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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Kristi F. Curtis, Circuit Court Judge

Case No. 2024-CP-40-06276
Appellate Case No. 2024-001321

Opternative, Inc., Appellant,

v.

South Carolina Board of Medical Examiners and South Carolina Department of Labor, Licensing, and Regulation,

Respondents,

and

South Carolina Optometric Physicians Association,

Respondent-Intervenor.

FINAL BRIEF OF RESPONDENT-INTERVENOR

Kirby D. Shealy III (S.C. Bar No. 11556)
ADAMS AND REESE LLP
1221 Main Street, Suite 1200
Columbia, South Carolina 29201
Telephone: (803) 212-4966
kirby.shealy@arlaw.com

Attorney for Respondent-Intervenor SCOPA

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STATEMENT OF ISSUE ON APPEAL

1. DID THE TRIAL COURT CORRECTLY DETERMINE THAT THE EYE CONSUMER PROTECTION LAW, S.C. CODE ANN. §§ 40-24-10, 40-24-20, IS CONSISTENT WITH THE REQUIREMENTS OF ARTICLE I, SECTION 3 OF THE SOUTH CAROLINA CONSTITUTION?

STATEMENT OF THE CASE

This appeal presents a constitutional challenge to the Eye Care Consumer Protection Law ("ECCPL"), S.C. Code Ann. §§ 40-24-10, 40-24-20. Because the circuit court correctly ruled that the challenged provisions were not unconstitutional, as they serve a legitimate public health purpose and are rationally related to the state's interest in ensuring the safety and adequacy of eye care, this Court should affirm the decision of the court and uphold the statutory provisions.

Appellant Opternative, Inc.[1] initiated its challenge through a Complaint against Respondents South Carolina Board of Medical Examiners ("Board") and the South Carolina Department of Labor, Licensing, and Regulation ("SCLLR") on October 20, 2016. Opternative sought a declaratory judgment from the circuit court, ruling that portions of the ECCPL were unconstitutional, as it contends the ECCPL provisions result in a denial of equal protection and substantive due process.

The circuit court granted Respondent-Intervenor South Carolina Optometric Physicians Association's ("SCOPA") motion to intervene on February 22, 2017. On July 12, 2017, Respondents moved for summary judgment, arguing (1) Opternative lacked standing to challenge the constitutionality of the ECCPL and (2) even if Opternative had standing, the ECCPL was constitutionally valid because it bore a rational relationship to its legislative purpose. In response, Opternative filed a cross motion for summary judgment on September 6, 2017, contending the

[1] During the course of this action, in 2018, Opternative changed its name to Visibly, Inc.

ECCPL was a case of "naked economic protectionism" designed solely to shield traditional optometry businesses from competition, while offering no genuine benefit to public health or safety. SCOPA, as intervenor, filed a brief on October 3, 2017, supporting Respondents' dispositive motion and opposing Opternative's arguments.

On January 26, 2018, the circuit court granted Respondents' motion for summary judgment, finding that Opternative lacked standing to bring its claims. Having resolved the case on standing grounds, the circuit court declined to address the equal protection and due process arguments concerning the constitutionality of the ECCPL at that time.

Opternative filed a Notice of Appeal on February 23, 2018, challenging the circuit court's decision. On February 9, 2023, the South Carolina Court of Appeals reversed the circuit court's dismissal and remanded the case, concluding that Opternative had satisfied the requirements for constitutional standing. *Opternative, Inc. v. S.C. Bd. of Med. Examiners*, 433 S.C. 405, 418, 859 S.E.2d 263, 270 (Ct. App. 2021). On further appeal, the South Carolina Supreme Court affirmed the Court of Appeals' decision on August 24, 2022, clarifying that Opternative had constitutional standing to challenge the ECCPL. *Opternative, Inc. v. S.C. Bd. of Med. Examiners*, 437 S.C. 258, 878 S.E.2d 861 (2022).

Following remand, both Opternative and SCOPA moved for summary judgment on the merits of Opternative's constitutional challenge to the ECCPL provisions in the circuit court. The circuit court conducted a hearing on the motions via WebEx on June 3, 2024.

On July 18, 2024, the circuit court granted summary judgment in favor of SCOPA, concluding Opternative failed to establish that the ECCPL violates the equal protection or due process provisions of Article I, Section 3 of the South Carolina Constitution. The circuit court

affirmatively held, based on all evidence presented to it prior to its decision, that the ECCPL serves a rational legislative purpose for protecting public health and is constitutionally sound.

Opternative appealed the circuit court's grant of summary judgment and filed its Notice of Appeal on August 15, 2024. The case is now before this Court pursuant to Rule 203(d)(1)(A)(ii), SCACR, as it involves a direct constitutional challenge to a state statute.

STATEMENT OF FACTS

I. The Parties

SCOPA was organized for the purpose of representing optometric physicians practicing in South Carolina and to provide the most advanced and highest-quality eye care to patients in the state. Optometrists are primary eye care providers who diagnose and treat eye diseases and visual system disorders and assess related systemic conditions. (R. at 246, ¶ 6). In contrast, ophthalmologists are medical doctors specializing in advanced eye care, including surgery, disease management, and prescribing corrective lenses. In South Carolina, ophthalmologists are licensed and regulated by the Board, under the SCLLR. (R. at 241, ¶¶ 3–4).

Opternative is a Chicago-based telehealth company that developed a technology to determine refractive error using a computer or smartphone without the need for an ophthalmologist or optometrist to be physically present at the time of examination (the "Technology"). (R. at 241, ¶ 5; 247, ¶ 7; 438:8–439:5, 455:22–456:18, 460:10–462:19).

II. In-Person Eye Examinations Versus Opternative's Technology

In-person comprehensive eye exams, conducted by optometrists or ophthalmologists, include an array of diagnostic tests to evaluate a patient's overall eye health, detect systemic diseases, and protect a patient's visual welfare. Such exams typically involve visual acuity measurements, slit-lamp examinations, ophthalmoscopic evaluations, tonometry, pupil

assessments, diagnostic imaging as needed, and performing other tests and procedures as indicated by the patient's chief complaint, case history, or objective signs and symptoms discovered during the courts of the eye examination. (R. at 241–42, ¶ 10; 249, ¶ 21). These assessments are vital for a patient's overall eye health, ensuring proper and timely diagnoses and enabling an optometrist or ophthalmologist to prescribe suitable corrective lenses and identify asymptomatic conditions.

Optometrists and ophthalmologists are affirmatively obligated to look after the health and safety of patients, which requires them to use their judgment, based on professional expertise and experience, to determine whether a patient's complaints or symptoms pertaining to his or her eyesight or eye health are indicators of systemic or body-wide disease processes or pathologies. These medical providers are likewise obliged to ensure determinations even when the disease processes or pathologies are asymptomatic. (R. at 243, ¶ 14; 249–50, ¶ 22). It is undisputed that optometrists and ophthalmologists are best able to make those necessary determinations through in-person comprehensive eye examinations. (R. at 243, ¶ 16; 817). No party disputes that eye examinations are beneficial to a patient's overall health.

Optometrists and ophthalmologists are authorized to issue prescriptions for corrective lenses. For example, a contact lens evaluation is a set of diagnostic tests and procedures performed in addition to a comprehensive eye examination. These tests and procedures include precise measurements of the corneal curvature and evaluations of the anterior eye segment. (R. at 242, ¶ 12). Poorly fitted lenses and over-wearing contact lenses can cause irritation, scarring, or vision loss—issues that cannot be identified without in-person corneal evaluations. (R. at 242, ¶ 13; 247–48, ¶ 14). Opternative's Technology does not perform a corneal evaluation. (R. at 242, ¶ 13). Moreover, unlike with Opternative's Technology, a typical in-person prescriber will not prescribe contact lenses they have not seen on their patient's eyes. Rather, prescribers usually will factor in

a trial period to evaluate how the lenses are fitting the patient and assess whether the lenses are causing the patient to experience vision problems after the initial evaluation. (R. at 807, 810–11).

Beyond lens fitting and vision correction, eye exams are critical for a medical provider to detect systemic conditions like diabetes, high blood pressure, and hypercholesterolemia. (R. at 243, ¶ 16; 248, ¶ 16). Diabetes is currently the nation's seventh leading cause of death in the United States and is also a risk factor for heart disease and stroke. (R. at 248, ¶ 17). Early detection, including during regularly-scheduled, in-person comprehensive eye exams, can prevent a patient from experiencing severe complications, such as diabetic retinopathy, a leading cause of preventable blindness in the United States. (R. at 248–49, ¶ 17–20).

Contrary to in-person eye exams, Opternative's Technology does not measure objective eye health data or diagnose diseases. It cannot detect conditions like glaucoma, cataracts or diabetic retinopathy, nor does it conduct essential evaluations that are necessary for accurate lens fitting, like corneal examinations. There is also a risk that individuals using Opternative's Technology may mistakenly believe they have received a comprehensive eye examination after receiving a prescription for corrective lenses from an ophthalmologist who only relies upon Opternative's Technology. (R. at 243, ¶ 15; 248, ¶ 15). As Opternative acknowledges in its brief, patients "often delay because they don't have time to visit an eye doctor." (Appellant's Initial Br. 6 (citing R. at 359, ¶¶ 9-10; 361–62, ¶ 18.)). To that end, a 2023 investigation brought by the Attorney General of Illinois, along with ten other states in which Opternative operates, "raised concerns about unsubstantiated claims made by [Opternative] regarding the accuracy and safety of its online tests, including that it was as accurate as an in-person exam." *See* "Attorney General Raoul Announces Settlement with Telehealth Company, Visibly," April 14, 2023, Press Release Office of the Illinois Attorney General, last assessed Dec. 4, 2023,

https://illinoisattorneygeneral.gov/news/story/attorney-general-raoul-announces-settlement-with-telehealth-company-visibly.

Opternative's Technology is accessible through its website or affiliated third-party corrective lens retailers. (R. at 448:6–13). The Technology collects user responses to visual stimuli, generating a dataset about the user's refractive error. (R. at 460:10–461:16). After paying a fee, the user's data is sent to Optimized Eye Care, Inc. ("Optimized"), a separate corporation, which contracts optometrists and ophthalmologists to review the results and issue prescriptions based on the information collected. (R. at 451:7–15; 454:2–8). These prescriptions are then delivered to users via Opternative for a user to then purchase contact lenses or glasses. (R. at 451:7–15; 455:22–456:18). The Technology does not measure objective data about the user's eyes or eye health, it does not ask the user follow-up questions, it cannot detect or aid in diagnosing diseases of the eye or systemic diseases, nor does it perform a corneal examination and evaluation. (R. at 242, ¶ 13). The Technology does not assess whether the prescription provided for a user to purchase contact lenses or glasses are providing the user with any benefit to his or her vision or if follow-up examination is needed to properly fit the user with corrective lenses.

III. The ECCPL

On April 29, 2016, the South Carolina General Assembly passed the ECCPL. On May 16, 2016, Governor Nikki Haley vetoed the ECCPL, but the veto was overridden on May 19, 2016, by a near-unanimous vote in the General Assembly. The ECCPL was codified at S.C. Code Ann. §§ 40-24-10 and 40-24-20.

The ECCPL establishes standards for prescribing corrective lenses and contains two parts: the first part establishes the relevant definitions, S.C. Code Ann. § 40-24-10, and the second part contains the substance of the Act, S.C. Code Ann. § 40-24-20. The ECCPL defines "provider" as

any "individual licensed by the South Carolina Board of Examiners in Optometry or the South Carolina Board of Medical Examiners," meaning both optometrists and ophthalmologists. S.C. Code Ann. § 40-24-10(7).

Part two of the ECCPL provides as follows:

> (A) A person in this State may not dispense spectacles or contact lenses to a patient without a valid prescription from a provider.
>
> (B) To be valid, a prescription must contain an expiration date on spectacles or contact lenses of one year from the date of examination by the provider or a statement of the reasons why a shorter time is appropriate based on the medical needs of the patient. The prescription must take into consideration medical findings made and refractive error discovered during the eye examination. If a provider determines a patient is a suitable candidate for a prescription for contact lenses or spectacles, a provider may not thereafter refuse to issue a prescription for spectacles or contact lenses to a patient.
>
> (C) A prescription for spectacles or contact lenses may not be based solely on the refractive eye error of the human eye or be generated by a kiosk.
>
> (D) Violation of this section constitutes misconduct as provided for in Sections 40-37-110 and 40-47-110. A provider who violates this section is subject to the penalties authorized in Chapter 37, Title 40 or Chapter 47, Title 40, as applicable.

S.C. Code Ann. § 40-24-20.

The Legislative purpose in passing the ECCPL was to safeguard public health by ensuring corrective lens prescriptions are grounded upon more than refractive error measurements generated by a computer or smart phone. The requirement for an in-person examination by an optometrist or ophthalmologist for patients in this State seeking corrective eye care prevents over-reliance on remote technologies incapable of detecting critical health conditions. This protects patients by providing them with proper eye care.

It is undisputed that SCOPA lobbied in favor of—and worked with legislators to enact—the ECCPL. In doing so, SCOPA relied on the collective training and clinical experience of its members to help pass a law that protects patients in this State from unwittingly putting their eye

health at risk by obtaining a prescription for corrective lenses through remote technology and without an in-person eye examination. The General Assembly's passage of the ECCPL is a quintessential example of a rational legislative determination. The circuit court's conclusion that the challenged ECCPL provisions were constitutional was based on proper application of the law and review of the facts of the case.

IV. Motions for Summary Judgment

Opternative argued during summary judgment, and maintains on appeal, that the ECCPL violates Article I, Section 3 of the South Carolina Constitution on grounds of equal protection and due process. (R. at 257, 271). Opternative challenged Section 40-24-10(9) of the ECCPL, which provides that vision assessments "must not be based solely on objective refractive data or information generated by an automated testing device, including an auto refractor or other electronic refractive-only testing device, to provide a medical diagnosis or to establish a refractive error for a patient as part of an eye examination." (R. at 273). Likewise, Opternative challenged Section 40-24-20(C), which states "[a] prescription for spectacles or contact lenses may not be based solely on the refractive eye error of the human eye or be generated by a kiosk." (R. at 273).

According to Opternative, these provisions "banned eye doctors from prescribing corrective lenses based on information collected using telemedicine." (R. at 257). It argued these provisions violate South Carolina's equal protection clause by treating "eye doctors who prescribe corrective lenses differently than all other doctors who use telemedicine." (R. at 257). Opternative further claimed the ECCPL violated South Carolina's due process clause because it does not rationally protect patient health and only serves to protect brick-and-mortar optometrists from online competition. (R. at 276).

SCOPA also moved for summary judgment. In its motion, SCOPA pointed out that the ECCPL establishes minimum standards for medical providers who are authorized to issue corrective lens prescriptions in South Carolina to patients, in order to protect public health and welfare. (R. at 405). The ECCPL addresses the risks associated with inadequate eye care by requiring in-person eye examinations, which are essential for detecting serious eye and systemic diseases that may go undiagnosed if patients forego an in-person eye exam. (R. at 405). The South Carolina Constitution grants the General Assembly authority to legislate for public health and welfare, and the ECCPL represents a reasonable and necessary exercise of that authority. It upholds the standard of care for optometrists and ophthalmologists while addressing identifiable risks to public health. Accordingly, SCOPA moved for summary judgment, asserting the ECCPL is a lawful and essential regulation that protects the citizens of South Carolina, and it should be upheld as constitutional.

V. The Circuit Court's Order

The circuit court agreed with SCOPA and granted summary judgment against Opternative. Noting in its Order that the parties did not dispute that the rational basis test applied to determine whether the ECCPL violates the equal protection clause, the circuit court correctly applied the three-step rational basis test. (R. at 13–18).

First, the circuit court looked at whether the ECCPL is reasonably related to its legislative purpose. It concluded the ECCPL is reasonably related to addressing an identifiable risk: preventing South Carolina patients from unwittingly putting their eye health at risk by obtaining a prescription for corrective lenses without an in-person eye examination. (R. at 13–14). Likewise, the circuit court found the ECCPL protects patients from incurring health risks from potentially undiagnosed diseases if they inadvertently or intentionally relied on remote examinations, like

Opternative's Technology, by foregoing regular eye exams that would allow an optometrist or ophthalmologist to spot emerging health problems in the patient in early stages. (R. at 14). The circuit court rejected Opternative's assertions the ECCPL does nothing to protect the public health and safety, pointing out that it was Opternative that ignored evidence in the record to the contrary. (R. at 14–15).

Second, the circuit court considered whether the classification created in the ECCPL treats members of the class alike under similar circumstances. (R. at 15–17). It concluded the ECCPL "creates a bright line rule for all ophthalmologists and optometrists to follow." (R. at 16). The circuit court rejected Opternative's argument the ECCPL treats ophthalmologists and optometrists differently from other health care providers, pointing out that the ECCPL only applies to conduct that falls within ophthalmologists and optometrists' scope of practice. (R. at 16). After all, other types of physicians are not allowed to prescribe corrective lenses. (R. at 16). Accordingly, the circuit court concluded the ECCPL's distinction between eye doctors who write prescriptions for corrective lenses based *solely* on refractive eye error generated by an automated testing device and eye doctors who write prescriptions based upon an appropriate eye examination is not arbitrary or capricious. (R. at 17).

Third, the circuit court determined the classification in the ECCPL has a reasonable basis. (R. at 17–18). Specifically, the court found the ECCPL addresses a particular public health risk and does not prevent eye doctors from exercising their medical judgment to write corrective lens prescriptions. (R. at 18). "If anything, it prevents [Opternative], and other similar healthcare technology providers, from fulfilling a market desire for convenience, to the detriment of . . . patients." (R. at 18). The circuit court concluded that addressing that risk was within the General Assembly's constitutional prerogative. (R. at 18). Accordingly, the court held the ECCPL did not

violate the equal protection clause. Likewise, the circuit court concluded the ECCPL did not violate Opternative's right to substantive due process. (R. at 18–19). Specifically, the circuit court found "the ECCPL bears a reasonable relationship to the State's legitimate interest in protecting the eye and systemic health of South Carolina citizens." (R. at 19).

The circuit court's ruling is supported by South Carolina law and the evidence in the case. The court did not err in either granting the SCOPA's motion for summary judgment or finding Opternative failed to overcome the presumption of constitutionality. That the ECCPL clearly has a legitimate purpose should result in approval of the circuit court's order in this case.

STANDARD OF REVIEW

"When reviewing the grant of summary judgment, the appellate court applies the same standard applied by the trial court pursuant to Rule 56(c), SCRCP." *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002); *see also* Rule 56(c), SCRCP (providing summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law").

"Summary judgment is proper if, viewing the evidence in a light most favorable to the nonmoving party, there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law." *Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013) (citation omitted). "[I]t is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine." *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 463, 892 S.E.2d 297, 301 (2023) (quoting *Floyd*, 403 S.C. at 477, 744 S.E.2d at 166).

The constitutionality of a statute is a question of law. *See State v. Frasier*, 437 S.C. 625, 634, 879 S.E.2d 762, 766 (2022). On appeal, the "Court applies de novo review to questions of

law, so it need not defer to the determination of the court below." *Callawassie Island Members Club, Inc. v. Martin*, 437 S.C. 148, 157, 877 S.E.2d 341, 345 (2022).

"[A]ll statutes are presumed constitutional[.]"*Curtis v. State*, 345 S.C. 557, 569, 549 S.E.2d 591, 597 (2001). Therefore, this Court has a "limited scope of review in cases involving a constitutional challenge to a statute[.]" *Id.* If possible, the Court will construe a statute in order to render it valid. *Id.*; *see also 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." (internal citations omitted)).

"Further, a legislative act will not be declared unconstitutional unless its repugnance to the Constitution is clear and beyond a reasonable doubt." *Curtis*, 345 S.C. at 570, 549 S.E.2d at 597; *see also Bodman*, 403 S.C. at 66, 742 S.E.2d at 366 ("The party challenging the statute bears the heavy burden of proving that 'its repugnance to the constitution is clear and beyond a reasonable doubt.'" (quoting *In re Treatment and Care of Luckabaugh*, 351 S.C. 122, 134–35, 568 S.E.2d 338, 344 (2002))).

ARGUMENTS

The ECCPL represents a rational legislative effort to protect public health by ensuring that corrective lenses are prescribed only after appropriate eye examination. The circuit court did not err in granting summary judgment against Opternative and in favor of Respondents and SCOPA. For the following reasons, this Court should similarly conclude the ECCPL is constitutional.

The legislature has the power to regulate the practice of medicine, including the practice of eye doctors, for the protection of public health. *See Dantzler v. Callison*, 230 S.C. 75, 92, 94 S.E.2d 177, 186 (1956) ("[I]t may be observed that no person has a natural or absolute right to

practice medicine, surgery, naturopathy or any of the various healing arts. It is a right granted upon condition. . . . [I]t is very generally held that a state, under its police power, may regulate, within reasonable bounds, for the protection of the public health the practice of [medicine or surgery] by defining the qualifications which one must possess before being permitted to practice the same." (internal citations omitted)); *Sloan v. S.C. Bd. of Physical Therapy Examiners*, 370 S.C. 452, 477–78, 636 S.E.2d 598, 611 (2006) ("It is axiomatic that the Legislature has broad authority, within constitutional limits, to regulate the medical and other professions through the enactment of statutes and regulations. Title 40 contains some fifteen chapters regulating medical professionals such as physicians, dentists, pharmacists, nurses, physical therapists, and psychologists." (internal citations omitted)), *overruled on other grounds by Joseph v. S.C. Dep't of Lab.*, *Licensing & Regul.*, 417 S.C. 436, 790 S.E.2d 763 (2016).

The legislature was well within its authority when it enacted the ECCPL to govern the provision of eye care to patients in this state. The ECCPL is reasonably grounded in a legitimate public health objective, which is to ensure the adequacy of eye care and protect the public from unwittingly putting their health at risk by obtaining prescription for corrective lenses without an adequate eye examination. An adequate eye examination requires in-person testing and interaction between a medical provider and a patient. The Technology simply does not suffice.

The circuit court correctly held the ECCPL does not violate the equal protection or due process clauses of Article I, Section 3 of the South Carolina Constitution.

I. The ECCPL Does Not Violate South Carolina's Equal Protection Clause.

"The South Carolina Constitution provides that no 'person shall be denied the equal protection of the laws.'" *Bodman*, 403 S.C. at 69, 742 S.E.2d at 367 (quoting S.C. Const. art. I, § 3). "The sine qua non of an equal protection claim is a showing that similarly situated persons

received disparate treatment." *Grant v. S.C. Coastal Council*, 319 S.C. 348, 354, 461 S.E.2d 388, 391 (1995). "Not all classifications are unconstitutional, however, for '[t]he equal protection clause only forbids irrational and unjustified classifications.'" *Bodman*, 403 at 69, 742 S.E.2d at 367 (quoting *Luckabaugh*, 351 S.C. at 147, 568 S.E.2d at 351). "If the legislation serves a public purpose and treats all similarly situated persons alike it does not violate the equal protection clause." *Luckabaugh*, 351 S.C. at 147, 568 S.E.2d at 351.

"Courts generally analyze equal protection challenges under one of three standards: (1) rational basis; (2) intermediate scrutiny; or, (3) strict scrutiny." *Denene, Inc. v. City of Charleston*, 359 S.C. 85, 91, 596 S.E.2d 917, 920 (2004) (citation omitted). "If the classification does not implicate a suspect class or abridge a fundamental right, the rational basis test is used." *Id.* (citing *City of Cleburne, Tex. v. Cleburne Living Ctr.,* 473 U.S. 432, 439–40 (1985)). In this case, all parties agree the rational basis is the appropriate standard to apply.

"Under the rational basis test, the requirements of equal protection are satisfied when: (1) the classification bears a reasonable relation to the legislative purpose sought to be affected; (2) the members of the class are treated alike under similar circumstances and conditions; and, (3) the classification rests on some reasonable basis." *Id.* (first citing *Fraternal Order of Police v. South Carolina Dep't of Rev.,* 352 S.C. 420, 430, 574 S.E.2d 717, 722 (2002); and then citing *Gary Concrete Products, Inc. v. Riley,* 285 S.C. 498, 504, 331 S.E.2d 335, 339 (1985)); *see also Dunes W. Golf Club, LLC v. Town of Mount Pleasant*, 401 S.C. 280, 293–94, 737 S.E.2d 601, 608 (2013).

This Court "give[s] great deference to the General Assembly's decision to create a classification." *Bodman*, 403 S.C. at 69, 742 S.E.2d at 367 (citing *Davis v. Cnty. of Greenville,* 313 S.C. 459, 465, 443 S.E.2d 383, 386 (1994); *see also Lee v. S.C. Dep't of Nat. Res.*, 339 S.C. 463, 467, 530 S.E.2d 112, 114 (2000) ("We must give great deference to the General Assembly's

classification decisions because it presumably debated and weighed the advantages and disadvantages of the legislation at issue."). Consequently, "[u]nder the rational basis test, a classification is presumed reasonable and will remain valid unless and until the party challenging it proves beyond a reasonable doubt that there 'is no admissible hypothesis upon which it can be justified.'" *McLeod v. Starnes*, 396 S.C. 647, 656, 723 S.E.2d 198, 203 (2012) (quoting *Carolina Amusement Co. v. Martin*, 236 S.C. 558, 576, 115 S.E.2d 273, 282 (1960)); *see also Bodman*, 403 S.C. At 69–70, 742 S.E.2d at 368 ("[T]hose who challenge the validity of [a classification] under rational basis review must 'negate *every conceivable basis* which might support it.'" (quoting *Lee*, 339 S.C. at 470 n.4, 530 S.E.2d at 115 n.4) (emphasis added)).

If the Court "can discern any rational basis to support the classification, regardless of whether that basis was the original motivation for it, the classification will withstand constitutional scrutiny." *McLeod*, 396 S.C. at 656, 723 S.E.2d at 203 (citing *Lee*, 339 S.C. at 470 n.4, 530 S.E.2d at 115 n.4). "Further, '[t]he classification does not need to completely accomplish the legislative purpose with delicate precision in order to survive a constitutional challenge.'" *Lee*, 339 S.C. at 467, 530 S.E.2d at 114 (quoting *Foster v. South Carolina Dep't of Highways and Pub. Transp.*, 306 S.C. 519, 526, 413 S.E.2d 31, 36 (1992)). "The classification also does not need to completely achieve its purpose to withstand constitutional scrutiny. Moreover, '[t]he fact that the classification may result in some inequity does not render it unconstitutional.'" *Bodman*, 403 S.C. at 70, 742 S.E.2d at 368 (quoting *Davis,* 313 S.C. at 465, 443 S.E.2d at 386).

A. The circuit court applied the correct standard in determining the ECCPL did not violate the equal protection clause.

Opternative criticizes the circuit court for applying what it characterizes as a "fact-free version of the federal rational basis test rather than the fact-based state test this Court has long used to ensure the police power serves the public." (Appellant's Initial Br. 15). In so arguing,

Opternative spills much ink discussing the history of the South Carolina Constitution and what Opternative coins the "fact-based" rational basis test. (Appellant's Initial Br. 17–27). According to Opternative, the circuit court failed to "engage with the undisputed evidence . . . because it applied the most toothless form of federal rational basis review, which requires a court to uphold laws if they can imagine any 'conceivable basis' for them." (Appellant's Initial Br. 16 (citing R. at 12)). However, Opternative's attempt to create a unique "fact-based rational basis test" fails.

As is evident in the Order, the circuit court applied the correct standard for the rational basis test. The circuit court's citation to a singular United States Supreme Court case, *F.C.C. v. Beach Commc'ns, Inc.*, 508 U.S. 307 (1993), does not support Opternative's argument that the court applied an inapplicable federal standard of rational basis review. (Order 9). As this Court has recognized, South Carolina's rational basis test is similar to the tests federal courts employ in deciding equal protection claims. *Cf. Owens v. Stirling*, 443 S.C. 246, 299, 904 S.E.2d 580, 608 (2024) (J. Hill concurring) (indicating the rational basis test this Court employs is "similar" to "tests federal courts employ in deciding due process or equal protection claims arising under the federal constitution").

Moreover, Opternative is incorrect that the "conceivable basis" standard—allegedly part of the more "toothless form of federal rational basis review" (Appellant's Initial Br. 16)—does not apply under South Carolina law. This Court has cited with approval to *Beach Communications*, stating that "[t]hose attacking the validity of the legislation have the burden to negate every conceivable basis which might support it." *Lee*, 339 S.C. at 470 n.4, 530 S.E.2d at 115 n.4 (citing *Beach Commc'ns*, 508 U.S. at 314); *see also Retail Servs. & Sys., Inc. v. S.C. Dep't of Revenue*, 419 S.C. 469, 481 n.16, 799 S.E.2d 665, 671 n.16 (2017) (J. Kittredge dissenting); *Boiter v. S.C. Dep't of Transp.*, 393 S.C. 123, 128, 712 S.E.2d 401, 403 (2011); *Bibco Corp. v. City of Sumter*,

332 S.C. 45, 53, 504 S.E.2d 112, 116 (1998). There is a plethora of South Carolina precedent establishing that the party challenging a classification must prove beyond a reasonable doubt that there is no conceivable basis to support it. *E.g.*, *McLeod*, 396 S.C. at 656, 723 S.E.2d at 203; *Bodman*, 403 S.C. at 69–70, 742 S.E.2d at 367–68; *Luckabaugh*, 351 S.C. at 149, 568 S.E.2d at 352; *Curtis*, 345 S.C. at 574, 549 S.E.2d at 600; *Lee*, 339 S.C. at 467, 530 S.E.2d at 114.

Rather than diminishing the power of the court's review of a constitutional challenge, the circuit court's order applied proper legal precedent, after a review of the entire evidentiary record, and arrived at a reasoned decision. The fact is, like federal courts, this Court gives only a "minimal level of scrutiny" in reviewing the legislature's reasons for a classification. *See Lee*, 339 S.C. at 470, 530 S.E.2d at 115. The reason is because the Court is clearly "reluctant to find a statute unconstitutional." *Luckabaugh*, 351 S.C. at 134, 568 S.E.2d at 344. Rather, "[e]very presumption is made in favor of a statute's constitutionality." *Id.*

Furthermore, the cases cited by Opternative in support of its contention that the circuit court failed to apply the correct test for a rational basis review are inapposite. (Appellant's Initial Br. 20–25). Nearly all of the cases discussed involved municipal ordinances which were not challenged on equal protection grounds. *See City of Orangeburg v. Farmer*, 181 S.C. 143, 186 S.E. 783 (1936) (applying the "test of reasonableness" to a city ordinance to determine whether it was "within the corporate powers of the city of Orangeburg to enact"); *Fincher v. City of Union*, 186 S.C. 232, 196 S.E. 1 (1938) (considering whether an ordinance of the City of Union violated the due process clauses of the United States and South Carolina Constitutions, and recognizing the fact that "laws or ordinances regulating lawful business enterprises are in a separate class from those enacted to protect the public health"); *McCoy v. Town of York*, 193 S.C. 390, 8 S.E.2d 905, 907 (1940) ("The standard by which the validity of an ordinance enacted under the exercise of

police power is tested is that the exercise of the power should extend only to reasonable and necessary measures."); *Painter v. Town of Forest Acres*, 231 S.C. 56, 97 S.E.2d 71 (1957) (considering whether town ordinance violated constitutional requirements that no person shall be deprived of property without due process of law and that private property shall not be taken for public use without just compensation).

Indeed, the analysis undertaken by the courts in the cases cited by Opternative would be inappropriate for any court to employ in the circumstances of the present dispute. "A judicial inquiry into the facts necessitating the passage of a statute is, as a general rule, improper, but this rule does not apply to the acts of inferior legislative tribunals, such as municipal councils." *McCoy*, 193 S.C. 390, 8 S.E.2d at 908. Regardless, contrary to Opternative's assertions, the circuit court appropriately considered all of the facts presented in the parties' briefing and discussed them in its reasoned order. (*See* R. at 7–9, 13–18 (discussing the facts and applying them in the context of the rational basis test)). It is in fact Opternative who ignores the facts.

B. The circuit court correctly found the ECCPL is reasonably related to its legislative purpose.

Turning to the first prong of the rational basis test—whether the classification bears a reasonable relation to the legislative purposes sought to be affected—the circuit court properly determined that "[t]he ECCPL protects the public health and welfare because it upholds the standard of care for eye care professionals in South Carolina and prevents citizens from unwittingly putting their eye health at risk by obtaining a prescription for corrective lenses without a comprehensive eye examination." (R. at 13–14). Thus, the ECCPL addresses an identifiable risk. (R. at 15).

The circuit court's conclusion that the ECCPL satisfies the first prong of the rational basis test is firmly supported by the statute's text and expert testimony. Contrary to Opternative's

assertion, the ECCPL's purpose is not economic protectionism but, instead, safeguarding public health by ensuring that a patient's prescription for corrective lenses is issued following a proper, in-person, eye examination, which is the standard of care for eye care professionals in South Carolina. (*See* R. at 243–44, ¶¶ 18–20; 247–50, ¶¶ 14, 21–22, 25–26). As the circuit court accurately noted, Opternative's argument that the ECCPL does not serve its stated purpose because it does not *require* eye-health exams fails. (R. at 14). Optometrists and Ophthalmologists are already under "an affirmative obligation to look after the health and safety of their patients," which includes conducting comprehensive eye examinations when needed. (R. at 249–50, ¶ 22).

The fact that it is not *always* necessary for a doctor to conduct a comprehensive eye examination of a patient in order to prescribe corrective lenses, or that many eye diseases are rare before age 40, does not negate the purpose of the ECCPL. The law recognizes the standard of care for professionals across a wide range of disciplines is too nuanced and fact-specific to be completely and thoroughly established by legislative act. *See, e.g.*, S.C. Code Ann. § 15-36-100 (Supp. 2016) (expert witness must attest to standard of care and its breach as a prerequisite to bringing a claim for professional negligence).

Furthermore, the ECCPL does not categorically prohibit telemedicine or the use of remote technology in eye care. For example, as Opternative points out in its brief, doctors may use telemedicine to prescribe certain eye drops and serums. Instead, the ECCPL establishes a standard of care that requires in-person evaluations to address risks inherent to the issuance of corrective lens prescriptions and enables medical providers to assess a patient's visual welfare. It requires that a prescription for corrective lenses be based on more than just a refractive examination performed by remote technology, which does not have the ability to assess certain conditions of the eye. Unlike general medical conditions that may be effectively managed through remote

consultation, including the need for prescription eye drops or serums, corrective eye care involves objective assessments—such as corneal curvature and slit-lamp examinations—that cannot be reliably conducted using Opternative's Technology. (R. at 241–42, ¶ 10; 249, ¶ 21). The added benefit of such "probing exams," as Opternative characterizes them (Appellant's Initial Br. 9), is that a medical provider may also assess other conditions of a patient's eye that might otherwise go unnoticed. The General Assembly elected to pass the ECCPL as one method of safeguarding patients' eye health. The fact that this may not be necessary for every citizen in the State or even a perfect way to protect the eye health and general welfare of patients obtaining prescription lenses does not make the statute unconstitutional. *See McLeod*, 396 S.C. at 656, 723 S.E.2d at 203 ("The classification also does not need to completely achieve its purpose to withstand constitutional scrutiny.").

Opternative further attempts to undermine the constitutionality of the ECCPL by asserting SCOPA lobbied for its passage and had economic motivations to do so. (Appellant's Initial Br. 35–37). It bears noting that SCOPA's engagement with the democratic process is not a basis to challenge the constitutionality of the statute. While Opternative characterizes the ECCPL as a mechanism for economic protectionism, the Court has consistently held that economic impact does not invalidate legislation that also furthers legitimate public health objectives. *Davis*, 313 S.C. at 465, 443 S.E.2d at 386 ("The fact that the classification may result in some inequity does not render it unconstitutional.").

Here, as set forth above, the ECCPL's requirements are tailored to address documented risks to eye health and safety, ensuring a reasonable relationship between the statute's classification and its public health purpose. These are considerations the circuit court incorporated in its Order and support a finding that the ECCPL is constitutional. "Moreover, because [this

Court] do[es] not require the legislature to articulate its reasons for enacting a statute, it is entirely irrelevant for constitutional purposes whether the conceived reason for the challenged distinction actually motivated the legislature." *Lee*, 339 S.C. at 470 n.4, 530 S.E.2d at 115 n.4. Thus, the circuit court correctly determined that the ECCPL meets the first prong of the rational basis test, as it is rationally related to its legitimate purpose of protecting public health and welfare.

C. The circuit court correctly determined the ECCPL treats all ophthalmologists and optometrists alike under similar circumstances and conditions.

The second prong of the rational basis test is met when the "members of the class are treated alike under similar circumstances and conditions." *Denene*, 359 S.C. at 91, 596 S.E.2d at 920. In this case, the circuit court properly concluded the ECCPL treats all ophthalmologists and optometrists alike under similar circumstances and conditions. (R. at 15–17).

Opternative argues the circuit court improperly held the ECCPL does not treat similar groups differently. (Appellant's Initial Br. 30). This was error because, according to Opternative, the members of the class are not eye doctors but rather *all* doctors "who can prescribe anything else under the Telemedicine Act." (Appellant's Initial Br. 30); *see* S.C. Code Ann. § 40-47-37 (the "Telemedicine Act"). The circuit court correctly disposed of this assertion, finding the classification in the ECCPL was restricted to ophthalmologist and optometrist, and thus the proper group for its consideration. *See Ed Robinson Laundry & Dry Cleaning, Inc. v. S.C. Dep't of Revenue*, 356 S.C. 120, 124, 588 S.E.2d 97, 99 (2003) ("A class may be constitutionally confined to a particular trade.").

Opternative's argument—that there is no meaningful health or safety distinction between eye care professionals prescribing corrective lenses and other medical professionals prescribing through telemedicine—ignores the unique nature of eye health and specialized qualifications of licensed optometrists and ophthalmologists. Unlike the broader Telemedicine Act, the ECCPL

addresses the distinct requirements for eye care professionals, particularly in the context of prescribing corrective lenses, which take into consideration different medical risks and benefits. It is codified in a separate chapter of the South Carolina Code of Laws and is not an exception to the Telemedicine Act as Opternative suggests. *Compare* S.C. Code Ann. §§ 40-24-10, 40-24-20 (the ECCPL) *with* S.C. Code Ann. § 40-47-37 (the Telemedicine Act).

Opternative's attempt to equate the ECCPL's regulatory scope with that of the Telemedicine Act improperly conflates the classes of professionals covered. Not all doctors are authorized to practice optometry or ophthalmology, and the ECCPL exclusively governs practices within the scope of licensed optometrists and ophthalmologists. While these professionals may prescribe treatments via telemedicine as permitted by law, as all physicians may, the ECCPL mandates that prescriptions for corrective lenses cannot be based solely on a refractive error measured by a kiosk or computer. This narrow restriction underscores the ECCPL's focus on ensuring that eye health is addressed comprehensively, prioritizing patient safety, and maintaining a high standard of care specific to eye care professionals. Accordingly, it is inapposite to compare eye doctors under the ECCPL to all other types of providers under the Telemedicine Act, and the circuit court properly rejected Opternative's attempt to do so. (R. at 16–17).

Opternative asserts "there's no meaningful health or safety difference between doctors who prescribe lenses and doctors who prescribe anything else using telemedicine." (Appellant's Initial Br. 28). Claiming there is "no meaningful health or safety difference" between prescribing corrective lenses and prescribing other treatments via telemedicine is like asserting there is no meaningful difference between a mechanic diagnosing engine problems through a video call and a surgeon performing remote robotic surgery. Both involve technical expertise, but the level of precision, risk, and specific contextual assessment required are vastly different. Similarly, the

record supports that prescribing corrective lenses involves unique risks to eye health that require specialized expertise and often in-person assessments, such as detecting systemic conditions or underlying eye diseases that could be missed through remote methods. This type of specialized medical care is fundamentally different from general types of telemedicine practices, including the diagnosis and prescription of eye drops and serums.

The record is uncontradicted: comprehensive eye examinations, conducted in person, are necessary to identify conditions such as glaucoma, diabetic retinopathy, and corneal damage that may be asymptomatic but could lead to severe complications, including vision loss, if undetected. (R. at 242–43, ¶¶ 13, 15–16; 247–50, ¶¶ 14–23). As noted in the expert testimony, these risks are particularly pronounced when contact lenses are involved, as improper fit or undiagnosed eye conditions can result in long-term harm. (R. at 242–43, ¶¶ 13, 15–16; 247–50, ¶¶ 14–23). Despite the fact that full eye-health exams are not "always medically necessary for otherwise-healthy patients," (Appellant's Initial Br. 9), they are medically beneficial for patients and catch more severe health problems at an early stage.

The ECCPL applies uniformly to all ophthalmologists and optometrists, treating them equally under its provisions. Opternative acknowledges such. (Appellant's Initial Br. 30). The distinction it draws between eye care professionals who issue correct lens prescriptions based solely on the refractive eye error of the human eye generated by an automated testing device and those who base prescriptions on in-person eye examinations is neither arbitrary nor irrational. Instead, this differentiation is directly and reasonably related to the statute's purpose of protecting public health. There is no bar from using Opternative's Technology in the course of treating a patient, and the circuit court pointed out Opternative acknowledged it is possible to use the Technology in conjunction with an in-person eye exam. (R. at 17). The ECCPL simply prohibits

all ophthalmologists and optometrists from basing a prescription for corrective lenses "*solely* on the refractive eye error of the human eye or be generated by a kiosk." S.C. Code Ann. § 40-24-20(C) (emphasis added).

Accordingly, members of the class are treated alike under similar circumstances and conditions. Opternative has failed to prove that the ECCPL treats those similarly situated—eye doctors—differently. *See Ed Robinson Laundry & Dry Cleaning, Inc.*, 356 S.C. at 124, 588 S.E.2d at 99 ("As Robinson does not claim the State taxes dry cleaners, i.e. those 'similarly situated,' differently it fails to prove a violation of the equal protection clause."). Opternative's Technology is not barred by the ECCPL. Even assuming, *arguendo*, Opternative correctly defines the classification, its argument fails because there is a rational basis for treating prescribers of corrective lenses differently than prescribers of eye drops and serums.

D. The classification in the ECCPL has a reasonable basis.

The final prong under the rational basis test is whether the classification rests on some reasonable basis. *See Denene*, 359 S.C. at 91, 596 S.E.2d at 920. The ECCPL passes this test because the legislative distinction it draws—requiring in-person eye examinations before specifically prescribing corrective lenses—reflects the unique risks associated with corrective vision care and aligns with the legislature's goal of protecting public health.

Unlike some other medical prescriptions, corrective lenses directly interact with a sensitive organ: the eyes. Ill-fitting or improperly prescribed lenses can cause serious complications, such as corneal abrasions, infections, or exacerbated vision problems, particularly with contact lenses. Without an in-person examination to determine the correct fit of contact lenses, patients will be at a higher risk for injuries stemming from ill-fitting lenses. (R. 242, ¶¶ 12–13; 247–48, ¶ 14). As the circuit court noted, eye health often requires physical assessment tools that are essential to

detecting conditions like glaucoma or keratoconus, which remote tests like Opternative's Technology cannot reliably diagnose. (R. 242, ¶¶ 12–13; 247–48, ¶¶ 13–14). These risks justify the ECCPL's focus on ensuring adequate evaluations before prescribing corrective lenses.

Opternative fails to acknowledge the classification is not arbitrary or irrational simply because other telemedicine practices exist. The fact that the ECCPL does not prohibit all forms of telemedicine concerning the eye does not render it unconstitutional or unreasonable. "It is no requirement of equal protection that all evils of the same genus be eradicated or none at all." *SPUR at Williams Brice Owners Ass'n, Inc. v. Lalla*, 415 S.C. 72, 88, 781 S.E.2d 115, 124 (Ct. App. 2015) (quoting *Ry. Express Agency v. New York*, 336 U.S. 106, 110 (1949).

Opternative indicates the Telemedicine Act alone suffices to regulate vision care. However, the ECCPL builds upon the Telemedicine Act by addressing a specific gap in its framework: the heightened risks of prescribing corrective lenses to a patient without a comprehensive exam. The Telemedicine Act allows telemedicine, in general, but its existence does not negate the State's authority to impose stricter requirements in areas with unique public health concerns, such as corrective vision diagnoses, prescriptions, and ongoing treatment.

Courts routinely uphold such tailored regulations. *See, e.g.*, *Denene*, 359 S.C. at 97, 596 S.E.2d at 923 ("No one has an unfettered right to pursue a business detrimental to the public health, safety, and welfare."). The classification here reflects the legislature's careful consideration of the risks posed by lens prescriptions compared to other treatments. It does not amount to arbitrary discrimination against telemedicine but instead ensures that public health priorities are met in a context where potential harm is well-documented.

Opternative heavily relies on *Joseph v. South Carolina Department of Labor, Licensing & Regulation*, and other cases, to argue that the ECCPL lacks a rational basis. (Appellant's Initial Br.

30, 35). However, this reliance is misplaced. In *Joseph*, the Court invalidated a restriction on physician self-referrals because the alleged harms applied equally to all referrals, not just the restricted subset. The Court in that case held the statute at issue "deprives physicians of their right to practice medicine in the best interests of their patients." 417 S.C. at 452, 790 S.E.2d at 771. Here, the ECCPL addresses a particular health risk, unique to the fields of optometry and ophthalmology, and furthers the health interests of eye doctors' patients. There was no risk to patients that the statute in *Joseph* was allegedly designed to mitigate and any such risk was not unique to physical therapists. *See id.* at 452–53, 790 S.E.2d at 771–72.

Moreover, while Opternative claims that economic protectionism is the ECCPL's true motive, the statute's text and expert testimony refute this assertion. The statute's text reflects a public health rationale, not an effort to protect a particular industry. As the circuit court pointed out, if anything, the ECCPL prevents Opternative and other similar companies from fulfilling its *own* economic desire and the market's desire for convenience, which would be to the detriment of eye doctors' patients and the public health of this state. (*See* R. at 18). While the ECCPL may have incidental economic effects, these do not negate its legitimate purpose. As set forth above, the ECCPL does not *prohibit* Opternative's Technology, only its use as the sole basis for prescription lenses. Opternative may also benefit economically from the ECCPL, even if its economic benefits would be greater without the provisions it challenges.

Courts have repeatedly rejected the notion that a law's incidental economic impact invalidates it under the rational basis test. For example, in *Retail Services*, this Court recognized economic protectionism for a certain class is not a constitutionally sound basis only when there is no other supportable justification present. *See* 419 S.C. at 474, 799 S.E.2d at 667. Unlike the regulation at issue in *Retail Services*, the ECCPL's provisions align with its stated public health

goals, distinguishing it from laws designed *solely* to favor particular entities. *See id.* ("*Without any other supportable police power justification present*, economic protectionism for a certain class of retailers is not a constitutionally sound basis for regulating liquor sales.").

The ECCPL rests on a reasonable basis, addressing a documented public health concern. It reflects a rational legislative judgment addressing the unique health and safety risks associated with online lens prescriptions for patients. Far from being arbitrary or protectionist, the ECCPL is a targeted response to a legitimate public health concern and therefore satisfies the third prong of the rational basis test.

II. The ECCPL Does Not Violate the Due Process Clause of South Carolina's Constitution.

The circuit court correctly determined the ECCPL does not violate the substantive due process protections guaranteed by the South Carolina Constitution. Opternative failed to adequately address the circuit court's analysis of substantive due process, instead conflating it with its equal protection arguments. While Opternative briefly attempts to draw a connection between the two doctrines, citing a Georgia Supreme Court case to suggest that proving an irrational classification equates to a due process violation, its analysis is both cursory and unpersuasive. (Appellants Initial Br. 28 & n.17). The circuit court's ruling rests on well-established principles of South Carolina law and properly concludes the ECCPL is constitutional.

Under Article I, Section 3 of the South Carolina Constitution, no person shall "be deprived of life, liberty, or property without due process of law." S.C. Const. art. I, § 3. "In order to prove a denial of substantive due process, a party must show that he was arbitrarily and capriciously deprived of a cognizable property interest rooted in state law." *Denene*, 359 S.C. at 96, 596 S.E.2d at 923. "When an act is challenged under the due process clause, this 'Court only requires the act to be reasonably designed to accomplish its purposes . . . .'" *Luckabaugh*, 351 S.C. at 140, 568

S.E.2d at 347 (quoting *State v. Hornsby*, 326 S.C. 121, 125–26, 484 S.E.2d 869, 872 (1997)). A statute passes this standard if it "bears a reasonable relationship to any legitimate interest of government." *Denene*, 359 S.C. at 96, 596 S.E.2d at 923 (citing *Sunset Cay, LLC v. City of Folly Beach,* 357 S.C. 414, 430, 593 S.E.2d 462, 470 (2004)).

The ECCPL bears a clear and reasonable relationship to the State's legitimate interest in protecting the eye and systemic health of patients in South Carolina. The circuit court's findings underscore this point, concluding the ECCPL safeguards public health by preventing citizens from unwittingly putting their eye health at risk by obtaining a prescription for corrective lenses without an adequate eye examination. (R. at 19). This also ensures that undiagnosed diseases, such as glaucoma, cataracts, and diabetic retinopathy, do not go undetected—a critical public health concern. Opternative does not challenge the benefits of in-person eye exams. Neither does Opternative dispute the risks posed by undiagnosed eye conditions. Opternative does not claim that these eye conditions may remain undetected without in-person eye examinations.

The General Assembly is vested with broad discretion to enact legislation to protect public health and welfare. Courts afford significant deference to these legislative judgments, and statutes are presumed constitutional unless proven otherwise beyond a reasonable doubt. *Bodman*, 403 S.C. at 66, 742 S.E.2d at 365–66; *Luckabaugh*, 351 S.C. at 134–35, 568 S.E.2d at 344. The ECCPL's provisions fall squarely within the State's authority to regulate for public health, aligning with longstanding principles of substantive due process jurisprudence.

In this case, Opternative has failed to meet its burden of overcoming the presumption of constitutionality. It offers no evidence to demonstrate that the ECCPL is arbitrary, capricious, or unrelated to a legitimate public health objective. It merely argues patients may have other undiagnosed diseases that go undetected when doctors are allowed to use telemedicine in other

contexts. (Appellant's Initial Br. 34). The fact that the ECCPL does not address every potential threat of undiagnosed diseases does not undermine its attempts to mitigate a risk within the context of optometry and ophthalmology. The circuit court correctly found that the ECCPL is rationally designed to protect South Carolinians from the risks of inadequate eye care and does not violate the due process clause of the South Carolina Constitution. Accordingly, this Court should affirm the circuit court's holding that the ECCPL does not infringe upon Opternative's substantive due process rights.

CONCLUSION

The ECCPL represents a rational legislative effort to protect public health by ensuring that a patient's corrective lenses are prescribed only after an appropriate in-person eye examination. Opternative failed to overcome the presumption of constitutionality or demonstrate that the law lacks a legitimate purpose. For these reasons, SCOPA respectfully requests that this Court affirm the decision of the circuit court and uphold the constitutionality of the ECCPL.

Respectfully submitted,

s/ Kirby D. Shealy III
Kirby D. Shealy III (S.C. Bar No. 11556)
ADAMS AND REESE LLP
1221 Main Street, Suite 1200
Columbia, South Carolina 29201
Telephone: (803) 212-4966
kirby.shealy@arlaw.com

Attorney for Respondent-Intervenor SCOPA

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