of the abortion debate, whether those concerns are based in privacy, morality, medicine, religion, bodily autonomy, or something else.

Planned Parenthood S. Atl. v. State, (*Planned Parenthood II*) 440 S.C. 465, 472, 892 S.E.2d 121, 125–26 (2023); *see also Planned Parenthood of Se. Pennsylvania v. Casey*, 505 U.S. 833, 850, 112 S. Ct. 2791, 2806, 120 L. Ed. 2d 674 (1992), *overruled by Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 142 S. Ct. 2228, 213 L. Ed. 2d 545 (2022) ("Men and women of good conscience can disagree, and we suppose some always shall disagree, about the profound moral and spiritual implications of terminating a pregnancy, even in its earliest stage."). This Court echoes the sentiments as stated by Justice Kittredge.

However, the role of this Court is not to determine whether the law is good or bad, whether the policy should be one way or the other, or to be outcome determinative based on personal views. The role of this Court is to simply determine the intent of the legislature in the enactment of the law in question and whether the actions of the legislature are within the bounds of the Constitution as derived from the will of the people. *Planned Parenthood II*, at 472, 892 S.E.2d at 126 ("Rather, respectful of separation of powers principles and the limited (non-policy) role of the Court, we approach our solemn duty in this case with a single commitment: to honor the rule of law. In our constitutional framework, the rule of law does not bend to satisfy personal preferences."). The

legality and regulation of abortion in the United States and in South Carolina has shifted over the years. The people, through the governmental branches at both the state and federal level, have spoken. This Court must listen.

The issue before this Court is not one of policy, preference, or personal views. If any court, much less a trial court, were allowed to substitute its views for that of the people and the elected representatives, the foundational structure that our Constitution provides would falter. First, the people and their will would be undermined and removed from the legislative and democratic process. The passage of any bill takes time, information, and input – all done through the long and deliberative legislative process. Additionally, the people can voice their views throughout the process to make known their complaints and wishes. However, the judicial process of delivering an opinion is often one of solitude and individuality. No input from the public, much less subject-matter experts, is taken into account in a deliberative and altering way. Rather, a court holds a hearing, listens to the arguments of counsel, and then makes a decision based on the facts and law presented to it – all while following the sworn oath to the Constitution. While many may disagree with the law and voice their concerns, the legislative process allows for those concerns to be heeded or not. This leads to the second reason that a court must avoid policy adventures. If a court correctly or incorrectly substitutes its policy preference for the will of the people, then the legislative branch of government is not held accountable for its actions. Rather, the court is given credit for "fixing" the problem. While some may approve of this method in one case, it surely will not work out in other cases that they would disapprove of the court's preferences. That is why this Court must simply be a conduit of the law.

This case has been framed as a choice between two time frames: six weeks or nine weeks. However, this is **not** the question before this court. The true issue before this Court surrounds

Plaintiffs' claim that the definition of "fetal heartbeat" is unclear. Plaintiffs' proposed policy preference would be that the definition in fact entails the nine-week time frame. However, this Court first looks to the statute to determine whether the time frame envisioned is clear. If it is not clear, then the court looks to the intent of the legislature.

While the question has been framed as a binary choice between six and nine weeks, it is actually a binary choice between six weeks and nothing. As will be discussed throughout this Order, the legislature could not have been more clear that it intended a six-week time frame. Thus, if this Court agrees with Plaintiffs and finds that the legislature failed to make that clear in its definition, then it is not the Court's job to substitute in its own time frame. Because what the parties did not offer this court, but is rife throughout the legislative history and case record, is that there is a plethora of potential time frames when this ban could begin. The legislature clearly intended a biological defining moment to mark the beginning of the ban. Did it make its intent clear in the definition of "fetal heartbeat"? If so, then the six-week mark is the law. If not, then the law is struck down because this Court will not and cannot substitute its own policy preference of some biological defining moment – whether that be nine weeks or any other time frame. That is the choice before this Court.

From the outset, it must be noted that nowhere in the Act do the words "six weeks" or "nine weeks" appear. Where these two time frames come from are from two separate biological defining moments. Generally, Plaintiffs believe that the Act bans abortions at the biological defining moment of when a heart has formed with four chambers, and the State believes this moment begins when there is embryonic cardiac activity.[1] The job of this Court is not to look at the two choices

[1] The declarations from both parties' experts explain at length the medical consensus that they believe defines "fetal heartbeat." This Order uses the term "six" and "nine" weeks when referring to the two biological defining moments that the parties each argued for, and as the parties used the terms.

and pick a policy preference. It is not to substitute the will of the elected representatives with the Court's own personal choices. The job is to determine the text's meaning, what the General Assembly intended with this law, and whether it clearly defined it.

When interpreting the text of a statute or constitutional provision, this Court will always keep several maxims of constitutional interpretation in mind. First, legislative acts are presumed constitutional. Second, courts should always attempt to read a statute as constitutional rather than unconstitutional. Third, and most importantly, courts should always read a statute in congruence with the legislative intent behind the law. This in no way alleviates or removes the judiciary's sacred constitutional right of judicial review; but rather enhances it by saving it for the rare circumstances where it must be wielded. And thus, when judicial review is used and the courts check another branch, it carries a legitimacy that is so vital for our tripartite system of government.

> Judicial power, as contradistinguished from the power of the laws, has no existence. Courts are the mere instruments of the law, and can will nothing. When they are said to exercise a discretion, it is a mere legal discretion, a discretion to be exercised in discerning the course prescribed by law; and, when that is discerned, it is the duty of the Court to follow it. Judicial power is never exercised for the purpose of giving effect to the will of the Judge; always for the purpose of giving effect to the will of the Legislature; or, in other words, to the will of the law.

Osborn v. Bank of U.S., 22 U.S. 738, 866, 6 L. Ed. 204 (1824).

The first step this Court will take when determining the meaning of the statute is straight forward: read and apply the clear meaning of the text. The text is the best piece of evidence in determining what the General Assembly meant when it passed a law. However, if the text is not clear, then this Court must attempt to ascertain the intent of the legislature.

It is important to note that the issue before this court is not whether the abortion ban **should** start at six weeks, nine weeks, or some other time. Even more importantly, the question is not: if the ban is at six weeks, is it unconstitutional? The Plaintiffs at oral argument specifically stated

that they are not challenging the constitutionality of the time frame and its relation to the right to privacy. The South Carolina Supreme Court has upheld the constitutionality of the Act. Rather, Plaintiffs are seeking clarity as to what did the General Assembly **intend** when it passed the Act. In addition, Plaintiffs ask for injunctive relief, a drastic measure, so that the law passed by the General Assembly and upheld by our Supreme Court can be stopped until the intent can be determined. This Court will not stop a constitutionally sound law if it is clear what it means and how it applies. The challenge brought to this Court is not whether a six-week ban is good or bad, but merely whether the General Assembly intended a six-week ban when it passed the Act.

II. Background

In 2021, the South Carolina General Assembly passed the Fetal Heartbeat and Protection from Abortion Act. Act No. 1, 2021 S.C. Acts 2. In January 2023, the South Carolina Supreme Court struck down that 2021 Act as unconstitutional. *Planned Parenthood S. Atl. v. State* (*Planned Parenthood I*), 438 S.C. 188, 882 S.E.2d 770 (2023). After this ruling, the General Assembly revised the 2021 Act and passed a new version of the Fetal Heartbeat and Protection from Abortion Act. Act No. 70, 2023 S.C. Acts ---, codified at S.C. Code Ann. §§ 44-41-610 to -740 (2023).

In August 2023, this new Act was challenged facially in the Supreme Court, and the Court upheld the law as constitutional. *Planned Parenthood II*, 440 S.C. 465, 892 S.E.2d 121 (2023). However, at oral arguments and in the written opinion, the Court noted that it would "leave for another day" an as-applied challenge to the meaning of "fetal heartbeat." *Id*. at 474, 892 S.E.2d at 126. Plaintiffs took up this invitation to challenge the Act on an as-applied basis. They asked the Supreme Court to take the case in its original jurisdiction and also sought an injunction. However, in November, the Court refused to grant a preliminary injunction:

> Petitioners have filed a petition for original jurisdiction asking the Court to determine the meaning of the term "fetal heartbeat" as used in the 2023 version of the Fetal Heartbeat and Protection from Abortion Act (the Act). Petitioners further ask the Court to enjoin the enforcement of the Act. **We deny the request for injunctive relief.** The petition for original jurisdiction is otherwise denied without prejudice to Petitioners' right to file an as-applied action in the circuit court.

See Order, South Carolina Supreme Court (Nov. 14, 2023) (emphasis added).

Plaintiffs then filed this action in the Fifth Judicial Circuit in February 2024. All parties have submitted numerous written briefs and reply briefs. In addition, the parties have submitted affidavits of their experts describing the medical consensus regarding the definition of "fetal heartbeat." On May 2, 2024, this Court heard oral arguments from all parties and subsequently took the matter under advisement.

Recall that the South Carolina Supreme Court upheld the constitutionality of the Act. In accordance with this, Plaintiffs' counsel did not challenge the constitutionality of the Act in regards to privacy concerns. Rather, at the May 2nd hearing, Plaintiffs requested a preliminary injunction and a declaratory judgment.

III. Discussion

Plaintiffs have moved this Court "to enjoin Defendants from enforcing [the Act] during the pendency of an injunction, as applied to abortions performed on patients whose pregnancies have detectable embryonic electrical activity but where a heart has not yet formed, or between approximately six and nine weeks LMP." Pls.' Mot. for Preliminary Inj. 1. In addition to and in conjunction with the requested injunctive relief, Plaintiffs ask this court to "issue a declaratory judgment finding that, consistent with the plain language of the Act: (1) 'cardiac activity' is modified by 'the steady and repetitive rhythmic contraction of the fetal heart' such that the two phrases refer to one point in time during pregnancy, and (2) the relevant point in time addressed

by the Act is the point when a heart has formed, which is after approximately nine weeks…" Pls.' Mot. for Preliminary Inj. 2.

The question of abortion and the right to privacy is morally profound. However, the question before this Court is not the policy preferences and moral decisions that rest on the shoulders of lawmakers, but rather the legal question of statutory interpretation. The specific question in this case boils down to the interpretation of "fetal heartbeat" as defined in the Act. The term "fetal heartbeat" is defined as "cardiac activity, or the steady and repetitive rhythmic contraction of the fetal heart, within the gestational sac." S.C. Code Ann. § 44-41-610(6). The answer to this question is not based on what the law ought to be, but rather what the intent of the law was at the time the General Assembly wrote and passed the law. This Court will only declare what the law is, not what it should be.

A preliminary injunction is used "to preserve the status quo and prevent irreparable harm to the party requesting it." *Compton v. S.C. Dep't of Corr.*, 392 S.C. 361, 366, 709 S.E.2d 639, 642 (2011). Before granting injunctive relief, the party seeking such relief must prove three essential elements: "Accordingly, the applicant must establish three elements to receive this relief: (1) he will suffer immediate, irreparable harm without the injunction; (2) he has a likelihood of success on the merits; and (3) he has no adequate remedy at law." *Id*. An injunction will not be granted lightly, but is a drastic step that a court can take. "The remedy of injunction is a drastic one and ought to be applied with caution." *Forest Land Co. v. Black*, 216 S.C. 255, 266, 57 S.E.2d 420, 426 (1950). It is important to this Court that the South Carolina Supreme Court did not grant injunctive relief on this exact case in September of 2023, but rather sent the case to the circuit court to be argued and build a record. *See* Order, South Carolina Supreme Court (Nov. 14, 2023). The Act has been in effect ever since.

Plaintiffs have claimed that the plain reading of the Act shows that the ban should be enforced at the nine-week mark. In the alternative, they ask this Court to strike down the Act because the definition of "fetal heartbeat" is unconstitutionally vague. Therefore, to succeed on the merits, Plaintiffs must prove those two issues.

This Court first looks to the second element of "likelihood of success on the merits" because that element focuses on the statutory interpretation question which is so forceful and decisive in this case. Whether Plaintiffs' have a viable claim is a matter of law because this Court must determine whether the Act is clear or not about what the General Assembly meant in its definition of "fetal heartbeat" and if the nine-week time frame is what the General Assembly intended.

Defendants have asked this Court to dismiss the motion for injunctive relief because they claim that Plaintiffs have failed to state facts sufficient to constitute a cause of action. Rule 12(b)(6), SCRCP; *Brown v. Theos*, 338 S.C. 305, 313, 526 S.E.2d 232, 237 (Ct. App. 1999), *aff'd*, 345 S.C. 626, 550 S.E.2d 304 (2001) ("Where the dispute is not as to the underlying facts but as to interpretation of the law, and development of the record will not aid in the resolution of the issues, it is proper to decide even novel issues on a 12(b)(6) motion.").

i. Plain Meaning

To determine what the legislature intended, a court must simply read what it wrote. *State v. Hercheck*, 403 S.C. 597, 602–03, 743 S.E.2d 798, 801 (2013) (citation omitted) ("What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will."). If it is not clear what the legislature intended by simply reading the text, the court must then attempt to ascertain what it intended. *In re Vincent J.*, 333 S.C. 233, 235, 509 S.E.2d 261,

262 (1998) ("The primary function of the Court in interpreting a statute is to ascertain the intention of the legislature."). While that is simply put, it is anything but. How does a court balance clarifying the ambiguity without buttressing or supplying the judge's policy preferences or personal opinions? This Court will never supplement the will of the General Assembly with its own interpretations because that would be a direct violation of the Constitution and the sacrosanct doctrine of separation of powers. Rather, this Court will use a scalpel in determining, as best it can, the precise intent by the Act.

Figuring out the intent of the legislature is no easy feat, and is fraught with easy temptations to substitute policy preferences disguised as legislative overtures. This Court is a trial court, which means it is rarely tasked with constitutional interpretations of a first impression. Our Supreme Court is constitutionally tasked and procedurally equipped with the ability to give its final answer on pressing and important questions. However, the parties were specifically tasked with having a circuit court hear and determine this issue, and this Court does not take that responsibility lightly. As difficult as it may be to determine legislative intent, this Court will simply follow South Carolina Supreme Court precedent and look to the original understanding and intent by the General Assembly.

In *State v. Harper*, our Supreme Court held that statutes should be construed similarly to constitutional provisions. *State v. Harper*, 6 S.C. 464, 469–70 (1876) ("As with a statute, so with a Constitution; the Court must give effect, if possible, to its every provision, and render such a construction as will preserve the intention of the framer if it can be collected from the words he has employed…"); *see also City of Charleston v. Oliver*, 16 S.C. 47, 52 (1881) ("The object being to ascertain the intention of the framers of the constitution, which must be gathered from the words used, we must necessarily give to those words the sense in which they are generally used by those

who framed and those who adopted the constitution…"). This proposition was reaffirmed in 2014, when the Supreme Court again stated that "the Court applies 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). "When this Court is called to interpret our Constitution, it is guided by the principle that both the citizenry and the General Assembly have worked to create the governing law." *Id.* "The Court will look at the 'ordinary and popular meaning of the words used,'…" *Id.*

Turning to the specific statute in question, this Court must first determine if the text is clear about when a "fetal heartbeat" begins. If it is, then the inquiry ends. *In re Vincent J.*, at 235, 509 S.E.2d at 262 ("Under the plain meaning rule, it is not the Court's place to change the meaning of a clear and unambiguous statute."). The Plaintiffs argue that the language of the text is abundantly clear and only has one interpretation: "fetal heartbeat" begins after a heart has formed which is around nine weeks. They argue that this is made clear by the commas offsetting the term "cardiac activity" which further define exactly what that activity is: "steady and repetitive rhythmic contraction of the fetal heart[.]"

Based on the declaration of Dr. Farris, the term "heart" indicates an organ with four functioning chambers – which is not present until approximately nine weeks. Farris Decl. at ¶ 10. Additionally, Dr. Crockett stated in her affidavit that "structures representing the functional elements of a heart are not present until after approximately [9 weeks LMP]." Crockett Decl. at ¶ 24.

Contrary to Plaintiffs' experts, the States' expert stated that "there is medical consensus that the organ identified here as the embryonic heart contracts to circulate blood throughout the embryo around 5-6 weeks LMP. Skop Decl. at ¶ 7. Plaintiffs have stated that the definition of "cardiac activity" in the Act requires a steady and rhythmic beat, and that this is not possible until

at least nine weeks. However, the States' expert claims that this is exactly the case at the six-week mark. Skop Decl. at ¶ 18 ("The science is clear: An embryo's heart is beating steadily, repetitively, and rhythmically—and functioning as a heart should, circulating oxygen-rich blood throughout the preborn body—by the time the heartbeat can be detected around 6 weeks LMP."). Additionally, the States' expert further explains her scientific opinion and reasoning behind this conclusion:

> While it is true, as Dr. Crockett stated, that the four chambers of the heart are not developed until the ninth week LMP, there is no medical consensus that a functioning blood-circulating embryonic heart does not begin to exist until it develops all four chambers. In fact, a "heart" is defined as an organ which "continuously pumps oxygen and nutrient-rich blood throughout your body to sustain life." Or as Dr. Crockett states in her Declaration, "[t]he human heart is the primary organ of the circulatory system, serving to pump blood throughout the body." Crockett Dec. at ¶ 12 (emphasis added). This is precisely what an embryonic heart does even before the time it can be detected by ultrasound technology. As Dr. Crockett acknowledges, "the organ will begin to transmit electrical impulses which causes cellular contractions on approximately day 21 of development; blood begins to circulate in the embryo on days 24-25 of development (5 weeks LMP)." Id. at ¶ 27 (emphasis added). As a board-certified obstetrician practicing over thirty years, I can attest this heartbeat can usually be detected by around 6 weeks LMP. The ultrasound doppler reflects the movement of blood within the contracting heart, that is, the embryonic "heartbeat."

Id. at ¶ 12-13.

> The key question in confirming the presence of cardiac activity is not, "When is the heart developmentally complete?" but, "When does it perform the function of a heart?" Although the embryonic heart has not yet reached its final shape, electrical impulses generated by the cardiac conduction system cause muscular contractions to propel oxygen-carrying blood cells throughout the embryo's body beginning in the 6th week of gestation. These rhythmic contractions are not haphazard, but regular and repetitive, and if the heartbeat were to cease, the unborn child would die. The blood flow that can be detected by ultrasound at 6 weeks LPM corresponds directly with these contractions of the embryonic heart (i.e., heartbeats).

Id. at ¶ 15.

These dueling experts alone would likely call into question the clarity of the definition, but by Plaintiffs' counsel's own admission at oral argument, there is a term in the definition that is not

clear. According to Plaintiffs, the term "fetus" or "fetal" refers to a period of at least 10 weeks. Farris Decl. at ¶ 11. ("Additionally, in the field of medicine, the developing organism present in the gestational sac during pregnancy is most accurately termed an 'embryo' before approximately ten weeks LMP. The term 'fetus' is not used until after this time."). As Plaintiffs have argued, the heart forms as early as nine weeks. Therefore, the term "fetal heart" as used in the definition would be contradictory and not clear as to what exactly time frame it is referring to. *See also* Pls.' Mem. in Supp. 9 n. 4. ("Physicians and scientists may use different verbiage in talking about cardiac development at different stages of pregnancy. **For example, some may use the term "heartbeat" to refer to early embryonic electrical activity.** However, the medical consensus is that the four main components of a heart (four chambers, walls, valves, and conduction system) form after approximately nine weeks LMP. Crockett Decl. ¶ 32.") (emphasis added). The only point of this line of argument that this Court is making is to illustrate that while Plaintiffs claim the definition of "fetal heartbeat" clearly indicates the nine-week time frame, this definition is in fact ambiguous.

If the definition were as clear as Plaintiffs claim, then this case would be far simpler than it is. *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) ("Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.") Even the South Carolina Supreme Court appears to acknowledge that the definition is not textually clear:

> We leave for another day (in an as-applied constitutional challenge) the meaning of "fetal heartbeat" and whether the statutory definition—"cardiac activity, *or* the steady and repetitive rhythmic contraction of the fetal heart, within the gestational sac"—refers to one period of time during a pregnancy or two separate periods of time.

Planned Parenthood II, at n. 4; *Id*. at 497, 892 S.E.2d at 139 ("I say 'if' the 2023 Act is viewed as a six-week ban because the majority now states there is uncertainty about what the language even means.") (Beatty, C.J., dissenting).

At oral arguments for *Planned Parenthood II*, the justices noted their concerns with the ambiguity of the text of the statute:

> Those commas may or may not have great significance. Do you think that the phrase that is within the commas, the parenthetical within the commas, is actually a phrase that the legislature intended to define the term "cardiac activity" or to supplement the term "cardiac activity"? In other words, the question that I'm asking you is simply is "fetal heartbeat" defined simply as "any cardiac activity" or is it defined as "the steady and repetitive rhythmic contraction of the fetal heart?"

Oral Argument Video 0:07:10–0:08:10, *Planned Parenthood II*, No. 2023-000896 (S.C.) (Few, J.); *Id*. 0:09:12 – 0:09:18 ("…because you just walked yourself into a gigantic hole of ambiguity.").

The definition of "fetal heartbeat" is not clear and unambiguous and does not convey a definite meaning on its face. Therefore, this Court must look to the intent of the General Assembly in determining, if possible, what it envisioned. *Bankers Tr. of S.C. v. Bruce*, 275 S.C. 35, 37, 267 S.E.2d 424, 425 (1980) ("The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent wherever possible."). It must be noted, however, that at oral arguments, counsel for both parties conceded that the definition of "fetal heartbeat" refers to one point in time and not two.

ii. Ambiguity

If a statute is ambiguous, as they often are, then that simply means that this Court must continue its inquest into the intent behind the legislation so that it can give meaning to the words in the law. *Lambries v. Saluda Cnty. Council*, 409 S.C. 1, 10, 760 S.E.2d 785, 789 (2014) ("If a statute is ambiguous, the courts must construe its terms.") This Court will look to the intent and

understanding by those who proposed, wrote, and passed the law: the General Assembly. As a trial court, this Court will also be persuaded and guided by how the South Carolina Supreme Court has approached this complex and heavy issue.

> As has been well said, "in interpreting an ambiguous statute the question is what the words meant to those using them, and to ascertain this the courts should examine the statute in the light of the history of its enactment, the contemporary history of the conditions and situation of the people, the economic and sociological policy of the state, its Constitution and laws, and all other matters of common knowledge within the limits of their jurisdiction."

Crescent Mfg. Co. v. Tax Comm'n, 129 S.C. 480, 124 S.E. 761, 767 (1924)

i. Legislative Intent

Because the text is not clear, this Court must further delve into the legislative intent behind the definition. Did the General Assembly intend to ban abortions at six weeks or some other point? This Court believes that there is no doubt as to what the General Assembly meant when it passed the Act. This Court cannot locate one instance of legislative history indicating a time frame of any other period other than the six-week mark, much less nine weeks. The legislative record of this Act is rife with references to the six-week time frame.

- "a heartbeat can be detected between six and seven weeks." S.C. Senate, Video of Floor Proceedings, at 1:31:00 (Feb. 7, 2023) (Sen. Massey).
- Arguing against S. 474, Senator Senn insisted that a "six-week ban, as the Court actually started calling it and as most people call it," "was already held unconstitutional one time" in *Planned Parenthood I*. S.C. Senate, Video of Floor Proceedings, at 3:45:10 (Feb. 9, 2023) (Sen. Senn).
- S.C. House Judiciary Comm., Video of Comm. Hearing Part 2, at 1:40:34 (May 9, 2023) (Rep. Brittain).
- "six weeks is six weeks. It's the heartbeat bill." S.C. House Judiciary Comm, Constitutional Laws Subcomm., Video of Comm. Hearing, at 46:08 (May 9, 2023) (Rep. Wheeler).
- S.C. House Judiciary Comm., Video of Comm. Hearing Part 2, at 3:16:40–3:21:20 (May 9, 2023) (Rep. Wheeler).

- "the very crux of this piece of legislation surrounds time" and "it's a six-week ban." S.C. House, Video of Floor Proceedings Part 1, at 8:49:44 (May 16, 2023) (Rep. Bamberg).
- "the General Assembly passed the act which prohibits an abortion after around the sixth week of gestation, which we are here discussing again" with S. 474. *Id*. at 12:28:54 (Rep. Bauer).
- "now cutting off abortion—or the access to abortion—at six weeks." *Id*. at 2:35:15 (Rep. Dillard).
- "still ha[s] the six weeks." S.C. House Judiciary Comm., Video of Comm. Hearing Part 1, at 0:13:30 (May 9, 2023) (Rep. Bernstein)
- S. 474 prohibits abortion at "six weeks." S.C. House Judiciary Comm., Video of Comm. Hearing Part 2, at 0:10:58 (May 9, 2023) (Rep. Thigpen)
- "six weeks is a total abortion ban." *Id*. at 3:25:443 (Rep. Bamberg)
- S.C. House, Video of Floor Proceedings Part 1, at 0:59:15 (May 16, 2023) (Rep. Wetmore)
- "at six weeks most women don't even know that they're pregnant." *Id*. at 3:22:40 (May 16, 2023) (Rep. Bamberg)
- "we're doing the same exact thing on this bill" as the General Assembly did in the 2021 Act, and the Supreme Court has held "the six-week ban" is unconstitutional. *Id*. at 3:31:07 (Rep. Bamberg)
- "we've decided against our better judgment we're going to stick with a six-week ban." *Id*. at 7:13:17 (Rep. Bamberg)
- S. 474 "has the gestational age as six weeks." *Id*. at 7:28:00 (Rep. Bernstein)
- *Id*. at 13:10:50 (Rep. Howard)
- "this essentially amounts to a total ban because it's next to impossible for a woman to know she's pregnant at six weeks." S.C. House, Video of Floor Proceedings Part 2, at 2:16:50 (May 16, 2023) (Rep. Rose)
- S. 474 is a "total ban" because "very little people can actually know that they're pregnant at six" weeks. *Id*. at 6:36:15 (Rep. Rose)

In addition to the statements by legislators as to their understanding of the law, a statement by Senators Massey, Campsen, and Grooms entered into the Senate Journal cites to the American Pregnancy Association in describing the time frame of when the Act would begin the ban. *See* Senate Journal, Gen. Assemb., 125th Session, February 9, 2023 ("According to the American Pregnancy Association the heartbeat of an unborn child can be detected between 6 ½ to 7 weeks

of pregnancy though it is possible, though much less likely, that a heartbeat can be detected a week earlier -- about 5 ½ weeks."). In that same Senate Journal, Senator Senn, who opposed the measure, also described the Act as banning abortions at the six-week time frame. *Id*. ("S. 474 is another six-week ban on abortion Bill." "Yet the same issues that were presented in the first six-week ban on abortion case will also need to be addressed in the second." "The new six-week abortion ban is S. 474.")

This Court can draw absolutely no other conclusion than that the General Assembly intended for the Act to begin at the six-week mark. To find that the General Assembly intended anything other than the six weeks would fly in the face of statutory interpretation and constitutional requirements. *State v. Pittman*, 373 S.C. 527, 561, 647 S.E.2d 144, 161 (2007) ("All rules of statutory construction are subservient to the maxim that legislative intent must prevail if it can be reasonably discovered in the language used.").

ii. Court precedent

In *Planned Parenthood I*, the Supreme Court repeatedly and adamantly referred to the ban as a "six-week" limit throughout the opinion. While this case discussed the 2021 Act, it used the same definition of "fetal heartbeat" that is before this Court. *Compare* 2023 S.C. Acts No. 70, § 2 (S.C. Code Ann. § 44-41-610(6)), *with* 2021 S.C. Acts No. 1, § 3 (S.C. Code Ann. § 44-41-610(3) (repealed)). The Supreme Court used the phrase "six-week ban" in some form over 60 times. To highlight some examples:

- "In 2021, the General Assembly passed the Act, which prohibits an abortion after around six weeks gestation." *Planned Parenthood I*, 438 S.C. 188, 195, 882 S.E.2d 770, 774 (2023).
- "…six weeks, precisely when the Act bans this medical procedure." *Id*. at 214, 882 S.E.2d at 784.

- "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." *Id*. at 217, 882 S.E.2d at 786.
- "However, South Carolina's law is based on a factual premise—the existence of a fetal heartbeat as early as six weeks of gestation…" *Id*. at 221, 882 S.E.2d at 788.
- "In the instant case, the Act prohibits an abortion after a "fetal heartbeat" has been detected. S.C. Code Ann. § 44-41-680(A) (Supp. 2022). The Act defines a fetal heartbeat broadly, as any "cardiac activity." *Id.* § 44-41-610(3). As discussed, this activity can be present as early as six weeks into a pregnancy." *Id*. at 237, 882 S.E.2d at 797.
- "Banning abortions at the stage of detectable embryonic "cardiac activity," presumably at the six-week gestation period…" *Id*. at 237-238, 882 S.E.2d at 797.
- "The six-week or detectable "cardiac activity" limitation…") *Id*. at 243, 882 S.E.2d at 800.
- "Petitioners note that when the Act became effective in February 2021, it banned most abortions upon the detection of embryonic "cardiac activity," generally said to occur at approximately six weeks…" *Id*. at 246, 882 S.E.2d at 801.
- " 'Fetal Heartbeat Act'—also commonly referred to as the 'six-week bill?' " *Id*. at 257, 882 S.E.2d at 807.
- "…our General Assembly specifically recognized in the six-week bill…" *Id*. at 269, 882 S.E.2d at 814.
- "The Fetal Heartbeat Act is referred to as the 'six-week bill' because cardiac activity 'can be detected by transvaginal ultrasound by 6-7 weeks post [last menstrual period] or 4-5 weeks post-conception.' (J.A. at 305 & n.6). The State contends this cardiac activity—the 'fetal heartbeat'—can be detected at approximately six weeks. (Resp't Att'y General Br. 6). If the time period on which the common name 'six-week bill' is based were measured from conception—as is the name twenty-week bill—the common name would be the 'four-week bill.' This becomes important to my analysis in subsections V.B. and V.D. of this opinion." *Id*. at 258, 882 S.E.2d at 808.

The reason that this Court finds the opinion of the Supreme Court so persuasive is not because it carries more weight than the legislative record, but rather as a trial court, this Court will always attempt to ascertain and follow the precedent as set out by the highest court in our state. More recently, an Order Granting a Preliminary Injunction by Judge Clifton Newman of the circuit court referred to the 2023 Act as the "Six-Week Ban." Order, *Planned Parenthood South Atlantic v. State*, No. 2023-CP-40-002745 (S.C.Com.Pl. May 26, 2023).

After reviewing the legislative record and judicial precedent, this Court has no choice but to declare the clear intent of the General Assembly when it passed this Act: the legislature, **beyond any doubt**, intended the ban to start at the six-week mark and not another time. *Mitchell v. City of Greenville*, 411 S.C. 632, 634, 770 S.E.2d 391, 392 (2015) ("The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible."); *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 412, 526 S.E.2d 716, 719 (2000) ("A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers."); *State v. Baker*, 310 S.C. 510, 512, 427 S.E.2d 670, 671–72 (1993) ("Our primary function in interpreting a statute is to ascertain the intent of the Legislature."); *Browning v. Hartvigsen*, 307 S.C. 122, 125, 414 S.E.2d 115, 117 (1992) ("The real purpose and intent of the lawmakers will prevail over the literal import of the words."). Because this Court finds that the statute has only one meaning based on the intent of the General Assembly, this Court cannot apply an alternative interpretation. *State v. Pittman*, at 562, 647 S.E.2d at 162 ("Because we find that the statute has only one meaning, we cannot apply an alternate interpretation.").

Even if this Court is presented with two susceptible definitions of "fetal heartbeat" – one at six weeks and the other at nine – this Court must adopt the definition that the legislature intended and not the one that "presents grave and doubtful constitutional questions." *Edwards v. State*, 383 S.C. 82, 91–92, 678 S.E.2d 412, 417 (2009) ("Where a statute is susceptible of two constructions, one of which presents grave and doubtful constitutional questions, and the other of which avoids those questions, the Court's duty is to adopt the latter."); *State v. Pittman*, at 562, 647 S.E.2d at 162 ("This Court has held that where a statute is susceptible to *more than one construction,* the court should interpret the statute so as to avoid constitutional questions[.]").

iii. Constitutional interpretation

The legal issue of defining "fetal heartbeat" has been positioned as a choice between two policy preferences: six or nine weeks. But this is not the case, and this Court does not believe that is what the Supreme Court referred to when it sent this case down to the trial arena. This Court believes that the issue that the Supreme Court was seeking to clarify was: Even though the General Assembly clearly intended the ban to begin at six weeks, did it properly write that definition into the Act?

After determining that the statute is not clear on its face, but the legislative intent is crystal clear, the next issue raised by Plaintiffs is the contention that the statute is too vague to survive constitutional muster. For Plaintiffs to succeed in challenging the statute for vagueness, they have a high burden to clear.

> This Court has a limited scope of review in cases involving a constitutional challenge to a statute because all statutes are presumed constitutional and, if possible, will be construed to render them valid. *Davis v. County of Greenville,* 322 S.C. 73, 470 S.E.2d 94 (1996). "A possible constitutional construction must prevail over an unconstitutional interpretation." *Westvaco Corp. v. South Carolina Dep't of Revenue,* 321 S.C. 59, 467 S.E.2d 739 (1995). Further, a legislative act will not be declared unconstitutional unless its repugnance to the Constitution is clear and beyond a reasonable doubt. *Id.* **Because Curtis does not establish an infringement of a constitutional right, the trial court was correct in holding he is not likely to succeed on the merits of the following constitutional challenges**.

Curtis v. State, 345 S.C. 557, 569–70, 549 S.E.2d 591, 597 (2001) (emphasis added). The constitutional issue at hand in this case is the right to procedural due process – which is violated by vague laws. 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.

This Court is bound by the Constitution and Supreme Court precedent interpreting the Constitution which requires that courts to always seek to find statutes constitutional if permissible.

Davis v. Cnty. of Greenville, 322 S.C. 73, 77, 470 S.E.2d 94, 96 (1996) ("Accordingly, we construe the statutes so as to render them constitutional."); *Last v. MSI Const. Co.*, 305 S.C. 349, 352, 409 S.E.2d 334, 336 (1991) ("All statutes are presumed constitutional and will, if possible, be construed so as to render them valid."); *Mitchell v. Owens*, 304 S.C. 23, 24, 402 S.E.2d 888, 889 (1991) ("A statute enacted pursuant to legislative power is presumptively constitutional."); *Bodman v. State*, 403 S.C. 60, 66, 742 S.E.2d 363, 365–66 (2013) ("We are reluctant to declare a statute unconstitutional. Hence, we will make every presumption in favor of finding it constitutional. Moreover, if possible, we must construe a statute so that it is valid. The party challenging the statute bears the heavy burden of proving that 'its repugnance to the constitution is clear and beyond a reasonable doubt.'").

i. Constitutional Avoidance

Plaintiffs ask this Court – if it finds the statutory language ambiguous – to construe the Act to avoid constitutional infirmity and interpret the definition consistent with the medical definition. Pls.' Mem. in Supp. 16. But this Court has been presented with a medical definition from both experts. *See* Farris Decl.; Crockett Decl.; Skopp Decl. One states that the definition is consistent with a nine-week time frame and the other with the six-week. Both declarations go into great detail about this finding and how each conclusion is reached. While this might appear to balance the scales, they surely fall in favor of the State based on the record of legislative intent and that the General Assembly intended for the six-week mark to be the moment in time. *Planned Parenthood II*, at 475, 892 S.E.2d at 127 ("This deference is not diminished simply because there is medical support for 'both sides' of an issue.").

Therefore, Plaintiffs are unlikely to succeed on the merits as to this constitutional issue because a court is required to construe a statute in alignment with the intent of the legislative body

that passed the law. Additionally, the South Carolina Supreme Court has already upheld the constitutionality of the Act in *Planned Parenthood II*.

ii. Vagueness

In *Planned Parenthood II*, the Supreme Court held for another day the as applied challenge to the definition of "fetal heartbeat." *Planned Parenthood II*, at n. 4 ("We leave for another day (in an as-applied constitutional challenge) the meaning of 'fetal heartbeat' and whether the statutory definition—'cardiac activity, *or* the steady and repetitive rhythmic contraction of the fetal heart, within the gestational sac'—refers to one period of time during a pregnancy or two separate periods of time."). "The line between facial and as-applied relief is fluid one, and many constitutional challenges may occupy an intermediate position on the spectrum between purely as-applied relief and complete facial invalidation." 16 C.J.S. Constitutional Law § 153. "Statutes are ordinarily challenged, and their constitutionality evaluated, 'as applied'-that is, the plaintiff contends that application of the statute in the particular context in which he has acted, or in which he proposes to act, would be unconstitutional. The practical effect of holding a statute unconstitutional 'as applied' is to prevent its future application in a similar context, but not to render it utterly inoperative." *Ada v. Guam Soc. of Obstetricians & Gynecologists*, 506 U.S. 1011, 113 S. Ct. 633, 121 L. Ed. 2d 564 (1992) (Scalia, J., Rehnquist, C.J., and White, J., dissenting). "Conversely, '[i]n an as-applied' challenge, the party challenging the constitutionality of the statute claims that the 'application of the statute in the particular context in which he has acted, or in which he proposes to act, would be unconstitutional.'" *State v. German*, 439 S.C. 449, 466, 887 S.E.2d 912, 921 (2023) (citation omitted).

That day is now upon us, and a decision must be made. Because this is a matter of first impression as to this specific definition in the Act, this Court will follow the mandate of the

Supreme Court and provide guidance as to its application based on the intent of the General Assembly and not based on any personal preference or policy choice. *Town of Mount Pleasant v. Chimento*, 401 S.C. 522, 534, 737 S.E.2d 830, 838 (2012) ("In deciding a void-for-vagueness challenge to a statute, the Court must look first to see whether the allegedly unconstitutional statute has been interpreted or limited by prior judicial decisions.").

Even though the legislative intent is abundantly clear, the General Assembly still must actually write the law so that it is clear for the public to understand what it is. If the legislature fails at this, then the law will fail for vagueness. Our Supreme Court has made clear that the legislature must make laws clear enough to survive a due process challenge. *Curtis v. State*, at 571–72, 549 S.E.2d at 598 ("The constitutional standard for vagueness is the practical criterion of fair notice to those to whom the law applies."); *State v. Albert*, 257 S.C. 131, 134, 184 S.E.2d 605, 606 (1971) ("The concept of vagueness or indefiniteness rests on the constitutional principle that procedural due process requires fair notice and proper standards for adjudication. The primary issues involved are whether the provisions of a penal statute are sufficiently definite to give reasonable notice of the prohibited conduct to those who wish to avoid its penalties and to apprise judge and jury of standards for the determination of guilt."); *Toussaint v. State Bd. of Med. Examiners*, 303 S.C. 316, 320, 400 S.E.2d 488, 491 (1991) ("A law is unconstitutionally vague if it forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess as to its meaning and differ as to its application.")

In addition, our Supreme Court and the United States Supreme Court have held that the standard for vagueness applies to those to whom the law is being applied. *Id*. (citations omitted) ("The constitutional standard for vagueness is the practical criterion of fair notice to those to whom the law applies. When the persons affected by the law constitute a select group with a specialized

understanding of the subject being regulated, the degree of definiteness required to satisfy due process is measured by the common understanding and knowledge of the group."); *Huber v. S.C. State Bd. of Physical Therapy Examiners*, 316 S.C. 24, 26–27, 446 S.E.2d 433, 435 (1994) ("When the persons affected by the law constitute a select group with a specialized understanding of the subject being regulated, the degree of definiteness required to satisfy due process is measured by the common understanding and knowledge of the group.")

Specifically, this Court will look to two lines of inquiry for a vagueness issue: is there fair notice to those affected by the law or does the law have the potential for arbitrary enforcement. *Johnson v. United States*, 576 U.S. 591, 595, 135 S. Ct. 2551, 2556, 192 L. Ed. 2d 569 (2015) ("Our cases establish that the Government violates this guarantee by taking away someone's life, liberty, or property under a criminal law so vague that it fails to give ordinary people fair notice of the conduct it punishes, or so standardless that it invites arbitrary enforcement."); *State v. Lewis*, 434 S.C. 158, 167–68, 863 S.E.2d 1, 6 (2021) (citation omitted) ("Simply because a statute uses undefined terms or could have been drafted more precisely does not render it unconstitutionally vague. ...Instead, to satisfy due process concerns, a statute must be sufficiently definite to enable a person of common intelligence to not have to guess as to its meaning."); *State v. Green*, 397 S.C. 268, 279, 724 S.E.2d 664, 669 (2012) ("A law is unconstitutionally vague if it forbids or requires the doing of an act in terms so vague that a person of common intelligence must necessarily guess as to its meaning and differ as to its application.").

In the case at hand, this Court has already stated that the definition of "fetal heartbeat" is ambiguous, however the inquiry does not end there. The finding of ambiguity is merely a statutory interpretation, while the finding of vagueness is a much higher level of constitutional interpretation.

As discussed earlier, the term "fetal heartbeat" is defined as "cardiac activity, or the steady and repetitive rhythmic contraction of the fetal heart, within the gestational sac." S.C. Code Ann. § 44-41-610. Additionally, the General Assembly made the following finding with the Act: "(2) Cardiac activity begins at a *biologically identifiable moment* in time, normally when the fetal heart is formed in the gestational sac." South Carolina Fetal Heartbeat and Protection from Abortion Act, Act No. 70, 2023 S.C. Acts ——, —— § 1(2) (emphasis added); *Planned Parenthood II*, at 475, 892 S.E.2d at 127 ("As an initial matter, we recognize that legislative findings are entitled to deference and may be rejected only if determined to be arbitrary as a matter of law.").

For three important reasons, this Court finds that the Plaintiffs have not met their burden in showing that the Act's ban is void for vagueness. This Court received legal briefs, expert declarations, and oral arguments from both parties – which is what this Court decides the issue of vagueness on. First, counsel for Plaintiffs stated at oral argument that they were asking this Court to give a declaratory judgment as to whether the time frame was six weeks or nine weeks. This is important because it is a tacit admission that it is a choice between two definite time periods. Which leads to the second and most important point: a biological defining moment as intended by the General Assembly.

During oral arguments, both Plaintiffs and Defendants agreed that the six-week time frame was a biological identifiable moment. This is extremely important because Plaintiffs have not made the argument that Planned Parenthood was unable to determine when the six-week time "moment" was, but rather that they were not sure if the "moment" was the six-week mark or the nine-week mark. *See also* Pls.' Mem. in Supp. 10 ("…[Plaintiffs] have had no choice but to stop providing abortions as soon as embryonic electrical activity can be detected via ultrasound – after approximately six weeks LMP (and sometimes sooner)."). This is imperative because it goes to

the key issue of a vagueness challenge which the Plaintiffs carry the burden. In addition to the legal arguments, Plaintiffs' expert states this point in her declaration and makes clear that they know when the six-week biological defining moment is, but that they disagree that it should be the starting point:

> Due to the Act's severe criminal and civil penalties, when the Act was first passed in May of this year, I assumed it to prohibit abortion after the detection of embryonic electrical activity, which can be observed through ultrasound as early as six weeks as measured from the first day of a patient's last menstrual period ("LMP"). I thus understood the term "fetal heartbeat" to cover not just a "heartbeat" in the medical sense, but also early embryonic electrical activity present before development of any cardiovascular system. However, the South Carolina Supreme Court, at oral argument and in the majority decision, introduced the question of whether the statutory definition of "fetal heart" defines "cardiac activity" with the clause "or the steady and repetitive rhythmic contraction of the fetal heart, within the gestational sac."4 In other words, the Court posed the question as to whether the Act prohibits abortion after embryonic electrical activity can be detected, as early as six weeks LMP, or after a heart has formed after approximately nine weeks LMP, before leaving this question unanswered.

Farris Decl. ¶ 7.

> Accordingly, based on this ambiguity first raised by the South Carolina Supreme Court, I am unable to understand with confidence at what point(s) in pregnancy abortion is prohibited.

Id. ¶ 8. The declaration and statements by counsel indicate to this Court that Plaintiffs do not have to guess at when the ban begins – which is a crucial factor in a void for vagueness argument.

And third, and similarly to the second point, Planned Parenthood has stated that they have interpreted the ban at six weeks and used that as their time frame.

> Because of the ambiguity about which point in pregnancy abortion is banned by the Act, on August 23, 2023, PPSAT stopped performing the vast majority of abortions—any with detectable embryonic electrical activity—that we performed before the Act went into effect. Because we face the threat of civil and criminal penalties for violating the Act, we must presume that a "fetal heartbeat" can be detected after approximately six weeks LMP—despite the fact that no heart has formed at that point and thus there is no heartbeat.

Id. ¶ 14. This again goes to the requirement of a vagueness argument that the Plaintiffs must guess as to the required conduct of the statute and that the law may be applied arbitrarily.

The South Carolina Supreme Court and the South Carolina Constitution require more than simply having an ambiguous statute or one that is subject to more than one interpretation. The vagueness doctrine is a far-reaching remedy and requires that the parties affected by the law suffer from guesswork, speculation, and arbitrariness. *Broadrick v. Oklahoma*, 413 U.S. 601, 608, 93 S. Ct. 2908, 2913, 37 L. Ed. 2d 830 (1973) ("Words inevitably contain germs of uncertainty…"); *State v. Lewis*, at 167, 863 S.E.2d at 6 ("Simply because a statute uses undefined terms or could have been drafted more precisely does not render it unconstitutionally vague."). That is not the case here based on the evidence provided by Plaintiffs.

iii. Separation of Powers

The doctrine of separation of powers is at the forefront of this case because it involves the interpretation of a statute that is far reaching and consequential. But no matter the stakes, this Court will always follow its constitutional mandate. S.C. Const. art. I, § 8 ("In the government of this 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."); *Edwards v. State*, at 90, 678 S.E.2d at 416 ("One of the prime reasons for separation of powers is the desirability of spreading out the authority for the operation of the government to prevent the concentration of power in the hands of too few and provide a system of checks and balances."); *State ex rel. McLeod v. McInnis*, 278 S.C. 307, 312, 295 S.E.2d 633, 636 (1982) ("The legislative department makes the laws; the executive department carries the laws into effect; and the judicial department interprets and declares the laws.").

If this Court were to cast aside the clear intent of the legislature when it wrote this law because of policy reasons, then this Court would be substituting its own judgment for that of the legislative body. That would be a clear violation of the separation of powers doctrine because the courts are not equipped with the constitutional authority or technical power to make policy decisions that legislators have been tasked with. *Abbeville Cnty. Sch. Dist. v. State*, 410 S.C. 619, 664-666, 767 S.E.2d 157, 180-182 (2014) (Kittredge, J., dissenting).

IV. Conclusion

In conclusion, this Court holds that it is clear beyond a shadow of a doubt that the General Assembly intended, and the public understood, that the time frame of the Act would begin around the six-week mark. The moral and ethical issues that this case presents are immense and this Court does not take that lightly. However, as Justice Kittredge noted in *Planned Parenthood II*, the courts must respect the separation of powers principles and the limited (non-policy) role it is enshrined with, and this Court must approach this case with one single commitment: to honor the rule of law. The South Carolina Supreme Court and the General Assembly have spoken. This Court must listen.

For the foregoing reasons, Plaintiffs' Motion for Injunctive and Declaratory Relief is **DENIED**.

AND IT IS SO ORDERED.

The Honorable Daniel McLeod Coble

May 16, 2024.

[ELECTRONIC SIGNATURE TO FOLLOW.]

Richland Common Pleas

Case Caption: Planned Parenthood South Atlantic , plaintiff, et al vs State Of South Carolina , defendant, et al

Case Number: 2024CP4000762

Type: Order/Other

So Ordered

s/ Daniel Coble, 2774