ELECTRONICALLY FILED - 2023 May 25 11:07 AM - RICHLAND - COMMON PLEAS - CASE#2023CP4002745

STATE OF SOUTH CAROLINA
RICHLAND COUNTY

IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT

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

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

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

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

Plaintiffs,

v.

STATE OF SOUTH CAROLINA;

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

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

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

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

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

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

SUMMONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Defendants.

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint upon the subscriber, Burnette Shutt & McDaniel, PA, 912 Lady Street (29201), Second Floor, P.O. Box 1929, Columbia, South Carolina 29202, within 30 days after service hereof, exclusive of the day of such service. If you fail to answer the Complaint within the aforesaid time, judgment by default will be rendered against you for the relief demanded in the Complaint.

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/s/ *M. Malissa Burnette*
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May 24, 2023

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STATE OF SOUTH CAROLINA **RICHLAND COUNTY**	**IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT**
PLANNED PARENTHOOD SOUTH ATLANTIC, on behalf of itself, its patients, and its physicians and staff; KATHERINE FARRIS, M.D., on behalf of herself and her patients; GREENVILLE WOMEN'S CLINIC, on behalf of itself, its patients, and its physicians and staff; and; TERRY L. BUFFKIN, M.D., on behalf of himself and his patients. *Plaintiffs*, v. SOUTH CAROLINA; ALAN WILSON, in his official capacity as Attorney General of South Carolina; EDWARD SIMMER, in his official capacity as Director of the South Carolina Department of Health and Environmental Control; ANNE G. COOK, in her official capacity as President of the South Carolina Board of Medical Examiners; STEPHEN I. SCHABEL, in his official capacity as Vice President of the South Carolina Board of Medical Examiners; RONALD JANUCHOWSKI, in his official capacity as Secretary of the South Carolina Board of Medical Examiners;	C/A No.: 2023-CP-[ ]-__________ **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Defendants.

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

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

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

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

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

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

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

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

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

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

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PARTIES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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JURISDICTION AND VENUE

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

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

FACTUAL ALLEGATIONS

Prior South Carolina Abortion Law

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Abortion in South Carolina

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

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

[4] Elizabeth G. Raymond & David A. Grimes, The Comparative Safety of Legal Induced Abortion and Childbirth in the United States, 119 Obstetrics & Gynecology 215, 216 (2012); see also Nat'l Acads, *supra* note 3, at 75 tbls. 2-4 (finding the risk to be approximately twelve times higher).
[5] Raymond & Grimes, *supra* note 4, at 216.
[6] Nat'l Acads., *supra* note 3, at 74, 75 tbls. 2–4.
[7] S.C. Maternal Morbidity & Mortality Rev. Comm., *Legislative Brief* (Mar. 2021), available at https://scdhec.gov/sites/default/files/media/document/2021SCMMMRCLegislativeBrief.pdf.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Impact of the Act on Plaintiffs and Their Patients

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

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

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

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

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

South Carolinians Will Suffer Irreparable Harm from Forced Pregnancy.

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

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

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

[12] *See* Spencer Donovan & Eric Connor, *SC Woman Arrested for Abortion. What Does This Mean as Ban Debate Continues?*, Post and Courier Greenville (March 5, 2023), https://www.postandcourier.com/greenville/news/sc-abortion-arrest-raises-questions-about-criminalizing-women-for-ending-pregnancies/article_1c501f98-b929-11ed-8421-4757feceec31.html.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[15] *Id.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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The Act's Narrow Exceptions Will Harm South Carolinians.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

119. Plaintiffs have no adequate remedy at law.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

Six-Week Ban — Privacy

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

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

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

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

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

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

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

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

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

<u>SECOND CAUSE OF ACTION</u>

Six-Week Ban — Equal Protection

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

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

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

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

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

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

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

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

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

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

THIRD CAUSE OF ACTION

Six-Week Ban — Substantive Due Process

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

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

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

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

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

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

FOURTH CAUSE OF ACTION

Death or Substantial Injury Exception — Privacy

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

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

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

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

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

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

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

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

FIFTH CAUSE OF ACTION

Death or Substantial Injury Exception — Equal Protection

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

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

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

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

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

SIXTH CAUSE OF ACTION

Death or Substantial Injury Exception — Substantive Due Process

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

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

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

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

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

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SEVENTH CAUSE OF ACTION

Death or Substantial Injury Exception — Vagueness

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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EIGHTH CAUSE OF ACTION

Reported Rape Exception — Privacy

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

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

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

NINTH CAUSE OF ACTION

Reported Rape Exception — Equal Protection

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

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

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

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

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

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

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

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

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

TENTH CAUSE OF ACTION

Fatal Fetal Anomaly Exception — Privacy

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

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

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

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

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

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

ELEVENTH CAUSE OF ACTION

Fatal Fetal Anomaly Exception — Equal Protection

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

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

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

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

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TWELFTH CAUSE OF ACTION

Fatal Fetal Anomaly Exception — Substantive Due Process

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

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

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

THIRTEENTH CAUSE OF ACTION

Fatal Fetal Anomaly Exception — Vagueness

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

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

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

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

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

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

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

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

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

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FOURTEENTH CAUSE OF ACTION

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

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

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

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

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

FIFTEENTH CAUSE OF ACTION

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

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

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

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

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

SIXTEENTH CAUSE OF ACTION

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

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

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

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

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

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

SEVENTEENTH CAUSE OF ACTION

Void *Ab Initio*

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

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

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

A. That, pursuant to the South Carolina Uniform Declaratory Judgments Act, S.C. Code Ann. §§ 15-53-10–140, the Court declare that S.B. 474 is invalid because laws banning abortion violate South Carolina's right to privacy and guarantees of equal protection and substantive due process, because S.B. 474 is unconstitutionally vague, because S.B. 474 is an unconstitutional bill of attainder, and because S.B. 474 violates the Medicaid Act;

B. That the Court issue a temporary restraining order followed by preliminary and permanent injunctions prohibiting Defendants and their officers, employees, servants, agents, appointees, or successors from administering, preparing for, enforcing, or

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giving effect to S.B. 474 and any other South Carolina statute or regulation that could be understood to give effect to S.B. 474, including through any future enforcement actions based on abortions performed during the pendency of an injunction;

C. That the Court waive any security requirement for any injunction issued under S.C. R. Civ. P. 65(c);

D. That the Court retain jurisdiction of this action to render any further orders that this Court may deem appropriate;

E. That the Court award Plaintiffs costs and expenses; and

F. That the Court grant such other and further relief as the Court deems just and appropriate.

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Respectfully submitted,

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* *Pro hac vice motions to be filed*

Dated: May 24, 2023

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