STATE OF SOUTH CAROLINA
RICHLAND COUNTY

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;

IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT

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;

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.

/s/ *M. Malissa Burnette*
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Columbia, SC

May 25, 2023

STATE OF SOUTH CAROLINA
RICHLAND COUNTY

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;

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

IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT

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;

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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;

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*.	

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:

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

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.

[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).

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.

[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.

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.

§ 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.

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.

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

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.

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

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

[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)).

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.

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.

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

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

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.

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

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

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.

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).

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.

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

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

[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.

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.

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.

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).

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

[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

[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).

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.

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

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

[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.

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,

[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).

[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/.

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.

SECOND CAUSE OF ACTION

Six-Week Ban — Equal Protection

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

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)).

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.

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.

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

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

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.

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)).

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.

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.

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

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.

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.

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

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

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

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.

Respectfully submitted,

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* *Pro hac vice motions to be filed*

Dated: May 25, 2023

Exhibit A

South Carolina General Assembly
125th Session, 2023-2024

S. 474

STATUS INFORMATION

General Bill
Sponsors: Senators Grooms, Massey, Kimbrell and Adams
Document Path: SR-0235KM23.docx

Introduced in the Senate on February 1, 2023
Introduced in the House on February 14, 2023
Last Amended on May 16, 2023
Currently residing in the Senate

Summary: Abortion - Fetal Heartbeat

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
2/1/2023	Senate	Introduced and read first time (Senate Journal-page 3)
2/1/2023	Senate	Referred to Committee on **Medical Affairs** (Senate Journal-page 3)
2/2/2023		Scrivener's error corrected
2/3/2023	Senate	Polled out of committee **Medical Affairs** (Senate Journal-page 1)
2/3/2023	Senate	Committee report: Favorable **Medical Affairs** (Senate Journal-page 1)
2/7/2023		Scrivener's error corrected
2/7/2023	Senate	Debate interrupted (Senate Journal-page 19)
2/8/2023	Senate	Amended (Senate Journal-page 53)
2/8/2023	Senate	Read second time (Senate Journal-page 53)
2/9/2023	Senate	Amended (Senate Journal-page 25)
2/9/2023	Senate	Read third time and sent to House (Senate Journal-page 26)
2/9/2023	Senate	Roll call Ayes-28 Nays-12 (Senate Journal-page 25)
2/13/2023		Scrivener's error corrected
2/14/2023	House	Introduced and read first time (House Journal-page 11)
2/14/2023	House	Referred to Committee on **Judiciary** (House Journal-page 11)
5/10/2023	House	Committee report: Favorable with amendment **Judiciary** (House Journal-page 43)
5/11/2023	House	Requests for debate-Rep(s). Hiott, Magnuson, McCravy, Pope, Felder, O'Neal, Ligon, T Moore, Nutt, Hayes, Guest, Erickson, Jordan, JE Johnson, W Newton, Atkins, BL Cox, Pace, Davis, MM Smith, Lawson, Harris, B Newton, Neese, Carter, Hixon, Oremus, Williams, Henegan, Gagnon, Chapman, West Thayer, Forrest, Cobb-Hunter, Henderson-Myers, King, McDaniel, JA Moore, Bauer, Tedder, Rivers, Kirby, Thigpen, Hosey, Clyburn, Anderson, Hewitt, Robbins, Bernstein, Jefferson, JL Johnson White, S Jones, Gilliam, Murphy, Brewer, Whitmire, Sandifer, Mitchell, Yow, Hager, May, Kilmartin, Long, Trantham, AM Morgan, Dilliard, W Jones, Wetmore, Caskey, Wooten, Weeks, Taylor (House Journal-page 33)

5/16/2023	House	Amended (House Journal-page 34)
5/16/2023	House	Read second time (House Journal-page 301)
5/16/2023	House	Roll call Yeas-82 Nays-33 (House Journal-page 301)
5/17/2023	House	Read third time and returned to Senate with amendments (House Journal-page 14)
5/17/2023	House	Roll call Yeas-82 Nays-32 (House Journal-page 14)
5/18/2023		Scrivener's error corrected
5/23/2023		Scrivener's error corrected
5/23/2023	Senate	Concurred in House amendment and enrolled (Senate Journal-page 61)
5/23/2023	Senate	Roll call Ayes-27 Nays-19 (Senate Journal-page 61)

View the latest legislative information at the website

VERSIONS OF THIS BILL

02/01/2023
02/02/2023
02/03/2023
02/07/2023
02/08/2023
02/09/2023
02/13/2023
05/10/2023
05/16/2023
05/18/2023
05/23/2023

~~Indicates Matter Stricken~~
Indicates New Matter

AMENDED
May 16, 2023

S. 474

Introduced by Senators Grooms, Massey, Kimbrell and Adams

S. Printed 05/16/23--H. [SEC 5/23/2023 11:00 AM]
Read the first time February 14, 2023

_____

A BILL

TO AMEND ARTICLE 6, CHAPTER 41, TITLE 44 OF THE SOUTH CAROLINA CODE OF LAWS, RELATING TO THE FETAL HEARTBEAT AND PROTECTION FROM ABORTION ACT, SO AS TO PROVIDE THAT ABORTIONS MAY NOT BE PERFORMED IN THIS STATE AFTER A FETAL HEARTBEAT HAS BEEN DETECTED EXCEPT IN CASES OF RAPE OR INCEST DURING THE FIRST TWELVE WEEKS OF PREGNANCY, IN MEDICAL EMERGENCIES, OR IN LIGHT OF A FATAL FETAL ANOMALY; TO DEFINE NECESSARY TERMS; TO REPEAL SECTION 2 OF ACT 1 OF 2021; TO REPEAL SECTIONS 44-41-10 AND 44-41-20 OF THE S.C. CODE; AND TO REPEAL ARTICLE 5, CHAPTER 41, TITLE 44 OF THE S.C. CODE SUBJECT TO CERTAIN CONDITIONS.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. The General Assembly hereby finds all of the following:

(1) A fetal heartbeat is a key medical predictor that an unborn child will reach live birth.

(2) Cardiac activity begins at a biologically identifiable moment in time, normally when the fetal heart is formed in the gestational sac.

(3) The 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.

SECTION 2. Article 6, Chapter 41, Title 44 of the S.C. Code is amended to read:

Article 6

Fetal Heartbeat and Protection from Abortion

Section 44-41-610. ~~As used in this article:~~

~~(1) "Conception" means fertilization.~~

~~(2) "Contraceptive" means a drug, device, or chemical that prevents conception.~~

~~(3) "Fetal heartbeat" means cardiac activity, or the steady and repetitive rhythmic contraction of the fetal heart, within the gestational sac.~~

~~(4) "Gestational age" means the age of an unborn human individual as calculated from the first day~~

~~of the last menstrual period of a pregnant woman.~~

~~(5) "Gestational sac" means the structure that comprises the extraembryonic membranes that envelop the human fetus and that is typically visible by ultrasound after the fourth week of pregnancy.~~

~~(6) "Human fetus" or "unborn child" each means an individual organism of the species homo sapiens from fertilization until live birth.~~

~~(7) "Intrauterine pregnancy" means a pregnancy in which a human fetus is attached to the placenta within the uterus of a pregnant woman.~~

~~(8) "Medical emergency" means a condition that, by any reasonable medical judgment, so complicates the medical condition of a pregnant woman that it necessitates the immediate abortion of her pregnancy to avert her death without first determining whether there is a detectable fetal heartbeat or for which the delay necessary to determine whether there is a detectable fetal heartbeat will create serious risk of a substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions. 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.~~

~~(9) "Physician" means any person licensed to practice medicine and surgery, or osteopathic medicine and surgery, in this State.~~

~~(10) "Reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician who is knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.~~

~~(11) "Spontaneous miscarriage" means the natural or accidental termination of a pregnancy and the expulsion of the human fetus, typically caused by genetic defects in the human fetus or physical abnormalities in the pregnant woman.~~As used in this article:

(1) "Abortion" means the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will, with reasonable likelihood, cause the death of the unborn child. Such use, prescription, or means is not an abortion if done with the intent to save the life or preserve the health of the unborn child, or to remove a dead unborn child.

(2) "Clinically diagnosable pregnancy" means the point in time when it is possible to determine that a woman is pregnant due to the detectible presence of human chorionic gonadotropin (hCG).

(3) "Conception" means fertilization of an ovum by sperm.

(4) "Contraceptive" means a drug, device, or chemical that prevents ovulation, conception, or the implantation of a fertilized ovum in a woman's uterine wall after conception.

(5) "Fatal fetal anomaly" means that, 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.

(6) "Fetal heartbeat" means cardiac activity, or the steady and repetitive rhythmic contraction of the fetal heart, within the gestational sac.

(7) "Gestational age" means the age of an unborn child as calculated from the first day of the last menstrual period of a pregnant woman.

(8) "Gestational sac" means the structure that comprises the extraembryonic membranes that envelop the unborn child and that is typically visible by ultrasound after the fourth week of pregnancy.

(9) "Medical emergency" means in reasonable medical judgment, a condition exists that has complicated the pregnant woman's medical condition and necessitates an abortion to prevent death or serious risk of a substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions. 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.

(10) "Physician" means a person licensed to practice medicine in this State.

(11) "Pregnant" means the human biological female reproductive condition of having a living unborn child within her body, whether or not she has reached the age of majority.

(12) "Rape" has the same meaning as criminal sexual conduct, regardless of the degree.

(13) "Reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician who is knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

(14) "Unborn child" means an individual organism of the species homo sapiens from conception until live birth.

Section 44-41-620. ~~(A) A court judgment or order suspending enforcement of any provision of this chapter is not to be regarded as tantamount to repeal of that provision.~~

~~(B) If the United States Supreme Court issues a decision overruling Roe v. Wade, 410 U.S. 113 (1973), any other court issues an order or judgment restoring, expanding, or clarifying the authority of states to prohibit or regulate abortion entirely or in part, or an amendment is ratified to the Constitution of the United States restoring, expanding, or clarifying the authority of states to prohibit or regulate abortion entirely or in part, then the Attorney General may apply to the pertinent state or federal court for either or both of the following:~~

~~(1) a declaration that any one or more of the statutory provisions specified in subsection (A) are constitutional; or~~

~~(2) a judgment or order lifting an injunction against the enforcement of any one or more of the statutory provisions specified in subsection (A).~~

~~(C) If the Attorney General fails to apply for relief pursuant to subsection (B) within a thirty-day period after an event described in that subsection occurs, then any solicitor may apply to the appropriate~~

~~state or federal court for such relief.~~ An abortion may not be performed or induced without the voluntary and informed written consent of the pregnant woman or, in the case of incapacity to consent, the voluntary and informed written consent of her court-appointed guardian, and without compliance with the provisions of Section 44-41-330(A).

Section 44-41-630. (A) An abortion provider who is to perform or induce an abortion, a certified technician, or another agent of the abortion provider who is competent in ultrasonography shall:

(1) perform an obstetric ultrasound on the pregnant woman, using whichever method the physician and pregnant woman agree is best under the circumstances;

(2) during the performance of the ultrasound, display the ultrasound images so that the pregnant woman may view the images; and

(3) record a written medical description of the ultrasound images of the unborn child's fetal heartbeat, if present and viewable.

(B) Except as provided in Section 44-41-640, Section 44-41-650, and Section 44-41-660, no person shall perform or induce an abortion on a pregnant woman with the specific intent of causing or abetting an abortion if the unborn child's fetal heartbeat has been detected in accordance with Section 44-41-330(A). A person who violates this subsection is guilty of a felony and, upon conviction, must be fined ten thousand dollars, imprisoned for not more than two years, or both.

Section 44-41-640. ~~If a pregnancy is at least eight weeks after fertilization, then the abortion provider who is to perform or induce an abortion, or an agent of the abortion provider, shall tell the woman that it may be possible to make the embryonic or fetal heartbeat of the unborn child audible for the pregnant woman to hear and shall ask the woman if she would like to hear the heartbeat. If the woman would like to hear the heartbeat, then the abortion provider shall, using whichever method the physician and patient agree is best under the circumstances, make the fetal heartbeat of the unborn child audible for the pregnant woman to hear.~~(A) It is not a violation of Section 44-41-630 if an abortion is performed or induced on a pregnant woman due to a medical emergency or is performed 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, not including psychological or emotional conditions, of the pregnant woman.

(B)(1) Section 44-41-630 does not apply to a physician who performs or induces an abortion if the physician determines according to standard medical practice that a medical emergency exists or is performed to prevent the death of the pregnant woman or to prevent the serious risk of a substantial or irreversible impairment of a major bodily function, not including psychological or emotional conditions, that prevents compliance with the section.

(2) A physician who performs or induces an abortion on a pregnant woman based on the exception in item (1) shall make written notations in the pregnant woman's medical records of the following:

(a) the physician's belief that a medical emergency necessitating the abortion existed;

(b) the medical condition of the pregnant woman that assertedly prevented compliance with Section 44-41-630; and

(c) the medical rationale to support the physician's or person's conclusion that the pregnant woman's medical condition necessitated the immediate abortion of her pregnancy to avert her death and a medical emergency necessitating the abortion existed.

(3) A physician performing a medical procedure pursuant to item (1) shall make reasonable medical efforts under the circumstances to preserve the life of the pregnant woman's unborn child, 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. A medical procedure shall not be considered necessary if it is performed based upon a claim or diagnosis that the woman will engage in conduct that she intends to result in her death or in a substantial physical impairment of a major bodily function.

(4)(a) For at least seven years from the date the notations are made in the pregnant woman's medical records, the physician owner of the pregnant woman's medical records shall maintain a record of the notations and in his own records a copy of the notations.

(b) A person, if he is the owner of the pregnant woman's medical records, who violates this subsection is guilty of a felony and must be fined up to ten thousand dollars, imprisoned for not more than two years, or both.

(c) An entity with ownership of the pregnant woman's medical records that violates item (3) must be fined up to fifty thousand dollars.

(C)(1) 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, not including psychological or emotional conditions.

(2) It is presumed that the following medical conditions constitute a risk of death or serious risk of a substantial and irreversible physical impairment of a major bodily function of a pregnant woman, not including psychological or emotional conditions: 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. However, when an unborn child is alive in utero, the physician must make all reasonable efforts to deliver and save the life of an unborn child 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. The enumeration of the medical conditions in this item is not intended to exclude or abrogate other conditions that satisfy the exclusions contained

in item (1) or prevent other procedures that are not included in the definition of abortion.

(3) A physician who performs a medical procedure pursuant to item (1) shall declare, in a written document maintained with the woman's medical records, that the medical procedure was necessary, the woman's medical condition necessitating the procedure, the physician's rationale for his conclusion that the procedure was necessary, and that all reasonable efforts were made to save the unborn child in the event it was living prior to the procedure. The declaration required by this item must be placed in the woman's medical records not later than thirty days after the procedure was completed. A physician's exercise of reasonable medical judgment in relation to a medical procedure undertaken pursuant to this subsection is presumed to be within the applicable standard of care.

(D) Medical treatment provided to a pregnant woman by a physician which results in the accidental or unintentional injury or death of her unborn child is not a violation of Section 44-41-630.

(E) It is not a violation of Section 44-41-630 to use, sell, or administer a contraceptive measure, drug, chemical, or device if the contraceptive measure, drug, chemical, or device is used, sold, prescribed or administered in accordance with manufacturer's instructions and is not used, sold, prescribed or administered to cause or induce an abortion.

Section 44-41-650. ~~(A) Except as provided in Section 44-41-660, no person shall perform, induce, or attempt to perform or induce an abortion on a pregnant woman before a physician determines in accordance with Section 44-41-630 whether the human fetus the pregnant woman is carrying has a detectable fetal heartbeat.~~

~~(B) A person who violates subsection (A) is guilty of a felony and, upon conviction, must be fined ten thousand dollars, imprisoned not more than two years, or both.~~ (A) A physician may perform, induce, or attempt to perform or induce an abortion on a pregnant woman after the fetal heartbeat has been detected in accordance with Section 44-41-630 if:

(1) the pregnancy is the result of rape, and the probable gestational age of the unborn child is not more than twelve weeks; or

(2) the pregnancy is the result of incest, and the probable gestational age of the unborn child is not more than twelve weeks.

(B) A physician who performs or induces an abortion on a pregnant woman based on an exception contained in this section must report the allegation of rape or incest to the sheriff in the county in which the abortion was performed. The report must be made no later than twenty-four hours after performing or inducing the abortion, may be made orally or otherwise, and shall include the name and contact information of the pregnant woman making the allegation. Prior to performing or inducing an abortion, the physician who performs or induces an abortion based on an allegation of rape or incest must notify the pregnant woman that the physician will report the allegation of rape or incest to the sheriff. The physician shall make written notations in the pregnant woman's medical records that the abortion was

performed pursuant to the applicable exception, that the doctor notified the sheriff of the allegation of rape or incest in a timely manner, and that the woman was notified prior to the abortion that the physician would notify the sheriff of the allegation of rape or incest.

(C) A person who violates this section is guilty of a felony and, upon conviction, must be fined ten thousand dollars, imprisoned for not more than two years, or both.

Section 44-41-660. ~~(A) Section 44-41-650 does not apply to a physician who performs or induces an abortion if the physician determines according to standard medical practice that a medical emergency exists that prevents compliance with the section.~~

~~(B) A physician who performs or induces an abortion on a pregnant woman based on the exception in subsection (A) shall make written notations in the pregnant woman's medical records of the following:~~

~~(1) the physician's belief that a medical emergency necessitating the abortion existed;~~

~~(2) the medical condition of the pregnant woman that assertedly prevented compliance with Section 44-41-650; and~~

~~(3) the medical rationale to support the physician's conclusion that the pregnant woman's medical condition necessitated the immediate abortion of her pregnancy to avert her death.~~

~~(C) For at least seven years from the date the notations are made, the physician shall maintain in his own records a copy of the notations.~~(A) It is not a violation of Section 44-41-630 if an abortion is performed or induced on a pregnant woman due to the existence of a fatal fetal anomaly. Section 44-41-630 does not apply to a physician who performs or induces an abortion if the physician or person determines according to standard medical practice that there exists a fatal fetal anomaly.

(B)(1) A person who performs or induces an abortion based upon the existence of a fatal fetal anomaly shall make written notations in the pregnant woman's medical records of:

(a) the presence of a fatal fetal anomaly;

(b) the nature of the fatal fetal anomaly;

(c) the medical rationale for making the determination that with or without the provision of life-preserving treatment life after birth would be unsustainable.

(2) For at least seven years from the date the notations are made in the woman's medical records, the owner of the pregnant woman's medical records shall maintain a record of the notations.

(C) A person who violates this section is guilty of a felony and, upon conviction, must be fined up to ten thousand dollars, imprisoned for not more than two years, or both.

(D) An entity with ownership of the pregnant woman's medical records that violates item (2) must be fined up to fifty thousand dollars.

Section 44-41-670. ~~A physician is not in violation of Section 44-41-650 if the physician acts in~~

~~accordance with Section 44-41-630 and the method used to test for the presence of a fetal heartbeat does not reveal a fetal heartbeat.~~A pregnant woman on whom an abortion is performed or induced in violation of this article may not be criminally prosecuted for violating any of the provisions of this article or for attempting to commit, or conspiring to commit a violation of any of the provisions of the article and is not subject to a civil or criminal penalty based on the abortion being performed or induced in violation of any of the provisions of this article.

Section 44-41-680. ~~(A) Except as provided in subsection (B), no person shall perform, induce, or attempt to perform or induce an abortion on a pregnant woman with the specific intent of causing or abetting the termination of the life of the human fetus the pregnant woman is carrying and whose fetal heartbeat has been detected in accordance with Section 44-41-630.~~

~~(B) A physician may perform, induce, or attempt to perform or induce an abortion on a pregnant woman after a fetal heartbeat has been detected in accordance with Section 44-41-630 only if:~~

~~(1) the pregnancy is the result of rape, and the probable post-fertilization age of the fetus is fewer than twenty weeks;~~

~~(2) the pregnancy is the result of incest, and the probable post-fertilization age of the fetus is fewer than twenty weeks;~~

~~(3) the physician is acting in accordance with Section 44-41-690; or~~

~~(4) there exists a fetal anomaly, as defined in Section 44-41-430.~~

~~(C) A physician who performs or induces an abortion on a pregnant woman based on the exception in either subsection (B)(1) or (2) must report the allegation of rape or incest to the sheriff in the county in which the abortion was performed. The report must be made no later than twenty-four hours after performing or inducing the abortion, may be made orally or otherwise, and shall include the name and contact information of the pregnant woman making the allegation. Prior to performing or inducing an abortion, a physician who performs or induces an abortion based upon an allegation of rape or incest must notify the pregnant woman that the physician will report the allegation of rape or incest to the sheriff. The physician shall make written notations in the pregnant woman's medical records that the abortion was performed pursuant to the applicable exception, that the doctor timely notified the sheriff of the allegation of rape or incest, and that the woman was notified prior to the abortion that the physician would notify the sheriff of the allegation of rape or incest.~~

~~(D) A person who violates subsection (A) is guilty of a felony and, upon conviction, must be fined ten thousand dollars, imprisoned not more than two years, or both.~~(A) In addition to all other remedies available under common or statutory law, failure to comply with the requirements of this article shall provide the basis for a civil action further described in this section.

(B) A pregnant woman upon whom an abortion has been performed, induced, or coerced in violation of this article may maintain an action against the person who violated this article for actual and punitive

damages. In addition to all other damages, and separate and distinct from all other damages, a plaintiff is entitled to statutory damages of ten thousand dollars for each violation of this article to be imposed on each defendant found to have violated this article.

(C) A separate and distinct cause of action for injunctive relief against any person who has violated this article may be maintained by:

(1) the woman upon whom the abortion was performed or induced in violation of this article;

(2) the parent or guardian of the pregnant woman if she had not attained the age of eighteen years at the time of the abortion or died as a result of the abortion;

(3) a solicitor or prosecuting attorney with proper jurisdiction; or

(4) the Attorney General.

(D) If a plaintiff prevails in an action initiated pursuant to this section the court shall award the plaintiff reasonable costs and attorney's fees.

(E) No damages, costs, or attorney's fees may be assessed against the woman upon whom an abortion was performed or induced.

(F) Under no circumstances may civil damages be awarded to a plaintiff if the pregnancy resulted from the plaintiff's criminal conduct.

(G) A civil cause of action pursuant to this section must be brought within three years of the date of the abortion and is not subject to the limitations and requirements contained in Chapter 79, Title 15.

Section 44-41-690. ~~(A) Section 44-41-680 does not apply to a physician who performs a medical procedure that, by any reasonable medical judgment, is designed or intended 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.~~

~~(B) A physician who performs a medical procedure as described in subsection (A) shall declare, in a written document, that the medical procedure was necessary, by reasonable medical judgment, to prevent the death of the pregnant woman or to prevent the serious risk of a substantial and irreversible physical impairment of a major bodily function of the pregnant woman. In the document, the physician shall specify the pregnant woman's medical condition that the medical procedure was asserted to address and the medical rationale for the physician's conclusion that the medical procedure was 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.~~

~~(C) A physician who performs a medical procedure as described in subsection (A) shall place the written document required by subsection (B) in the pregnant woman's medical records. For at least seven years from the date the document is created, the physician shall maintain a copy of the document in his own records.~~In addition to any other penalties imposed by law, a physician or any other professionally licensed person who intentionally, knowingly, or recklessly violates the prohibition on

abortion contained in this article commits an act of unprofessional conduct. A physician's license to practice in this State immediately shall be revoked by the State Board of Medical Examiners, after due process according to the board's rules and procedures. Any other licensed person's professional license shall be immediately revoked by the appropriate licensing board, after due process according to that board's rules and procedures. A complaint may be originated by any person or by the board sua sponte. A licensing board acting pursuant to this section may assess costs of the investigation, fines, and other disciplinary actions as it may deem appropriate.

Section 44-41-700. ~~A physician is not in violation of Section 44-41-680 if the physician acts in accordance with Section 44-41-630 and the method used to test for the presence of a fetal heartbeat does not reveal a fetal heartbeat.~~Reserved.

Section 44-41-710. ~~This article must not be construed to repeal, by implication or otherwise, Section 44-41-20 or any otherwise applicable provision of South Carolina law regulating or restricting abortion. An abortion that complies with this article but violates the provisions of Section 44-41-20 or any otherwise applicable provision of South Carolina law must be considered unlawful as provided in such provision. An abortion that complies with the provisions of Section 44-41-20 or any otherwise applicable provision of South Carolina law regulating or restricting abortion but violates this article must be considered unlawful as provided in this article. If some or all of the provisions of this article are ever temporarily or permanently restrained or enjoined by judicial order, all other provisions of South Carolina law regulating or restricting abortion must be enforced as though such restrained or enjoined provisions had not been adopted; provided, however, that whenever such temporary or permanent restraining order or injunction is stayed or dissolved, or otherwise ceases to have effect, such provisions shall have full force and effect.~~Reserved.

Section 44-41-720. ~~Nothing in this article prohibits the sale, use, prescription, or administration of a drug, device, or chemical that is designed for contraceptive purposes.~~Reserved.

Section 44-41-730. ~~A pregnant woman on whom an abortion is performed or induced in violation of this article may not be criminally prosecuted for violating any of the provisions of this article or for attempting to commit, conspiring to commit, or acting complicitly in committing a violation of any of the provisions of the article and is not subject to a civil or criminal penalty based on the abortion being performed or induced in violation of any of the provisions of this article.~~Reserved.

Section 44-41-740. ~~(A) A woman who meets any one or more of the following criteria may file a civil action in a court of competent jurisdiction:~~

~~(1) a woman on whom an abortion was performed or induced in violation of this article; or~~

~~(2) a woman on whom an abortion was performed or induced who was not given the information provided in Section 44-41-330.~~

~~(B) A woman who prevails in an action filed pursuant to subsection (A) shall receive the following from the person who committed the act or acts described in subsection (A):~~

~~(1) damages in an amount equal to ten thousand dollars or an amount determined by the trier of fact after consideration of the evidence; and~~

~~(2) court costs and reasonable attorney's fees.~~

~~(C) If the defendant in an action filed pursuant to subsection (A) prevails and the court finds that the commencement of the action constitutes frivolous conduct and that the defendant was adversely affected by the frivolous conduct, then the court shall award reasonable attorney's fees to the defendant; provided, however, that a conclusion of frivolousness cannot rest upon the unconstitutionality of the provision that was allegedly violated.~~Reserved.

SECTION 3. Article 1, Chapter 41, Title 44 of the S.C. Code is amended by adding:

Section 44-41-90. (A) No 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 as provided in Sections 44-41-640, 44-41-650, and 44-41-660.

(B) No funds appropriated or authorized by the State may be used by any political subdivision of the State to purchase fetal tissue obtained from an abortion or fetal remains, nor may any political subdivision of the State accept donated fetal remains.

(C) No state funds may, directly or indirectly, be utilized by Planned Parenthood for abortions, abortion services or procedures, or administrative functions related to abortions.

SECTION 4. Article 3, Chapter 17, Title 63 of the S.C. Code is amended by adding:

Section 63-17-325. (A) A biological father of a child has a duty to pay the mother of the child the following financial obligations beginning with the date of conception:

(1) child support payment obligations in an amount determined pursuant to Section 63-17-470;

(2) fifty percent of the mother’s pregnancy expenses.

(a) Any portion of a mother’s pregnancy expenses paid by the mother or the biological father reduces that parent’s fifty percent obligation regardless of when the mother or biological father pays the pregnancy expenses.

(b) Pregnancy expenses must include fifty percent of the mother’s insurance premiums that are not paid by her employer or governmental program beginning from the date of conception and before

the pregnancy ends, unless otherwise ordered by the court.

(c) Item (2) does not apply if a court apportions pregnancy expenses as part of an award of child support in item (1).

(B) In the case of a mother who becomes pregnant as a result of rape or incest, the biological father, in addition to the duties imposed by subsection (A), also is responsible for the full cost of any expenses incurred by the mother for mental health counseling arising out of the rape or incest.

(C) The duties imposed by this section accrue at the time of conception and must be applied retroactively when paternity is contested, and medical evidence establishes the paternity of the child. Interest accrues on any retroactive obligations beginning with conception until either the obligations are brought current or paid in full whichever happens first. The rate of interest must be calculated based on the applicable interest rate for money decrees and judgments in this State established annually by the South Carolina Supreme Court.

SECTION 5. Article 1, Chapter 71, Title 38 of the S.C. Code is amended by adding:

Section 38-71-146. All individual and group health insurance and health maintenance organization policies in this State shall include coverage for contraceptives. For purposes of this section, "contraceptive" means the same as in Section 44-41-610(4). A contraceptive may prevent ovulation, fertilization, or implantation in the uterus. A contraceptive does not include any drug, device, or medication used with the intent of terminating a pregnancy of a woman known to be pregnant. This section does not apply if an individual or entity asserts a sincerely held religious belief regarding the use of contraception.

SECTION 6. Section 44-41-10 of the S.C. Code is amended to read:

Section 44-41-10. As used in this chapter:

~~(a) "Abortion" means the use of an instrument, medicine, drug, or other substance or device with intent to terminate the pregnancy of a woman known to be pregnant for reasons other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead fetus.~~ (a) "Abortion" means the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will, with reasonable likelihood, cause the death of the unborn child. Such use, prescription, or means is not an abortion if done with the intent to save the life or preserve the health of the unborn child, or to remove a dead unborn child.

(b) "Physician" means a person licensed to practice medicine in this State.

(c) "Department" means the South Carolina Department of Health and Environmental Control.

(d) “Hospital” means those institutions licensed for hospital operation by the department in accordance with Article 3, Chapter 7 of this title and which have also been certified by the department to be suitable facilities for the performance of abortions.

(e) “Clinic” shall mean any facility other than a hospital as defined in subsection (d) which has been licensed by the Department, and which has also been certified by the Department to be suitable for the performance of abortions.

(f) ~~“Pregnancy” means the condition of a woman carrying a fetus or embryo within her body as the result of conception.~~“Pregnant” means the human biological female reproductive condition of having a living unborn child within her body, whether or not she has reached the age of majority.

(g) “Conception” means the ~~fecundation of the ovum by the spermatozoa~~ fertilization of an ovum by a sperm.

(h) “Consent” means a signed and witnessed voluntary agreement to the performance of an abortion.

(i) “First trimester of pregnancy” means the first twelve weeks of pregnancy commencing with conception rather than computed on the basis of the menstrual cycle.

(j) “Second trimester of pregnancy” means that portion of a pregnancy following the twelfth week and extending through the twenty-fourth week of gestation.

(k) “Third trimester of pregnancy” means that portion of a pregnancy beginning with the twenty-fifth week of gestation.

(l) ~~“Viability” means that stage of human development when the fetus is potentially able to live outside of the mother's womb with or without the aid of artificial life support systems. For the purposes of this chapter, a legal presumption is hereby created that viability occurs no sooner than the twenty-fourth week of pregnancy.~~

~~(m)~~ “Minor” means a female under the age of seventeen.

~~(n)~~(m) “Emancipated minor” means a minor who is or has been married or has by court order been freed from the care, custody, and control of her parents.

~~(o)~~(n) “In loco parentis” means any person over the age of eighteen who has placed himself or herself in the position of a lawful parent by assuming obligations which are incidental to the parental relationship and has so served for a period of sixty days.

SECTION 7. Section 44-41-60 of the S.C. Code is amended to read:

Section 44-41-60. Any abortion performed in this State must be reported by the performing physician on the standard form for reporting abortions to the State Registrar, Department of Health and Environmental Control, within seven days after the abortion is performed. The names of the patient and physician may not be reported on the form or otherwise disclosed to the State Registrar. The form must indicate from whom consent was obtained, circumstances waiving consent, and, if an exception

was exercised pursuant to Section 44-41-640, 44-41-650, or 44-41-660, which exception the physician relied upon in performing or inducing the abortion.

SECTION 8. Section 44-41-70(b) of the S.C. Code is amended to read:

(b) The department shall promulgate and enforce regulations for the licensing and certification of facilities other than hospitals as defined in Section 44-41-10(d) wherein abortions are to be performed ~~as provided for in Section 44-41-20(a) and (b)~~.

SECTION 9. Section 44-41-80 of the S.C. Code is amended to read:

Section 44-41-80. (a) Any person, except as permitted by this chapter, who provides, supplies, prescribes or administers any drug, medicine, prescription or substance to any woman or uses or employs any device, instrument or other means upon any woman, with the intent to produce an abortion shall be deemed guilty of a felony and, upon conviction, shall be punished by imprisonment for a term of not less than two nor more than five years or fined not more than five thousand dollars, or both. Provided, that the provisions of this item shall not apply to any woman upon whom an abortion has been attempted or performed.

(b) ~~Except as otherwise permitted by this chapter, any woman who solicits of any person or otherwise procures any drug, medicine, prescription or substance and administers it to herself or who submits to any operation or procedure or who uses or employs any device or instrument or other means with intent to produce an abortion, unless it is necessary to preserve her life, shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by imprisonment for a term of not more than two years or fined not more than one thousand dollars, or both.~~

~~(c)~~ Any woman upon whom an abortion has been performed or attempted in violation of the provisions of this chapter may be compelled to testify in any criminal prosecution initiated pursuant to subsection (a) of this section; provided, however, that such testimony shall not be admissible in any civil or criminal action against such woman and she shall be forever immune from any prosecution for having solicited or otherwise procured the performance of the abortion or the attempted performance of the abortion upon her.

SECTION 10. Section 44-41-330(A) of the S.C. Code is amended to read:

(A) Except in the case of a medical emergency and in addition to any other consent required by the laws of this State, no abortion may be performed or induced without the voluntary and informed written consent of the pregnant woman and unless the following conditions have been satisfied:

(1)(a) ~~The~~While physically present in the same room, the woman must be informed by the physician who is to perform the abortion ~~or by,~~ an allied health professional working in conjunction with the physician, or the referring physician of the procedure to be involved ~~and by the physician who is to perform the abortion of the probable gestational age of the embryo or fetus at the time the abortion is to be performed~~, including:

(i) the nature and risks of undergoing or not undergoing the proposed procedure that a reasonable patient would consider material to making a knowing and wilful decision of whether to have an abortion;

(ii) the probable gestational age of the unborn child, verified by an ultrasound, at the time the abortion is to be performed;

(iii) the presence of the unborn child's fetal heartbeat, if present and viewable.

(b) ~~.~~ If an ultrasound is required to be performed, an abortion may not be performed sooner than sixty minutes following completion of the ultrasound. The ultrasound must be performed by the physician who is to perform the abortion or by a person having documented evidence that he or she is a certified sonographer under South Carolina law and who is working in conjunction with the physician. The physician who is to perform the abortion or an allied health professional working in conjunction with the physician must inform the woman before the ultrasound procedure of her right to view the live ultrasound ~~image~~ images and hear the unborn child's fetal heartbeat, if present, at her request during or after the ultrasound procedure and to have them explained to her.

(c) If the woman accepts the opportunity to view the images and hear the explanation, a physician or a registered nurse, licensed practical nurse, or physician assistant working in conjunction with the physician must contemporaneously review and explain the images to the woman before the woman gives informed consent to having an abortion procedure performed.

(d) The woman has a right to decline to view and hear the explanation of the live ultrasound images after she is informed of her right and offered an opportunity to view the images and hear the explanation. If the woman declines, the woman shall complete a form acknowledging that she was offered an opportunity to view and hear the explanation of the images but that she declined that opportunity. The form also must indicate that the woman's decision was not based on any undue influence from any person to discourage her from viewing the images or hearing the explanation and that she declined of her own free will.

~~(b)~~(e) If the physician who intends to perform or induce an abortion on a pregnant woman has determined pursuant to Sections 44-41-620, 44-41-630, and 44-41-330(A) that the ~~human fetus~~ unborn child the pregnant woman is carrying has a detectable fetal heartbeat, then that physician shall inform the pregnant woman in writing that the ~~human fetus~~unborn child the pregnant woman is carrying has a fetal heartbeat. The physician shall further inform the pregnant woman, to the best of the physician's knowledge, of the statistical probability, absent an induced abortion, of bringing the human fetus

possessing a detectable fetal heartbeat to term based on the gestational age of the human fetus or, if the director of the department has specified statistical probability information, shall provide to the pregnant woman that information. The department may promulgate regulations that specify information regarding the statistical probability of bringing an unborn child possessing a detectable fetal heartbeat to term based on the gestational age of the unborn child. Any regulations must be based on available medical evidence.

(2) The woman must be presented by the physician who is to perform the abortion or by an allied health professional working in conjunction with the physician a written form containing the following statement: "You have the right to review printed materials prepared by the State of South Carolina which describe fetal development, list agencies which offer alternatives to abortion, and describe medical assistance benefits which may be available for prenatal care, childbirth, and neonatal care. You have the right to view your ultrasound image." This form must be signed and dated by both the physician who is to perform the procedure and the pregnant woman upon whom the procedure is to be performed.

(3) The woman must certify in writing, before the abortion, that the information described in item (1) of this subsection has been furnished her, and that she has been informed of her opportunity to review the information referred to in item (2) of this subsection.

(4) Before performing the abortion, the physician who is to perform or induce the abortion must determine that the written certification prescribed by item (3) of this subsection or the certification required by subsection (D) has been signed. This subsection does not apply in the case where an abortion is performed pursuant to a court order.

SECTION 11. The Public Employee Benefit Authority and the State Health Plan shall cover prescribed contraceptives for dependents under the same terms and conditions that the Plan provides contraceptive coverage for employees and spouses. The State Health Plan shall not apply patient cost sharing provisions to covered contraceptives.

SECTION 12. The President of the Senate, on behalf of the Senate, and the Speaker of the House of Representatives, on behalf of the House of Representatives have an unconditional right to intervene on behalf of their respective bodies in a state court action and may provide evidence or argument, written or oral, if a party to that court action challenges the constitutionality of this act. In a federal court action that challenges the constitutionality of this act the Legislature may seek to intervene, to file an amicus brief, or to present arguments in accordance with federal rules of procedure. Intervention by the Legislature pursuant to this provision does not limit the duty of the Attorney General to appear and prosecute legal actions or defend state agencies, officers or employees as otherwise provided. In any action in which the Legislature intervenes or participates, the Senate and the House of Representatives

shall function independently from each other in the representation of their respective clients.

SECTION 13. A. SECTION 2 of Act 1 of 2021 and Section 44-41-20 of the S.C. Code are repealed.

B. Article 5, Chapter 41, Title 44 of the S.C. Code is repealed. However, if some or all of the provisions contained in SECTION 2 of this act are ever temporarily or permanently restrained or enjoined by judicial order, or are held to be unconstitutional or invalid, then all of the provisions of Article 5, Chapter 41, Title 44 are reenacted retroactively to the date the judicial order either temporarily or permanently restraining or enjoining some or all of the provisions contained in SECTION 2 or declaring some or all of the provisions contained in SECTION 2 unconstitutional or invalid is entered.

SECTION 14. This act takes effect upon approval by the Governor.

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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 physicians and staff, *et al.*, *Plaintiffs*, v. SOUTH CAROLINA, *et al*., *Defendants*.	C/A No.: 2023-CP-[ ]-_____ **PLAINTIFFS' EMERGENCY MOTION FOR A TEMPORARY RESTRAINING ORDER** **EMERGENCY HEARING REQUESTED**

Pursuant to Rule 65 of the South Carolina Rules of Civil Procedure, Plaintiffs move the Court for a Temporary Restraining Order to enjoin Defendants from enforcing South Carolina's Senate Bill 474, 125th Gen. Assemb., Spec. Sess. (S.C. 2023) (hereinafter "S.B. 474" or the "Act"), which bans abortion after approximately six weeks of pregnancy with very limited exceptions. Plaintiffs, the last remaining outpatient abortion providers in South Carolina, seek emergency relief to preserve the status quo as it stood prior to the Act's enactment. Plaintiffs request an emergency hearing on this motion at the Court's earliest convenience—today, if possible.

As explained in the accompanying memorandum in support, its attached affidavits and exhibits, the complaint, and its attached exhibit, injunctive relief is urgently necessary to prevent continued irreparable harm to Plaintiffs and their physicians, staff, and patients from S.B. 474 taking effect and banning the vast majority of abortions in South Carolina. Plaintiffs have numerous patients scheduled for abortion services in the coming days, including Thursday, May 25, 2023, and Friday, May 26, 2023. Most of these patients will almost certainly be past S.B. 474's gestational age limit. Unless S.B. 474 is enjoined, these patients will be forced to travel out of state and wait days or weeks for an abortion, if they can obtain an abortion at all, and endure financial,

physical, and emotional costs of forced pregnancy, for which they cannot be made whole after judgment.

In January, the South Carolina Supreme Court held that a virtually identical abortion ban violates the South Carolina Constitution's right to privacy. S.B. 474 suffers from the same infirmity. The Court should therefore block its enforcement immediately by granting Plaintiffs' motion for a temporary restraining order and enjoin Defendants and their officers, employees, servants, agents, appointees, or successors from administering, preparing for, enforcing, or 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.

A proposed order will be filed separately.

Respectfully submitted,

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* *Pro hac vice motions to be filed*

Dated: May 25, 2023

STATE OF SOUTH CAROLINA **RICHLAND COUNTY** PLANNED PARENTHOOD SOUTH ATLANTIC, on behalf of itself, its patients, and physicians and staff, *et al.*, *Plaintiffs*, v. SOUTH CAROLINA, *et al.*, *Defendants*.	**IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT** C/A No.: 2023-CP-[ ]-_____ **PLAINTIFFS' MEMORANDUM IN SUPPORT OF THEIR EMERGENCY MOTION FOR A TEMPORARY RESTRAINING ORDER** **EMERGENCY HEARING REQUESTED**

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INTRODUCTION AND NATURE OF THE CASE

Just four months ago, the South Carolina Supreme Court struck down a ban on abortion after approximately six weeks of pregnancy, Senate Bill 1, 124th Gen. Assemb., Reg. Sess. (S.C. 2021) ("S.B. 1"), as an unconstitutional infringement on South Carolina's fundamental right to privacy. *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*"). The ink on the Supreme Court's January 5, 2023 decision was barely dry before the Senate introduced a nearly identical law on February 1, Senate Bill 474, 125th Gen. Assemb., Spec. Sess. (S.C. 2023) ("S.B. 474" or the "Act"), again banning abortion after approximately six weeks. The General Assembly adopted S.B. 474 on May 23, 2023, and Governor Henry McMaster signed it today, immediately banning constitutionally protected health care across South Carolina. Many patients will come in for abortion care tomorrow morning, only to find out once they are already at the clinic that they can no longer access that care in South Carolina. Plaintiffs therefore seek emergency relief to prevent the widespread and irreversible harm that S.B. 474 is already inflicting and will inflict each day it remains in effect.

Without that relief, the Act will continue to cause immediate, irreparable harm to Plaintiffs, the last remaining outpatient abortion providers in South Carolina, and to their patients. Plaintiffs have numerous patients scheduled for abortion services in the coming days. But if the Act remains in effect, Plaintiffs will not be able to provide abortions to most of those patients. Relief is thus necessary to preserve the status quo as it has existed for nearly half a century.

This case is open and shut. The South Carolina Constitution contains a right to privacy. S.C. Const. art. I, § 10. And that right "has no meaning if [this State's courts] fail to limit how closely the state may regulate our personal, medical, intimate, and moral decisions." *Planned*

Parenthood I, 438 S.C. at 217, 882 S.E.2d at 786 (Beatty, C.J., concurring). Because decisions related to having a family are some of the most personal that South Carolinians will ever make, the Act is an unreasonable invasion of the constitutional right to privacy. *Id.*, 438 S.C. at 195, 882 S.E.2d at 774 (Hearn, J.); *Id.*, 438 S.C. at 223–24, 882 S.E.2d at 789 (Beatty, C.J., concurring); *Id.*, 438 S.C. at 268–69, 882 S.E.2d at 813–14 (Few, J., concurring in the judgment). And because this Court is bound by decisions of the South Carolina Supreme Court, it must find that this law, which is identical in all material respects to S.B. 1, likewise violates South Carolinians' fundamental right to privacy.

If permitted to remain in effect, the Act will leave huge numbers of women[1] in South Carolina without any access to legal abortion in their communities, thus forcing people who are pregnant to carry a pregnancy to term against their will; to remain pregnant if and until they can travel out of state to access critical, time-sensitive abortion, at great cost to themselves and their families; or to attempt to self-manage their abortions outside the medical system. The Act is an affront to the dignity and health of South Carolinians. In particular, it 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 law's cruelties. South Carolinians already face a critical shortage of reproductive health care providers, including obstetrician-gynecologists, and the rate at which South Carolinians, particularly Black South Carolinians, die

[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) .

from pregnancy-related causes is already shockingly high. The Act will only exacerbate these serious problems unless it is enjoined.

Plaintiffs seek a temporary restraining order to prevent enforcement of S.B. 474 and to safeguard themselves and their patients from ongoing grave and irreparable harms.

STATEMENT OF FACTS

A. Access to Abortion Under Prior South Carolina Law

Plaintiffs Planned Parenthood South Atlantic ("PPSAT") and Greenville Women's Clinic, P.A. ("GWC") are health care providers in South Carolina that offer a range of sexual and reproductive health services, including abortion. Decl. of Katherine Farris, M.D. ("Farris Decl.") ¶ 21; Decl. of Terry L. Buffkin, M.D. ("Buffkin Decl.") ¶¶ 2–3. PPSAT operates health centers in Columbia and Charleston, Farris Decl. ¶ 20, and GWC operates a clinic in Greenville, Buffkin Decl. ¶ 2. Working with physicians licensed to practice medicine in South Carolina, PPSAT and GWC run the only clinics in the state that provide abortion services to the public. Farris Decl. ¶¶ 26–27; Buffkin Decl. ¶ 15. They hold state licenses for each of their clinics to perform abortions through the end of the first trimester, *see* S.C. Code Ann. § 44-41-75(A), which corresponds to 14 weeks of pregnancy as measured from the first day of the last menstrual period ("LMP"), *id.* § 44-41-10; S.C. Code Ann. Regs. 61-12.101(S)(4); Farris Decl. ¶¶ 23, 26; Buffkin Decl. ¶ 7. Plaintiff Terry L. Buffkin, M.D., is one of the two physicians who provide care at GWC and a co-owner of the clinic. Buffkin Decl. ¶ 2. He is a board-certified obstetrician-gynecologist. *Id.* ¶ 1. Plaintiff Katherine Farris, M.D., is the Chief Medical Officer for PPSAT and is one of the physicians who provide abortion at PPSAT's South Carolina health centers. Farris Decl. ¶ 1.

Plaintiffs' patients seek abortions for a range of reasons. Most are already parents, having had at least one child, and they may struggle with basic unmet needs for their families. Farris Decl.

¶ 30; *see* Buffkin Decl. ¶ 35. Other patients decide that they are not ready to become parents because they are too young or want to finish school before starting a family. Farris Decl. ¶ 30; *see* Buffkin Decl. ¶ 35. Some patients 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. Farris Decl. ¶ 30; Buffkin Decl. ¶ 35. 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. Farris Decl. ¶ 30; Buffkin Decl. ¶ 35. Others are struggling with substance abuse or have an abusive partner or a partner with whom they do not wish to have children for other reasons. Farris Decl. ¶ 30; Buffkin Decl. ¶ 35. Although patients generally obtain an abortion as soon as they are able, the vast majority of patients who seek abortions in South Carolina are at least six weeks pregnant by the time they do so. Farris Decl. ¶ 32; Buffkin Decl. ¶ 23. The difficulty of obtaining an abortion before they are six weeks LMP will be especially pronounced for marginalized South Carolinians, including those living in poverty and Black and Hispanic women. Farris Decl. ¶¶ 41–42. Accordingly, the vast majority of Plaintiffs' patients will likely be unable to access abortion under the Act.

B. Legislative and Litigation History

S.B. 474 is the latest in South Carolina's efforts to restrict access to abortion care. Following the U.S. Supreme Court's ruling in *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022), S.B. 474's predecessor—S.B. 1—went into effect on June 27, 2022, banning abortion in South Carolina after approximately six weeks LMP. Plaintiffs filed a challenge to S.B. 1 in this Court. By the time the South Carolina Supreme Court granted a temporary

injunction against S.B. 1's enforcement on August 17, 2022, the law had been in effect for 51 days. However, it did not take effect again because on January 5, 2023, the South Carolina Supreme Court permanently enjoined S.B. 1, finding that it impermissibly infringed upon South Carolinians' fundamental right to privacy as guaranteed in article I, section 10 of the South Carolina Constitution. Less than one month later, S.B. 474, which is virtually identical to S.B. 1, was introduced in the Senate. S.B. 474 was signed by Governor McMaster today and became immediately effective upon his signature.

C. The Act's Requirements and Impact on Plaintiffs and Patients

The Act imposes dramatic changes, almost identical to those imposed by S.B. 1, to South Carolina law by banning abortion after roughly six weeks LMP (the "Six-Week Ban"). S.B. 474, § 2 (adding S.C. Code Ann. § 44-41-630(B)). The Six-Week Ban provides that "no person shall perform or induce an abortion" where a "fetal heartbeat has been detected." *Id.*

The Act's reference to a "fetal heartbeat" is doubly inaccurate and misleading. First, the Act would ban abortion so early that the pregnancy is still an embryo, not yet a "fetus"; the developing pregnancy is an "embryo" until at least ten weeks LMP, only after which the term "fetus" is used. Farris Decl. ¶ 7. 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)). Second, the Act would ban abortion upon the presence of any cardiac activity, even though no heart has yet developed. It defines "[f]etal heartbeat" to include any "cardiac activity, or the steady and repetitive rhythmic contraction of the fetal heart, within the gestational sac." *Id.* (amending S.C. Code Ann. § 44-41-610(6)). The term, therefore, covers not just a "heartbeat" in the lay sense, but also early cardiac activity present before development of any cardiovascular system. Farris Decl. ¶ 7. Such cardiac activity may be

detected by transvaginal ultrasound as early as six weeks LMP (and sometimes sooner). *Id.* ¶¶ 8, 25. Early in pregnancy, even with an ultrasound, this activity would not be audible but would instead appear as a visual flicker. *Id.*

The Act 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, all under the guise of "informed consent." S.B. 474, § 2 (amending S.C. Code Ann. §§ 44-41-330(A), 44-41-630(A)). This is despite the fact that, if the ultrasound detects fetal or embryonic cardiac activity, the patient cannot have an abortion.

Both the physician who performs an abortion and the clinic in which the abortion is performed are subject to severe penalties for violating the Six-Week Ban. Those penalties include a felony offense that carries a $10,000 criminal fine and up to two years in prison as well as revocation of professional licensure. *Id.* (adding S.C. Code Ann. §§ 44-41-630(B), 44-41-640(B), 44-41-650(C), 44-41-660(C); amending S.C. Code Ann. § 44-41-690)); *see also* S.C. Code Ann. § 16-1-40 (accessory liability). 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.*

The Six-Week Ban contains only a few narrow exceptions: (1) to save the life of the pregnant patient or prevent certain types of substantial physical impairment of a major bodily

function (the "Death or Substantial Injury Exception") but expressly excluding any psychological conditions, emotional conditions, or suicidality of the pregnant person; (2) in cases of a fetal diagnosis that is "incompatible" with sustained life after birth (the "Fatal Fetal Anomaly Exception"); and (3) where the pregnancy is the result of rape or incest and is reported to law enforcement (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)).

Of note, the Reported Rape Exception, similar to the one in S.B. 1, applies only if, within 24 hours of the abortion, the physician reports the rape or incest *and the patient's name and contact information* to the sheriff in the county where the abortion was performed. *Id.* (amending S.C. Code Ann. § 44-41-650(B)); *see also* S.B. 1, § 3 (adding S.C. Code Ann. § 44-41-680(C)). This report must occur irrespective of the patient's wishes and whether the provider has already complied with other applicable mandatory reporting laws. S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-650(B)). The exception makes no special provision for confidentiality. *See id.* 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.* In this way, the Act conditions the availability of abortion (but no other kind of health care) on the public disclosure of the patient's private medical and other personal information. But unlike S.B. 1, which allowed abortions under its narrow rape and incest exception up to 22 weeks LMP, S.B. 474's rape and incest exception is limited to 12 weeks LMP,

a window more than two months shorter. *Compare id.* (amending S.C. Code Ann. § 44-41-650(A)) *with* S.B. 1, § 3 (adding S.C. Code Ann. § 44-41-680(B)(1)–(2)).[2]

Now that the Act is in effect, Plaintiffs and their staff are forced to turn away South Carolinians in need of abortions who have a "fetal heartbeat" as defined in the Act, except for those who meet one of these very narrow exceptions. Farris Decl. ¶¶ 13, 51–54; Buffkin Decl. ¶¶ 10–11, 31. This is before many patients even know they are pregnant. Farris Decl. ¶¶ 33–37; Buffkin Decl. ¶¶ 24–28. People may not know they are pregnant until or after six weeks LMP for a range of reasons, including because of irregular menstrual cycles as a result of common medical conditions, contraceptive use, age, and breastfeeding; because many pregnant patients experience light bleeding when a fertilized egg is implanted in the uterus, which is often mistaken for a menstrual period; and because pregnancy is not always easy to detect. Farris Decl. ¶¶ 33–37; Buffkin Decl. ¶¶ 25–26. Even those who learn of their pregnancies before six weeks LMP may face additional logistical delays in arranging an appointment for an abortion, including raising money for the abortion and arranging time off work, transportation, and childcare. Farris Decl. ¶¶ 38–43, 45.

Based on their experience when S.B. 1 was in effect, Plaintiffs expect that most of the patients scheduled for abortions in the coming days will ultimately be ineligible for abortions under

[2] If denied an abortion, women whose pregnancies are the result of rape may be forced to share custody or otherwise parent the child with their rapist. South Carolina law permits, but does not require, a court to terminate a rapist's parental rights only where the petitioning parent demonstrates by clear and convincing evidence (1) that the child was conceived as a result of criminal sexual conduct; (2) the rapist was convicted in a criminal court of competent jurisdiction for the criminal sexual conduct that led to the child's conception; and (3) termination is in the best interest of the child. S.C. Code Ann. § 63-7-2570(11); *S.C. Dep't of Soc. Servs. v. Smith*, 423 S.C. 60, 76, 814 S.E.2d 148, 156 (2018) ("The grounds for [termination of parental rights] must be proven by clear and convincing evidence."). Some people forced to carry to term a pregnancy resulting from rape or incest will not be able to meet this strict evidentiary bar.

S.B. 474. Farris Decl. ¶ 8; Buffkin Decl. ¶ 31. For patients with detectable embryonic or fetal cardiac activity, these patients' only option will be to remain pregnant until they are able to travel out of state to access critical, time-sensitive abortion, at great cost to themselves and their families; to carry to term and give birth against their will; or to attempt to self-manage their abortions outside the medical system. Without relief from this Court, the Act will cause grave and irreparable harm to Plaintiffs, their staff, and patients.

The devastating impact of the Act is certain and predictable based on the harms experienced while S.B. 1 was in effect. Banning abortion after approximately 6 weeks LMP forced Plaintiffs to turn away the majority of their patients seeking abortion care. Farris Decl. ¶ 51; Buffkin Decl. ¶ 29. Plaintiffs' patients were forced to travel out of state to access abortion care if traveling was financially and logistically attainable. Farris Decl. ¶ 51. As with S.B. 1, the Act will disproportionately harm Plaintiffs' patients with low incomes, patients of color, and patients in rural areas. Farris Decl. ¶ 52.

ARGUMENT

"The purpose of an injunction is to preserve the status quo and prevent possible irreparable injury to a party pending litigation." *Greenville Bistro, LLC v. Greenville County*, 435 S.C. 146, 160, 866 S.E.2d 562, 569 (2021) (citing and quoting *AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 51, 674 S.E.2d 505, 509 (Ct. App. 2009)). A temporary restraining order is warranted where (1) it has a likelihood of success on the merits; (2) the plaintiff would suffer irreparable harm; and (3) there is no adequate remedy at law. *Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 586–87, 694 S.E.2d 15, 17 (2010). A "plaintiff is not required to prove an absolute legal right when seeking" temporary injunctive relief. *AJG Holdings*, 382 S.C. at 51, 674 S.E.2d at 509. A "reasonable question as to the existence of such a right" is sufficient. *Id.*

Here there can be no question of such a right when four months ago the South Carolina Supreme Court invalidated a virtually identical ban. Therefore, Plaintiffs are likely to succeed on the merits of their claim that the Act violates South Carolina's constitutional right to privacy. Moreover, the Act will inflict irreparable harm on Plaintiffs, their physicians and staff, and their patients, and there is no adequate remedy at law. Plaintiffs are therefore entitled to a temporary restraining order barring enforcement of the Act.

I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS OF THEIR RIGHT TO PRIVACY CLAIM.

Article I, section 10, of the South Carolina Constitution, unlike the U.S. Constitution, expressly guarantees a right to privacy. That section provides that "[t]he right of the people to be *secure in their persons*, houses, papers, and effects against unreasonable searches and seizures *and unreasonable invasions of privacy* shall not be violated . . . ." S.C. Const. art. I, § 10 (emphasis added). Earlier this year, the South Carolina Supreme Court held that a ban on abortion after approximately six weeks gestation violated that right. The Court recognized South Carolinians' right to medical autonomy and "that the decision to terminate a pregnancy rests upon the utmost personal and private considerations imaginable." *Planned Parenthood I*, 438 S.C. at 195, 882 S.E.2d at 774.

Despite this clear holding, the General Assembly has passed a law similar in all material respects to the invalidated ban, S.B. 1. It cannot be that a six-week ban can be unconstitutional one month and miraculously pass constitutional muster the next. The South Carolina Supreme Court's ruling is unmistakably binding precedent, and thus, Plaintiffs are likely to succeed on the merits of their claim that the Act, like S.B. 1, impermissibly infringes on South Carolinians' constitutional right to privacy.

S.B. 474, like S.B. 1, runs afoul of article I, section 10's broad textual guarantee of protections against unreasonable invasions of privacy and directly conflicts with precedent recognizing this strong privacy right under the South Carolina Constitution. *Planned Parenthood I* is controlling here: a law prohibiting abortion at the earliest weeks of pregnancy—foreclosing South Carolinians' autonomous medical decision-making about their own bodies and pregnancies—unreasonably invades South Carolinians' constitutional right to personal privacy. Finally, S.B. 474 is substantially identical to S.B. 1 and fails to cure the constitutional defects of S.B. 1 identified in *Planned Parenthood I*. For these reasons, it is unconstitutional.

A. The South Carolina Constitution Guarantees a Broad Right to Privacy.

In construing provisions of the state Constitution, South Carolina courts "'look to the ordinary and popular meaning of the word used' . . . [and] appl[y] rules of construction similar to those used to construe statutes." *State v. Long*, 406 S.C. 511, 514, 753 S.E.2d 425, 426 (2014) (quoting *Richardson v. Town of Mount Pleasant*, 350 S.C. 291, 294, 566 S.E.2d 523, 525 (2002)); *see also Planned Parenthood I*, 438 S.C. at 232, 882 S.E.2d at 794 (Beatty, C.J., concurring) ("[W]e will look to the ordinary and plain meaning of the terms and employ rules similar to statutory construction . . . ."); *Planned Parenthood I*, 438 S.C. at 199, 882 S.E.2d at 776 (Hearn, J.) ("In interpreting this text, we must . . . give the words their plain and ordinary meaning . . . ."). "When a constitutional provision is clear, [courts] must discern the intent behind the provision only from its text, and should not resort to other evidence of intent." *Planned Parenthood I*, 438 S.C. at 259, 882 S.E.2d at 808 (Few, J., concurring in the judgment); *see also Acker v. Cooley*, 177 S.C. 144, 145, 181 S.E. 10, 11 (1934) (acknowledging that "legislative interpretation of a constitutional provision should be given much weight" but declining to do so when the provision "is not ambiguous").

Article I, section 10, of the South Carolina Constitution, unlike the U.S. Constitution, expressly guarantees a right to privacy. That privacy right is appropriately broad, as demonstrated by its text. "[T]he word 'privacy'—though broad—is clear as to its scope: it includes *all forms of privacy*. . . . Thus, when used without limitation in article I, section 10, the term 'privacy' means *the full panoply of privacy rights* Americans have come to enjoy over the history of our Nation." *Planned Parenthood I*, 438 S.C. at 260, 882 S.E.2d at 808-09 (Few, J., concurring in the judgment). And the text makes clear that any infringement of that right must not be "unreasonable." S.C. Const. art. I, § 10. In other words, the "standard for reviewing the constitutionality of a statute under this provision is whether the privacy restriction is unreasonable as a matter of law." *Planned Parenthood I*, 438 S.C. at 287, 882 S.E.2d at 823 (Few, J., concurring in the judgment); *see also Planned Parenthood I*, 438 S.C. at 238, 882 S.E.2d at 797 (Beatty, C.J., concurring) ("[R]easonableness provides a limiting princip[le.]").

B. South Carolina Supreme Court Precedent Confirms that the Constitutional Right to Privacy Is Broad.

In addition to drawing on and being consistent with article I, section 10's text, the South Carolina Supreme Court's decision in *Planned Parenthood I* analyzed precedent recognizing that South Carolinians' right to privacy is well established and includes the right to privacy in medical decision making.

In *Singleton v. State*, 313 S.C. 75, 88, 437 S.E.2d 53, 60 (1993), for example, the South Carolina Supreme Court ruled that article I, section 10 protects a person's "right to decide what is to be done medically with one's brain and body . . . and the freedom from unwarranted physical interference with one's person." In that case, a prisoner challenged the State's efforts to forcibly medicate him to address his mental incompetence prior to execution. The Court held that "the South Carolina Constitutional right of privacy would be violated if the State were to sanction

forced medication solely to facilitate execution" *notwithstanding* his "very limited privacy interest when weighed against the State's penological interest." 313 S.C. at 89, 437 S.E.2d at 61.

The South Carolina Supreme Court has repeatedly reaffirmed *Singleton*. In *State v. Forrester*, the Court reiterated that article I, section 10 protects a privacy right broader than that guaranteed by the U.S. Constitution and that that right "applies both within and outside the search and seizure context." 343 S.C. 637, 644, 541 S.E.2d 837, 841 (2001). In *Hughes v. State*, which considered the petitioner's mental competence to waive his right to post-conviction relief, the Supreme Court echoed *Singleton*'s central holding that prisoners have a right "grounded in the state constitutional right to privacy . . . to be free from unwanted medical intrusions" such as forced medication. 367 S.C. 389, 398 n.2, 626 S.E.2d 805, 810 n.2 (2006). In *Planned Parenthood I*, too, the Supreme Court reaffirmed *Singleton*, explaining that "certain instances of medical intervention implicate the right to be secure in one's person from unreasonable invasions of privacy." 438 S.C. at 206, 882 S.E.2d at 780; *see also Planned Parenthood I*, 438 S.C. at 233, 882 S.E.2d at 794 (Beatty, C.J., concurring) ("Any objective reading of *Singleton* requires a conclusion that the Court officially recognized a right to bodily autonomy encompassed in our right to privacy that is protected by article I, section 10.").

C. Restrictions on Abortion Infringe on South Carolinians' Right to Privacy.

Restrictions on abortion infringe on the right to privacy because they encroach on the right to make decisions about what is done to one's body. "[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). The decision whether to remain pregnant is in many ways no different than choosing to undergo other medical procedures, such as taking medication (as in *Singleton*), "organ transplants, blood

transfusions, [and] mental health treatment." *Id.*, 438 S.C. at 252, 882 S.E.2d at 804 (Beatty, C.J., concurring). Although these procedures, like abortion, are "not specifically named in our constitution," they nonetheless, also like abortion, "affect[] bodily integrity and medical care." *Id.* (Beatty, C.J., concurring); *see also id.*, 438 S.C. at 206, 882 S.E.2d at 780 ("[I]n reaching [the] decision [in *Singleton*], we did not ask whether our constitution specifically prohibited forced medication of an inmate in order to carry out an execution. Just as the provision does not specifically refer to abortion, neither does it mention forcing medication on an inmate."). Thus, as Justice Hearn recognized, courts in sister states have surveyed caselaw "where the privacy right was implicated in medical decision-making and concluded that abortion was no different." *Id.*, 438 S.C. at 208, 882 S.E.2d at 781 (citing *Women of State of Minn. by Doe v. Gomez*, 542 N.W.2d 17, 27 (Minn. 1995)).

Indeed, there can be no question that abortion care implicates South Carolinians' privacy rights. As the South Carolina Supreme Court has recognized, "the decision to terminate a pregnancy rests upon the utmost personal and private considerations imaginable." *Id.*, 438 S.C. at 195, 882 SE.2d at 774; *id.*, 438 S.C. at 217, 882 S.E.2d at 786 (Beatty, C.J., concurring) ("If the right of privacy *means anything*, it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so *fundamentally* affecting a person as *the decision whether to bear or beget a child*." (quoting *Eisenstadt v. Baird*, 405 U.S. 438, 453 (1972))). "The privacy interests also arise in conversations a pregnant woman might have with her husband or boyfriend, her minister or other professional counselor, her doctor, and other loved ones and friends she might turn to for guidance and advice in making an informed choice about whether to continue the pregnancy." *Id.*, 438 S.C. at 267, 882 S.E.2d at 813 (Few, J., concurring in the judgment); *see also id.*, 438 S.C. at 224, 882 S.E.2d at 789 (Beatty, C.J., concurring) ("These

decisions have traditionally been made in consultation with a woman's medical provider, along with family, including a spouse or partner, and with considerations as to a woman's existing physical and mental health, employment and school obligations, any existing children, and financial circumstances."). In other words, "[t]he 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 276, 882 S.E.2d at 818 (Few, J., concurring in the judgment).

D. The Act Reproduces S.B. 1's Constitutional Defects.

Like S.B. 1, S.B. 474 infringes on South Carolinians' right to privacy and is unreasonable as a matter of law. The Act imposes a ban on abortion—with narrow exceptions—at the earliest stages of pregnancy before many people even know they are pregnant. It thus entirely forecloses the opportunity for most South Carolinians to get an abortion.

In *Planned Parenthood I,* the South Carolina Supreme Court held that a law that does not allow South Carolinians a sufficient period of time to get an abortion unreasonably violates the constitutional right to privacy—and that, as a matter of law, a six-week limit is not reasonable. *E.g., id.*, 438 S.C. at 217, 882 S.E.2d at 786 (Any gestational-age based restriction on abortion "must afford a woman sufficient time to determine she is pregnant and to take reasonable steps to terminate that pregnancy. Six weeks is, quite simply, not a reasonable period of time for these two things to occur, and therefore the Act violates our state Constitution's prohibition against unreasonable invasions of privacy."). S.B. 474 simply duplicates S.B. 1's unconstitutional ban on abortion after approximately six weeks LMP. S.B. 474 provides South Carolinians with a fleeting period in which to get an abortion—just four weeks after fertilization, as Justice Few recognized, and two or fewer weeks after missing a period. *See id.*, 438 S.C. at 276, 882 S.E.2d at 817–18 (Few, J., concurring in the judgment). "This is before many women . . . even know they are

pregnant." *Id.* 438 S.C. at 195; 882 S.E.2d at 774; *accord id.*, 438 S.C. at 238, 882 S.E.2d at 797 (Beatty, C.J., concurring); *see also supra* at 8–9; Farris Decl. ¶¶ 33–37; Buffkin Decl. ¶¶ 24–28 (explaining why many do not know they are pregnant before six weeks LMP).

S.B. 474 is nearly identical to S.B. 1, and the differences between the two that do exist do not cure the constitutional defects of S.B. 1. To the contrary, S.B. 474 shortened the exception for South Carolinians who have become pregnant as a result of rape or incest from 22 weeks LMP to 12 weeks LMP. *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)). Narrowing this window by more than two months makes S.B. 474 less reasonable than S.B. 1, not more so.

At bottom, because the Act is materially identical to S.B. 1, it cannot stand. Plaintiffs are likely to succeed on the merits of their constitutional right to privacy claim. A ban on abortion "usurps a woman's authority to make medical decisions regarding her reproductive health, including the decision whether to have children, and places this power, instead, solely in the hands of a political body." *See Planned Parenthood I*, 438 S.C. at 223, 882 S.E.2d at 789 (Beatty, C.J., concurring). By banning abortion upon identification of embryonic or fetal cardiac activity, the Act prevents pregnant people from exercising autonomy over their bodies, and in turn, the course of their lives. Plaintiffs are thus likely to prevail on their claim that the Act violates the right to privacy guaranteed by article I, section 10.

II. THE ACT WILL IRREPARABLY HARM PLAINTIFFS AND THEIR PATIENTS.

In addition to the irreparable harm of violating constitutional rights, S.B. 474 is already causing grave harm by forcing Plaintiffs to turn away the vast majority of South Carolinians seeking abortions. As noted above, Plaintiffs have many patients scheduled for abortion services during the remainder of this week; most of these South Carolinians will be beyond S.B. 474's

gestational age limit, and few, if any, will fall within S.B. 474's narrow exceptions. As a result, Plaintiffs will be forced to turn them away. *See* Farris Decl. ¶¶ 13, 91; Buffkin Decl. ¶ 31.

"[W]hether a wrong is irreparable" is a question that is "not decided by narrow and artificial rules," but instead determined based on the facts of the case. *Kirk v. Clark*, 191 S.C. 205, 211, 4 S.E.2d 13, 16 (1939); *see also Peek v. Spartanburg Reg'l Healthcare Sys.*, 367 S.C. 450, 626 S.E.2d 34 (Ct. App. 2005). "The Courts proceed realistically if the threatened wrong involves actual damage; the mere uncertainty of fixing the measure of such damage to the injured party may itself be sufficient to justify the exercise of equitable jurisdiction." *Kirk*, 191 S.C. at 211, 4 S.E.2d at 16.

As an initial matter, an injunction is required to prevent a deprivation of Plaintiffs' patients' constitutionally protected right to privacy. *Planned Parenthood I*, 438 S.C. at 195, 882 S.E.2d at 774. Generally, when a plaintiff has demonstrated a loss of a constitutional right, no further showing of irreparable injury is required. *E.g.*, *B. P. J. v. W. Va. State Bd. of Educ.*, 550 F. Supp. 3d 347, 357 (S.D. W. Va. 2021) ("When a party has shown a likelihood of a constitutional violation, the party has shown an irreparable harm."); *Henry v. Greenville Airport Comm'n*, 284 F.2d 631, 633 (4th Cir. 1960) ("The District Court has no discretion to deny relief by preliminary injunction to a person who clearly establishes by undisputed evidence that he is being denied a constitutional right."); 11A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2948.1 (3d ed. 2022) (collecting cases). The presumption of irreparable injury from a constitutional violation applies with special force in the context of abortion: "[T]he abortion decision is one that simply cannot be postponed, or it will be made by default with far-reaching consequences." *Bellotti v. Baird*, 443 U.S. 622, 643 (1979); *see also Deerfield Med. Ctr. v. City of Deerfield Beach*, 661 F.2d 328, 338 (5th Cir. Unit B 1981) (infringement of constitutional right to

decide whether to have an abortion "mandates" a finding of irreparable injury because an infringement "cannot be undone by monetary relief").[3]

But here, in addition, if left in place, S.B. 474 will be catastrophic for South Carolinians—as previewed with the devastating impact of S.B. 1 last year. The Act will force many people seeking abortion to carry a pregnancy to term against their will, with all of the physical, emotional, and financial costs that entails. Some South Carolinians will inevitably turn to self-managed abortion by buying pills or other items online and outside the U.S. healthcare system, which may in some cases be unsafe or expose them to criminal risk. Farris Decl. ¶ 51. And even South Carolinians who are ultimately able to obtain an abortion—either because they have been able to scrape together resources to travel out of state or if they are one of the very few who can satisfy one of the law's narrow exceptions—will suffer irreparable harm. *Id.* ¶¶ 55–73. Finally, Plaintiffs and their staff will also suffer harms that cannot possibly be compensated after judgment.

A. South Carolinians Will Suffer Irreparable Harm from Forced Pregnancy.

The Act threatens severe, actual, and irreparable damage to South Carolinians' lives and livelihood—harms that are more than sufficient to justify entry of injunctive relief. *See Kirk*, 191 S.C. at 211, 4 S.E.2d at 16.

The Act's consequences for South Carolinians who lose access to time-sensitive abortion care or who are forced to seek it out of state, at great cost and delay, are substantial and entirely foreseeable. S.B. 1 was in effect from June 27, 2022 until August 17, 2022. During that time,

[3] Where persuasive, South Carolina courts may look to federal case law, as well as precedent from other states, as to the scope of irreparable harm. *E.g.*, *Peek*, 367 S.C. at 455, 626 S.E.2d at 37 & n.2 (considering how other appellate courts have considered issues of loss of a professional practice to find that "[t]he complete loss of a professional practice can be an irreparable harm"); *Levine v. Spartanburg Reg'l Servs. Dist.*, 367 S.C. 458, 465 n.3, 626 S.E.2d 38, 42 n.3 (Ct. App. 2005) (citing other appellate courts' decisions in finding that irreparable harm had occurred).

Plaintiffs—who previously provided the majority of abortions performed in South Carolina—were forced to turn away people seeking this vital health care. PPSAT was compelled to cancel 490 scheduled abortions and turn away 513 pregnant South Carolinians seeking abortions, while GWC had to turn away the vast majority of patients. Farris Decl. ¶ 51; Buffkin Decl. ¶ 29. These South Carolinians were forced to travel out of state for abortions, if they could afford to do so; to remain pregnant against their will; or to attempt to self-manage their abortions outside of the medical system. Farris Decl. ¶ 51.

If S.B. 474 remains in effect, South Carolinians will be forced to carry their pregnancies to term and give birth. *See id.* ¶ 58. For these patients, who will suffer a range of physical, mental, and economic consequences, there is no effective monetary remedy after judgment for the impact of forced pregnancy on health and bodily autonomy.

Even an uncomplicated pregnancy challenges a person's entire physiology. *Id.* ¶ 59. However, many pregnant people experience complications. *See id.* ¶¶ 59–61. Pregnancy can cause new and serious health conditions or aggravate pre-existing health conditions. *Id.* ¶ 61. It can also induce or exacerbate mental health conditions, which are excluded by the Act's Death or Substantial Injury Exception. *Id.* ¶ 62. Some pregnant patients also face an increased risk of intimate partner violence—including possible homicide, with the severity sometimes escalating during or after pregnancy. *Id.* ¶ 63. Indeed, homicide, most frequently caused by an intimate partner, is a leading cause of maternal mortality. *Id.*

Separate from pregnancy, labor and childbirth are themselves significant medical events with many risks. *Id.* ¶ 64. Between 2015 and 2019, the maternal mortality rate in South Carolina was 26.2 deaths per 100,000 live births, exceeding the national average. *Id.* And the risk of mortality from pregnancy and childbirth is approximately 14 times greater than for legal pre-

viability abortion. *Id.* ¶ 28. The health risks of childbirth also go beyond mortality. Complications from labor and childbirth occur at a rate of over 500 per 1,000 delivery hospital stays. *Id.* ¶ 65. Even a normal pregnancy with no comorbidities or complications can suddenly become life-threatening during labor and delivery. *See id.*

Patients of color are even more at risk for negative pregnancy and childbirth-related health outcomes. In particular, Black and Hispanic/Latina South Carolinians face heightened risks of pregnancy-related complications, compared to non-Hispanic white women. *Id.* ¶ 68. Maternal mortality rates in particular are especially high among people of color in South Carolina at 42.3 deaths per 100,000 live births, 2.4 times the rate for white women in the state. *Id.* ¶ 64 & n.55.

If the Act remains in effect, it will also lead to long-term negative impacts for people forced to give birth and for their existing children. Roughly 55% of PPSAT's South Carolina patients who have an abortion already have one or more children. *Id.* ¶ 30. Women who seek but are denied an abortion are, when compared to those who are able to access abortion, more likely to moderate their future goals, and less likely to be able to exit abusive relationships. *Id.* ¶ 73. 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. *Id*. As compared to women who received an abortion, women denied an abortion are also 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. *Id*.

The economic impact of forced pregnancy, childbirth, and parenting will also have potentially exponential, negative effects on South Carolina families' financial stability. Some side-effects of pregnancy render people entirely unable to work, or unable to work the same number of hours as they otherwise would. *Id.* ¶ 69. Pregnancy-related discrimination can also result in lower

earnings for women during pregnancy, and the impacts of discrimination during pregnancy continue over time. *Id*. Further, South Carolina does not require private 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. *Id.* A typical South Carolinian who takes four weeks of unpaid leave could lose more than $2,800 in income. *Id*.

Pregnancy-related health care and childbirth are also some of the costliest hospital-based health services, particularly for complicated or at-risk pregnancies. *Id.* ¶ 70. 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, impacting a patient's existing children and other dependents. Beyond childbirth, raising a child is expensive in terms of direct costs and due to lost wages. *Id.* ¶ 71. In sum, pregnancy and parenting is hugely consequential in South Carolinians' lives, and being denied an abortion has long-term, negative effects on individuals' physical and mental health, economic stability, and the wellbeing of their families, including existing children.

In addition to these physical, mental, and economic injuries, the Act also imposes irreparable harm on Plaintiffs' patients by impinging on one of the most private and consequential decisions a person will make in a lifetime: whether to become or remain pregnant. *Planned Parenthood I*, 438 S.C. at 210, 882 S.E.2d at 782 ("[F]ew decisions in life are more private than the decision whether to terminate a pregnancy."). In this way, the Act will have an impact on a person's existing family that cannot be compensated by future monetary damages. *See* Farris Decl. ¶¶ 69, 73. Many people decide that adding a child to their family is well worth the risks and consequences of pregnancy and childbirth. Conversely, together with their partners and with the support of other loved ones and trusted individuals, including religious and spiritual advisors,

thousands of South Carolinians each year determine that abortion is the right decision for them. *Id.* ¶ 30.

B. The Act Will Irreparably Harm Patients Forced to Try to Obtain Abortions Outside of South Carolina.

Although some of those forced to remain pregnant may eventually be able to obtain abortions out of state, they will also suffer irreparable injury if the Act remains in effect.

First, people will be forced to remain pregnant against their will, with all the attendant risks and medical consequences, until they can obtain out-of-state abortion care, likely later in pregnancy than if they had had abortion access in South Carolina. *Id.* ¶ 57.[4]

Second, these South Carolinians will suffer the additional costs and burdens associated with substantial travel. At this time, the nearest abortion providers outside of South Carolina to PPSAT's Columbia health center are in Charlotte, North Carolina (the closest of which is about 98 miles away, one way); Asheville, North Carolina (about 160 miles away, one way); and Fayetteville, North Carolina (the closest of which is about 163 miles away, one way). *Id.* ¶ 55 And from PPSAT's Charleston health center, the nearest abortion providers outside of South Carolina are in Wilmington, North Carolina (about 177 miles away, one way) and Fayetteville, North Carolina (the closest of which is about 201 miles away, one way). *Id.* The nearest abortion provider outside South Carolina to Greenville Women's Clinic is about 65 miles away in Asheville, North Carolina. Buffkin Decl. ¶ 33.[5] Under S.B. 1, some patients were delayed in their travel due to

[4] *See, e.g.*, 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/; 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.

[5] North Carolina has enacted a ban on abortion after 12 weeks LMP that will go into effect July 1, 2023. Senate Bill 20, 2023 Leg., 2023–24 Sess. (N.C. 2023) ("S.B. 20"). That act also contains additional restrictions that will make it particularly difficult to obtain abortion care in North

logistical and financial obstacles and could only access a more costly procedural abortion because they had exceeded the gestational age for which medication abortion is approved.[6]

Third, some patients may also be forced to compromise the confidentiality of their decision to have an abortion in order to obtain transportation or child care for their travel to an appointment out of state. Farris Decl. ¶ 56.

Each of these impacts constitutes irreparable harm. *See, e.g.*, *Planned Parenthood of Kan. v. Andersen*, 882 F.3d 1205, 1236 (10th Cir. 2018) ("A disruption or denial of . . . patients' health care cannot be undone after a trial on the merits." (internal quotations omitted)); *Harris v. Bd. of Supervisors, L.A. Cnty.*, 366 F.3d 754, 766 (9th Cir. 2004) (irreparable harm where individuals would experience complications and other adverse effects due to delayed medical treatment); *Banks v. Booth*, 468 F. Supp. 3d 101, 123 (D.D.C. 2020) (same).

C. The Act's Exceptions Do Not Cure These Irreparable Harms.

Even patients who might meet the Six-Week Ban's limited exceptions will suffer irreparable harm in accessing abortions. Physicians caring for pregnant patients with rapidly worsening medical conditions—who, prior to the Act, could have obtained an abortion without explanation—may be forced to wait for care until their conditions become deadly or threaten substantial impairment of a major bodily function so as to meet the Death or Substantial Injury

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Carolina. For example, it requires certain state-mandated information that must be given at least 72-hour prior to an abortion to be given in person, meaning people accessing abortion care in North Carolina may need to make *at least* two trips to the health center. *See* S.B. 20 (amending N.C. Gen. Stat. Ann. §§ 90-21.82(b)(1), 90-21.83A(b)(1)). In other words, the 98-mile journey from Columbia to Charlotte would actually require a South Carolinian to travel nearly 400 miles total. And while there are also abortion providers in Georgia, Georgia also currently bans abortions after about six weeks LMP. Farris Decl. ¶ 54 & n.46; Ga. Code Ann. § 16-12-141.

[6] *See, 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.

Exception. Farris Decl. ¶ 84. Significantly, the Death or Substantial Injury Exception makes no allowances for risks to patients' mental health, even when they are suicidal, making the Exception narrower—thereby placing more women in danger—than when South Carolina first liberalized its abortion laws in 1970, prior to *Roe v. Wade*. *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). Again, this impact is not theoretical; while S.B. 1 was in effect, patients were forced to wait for their conditions to worsen before they could access necessary medical care, some with permanent consequences of that delay.[7]

Patients facing devastating fetal diagnoses will only be able to obtain abortions in cases of "fatal fetal anomal[ies]." S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-660). In such a case, a physician may have their "reasonable medical judgment" second guessed as to whether the fetus in fact "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)).

[7] *See, e.g.*, Claire Donnelly, *South Carolina OB-GYNs Are Consulting Criminal Attorneys Post-*Roe, WFAE (Sept. 8, 2022), https://www.wfae.org/health/2022-09-08/sc-ob-gyns-are- consulting-criminal-attorneys-post-roe ("We have delayed care for other patients until they developed signs that they were sick enough for everyone to feel confident that they met the legal exception definition in the law."); Becky Budds, *South Carolina OB-GYN Describes Practice Under Proposed Abortion Law*, WLTX (Sept. 9, 2022), https://www.wltx.com/article/news/politics/south-carolina-ob-gyns-proposed-abortion-law/101-ea9bd1e9-c498-4457-9370-19d719a41501 ("We've had to stop and consult attorneys and delay people's care while we tried to figure out if we were going to lose our medical license or go to jail if we provided the care that [pregnant patients] needed."); 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.

Sexual assault survivors in South Carolina will be faced with choosing between abortion services and maintaining their privacy in deciding whether to come forward about the assault, a "choice" forced on no other autonomous patient in South Carolina's medical system. Farris Decl. ¶¶ 76–81. Moreover, their opportunity to access abortion services will be further curtailed by the Act's narrowed Reported Rape Exception that only extends until 12 weeks LMP compared to the 22-week LMP period imposed by S.B. 1.[8]

D. The Act Will Irreparably Harm Plaintiffs and Their Staff.

Plaintiffs and their physicians and staff will also be irreparably injured by the Act, which eliminates their ability to offer abortion to many South Carolinians who need it. The Act interferes with the ability of Plaintiffs—and their physicians and staff—to provide medical care consistent with their medical judgment and in support of patient wellbeing. *See Joseph v. S.C. Dep't of Lab., Licensing & Regul.*, 417 S.C. 436, 452, 790 S.E.2d 763, 771 (2016) (recognizing physicians' "right to practice medicine in the best interests of their patients"). Plaintiffs and staff will also face reputational harm and harm to their professional licenses from the threat of severe criminal and licensing penalties posed by the Act. These harms too are irreparable. *Peek*, 367 S.C. at 455, 626 S.E.2d at 37 (holding that a physician's "loss of professional practice and career" was an irreparable harm); *Levine*, 367 S.C. at 465 n.3, 626 S.E.2d at 42 n.3 (same).

[8] S.B. 1 tied its rape and incest exceptions to the "post-fertilization" age of the fetus rather than the gestational age as calculated from the first day of the last menstrual period of the pregnant person. *Compare* S.B. 1, § 3 (adding S.C. Code Ann. § 44-41-680(B)) ("the probable post-fertilization age of the fetus is fewer than twenty weeks") *with* S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-610(7)) (defining "'[g]estational age' . . . as calculated from the first day of the last menstrual period of a pregnant woman"). Twenty weeks post-fertilization roughly correlates to 22 weeks LMP. *See* Compl. for Declaratory & Injunctive Relief at 6 n.2.

III. PLAINTIFFS DO NOT HAVE AN ADEQUATE REMEDY AT LAW.

"Equitable relief is generally available only where there is no adequate remedy at law." *Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n*, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989). "An 'adequate remedy' at law is one which is as certain, practical, complete and efficient to attain the ends of justice and its administration as the remedy in equity." *Id.* (citing 27 *Am. Jur. 2d Equity* § 94 (1966)).

No damages award could compensate Plaintiffs and their patients for the harms inflicted by S.B. 474. In the absence of equitable relief from this Court, Plaintiffs do not have an adequate remedy at law to prevent Defendants from enforcing the Act and violating the rights of Plaintiffs' patients under the South Carolina Constitution.

CONCLUSION

In January, the South Carolina Supreme Court made clear that a ban on abortion after approximately six weeks of pregnancy violates South Carolinians' rights. By enacting S.B. 474, a law nearly identical to S.B. 1, the General Assembly and the Governor have disregarded this coordinate branch of government and again unreasonably infringed on South Carolinians' right to privacy. This Court should thus grant Plaintiffs' motion for a temporary restraining order, followed by a preliminary injunction, and enjoin Defendants and their officers, employees, servants, agents, appointees, or successors from administering, preparing for, enforcing, or 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. Plaintiffs respectfully request that the Court waive any security under S.C. R. Civ. P. 65(c), in light of the constitutional interests at stake and Plaintiffs' critical role in

providing medical services to South Carolinians who might otherwise not have access to these services.

Respectfully submitted,

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* *Pro hac vice motions to be filed*

Dated: May 25, 2023

STATE OF SOUTH CAROLINA **RICHLAND COUNTY** PLANNED PARENTHOOD SOUTH ATLANTIC, on behalf of itself, its patients, and physicians and staff, *et al.*, *Plaintiffs*, v. SOUTH CAROLINA, *et al*., *Defendants*.	**IN THE COURT OF COMMON PLEAS** **FOR THE FIFTH JUDICIAL CIRCUIT** C/A No.: 2023-CP-[XX]-_____ **DECLARATION OF KATHERINE FARRIS, M.D., IN SUPPORT OF PLAINTIFFS' EMERGENCY MOTION FOR A TEMPORARY RESTRAINING ORDER**

I, Katherine Farris, M.D., declare as follows:

1. I am a plaintiff in this case, and I serve as the Chief Medical Officer for Plaintiff Planned Parenthood South Atlantic ("PPSAT"). In this position, I provide oversight, supervision, and leadership on all medical services we provide, including abortion. As part of my role, I collaborate with other members of PPSAT senior management to develop policies and procedures to ensure that the medical services we provide follow evidence-based guidelines and comply with all relevant laws. I also provide direct medical services for PPSAT, including abortion services at PPSAT's South Carolina health centers.

2. The facts I state here and the opinions I offer are based on my education, my years of medical practice, my expertise as a doctor and specifically as an abortion provider, my personal knowledge, my review of PPSAT business records, information obtained through the course of my duties at PPSAT, and my familiarity with relevant medical literature and statistical data recognized as reliable in the medical profession.

3. A copy of my *curriculum vitae* is attached as **Exhibit A**.

4. I am a plaintiff in this case and submit this declaration in support of Plaintiffs' Emergency Motion for a Temporary Restraining Order to prevent enforcement of Senate Bill 474, 125th Gen. Assemb., Spec. Sess. (S.C. 2023) (hereinafter, the "Act" or "S.B. 474").

5. I understand that the Act bans the provision of abortion in South Carolina as soon as a "fetal heartbeat" is detected, as that term is defined by the Act.[1]

6. As I understand the Act, "fetal heartbeat" includes any "activity . . . within the gestational sac."[2]

7. The term, therefore, covers not just a "heartbeat" in the medical sense, but also early cardiac activity present before development of any cardiovascular system. Moreover, as I understand the Act, a "fetal heartbeat" is not actually limited to a fetus. In the field of medicine, the developing organism present in the gestational sac during pregnancy is most accurately termed an "embryo" before approximately 10 weeks of pregnancy, as measured from the first day of a patient's last menstrual period ("LMP").[3] The term "fetus" is used during pregnancy after this time. Contrary to these medical classifications, my understanding is that the Act defines "unborn child" to mean "an individual organism of the species homo sapiens from fertilization [of an egg] until live birth."[4]

8. Accordingly, as I understand the Act, it prohibits abortion any time after identification of embryonic or fetal cardiac activity. Based on my medical experience and expertise, that activity may be detected by vaginal ultrasound as early as six weeks of pregnancy LMP (and sometimes sooner). By that point in pregnancy, a vaginal ultrasound may reveal a ring,

[1] S.B. 474, § 2 (adding S.C. Code Ann. § 44-41-630(B).
[2] *Id.* (amending S.C. Code Ann. § 44-41-610(6)).
[3] The LMP method of pregnancy dating can be accomplished by patient self-reporting and, when appropriate, confirmed via ultrasound.
[4] S.B. 474, § 2 (adding S.C. Code Ann. § 44-41-610(14)).

which represents the round sac within the uterus, and an electrical impulse that appears as a visual flicker on the edge of the sac and therefore, although this is not what one would think of as a "heartbeat," the Act's restrictions would begin to apply at this extremely early stage.[5] This activity cannot be made audible at that stage of pregnancy.[6] As described further below, most patients do not realize they are pregnant until after six weeks LMP.

9. My understanding is that the Act's exceptions are very narrow. A physician could provide an abortion after embryonic or fetal cardiac activity is detectable only if the abortion is necessary to save the patient's life, to prevent limited types of harm to the pregnant patient, and in other narrow circumstances involving rape, incest, and fatal fetal anomalies.[7]

10. I understand that the Act's ban on abortion after the detection of cardiac activity comes with heavy penalties. A physician's violation of the Act is a felony, carrying up to a two-year prison sentence and a fine of $10,000.[8] A physician will also have their license revoked and may also be civilly liable if they are found to have violated the Act.

11. I understand that, to comply with this ban on abortion after detectable cardiac activity, the Act requires the abortion provider or a trained colleague to perform an ultrasound before every abortion to determine whether embryonic or fetal cardiac activity can be detected, and that it is a felony to perform the abortion without taking this step, except in a medical emergency.[9]

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[5] Panos Antsaklis et al., *Early Pregnancy Scanning: Step-by-Step Overview*, 13 Donald Sch. J. of Ultrasound in Obstetrics & Gynecology 236, 237 (2019).
[6] Saeed Abdulrah Alnuaimi et al., *Fetal Cardiac Doppler Signal Processing Techniques: Challenges and Future Research Directions*, 5 Frontiers in Bioengineering & Biotechnology 3 (2017).
[7] S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-650).
[8] *Id*. (adding S.C. Code Ann. § 44-41-630(B)).
[9] *Id.*

12. I further understand that the Act 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.[10]

13. By banning abortion at a point in pregnancy before most patients even realize they are pregnant, the Act prohibits the majority of abortions in South Carolina. Because of this law, PPSAT has already been forced to turn away numerous patients. PPSAT has 77 patients scheduled for abortion for the remainder of this week. In my clinical experience, most of these patients will be at least six weeks LMP and will not be able to obtain abortion care in the state of South Carolina, including at PPSAT's clinics. Very few, if any, of the patients with pregnancies with detectable fetal or embryonic cardiac activity will qualify for one of the Act's limited exceptions.

14. I anticipate that patients who can scrape together the resources will be forced to travel out of state for medical care, and many others who cannot do so will be forced to carry a pregnancy to term against their will or seek ways to end their pregnancies without medical supervision, some of which may be unsafe. I am gravely concerned about the effect that the Act has on South Carolinians' emotional, physical, and financial wellbeing and the wellbeing of their families.

My Background

15. I am licensed to practice medicine in South Carolina, North Carolina, Virginia, and West Virginia. I am board-certified in Family Medicine. I am a member of the American College of Obstetricians and Gynecologists ("ACOG"), the National Abortion Federation, Physicians for Reproductive Health, and the American Academy of Family Physicians.

[10] *Id.* § 10 (amending S.C. Code Ann. § 44-41-330(A)).

16. I obtained a bachelor's degree in molecular and cellular biology from Northwestern University in 1995 and a medical degree from Northwestern University Medical School in 2000. I completed an internship and residency in Family Medicine at Valley Medical Center in Renton, Washington. I served as Chief Resident from 2002 to 2003.

17. I have worked for PPSAT and a predecessor organization since 2009. Throughout that time, I have provided comprehensive family planning services, including medication abortion and abortion by procedure. I have also served in a range of leadership positions, including as Laboratory Director, Acting Vice President of Patient Services, and as an Interim Abortion Facility Administrator.

18. Before joining PPSAT, I provided full-spectrum family medicine in private practice and in a hospital setting in Massachusetts. That practice included comprehensive family planning and reproductive health care, as did my work in an earlier position with Planned Parenthood League of Massachusetts. I have provided medication abortion and abortion by procedure since 2003.

PPSAT and Its Services

19. PPSAT is a not-for-profit corporation that is headquartered in North Carolina.

20. PPSAT and its predecessor organizations have provided health care in South Carolina for more than four decades. We have two health centers in South Carolina—one in Columbia and the other in Charleston. I provide abortion services as needed for PPSAT in South Carolina, among other locations.

21. We offer our patients a range of family planning and reproductive health services and other preventive care at these centers. This care includes well-person exams; contraception (including long-acting reversible contraception or "LARC") 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 medication abortion and abortion by procedure.

22. Medication abortion involves the use of medication taken to safely and effectively end an early pregnancy in a process similar to a miscarriage. Abortion by procedure involves the use of gentle suction and/or the insertion of instruments through the vagina to empty the contents of a patient's uterus. Although sometimes known as "surgical abortion," abortion by procedure does not involve surgery in the conventional sense. It does not require an incision into the patient's skin or a sterile field.

23. At both the Columbia and Charleston health centers, PPSAT provides abortion only in the first trimester of pregnancy. Before the Act took effect, and other than when S.B. 1, 124th Gen. Assemb., Reg. Sess. (S.C. 2022) ("S.B. 1"), was in effect last summer, PPSAT has generally provided medication abortion up to 11 weeks of pregnancy LMP) and abortion by procedure up to 14 weeks LMP. As a point of reference, a full-term pregnancy typically lasts approximately 40 weeks LMP.

24. Prior to the Act taking effect, and other than when S.B. 1 was in effect last summer, on the day of a patient's abortion appointment, PPSAT staff would perform an ultrasound if medically indicated.

25. At four weeks LMP, a transvaginal ultrasound might show the gestational sac as a ring within the uterus, but the yolk sac and embryo likely would not yet be visible. At five weeks LMP, the ultrasound might show the yolk sac as well as the gestational sac. By six weeks LMP, the ultrasound image would include the gestational sac, the yolk sac, and the embryo, and the

electrical impulse that constitutes embryonic cardiac activity at this stage would usually be visible as a flicker within the embryo. Sometimes this flicker is visible as early as partway through the fifth week LMP.

26. PPSAT's health centers are licensed as "abortion clinic[s]" under South Carolina law, a license that is required for any facility other than a hospital that performs five or more first-trimester abortions in a month or any second-trimester abortions.[11] PPSAT's physicians at the Columbia and Charleston health centers are licensed to practice medicine in South Carolina.

27. According to South Carolina's Department of Health and Environmental Control, there is only one abortion clinic in South Carolina other than PPSAT.[12] That provider, Greenville Women's Clinic, is also a plaintiff in this case.

Access to Abortion in South Carolina

28. Legal abortion is one of the safest procedures in contemporary medical practice and is far safer than childbirth.[13] Less than 1% of women obtaining abortions experience a serious complication.[14] The risk of a patient experiencing a complication that requires hospitalization is even lower, approximately 0.3%.[15] A woman's risk of death associated with childbirth nationwide is approximately fourteen times higher than that associated with abortion,[16] and every pregnancy-

[11] S.C. Code Ann. § 44-41-75(A).
[12] *Find a Facility: Abortion Clinics*, S.C. Dep't of Health & Env't Control, Health Facilities & Servs., https://sc-dhec.maps.arcgis.com/apps/webappviewer/index.html?id=e8b4eea83cab491bb3e3663093e14656 (last visited May 24, 2023).
[13] *See, e.g.*, Nat'l Acads. of Scis., Eng'g, & Med. ("Nat'l Acads."), *The Safety and Quality of Abortion Care in the United States*, at 10, 59, 79 (2018), available at http://nap.edu/24950.
[14] Ushma Upadhyay et al., *Incidence of Emergency Department Visits and Complications After Abortion*, 125 Obstetrics & Gynecology 175, 175 (2015).
[15] *Id.*
[16] 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 13, at 75 tbls. 2–4 (finding the risk to be approximately twelve times higher).

related complication is more common among women having live births than among those having abortions.[17]

29. Abortion is also very common: approximately one in four women in this country will have an abortion by age forty-five.[18]

30. Patients' decisions to have an abortion often involve multiple considerations.[19] The majority—55% in 2022—of PPSAT's South Carolina patients who have an abortion are already parents. Our patients with children understand the obligations of parenting and decide to have an abortion based on what is best for them and their existing families, which may already struggle to make ends meet. Other patients decide that they are not ready to become parents because they are too young or want to finish school before starting a family. Some patients have health complications during pregnancy that lead them to conclude that abortion is the right choice for them. In some cases, patients 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. In all of these cases, our patients decide that abortion is the best option for themselves and their families.

31. Regardless of the reasons that bring a patient to us, PPSAT is committed to providing high-quality, compassionate abortion services that honor each patient's dignity and autonomy. PPSAT trusts its patients to make the best decisions for themselves and their families.

[17] Raymond & Grimes, *supra* note 16, at 216.
[18] Rachel K. Jones & Jenna Jerman, *Population Group Abortion Rates and Lifetime Incidence of Abortion: United States, 2008–2014*, 107 Am. J. Pub. Health 1904, 1907 (2017).
[19] *See, e.g.*, M. Antonia Biggs et al., *Understanding Why Women Seek Abortions in the US*, 13 BMC Women's Health 1 (2013).

Timing of and Barriers to Abortion Services in South Carolina

32. Most patients obtain an abortion as soon as they are able, and the vast majority of abortions in the United States and in South Carolina take place in the first trimester of pregnancy.[20] According to data from the South Carolina Department of Health and Environmental Control from 2021, approximately 6,300 abortions were performed across the state in 2021, of which more than 99% occurred before approximately 15 weeks LMP.[21]

33. Many patients do not learn they are pregnant before six weeks LMP, with many patients facing physiological limitations in pregnancy detection. Some people have fairly regular menstrual cycles; a four week cycle is common. For a person with a regular four week cycle, fertilization typically occurs at two weeks LMP. Thus, a person with a highly regular, four week cycle would already be four weeks LMP when she misses her period, and before that time, most over the counter pregnancy tests would not be sufficiently sensitive to detect her pregnancy.

34. People can also have regular cycles of different lengths. Some individuals can go six to eight weeks, or even more, without experiencing a menstrual period.

35. For those who menstruate, it is also extremely common to have irregular cycles for a variety of reasons, including certain common medical conditions, contraceptive use, and age. Breastfeeding can suppress menstruation for weeks or months, after which someone's menstrual cycle may return but be irregular for a period of time. Those who have had a miscarriage in the last six months may also have a higher likelihood of an irregular period contributing to delayed

[20] Ctrs. for Disease Control & Prevention ("CDC"), *Reproductive Health: CDCs Abortion Surveillance System FAQs*, https://www.cdc.gov/reproductivehealth/data_stats/abortion.htm (last reviewed November 22, 2021) ("Nearly all abortions in 2020 took place early in gestation: 93.1% of abortions were performed at ≤13 weeks' gestation."); S.C. Dep't of Health & Env't Control, *A Public Report Providing Statistics Compiled from All Abortions Reported to DHEC—2021* (2022), available at https://scdhec.gov/sites/default/files/media/document/ 2021-Abortion_SC-Report.pdf (providing data for abortions performed before 13 weeks "postfertilization," i.e., 15 weeks LMP).
[21] S.C. Dep't of Health & Env't Control., *supra* note 20.

pregnancy detection.[22] Cycle irregularity is more common among young women, Hispanic women, and women with common health conditions, such as diabetes and polycystic ovary syndrome.[23]

36. Some pregnant patients experience light bleeding that occurs when a fertilized egg is implanted in the uterus. This implantation bleeding is often mistaken for a menstrual period. Further, although some pregnant people experience nausea and vomiting early in pregnancy, many do not.

37. Also, pregnancy itself is not always easy to detect. On average, people are unaware of their pregnancies until between five and six weeks gestation.[24] However, various individual characteristics during pregnancy, including younger age, lower educational attainment, and lower poverty-income ratios, are associated with later pregnancy awareness.[25] Use of hormonal contraceptives is also associated with delayed pregnancy awareness.[26]

38. Moreover, even after a patient learns that she is pregnant, arranging an appointment for an abortion may take some time as the logistical process presents its own delays. Logistical delays are often most pronounced for women with two or more children, minors, Black non-Hispanic women, and those living in poverty.[27]

39. There are only three abortion clinics in South Carolina. Due to provider availability and operational demands, each of PPSAT's health centers generally provides abortion only two

[22] Lawrence B. Finer et al., *Timing of Steps and Reasons for Delays in Obtaining Abortions in the United States*, 74 Contraception 334, 338 (2006).
[23] Jenna Nobles et al., *Menstrual Irregularity as a Biological Limit to Early Pregnancy Awareness*, 119 Proc. of the Nat'l Acad. of Scis. 1 (2022).
[24] Amy M. Branum & Katherine A. Ahrens, *Trends in Timing of Pregnancy Awareness Among US Women*, 21 Maternal & Child Health J. 715 (2017).
[25] Finer et al., *supra* note 22 (finding that minors took a week longer than all other age groups to suspect they had become pregnant).
[26] Branum et al., *supra* note 24.
[27] Finer et al., *supra* note 22, at 339.

days per week. As a result, even assuming that we have sufficient appointments to meet patient demand each week, patients generally cannot obtain an appointment immediately (even assuming they have met the requirements of South Carolina's twenty-four hour mandatory delay law, as discussed below).

40. For patients living in poverty or without insurance, travel-related financial barriers also help explain why the majority of our patients do not—and realistically could not—obtain abortions before detection of embryonic or fetal cardiac activity.

41. South Carolina has the nation's tenth highest rate of poverty among women: nearly 15% of women in South Carolina live in poverty, exceeding the national average of 12%,[28] and that rate rises to more than 22% among Black women, 19% among Latina women, and over 36% for Native women in South Carolina.[29] More than 38% of female-headed households in South Carolina live in poverty,[30] and South Carolina has the tenth highest rate of children living in poverty in the nation, at nearly 20%.[31]

42. These patients face particularly high barriers to obtaining abortions, including, but not limited to raising money for the abortion and associated travel and childcare costs and inability to take time off work.

43. The lack of comprehensive insurance coverage also poses a barrier to South Carolina women confirming they are pregnant and obtaining abortion coverage when they need it.

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[28] *South Carolina*, Nat'l Women's L. Ctr., https://nwlc.org/state/south-carolina (last visited May 24, 2023).
[29] *Women in Poverty, State by State 2021*, Nat'l Women's L. Ctr. (Oct. 7, 2022), https://nwlc.org/resource/women-in-poverty-state-by-state-2022/.
[30] *Id.*
[31] United Health Found., Am.'s Health Rankings, *2022 Health of Women and Children Report*, at 83 (2022), available at https://assets.americashealthrankings.org/app/uploads/ahr_2022_hwc_executive_brief.pdf.

Notably, South Carolina is one of just twelve states that have not expanded Medicaid,[32] and uninsured rates among South Carolina women of reproductive age (15.8%) are worse than the national average of 11.7%.[33] Unsurprisingly, more than 18% of women in South Carolina reported not receiving health care in the prior 12 months due to cost.[34] Even those patients who *do* have health insurance rarely have access to abortion coverage. With very narrow exceptions, South Carolina bars coverage of abortion in its Medicaid program, and it prohibits coverage of abortion in private insurance plans offered on the state's Affordable Care Act exchange,[35] an important source of health insurance for individuals who do not have access to employer-sponsored health coverage and who do not qualify for Medicaid.

44. South Carolina's lack of investment in health care is reflected in health outcomes. Since 1990, South Carolina has been among the ten worst states in overall health outcomes; it currently ranks 41st out of 50.[36] Meanwhile, South Carolina has the tenth highest rate of mortality for women ages 20 to 44[37] and the seventh highest rate of mortality for infants under age one,[38]

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[32] *Status of State Medicaid Expansion Decisions: Interactive Map*, Kaiser Fam. Found. (Mar. 27, 2023), https://www.kff.org/medicaid/issue-brief/status-of-state-medicaid-expansion-decisions-interactive-map/.

[33] Urb. Inst., *Insurance Coverage Among Women of Reproductive Age in South Carolina*, at 1 (2019), available at https://www.urban.org/sites/default/files/2019/07/24/factsheet-uninsured-women-sc.pdf.

[34] *South Carolina*, Nat'l Women's L. Ctr., *supra* note 28.

[35] Kaiser Fam. Found., *supra* note 32; *Regulating Insurance Coverage of Abortion*, Guttmacher Inst., https://www.guttmacher.org/state-policy/explore/regulating-insurance-coverage-abortion (last updated Mar. 1, 2023).

[36] United Health Found., *Overall in South Carolina*, Am.'s Health Rankings, https://www.americashealthrankings.org/explore/measures/Overall/SC (last visited May 24, 2023).

[37] United Health Found., *Mortality Rate—Women in South Carolina*, Am.'s Health Rankings, https://www.americashealthrankings.org/explore/measures/mortality_women/SC (last visited May 24, 2023).

[38] United Health Found., *Infant Mortality in South Carolina*, Am.'s Health Rankings, https://www.americashealthrankings.org/explore/measures/IMR_MCH/SC (last visited May 24, 2023).

with a rate of 7.3 infant deaths per 1,000 live births among all women.[39] And even this unacceptably high rate of death conceals a stark racial disparity: while South Carolina's infant mortality rate is 5.2 infant deaths per 1,000 live births among white women, that rate rises to 12.7 infant deaths per 1000 live births among Black women.[40]

45. Patients living in poverty and without insurance must often make difficult tradeoffs of other basic needs to pay for their abortions. Many patients must seek financial assistance from extended family and friends to pay for care as well—a process that takes time. Many patients, and especially patients who already have children, 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.[41]

46. In addition to the medical and practical impediments to patients' obtaining an abortion—particularly before six weeks LMP—that I have just described, South Carolina has also enacted numerous medically unnecessary statutory and regulatory requirements that must be met before a patient may obtain an abortion. For example, South Carolina requires PPSAT to ensure that patients have available, at least twenty-four hours in advance of an abortion, certain state-mandated information designed to discourage them from having an abortion.[42] Practically speaking, the effect of this twenty-four hour delay law lasts far longer than one day, which may push even patients who have discovered they are pregnant, decided to have an abortion, and

[39] S.C. Dep't of Health & 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.
[40] *Id.*
[41] Lawrence B. Finer et al., *Timing of steps and reasons for delays in obtaining abortions in the United States*, 74 Contraception 334, 343 (2006).
[42] S.C. Code Ann. § 44-41-330(C).

scheduled an appointment prior to six weeks LMP past the six week limitation by the time they actually arrive at the health center for their abortion appointment.

47. The impossibility of obtaining an abortion within the time permitted by the Act is all the more clear for our minor patients who are under seventeen. Minor patients without a history of pregnancy may be less likely to recognize early symptoms of pregnancy than older patients who have been pregnant before. Furthermore, some of these patients cannot obtain written parental authorization for an abortion as required by state law and must obtain a court order permitting them to receive care.[43] A court may take up to seventy-two hours to rule on a patient's petition to bypass the state's parental-consent law for abortions,[44] not including any time that may be necessary for a minor patient to appeal an unfavorable decision. That process cannot realistically happen before a patient's pregnancy reaches six weeks LMP.

48. South Carolina law also prohibits the use of telemedicine for the provision of medication abortion, closing off a safe and effective option for many patients to obtain an abortion.

49. For patients who would not qualify for the rape exception—either because they decided they do not want their assaults reported or they are experiencing interpersonal violence but have not become pregnant as the result of rape or incest—obtaining an abortion before six weeks LMP will be exceedingly difficult, if not impossible. For patients who qualify for the rape exception because they have become pregnant as a result of sexual assault or incest and they decide to have an abortion despite the mandatory reporting requirement, obtaining an abortion before twelve weeks LMP is still incredibly difficult.

50. For all of these reasons, prior to S.B. 474 taking effect, the majority of PPSAT's abortion patients in South Carolina did not obtain an abortion until after six weeks LMP.

[43] *See id.* §§ 44-41-31 to 33.
[44] *See id.* § 44-41-32(5).

The Act's Effects

51. The devastating effects of banning abortion are not theoretical; S.B. 1, which banned abortion after approximately six weeks LMP, was in effect in South Carolina from June 27, 2022 to August 17, 2022, when it was enjoined by the South Carolina Supreme Court. It forced PPSAT to stop providing the majority of all abortions we previously performed in South Carolina,[45] to the detriment of our patients' health, wellbeing, and financial security. During the 51 days that S.B. 1 was in effect, PPSAT 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. These numbers do not account for patients who scheduled abortions in other states—if they could afford to do so—rather than coming to our health centers because they knew they had passed S.B. 1's gestational age limit. They also do not include South Carolinians who remained pregnant against their will or tried to self-manage their abortions outside of the medical system.

52. As with S.B. 1, the Act's impact will be harshest for our patients with low incomes, patients of color, and patients who live in rural areas. Roughly half of our abortion patients in our South Carolina health centers are Black, and in 2022, those health centers provided abortion services to patients residing in all but three South Carolina counties.

53. As described above, the earliest a person could reasonably expect to learn that she is pregnant is at four weeks LMP. Accordingly, a South Carolinian would have roughly two weeks to learn she is pregnant, decide whether to have an abortion, secure the money to pay for the

[45] *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 (reporting number of abortions provided in South Carolina before six weeks post-fertilization (8 weeks LMP) for 2019–21).

abortion and associated care and travel, and seek and obtain an abortion at one of the three available locations in South Carolina. Based on my experience, the majority of patients, even those who suspect that they are pregnant at a very early stage, could not realistically take all of these steps before embryonic cardiac activity could be detected around six weeks LMP.

54. As described above, many other patients do not learn that they are pregnant until after six weeks LMP. Under the Act, these patients could *never* access abortion in South Carolina unless they fall into one of the Act's narrow exceptions.

Out-of-State Travel and Related Burdens

55. Under the Act, I anticipate that most South Carolinians will be forced to seek abortions in other states (if they are able to undertake the necessary travel at all), increasing their burdens and costs. Others will be denied access to abortion care entirely. From PPSAT's Columbia health center, the nearest abortion providers outside of South Carolina are in Charlotte, North Carolina (the closest of which is about 98 miles away, one way); Asheville, North Carolina (about 160 miles away, one way); and Fayetteville, North Carolina (the closest of which is about 163 miles away, one way). From our Charleston health center, the nearest abortion providers outside of South Carolina are in Wilmington, North Carolina (about 177 miles away, one way) and Fayetteville, North Carolina (the closest of which is about 201 miles away, one way). Of course, this assumes that abortion remains legal and accessible in North Carolina.[46]

[46] North Carolina's ban on abortion after 12 weeks LMP as well as additional restrictions that will make accessing abortion care there particularly difficult, will soon be in effect. Senate Bill 20, 2023 Leg., 2023–24 Sess. (N.C. 2023) ("S.B. 20"). For example, the bill requires certain state-mandated information that must be given at least 72-hour prior to an abortion to be given in person, meaning anyone accessing abortion care in North Carolina may need to make *at least* two trips to a health center. *See* S.B. 20 (amending N.C. Gen. Stat. Ann. §§ 90-21.82(b)(1), 90-21.83A(b)(1)). Although there are also abortion providers in Georgia—for example, there is a clinic in Augusta that is about 77 miles from PPSAT's Columbia clinic, one way, and about 151 miles from our Charleston clinic, one way, Georgia currently bans abortions at about six weeks LMP. Ga. Code

56. The necessary travel caused by the Act will carry with it associated costs, such as lodging, gas, food, time off work, and childcare for the patient's other children. The logistics required for out-of-state travel may also force some patients to explain the reason for their travel, thus compromising the confidentiality of their decision to have an abortion in order to obtain transportation or childcare.

57. Given the logistical hurdles of traveling out of state, I expect that pregnant people able to obtain an abortion through another provider in a different state will do so later in pregnancy than they would have had they had access to care in South Carolina. The likelihood of delay is particularly high given the fact that North Carolina imposes a 72-hour waiting period on patients seeking abortion.[47] While S.B. 1 was in effect, I and other providers at PPSAT routinely witnessed patients struggle to overcome all of the barriers associated with out-of-state travel and have to delay their care by weeks or more in the process. Although abortion is very safe, the physical risks associated with abortion—as is true with pregnancy generally—do increase with gestational age.[48] Accordingly, even for patients able to travel to another state, the delays created by the Act will still increase those patients' risk of experiencing pregnancy- and abortion-related complications and prolong the period during which they must carry a pregnancy that they have decided to end. Because the cost of abortion services also increases with gestational age,[49] delays in access to care caused by the Act may impose additional financial costs on patients related to the abortion service itself.

Ann. § 16-12-141. It is thus unlikely that someone who is unable to obtain an abortion in South Carolina would travel to a Georgia clinic.

[47] *See* N.C. Gen. Stat. Ann. § 90-21.82.

[48] Nat'l Acads., *supra* note 12, at 77–78.

[49] R.K. Jones et al., *Differences in Abortion Service Delivery in Hostile, Middle-ground, and Supportive States in 2014*, 28 Women's Health Issues 212, 215 (2018).

Forced Pregnancy and Parenthood

58. I also expect, as a result of the Act, many patients will be unable to travel out of state to obtain an abortion in light of the costs and coordination required and will be forced to carry pregnancies to term against their will.

59. Pregnancy affects an individual's health and social circumstances. The effects of pregnancy include a dramatic increase in blood volume, an increased heart rate, increased production of clotting factors, changes in breathing, digestive complications, substantial weight gain, and a growing uterus. As a result of these and other changes, pregnant patients are at a greater risk of blood clots, nausea, hypertensive disorders, and anemia, among other complications. Some of these changes require evaluation and occasionally urgent or emergent care in order to preserve the patient's health or to save their life.

60. 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 do so.

61. Pregnancy can also aggravate preexisting health conditions, including hypertension and other cardiac disease, diabetes, kidney disease, autoimmune disorders, obesity, asthma, and other pulmonary disease. New and serious health conditions can result, including preeclampsia, deep-vein thrombosis, hyperemesis gravidarum, and gestational diabetes. People who develop pregnancy-induced medical conditions are also at higher risk of developing the same condition in subsequent pregnancies.

62. Pregnancy may also induce or exacerbate mental health conditions. A person with a history of mental illness may experience a recurrence or worsening of their illness during pregnancy. These mental health risks can be higher for patients with unintended pregnancies. In

South Carolina, 39% of pregnancies among women of reproductive age were unwanted or mistimed as of 2017.[50] For Black and Hispanic/Latino women, the rates of unintended pregnancy are likely to be even higher. [51]

63. Some pregnant patients also face increased risk of intimate partner violence, and the severity of the risk can escalate during or after pregnancy. Homicides, the majority of which are caused by an intimate partner, are a leading cause of maternal mortality. Compared to women who are able to receive a wanted abortion, women denied wanted abortions are more likely to experience continued intimate partner violence from the man involved in the pregnancy.[52]

64. Labor and childbirth are significant medical events that carry risks greater than those for legal abortion in the first and second trimesters. The abortion-related mortality rate for legal abortions is only 0.7 deaths per 100,000 procedures, as compared to the national mortality rate among individuals who carry their pregnancies to term, which is 8.8 deaths per 100,000 live births.[53] South Carolina's maternal mortality rate exceeds the national average: between 2015 and

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[50] Kathryn Kost et al., *Pregnancies and Pregnancy Desires at the State Level: Estimates for 2017 and Trends Since 2012*, Guttmacher Inst., at fig.2 (Sept. 2021), https://www.guttmacher.org/report/pregnancy-desires-and-pregnancies-state-level-estimates-2017.

[51] *See e.g.* Charvonne N. Holliday et al., *Racial/Ethnic Differences in Women's Experiences of Reproductive Coercion, Intimate Partner Violence, and Unintended Pregnancy*, 20 J. of Women's Health 828, 828 (2017) (finding higher incidence of unintended pregnancy among Black and multiracial women in California in 2009); Lawrence B. Finer & Mia R. Zolna, *Declines in Unintended Pregnancy in the United States, 2008–2011,* 374 New Eng. J. of Med. 843, 850 fig.3 (2016) (finding that Black and Hispanic women of reproductive age have higher unintended pregnancy rates than their white non-Hispanic peers); Guttmacher Inst., *Unintended Pregnancy in the United States*, at 1 (Jan. 2019), available at https://www.guttmacher.org/sites/default/files/factsheet/fb-unintended-pregnancy-us.pdf ("At 79 per 1,000, the unintended pregnancy rate for non-Hispanic black women in 2011 was more than double that of non-Hispanic white women (33 per 1,000).").

[52] Sarah C.M. Roberts et al., *Risk of violence from the man involved in the pregnancy after receiving or being denied an abortion,* 12 BMC Med. 1 (2014) (finding a statistically significant reduction in physical violence over time for women who received an abortion but no such decrease for those who were denied an abortion).

[53] Nat'l Acads., *supra* note 13, at 74, 75 tbls. 2–4.

2019, the maternal mortality rate in South Carolina was 26.2 deaths per 100,000 live births.[54] The maternal mortality rate in South Carolina was 2.4 times higher for Black and other women of color as compared to white women.[55]

65. Other complications resulting from labor and childbirth occur at a rate of over 500 per 1,000 delivery hospital stays.[56] Hemorrhage is the leading cause of severe maternal morbidity. During labor, increased blood flow to the uterus places the patient at risk of hemorrhage and possibly death. Other unexpected adverse events include transfusion, ruptured uterus (the spontaneous tearing of the uterus) or liver, stroke, perineal laceration (the tearing of the tissue around the vagina and rectum), and unexpected hysterectomy (the surgical removal of the uterus). 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 lead to long-term urinary and fecal incontinence and sexual dysfunction. Vaginal delivery can also lead to long-term internal injuries, including injury to the bowel and the pelvic floor, causing urinary incontinence, fecal incontinence, and pelvic organ prolapse. Anesthesia or an epidural administered during labor can create additional risks, including infection, severe headaches, and nerve damage. Women who become pregnant during their teens or after age 35 are more likely to experience complications, placenta previa and preterm labor.

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[54] S.C. Maternal Morbidity & Mortality Rev. Comm., *Legislative Brief* (Mar. 2021), available at https://scdhec.gov/sites/default/files/media/document/2021SCMMMRCLegislativeBrief.pdf.
[55] *Id.*
[56] Anne Elixhauser & Lauren M. Wier, Stat. Br. No. 113, *Complicating Conditions of Pregnancy and Childbirth*, Healthcare Cost & Utilization Proj., at 2 tbl. 1, 5 tbl. 2 (May 2011), available at https://www.hcup-us.ahrq.gov/reports/statbriefs/sb113.pdf.

66. In South Carolina, 33.5% of live births in 2017 (approximately 19,000 births in all)[57] were the result of a cesarean section, as compared to 31.7% for the national average.[58] Because a cesarean section is an open abdominal surgery, patients must be hospitalized for at least a few days afterwards and the procedure carries significant risks of hemorrhage, infection, blood clots, and injury to internal organs. Cesarean sections also carry long-term risks, including an increased risk of placenta previa in later pregnancies (when the placenta covers the cervix, resulting in vaginal bleeding and requiring bed rest), increased risk of placenta accreta (when the placenta grows into and possibly through the uterine wall, potentially necessitating complicated surgical interventions, massive blood transfusions, hysterectomy, and risk of maternal death), and bowel or bladder injury in future deliveries. Individuals with a history of cesarean delivery are also more likely to need cesarean delivery with subsequent births.

67. 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.

[57] *S.C. Vital Records Data and Statistics, 2018 Birth Statistics*, S.C. Dep't. of Health & Env't Control., https://scdhec.gov/vital-records/parentage/sc-vital-records-data-and-statistics (last accessed May 24, 2023); Nat'l Ctr. for Health Stats., *Stats of the State of South Carolina, 2017*, CDC, https://www.cdc.gov/nchs/pressroom/states/southcarolina/southcarolina.htm (last visited May 24, 2023) (together, calculating approximate number of cesarean sections based on 2018 birth statistics and 2017 cesarean rate).

[58] Michelle J.K Osterman et al., *Births: Final Data for 2020*, 70 Nat'l Vital Stats. Reps. 1, 6 (2022), available at https://www.cdc.gov/nchs/data/nvsr/nvsr70/nvsr70-17.pdf.

68. In South Carolina, rates of pregnancy-related complications, including diabetes[59] and chronic hypertension;[60] postpartum depression;[61] and maternal mortality[62] are higher for Black and Hispanic/Latina women compared to non-Hispanic white women.

69. Due to structural barriers that limit access to contraceptives,[63] people with lower incomes experience disproportionately high rates of unintended pregnancies.[64] For people already facing an array of economic hardships, the cost of pregnancy can have especially long-term and severe impacts on their family's financial security. Many of the side-effects of pregnancy prevent patients from working the same number of hours that they had prior to pregnancy or working altogether, and patients can lose their jobs as a result. For example, some patients with hyperemesis gravidarum must adjust work schedules because they vomit throughout the day. Patients with preeclampsia must severely limit activity for a significant amount of time. Even in the absence of pregnancy-related side effects, pregnancy-related discrimination can result in lower earnings both during pregnancy and over time.[65] South Carolina does not require private employers to provide

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[59] Cheryl P. Lynch et al., *Increasing Prevalence of Diabetes During Pregnancy in South Carolina*, 24 J. of Women's Health 316, 320 tbl.2 (2015).

[60] Sarah B. Laditka et al., *Racial and Ethnic Disparities in Potentially Avoidable Delivery Complications Among Pregnant Medicaid Beneficiaries in South Carolina*, 10 Maternal & Child Health J. 339, 343 (2006).

[61] Michael Smith et al., *Postpartum Depression Symptoms in South Carolina, 2004-2005*, S.C. Dep't of Health & Env't Control (Dec. 2007), https://dc.statelibrary.sc.gov/bitstream/handle/10827/39022/DHEC_PRAMS_Postpartum_Depression_2007-12.pdf?sequence=1&isAllowed=; CDC, *Prevalence of Self-Reported Postpartum Depressive Symptoms—17 States, 2004–2005*, 57 Morbidity & Mortality Weekly Rep. 361, 363 tbl.1 (2008).

[62] S.C. Maternal Morbidity & Mortality Rev. Comm., *supra* note 39, at 1.

[63] ACOG, *Comm. Op. No. 615: Access to Contraception* (Jan. 2015), available at https://www.acog.org/-/media/project/acog/acogorg/clinical/files/committee-opinion/articles/2015/01/access-to-contraception.pdf; *see also* May Sudhinaraset et al., *Women's Reproductive Rights Policies and Adverse Birth Outcomes: A State-Level Analysis to Assess the Role of Race and Nativity Status*, 59 Am. J. Preventive Med. 787, 788 (2020).

[64] Guttmacher Inst., *supra* note 50, at 1.

[65] *See, e.g.*, Nat'l P'ship for Women & Fams., *By the Numbers: Women Continue to Face Pregnancy Discrimination in the Workplace*, at 1–2 (Oct. 2016), available at https://nationalpartnership.org/wp-content/uploads/2023/02/by-the-numbers-women-continue-to-

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.[66] On average, a person in South Carolina who takes four weeks of unpaid leave loses more than $2,800 in income.[67]

70. Aside from lost wages, pregnancy-related health care and childbirth are some of the costliest hospital-based health services, particularly for complicated or at-risk pregnancies. Many pregnant patients must pay for significant labor and delivery costs out of pocket, even with insurance coverage. 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; the mean out-of-pocket spending for that same group of women for vaginal birth, specifically, was $4,314; and for C-section, specifically, it was $5,161.[68] And the average proportion of delivery costs paid by patients has increased over time.[69] Many South Carolinians lack insurance to help offset these costs at all—for example, 4 in 10 Hispanic women of reproductive age in South Carolina report not having health insurance to pay for even prenatal care, nearly triple the national average.[70]

71. Beyond childbirth, raising a child is expensive, both in terms of direct costs and due to lost wages. On average, women experience a large and persistent decline in earnings following the birth of a child, an economic loss that compounds the additional costs associated

face-pregnancy-discrimination-in-the-workplace.pdf; Jennifer Bennett Shinall, *The Pregnancy Penalty,* 103 Minn. L. Rev. 749, 787–89 (2018).

[66] Nat'l P'ship for Women & Fams., *Paid Leave Means a Stronger South Carolina*, at 1 (Feb. 2022), available at https://www.nationalpartnership.org/our-work/resources/economic-justice/paid-leave/paid-leave-means-a-stronger-south-carolina.pdf.

[67] *May 2021 State Occupational Employment and Wage Estimates, South Carolina (Median Income, All Occupations)*, U.S. Bureau of Lab. Stat, https://www.bls.gov/oes/current/oes_sc.htm#00-0000 (last visited May 24, 2023).

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

[69] *Id.*

[70] Urb. Inst., *supra* note 33.

with raising a child.[71] In South Carolina, the average cost of infant care is more than $7,000 per year, meaning it would take a minimum wage worker 24 weeks working full time to afford childcare for a single infant.[72] These costs can be particularly impactful for people who do not have partners or other support systems in place.[73]

72. Most abortion patients do not consider adoption an equally acceptable substitute for abortion.[74] Placing a child for adoption can be very emotionally challenging for patients.[75] Adoption can also be also expensive, involving medical, legal, and counseling costs. Patients who choose to place their infant for adoption also face the physical risks of full-term pregnancy, labor, and delivery. In South Carolina, at least 72 children are currently waiting for adoption[76] and 3,786 children are in foster care.[77] In fiscal year 2022, 504 children of any age were adopted.[78]

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[71] Amanda Fins, Nat'l Women's L. Ctr, .*Effects of COVID-19 Show Us Equal Pay Is Critical for Mothers* (May 2020), available at https://nwlc.org/wp-content/uploads/2020/05/ Moms-EPD-2020-v2.pdf (analyzing the U.S. Census Bureau, 2018 Current Population Survey and determining that mothers in the U.S. are paid 71 cents for every $1 fathers make, about $16,000 a year in lost wages).

[72] *Child Care Costs in the United States, The cost of child care in South Carolina*, Econ. Pol'y Inst., https://www.epi.org/child-care-costs-in-the-united-states/#/SC (last updated Oct. 2020).

[73] *Id.*

[74] Liza Fuentes et al., *"Adoption is just not for me": How abortion patients in Michigan and New Mexico factor adoption into their pregnancy outcome decisions*, 5 Contraception: X 1 (2023).

[75] Gretchen Sisson, *"Choosing Life": Birth Mothers on Abortion and Reproductive Choice*, 25 Women's Health Issues 349, 351–52 (2015) (majority of 40 study participants describing adoption experiences as "predominantly negative," including those who "felt they had no options available to them other than adoption," and finding "lack of employment" as an "enduring variable[] that led participants to consider adoption despite their desire to parent"); *see also* Gretchen Sisson, *Who Are the Women Who Relinquish Infants for Adoption? Domestic Adoption and Contemporary Birth Motherhood in the United States*, 54 Persps. on Reprod. Health 46, 50 (2022) (majority of birth mothers who chose adoption reported annual income under $5,000).

[76] *Children Eligible for Adoption*, S.C. Dep't of Soc. Servs., https://portal.dss.sc.gov/adoptioninquiry/Search.aspx (last visited May 24, 2023).

[77] *Foster Care Services*, S.C. Dep't of Soc. Servs., https://reports.dss.sc.gov/ReportServer/Pages/ReportViewer.aspx?/Foster+Care (last visited May 24, 2023).

[78] S.C. Dep't of Soc. Servs., *Report 4—Number of Adoptions Finalized, "Legally Free" Determinations, and "All Parent TPRd/Relinquished" Rulings during Each State Fiscal Year (State Total, Finalized Adoptions, Previous SFY)* (Aug. 1, 2022), available at https://dss.sc.gov/media/3847/completed-adoptions-and-tprs-sfy-2021-2022.pdf.

73. Women who seek but who are denied an abortion are, when compared to those who are able to access abortion, 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 increasing 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.[79]

Other Harmful Impacts

74. Even where it is possible for patients to have an abortion in compliance with the Act and in light of all the other legal and logistical barriers, the Act will also force patients to race to a health center for an abortion to avoid missing the narrow window when abortion is legally available to them. Although patients who obtain abortions demonstrate a strong level of certainty with respect to the decision, some patients take longer to make a decision than others. And patients in South Carolina are already required to have the opportunity to review state mandated information at least twenty-four hours before obtaining an abortion.[80]

75. The Act will force some South Carolinians who cannot travel out of state for care to seek abortions outside the medical system using pills or other methods that may in some instances be unsafe. People who seek abortion in these ways may also be at risk of criminal prosecution and incarceration.[81] Women have already been prosecuted in a number of states,

[79] Diana Greene Foster et al., *Socioeconomic Outcomes of Women Who Receive and Women Who Are Denied Wanted Abortions in the United States*, 108 Am. J. Pub. Health 407, 409, 412–13 (2018).
[80] S.C. Code Ann. § 44-41-330(C).
[81] S.C. Code Ann. § 44-41-80.

including in South Carolina, for self-managing an abortion based on offenses, such as fetal homicide and failure to report a death to a coroner.[82]

76. The Act's exception for certain sexual assault and incest survivors will be functionally inaccessible to most affected patients—even more inaccessible than under the terms of S.B. 1. That is because the Act requires the abortion provider, when counseling a patient, to notify the patient in advance of the abortion that if she has the abortion a report to law enforcement will be required. If she goes through with the procedure, the physician will then have to report the sexual assault or incest allegation, along with the patient's name and contact information, to the county sheriff where the rape or incest occurred within twenty-four hours of the abortion. I also understand that, under S.B. 1's rape and incest exception, affected patients could obtain an abortion for up to twenty-two weeks LMP, whereas under the Act, they can only receive an abortion until twelve weeks LMP.

77. I have cared for a sizeable number of patients who have been raped. I ask all of my patients if they have a history of violence, abuse, or coercion as a screener to see if they have other needs to attend to. Sometimes, in responding to that question, a patient will tell me that the pregnancy is a result of rape or incest. Sometimes I am the first person a patient has told. We already comply with mandatory reporting obligations in South Carolina for minors and certain vulnerable adults who have experienced sexual abuse, but those reporting requirements apply based on a health care provider's knowledge of the abuse, irrespective of whether someone ultimately receives health care from us.

[82] Andrea Rowan, *Prosecuting Women for Self-Inducing Abortion: Counterproductive and Lacking Compassion*, 18 Guttmacher Pol. Rev. 70 (2015), available at https://www.guttmacher.org/sites/default/files/article_files/gpr1807015.pdf.

78. The Act's reporting requirement will undermine patient safety because physician-patient confidentiality is critical to providing medical care. In addition, by conditioning the availability of abortion on reporting of sexual assault, the Act will deny needed care to survivors who do not wish to involve law enforcement or who do not wish to discuss the circumstances of their pregnancy as a mandatory condition of obtaining abortion. In the United States, statistics show that 78% of rape cases are never reported to the police, due to factors including trauma and fear of violent retaliation from the abuser.[83]

79. Telling my patients who are survivors of sexual assault that they must file a police report in order for me to care for them goes against the standard of care, preventing me from providing medical care as soon as clinically appropriate, regardless of whether law enforcement is involved. In addition, the Act's mandatory ultrasound requirement will pose another barrier for patients who are survivors of rape or incest who may fear retraumatization by having an instrument placed in their vagina.

80. The Act's reporting requirement conflicts with guidelines from leading medical organizations, such as the American Medical Association, which recommends disclosure of patients' medical information without the patient's specific consent in emergent situations only to third parties "situated to mitigate the threat" and where there is a reasonable probability that the patient will seriously hurt herself or other identifiable people.[84] Similarly, the American College of Obstetricians and Gynecologists advises that physicians provide "trauma-informed care," which focuses on maintaining trust and prioritizing patient autonomy.[85] When patients cannot rely on

[83] 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.
[84] Am. Med. Ass'n., *Code of Med. Ethics Op. 3.2.1(e), Confidentiality*, available at https://www.ama-assn.org/delivering-care/ethics/confidentiality (last visited May 24, 2023).
[85] ACOG, *Comm. Op. No. 777: Sexual Assault*, 133 Obstetrics & Gynecology e296, e298 (2019).

their doctors to keep medical information private, they may withhold medical information, and this can lead to negative health outcomes.

81. Based on my experience treating survivors of sexual violence, I know that many fear the involvement of law enforcement so much that they would choose to forgo the abortion rather than trigger a mandatory report to law enforcement, especially if the report will reveal their name, address, and the fact that they terminated a pregnancy. These patients, too, will be forced to carry to term the pregnancy resulting from their sexual abuse, to try and access care in another state, or to otherwise self-manage their abortions.

82. The Act's exception for a medical emergency or to prevent death will also be functionally inaccessible to many patients with medical needs. The exception allows physicians to perform an abortion after the detection of fetal or embryonic cardiac activity only where the procedure is necessary to prevent a pregnant person's death or where there is a "serious risk of a substantial and irreversible physical impairment of a major bodily function . . . of the pregnant woman."[86]

83. While the Act lists certain conditions that are "presumed" to meet this standard, it does not provide an explicit exception for them. It seems like I could still be second-guessed that the abortion was needed to prevent death or impairment even if the patient had one of those conditions. Moreover, pregnancy can pose a wide range of health problems that are not necessarily encapsulated by this exception. For example, pregnancy may exacerbate diabetes, hypertension, or multiple sclerosis, or cause an autoimmune disorder, such as Crohn's disease, to flare. Diabetic patients with depression or another underlying mental health condition can find their diabetes extremely challenging to manage during pregnancy.

[86] S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-640).

84. Further, pregnant patients with rapidly worsening medical conditions—who, prior to the Act, could have obtained an abortion without explanation—may be forced to wait for care until a physician determines that their conditions become deadly or threaten substantial and irreversible impairment so as to meet the exception.

85. I also expect that the Act's exclusion of psychological or emotional conditions, including suicidal ideation, as those that would not qualify under the medical exception, will harm our patients.[87] For example, psychiatric disorders may emerge for the first time during pregnancy, especially among people who have had negative reactions to hormonal contraception in the past or due to psychosocial risk factors, such as youth, poverty, substance use, or a lack of family support. These psychiatric issues can range from worsening anxiety and mood disorders to active suicidal ideation with intentions to self-harm or psychotic symptoms, such as hallucinations or intrusive thoughts. Someone with a documented history of mental illness whose condition is stable before pregnancy may experience a worsening of mental illness as a result of the hormonal and neurochemical changes to their body and stress and anxiety relating to pregnancy. Moreover, women 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, but this will significantly increase the likelihood that mental illness recurs. In these situations, the pregnant person faces an increased risk of mental illness both during and after pregnancy because it is more difficult to return to equilibrium after relapse than it is to maintain a stable condition. My understanding is that these women would not qualify for abortion services under the Act's exception for certain medical conditions.

[87] *Id.*

86. The Act also contains another new wrinkle on this exception that was not included in S.B. 1. If a patient does qualify for a medical exception, I still must "make reasonable medical efforts under the circumstances to preserve the life of the pregnant woman's unborn child, 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."[88] However, all abortions at PPSAT's South Carolina facilities are provided in the first trimester, prior to fetal viability (i.e., when there is a reasonable chance of survival). Yet, the Act seems to dictate the method of abortion used or the manner in which it is performed in ways that I do not understand but about which the physician could later be second-guessed.

87. As physicians, we work with patients to identify a medical plan that best addresses the patients' goals and risk tolerance, but we are not always able to predict when serious, potentially life-threatening complications will occur. When they do, we put the patients' health and safety at the center of our care. By excluding all conditions but the most serious and severe physical ones from abortion eligibility and trying to dictate how we practice medicine, the Act would prevent physicians from providing treatment that is in our patients' health and safety interest and force us to go against our oath to first do no harm.

88. The Act will also add to the pain of patients and their families who receive fetal diagnoses later in pregnancy, nearly all of which would likely not meet the Act's narrow exception. There is no prenatal testing for fetal anomalies available at six weeks LMP or earlier. Indeed, some anomalies cannot be identified until eighteen to twenty weeks LMP. Often, these pregnancies are wanted throughout the first trimester of pregnancy and into the second. Patients facing devastating

[88] *Id.*

fetal diagnoses, and their physicians, will be forced to prove that the fetus "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."[89]

89. Even those patients able to qualify for one of the Act's narrow exceptions to the six week ban would be harmed. Instead of being able to make their own personal decision whether to have an abortion, based on their own needs, values, and goals, these patients will find that decision closely scrutinized.

* * *

90. For all of these reasons, I believe that the Act will deprive PPSAT's patients of access to critical health care and will threaten their health, safety, and lives.

91. This Court's intervention to bar enforcement of the Act and prevent these grave harms is urgently needed: PPSAT already has abortions scheduled for 77 patients for the remainder of this week. Most of these patients' pregnancies are likely to be at or beyond six weeks LMP, such that these patients will be prohibited from obtaining abortions if S.B. 474 remains in effect. And for some patients, leaving S.B. 474 in place for even a matter of days would effectively preclude them from obtaining an abortion in South Carolina. Many of these patients will be just days away from reaching the second trimester of pregnancy, at which point—consistent with PPSAT's abortion clinic license—we could not provide abortion services to them in South Carolina, nor could Greenville Women's Clinic. It is unlikely that any of these patients meet one of the Act's limited exceptions.

92. Even if S.B. 474 is later enjoined, these patients would need to leave the state to obtain an abortion, assuming they could do so. Leaving the Act in place, even for a matter of days,

[89] *Id.* (amending S.C. Code Ann. § 44-41-610).

would also impose additional and substantial logistical, emotional, and financial burdens on patients. As discussed above, many of our patients must make advance preparations to have abortions, including by finding childcare, asking for time off work and missing out on earnings for that time, and potentially traveling long distances to reach our health centers. It is critically important that PPSAT be able to assure patients relying on their upcoming appointments that abortion services in South Carolina will remain available as planned.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: May 24, 2023

Katherine Farris, M.D.

NOTARY PUBLIC

State of NC

County of Catawba

The foregoing instrument was acknowledged before me this May/24/2023 (date) by Dr. Katherine Farris.

VALERIE NOLF
NOTARY PUBLIC
CATAWBA COUNTY, NC

Valerie Nolf

Commission Exp: 10/28/2027

Exhibit A

Katherine A. Farris, M.D.

3000 Maplewood Avenue
Winston-Salem, NC 27603

phone: 336-768-2980
katherine.farris@ppsat.org

Employment

Planned Parenthood South Atlantic Winston-Salem/Raleigh, NC

Chief Medical Officer: April 2020 – present

Duties of Affiliate Medical Director with increased focus on strategic planning, oversight of new service lines including Primary Care, and increased advocacy work in support of PPSAT mission.

Affiliate Medical Director: December 2014 – April 2020

Clinical, policy, and administrative oversight for 14 health centers located throughout NC, SC, VA, and WV.

Laboratory Director: December 2014 – present

Oversight of non-waived laboratories WS, NC; AVL, NC; WILM, NC; CLT, NC; waived laboratory VIE, WV

Infection Control Professional: 2014-present

Serves as consultant and expert on any infection prevention concerns as per medical training.

Interim Abortion Facility Administrator: December 2019 – March 2020

Acting Vice President of Patient Services: March – June 2016; May – August 2017

Interim Affiliate Medical Director: July 2013 – December 2014

Reproductive Health Care: September 2009-present

Provision of comprehensive family planning services to women of all ages as well as STI counseling, testing and treatment to men and women.

PPFA Succession Planning Task Force, Member: April 2017 – March 2021

Task force was charged with addressing some of the systemic challenges of abortion provider training and recruitment at Planned Parenthood affiliates.

Medical Directors Council (MeDC), Mentor: 2015 – present

Serve as mentor to new Medical Directors/Chief Medical Officers at other PPFA Affiliates.

BetterHealth IT Board of Directors,

Member: September 2020 – present

Chair, Compliance Committee: January 2023 – present

Board member for the organization responsible for providing revenue cycle services and supporting and rolling out Epic electronic medical records system across PPFA affiliates.

(Prior to merger and name change January 2015, organization was named Planned Parenthood Health Systems, Inc.)

Heywood Medical Group/Henry Heywood Hospital Westminster/Gardner, MA

Family Practice/Obstetrics: August 2003 – May 2007

Meetinghouse Family Practice; 16 Wyman Rd.; Westminster, MA 01473

Provision of full-spectrum family medicine including comprehensive family planning and reproductive health care.

Planned Parenthood League of Massachusetts Boston/Worcester, MA

Reproductive Health Care: August 2003 – May 2007

Provision of comprehensive family planning services to women of all ages.

Education

Valley Medical Center Family Practice Residency Renton, WA

Chief Resident: 2002-2003

Residency: 2001-2003

Internship: 2000-2001

Northwestern University Medical School Chicago, IL

Degree: MD, 1995-2000

Northwestern University College of Arts and Sciences Evanston, IL

Degree: BA, 1991-1995
Major: Molecular and Cellular Biology Minor: Religion Studies

Certifications/Special Training

Physician for Reproductive Health, Leadership Training Academy Fellow 2018-2019
Basic Life Support/AED, Provider: renewed 10/2021
Title X Family Planning Program Training, Provider: 2015
CLIA Laboratory Director Training, Training for non-waived laboratory director: 2013
Single-rod Hormonal Implant Insertion Training, Provider: 2011, Certificate #30001820273

Professional Organizations / Positions

American Academy of Family Physicians (AAFP): 1995-present
North Carolina Academy of Family Physicians: 2007-present
National Abortion Federation (NAF): 2003-2005, 2018-present
Physicians for Reproductive Health: 2018-present
American College of Obstetricians and Gynecologists: 2020-present
Massachusetts Academy of Family Physicians: 2003-2007
Washington Academy of Family Physicians (WAFP): 2000-2003
American Medical Women's Association (AMWA): 1995-2000
Northwestern University Chapter President: 1997-1998
Vice-President: 1996-1997

Licenses

NC Physician License, active: 143375-2009
WV Physician License, active: 26126
VA Physician License, active: 0101265486
SC Physician License, active: MMD.84073 MD
American Board of Family Physicians, Board Diplomate

Honors/Awards

Sylvia Clark Award for Creativity in Clinical Services – Recipient 2023
Honors a clinical services provider team from a Planned Parenthood affiliate who, through their creativity in clinical services, have demonstrated special commitment and ingenuity in applying the PPFA mission to ensure access to reproductive and sexual health care for all.

Press Ganey Patient Experience Top Performing Provider 2020
Ranked in the top 10% of providers across the country for providing the highest level of patient experience.

2002 Roy Virak Memorial Family Practice Resident Scholarship Recipient
Awarded by the Washington Academy of Family Practice on the basis of academic achievement, excellence in patient care, and strong service to the community.

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 physicians and staff, *et al.*, *Plaintiffs*, v. SOUTH CAROLINA, *et al*., *Defendants*.	C/A No.: 2023-CP-[XX]-_____ **DECLARATION OF TERRY L. BUFFKIN, M.D., IN SUPPORT OF PLAINTIFFS' EMERGENCY MOTION FOR A TEMPORARY RESTRAINING ORDER**

I, Terry L. Buffkin, M.D., declare and state as follows:

1. I am a board-certified obstetrician/gynecologist ("OB/GYN") licensed to practice medicine in the State of South Carolina. I received my M.D. from Medical University of South Carolina in Charleston, South Carolina, in 1974. I completed an OB/GYN residency at Greenville Hospital System (currently known as Prisma Health) in South Carolina, which included training in the performance of abortions. Over the course of my medical career, I have regularly provided first-trimester abortions.

2. I am the co-owner of Greenville Women's Clinic ("the Clinic"), a healthcare facility in Greenville, South Carolina. I have been providing abortion services at Greenville Women's Clinic since 1976 along with Dr. Thomas W. Campbell, the other co-owner of the Clinic.

3. The Clinic has provided reproductive health care including pregnancy testing, birth control, testing and treatment for sexually transmitted diseases, general gynecological care, and abortions to patients since 1976.

4. I submit this declaration in support of Plaintiffs' Emergency Motion for a Temporary Restraining Order barring enforcement of South Carolina Senate Bill 474 ("S.B. 474"

or "the Act"). I understand that the Act bans abortions in the state, with extremely limited exceptions, as early as the detection of what the Act calls a "fetal heartbeat." In order to effectuate this ban, the Act requires providers to, among other things, determine, by ultrasound, whether the fetus or embryo has a "detectable heartbeat."

5. The Act places me in an impossible position: risk criminal, civil, and professional penalties for providing abortion care once cardiac activity is detected, which I cannot do, or withhold the abortion care my patients seek and need.

Background

6. Dr. Campbell and I are the only two physicians who work at the Clinic. We both provide pregnancy testing, birth control, testing and treatment for sexually transmitted diseases, general gynecological care, and abortion services.

7. The Clinic is licensed to provide first-trimester abortion care in South Carolina. Absent the Act, abortion care has historically been available at the Clinic from approximately 5 weeks LMP through 14 weeks, 0 days LMP.[1] I have generally provided medication abortion up through 10 weeks LMP and abortion by procedure up to 14 weeks, 0 days LMP.

8. The Clinic is open six days per week. Abortion care is typically provided in the mornings and early afternoons, and there is usually only one physician available at the clinic to see patients each week. We have provided abortions to thousands of patients over the years. For instance, the Clinic provided approximately 2,000 abortions in 2020 and approximately 2,500 abortions in 2021.

[1] "LMP" refers to "last menstrual period." Pregnancy is commonly measured by the number of days or weeks that have passed since the first day of a woman's last menstrual period. LMP may also be understood as roughly two weeks prior to fertilization.

9. The Clinic has had to double its staff to meet the influx of patients seeking abortion care in the wake of the U.S. Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*. We provided approximately 3,700 abortions in 2022, despite being unable to provide abortion care after approximately 6 weeks LMP between June 27, 2022 and August 17, 2022—the period when a nearly identical ban on abortion after approximately 6 weeks LMP was in effect before its enforcement was blocked by the South Carolina Supreme Court. So far, in 2023, the Clinic has provided approximately 2,700 abortions. Of these, a large majority of abortions were provided to patients who were beyond 6 weeks, 0 days LMP.

10. Because of the Act, we are forced to turn away most patients in need of abortions. But for the Act, the Clinic would provide abortions past detectable cardiac activity.

11. Very few, if any, of our abortion patients with detectable cardiac activity will fall within the Act's extremely narrow exceptions. As a result, the vast majority of our patients will be unable to obtain an abortion in South Carolina. Some may be able to scrape together the necessary resources to travel out of state, while many others will have no choice but to carry their pregnancies to term against their wills.

The Existing Landscape in South Carolina

12. Prior to passage of the Act, our patients already faced extreme obstacles to accessing abortion. South Carolina has imposed numerous laws that delay or impede patients from accessing abortion care. For example, South Carolina has a mandatory, twenty-four-hour waiting period before a patient can receive abortion care.

13. Outpatient abortion facilities are subject to onerous regulations and licensing requirements that do not apply to other healthcare providers.

14. And although South Carolina specifically encourages the use of telemedicine for many other types of medical care, and telemedicine is used in other states to provide medication abortions, telemedicine cannot lawfully be used in South Carolina to provide abortion care.

15. The Clinic is one of just three licensed first-trimester abortion clinics in the entire state. Our patients already face multiple challenges arranging appointments around work, school, and childcare, and obtaining transportation to the clinic. With very narrow exceptions, South Carolina bars coverage of abortion in its Medicaid program, and it even prohibits coverage of abortion in private insurance plans offered on the state's Affordable Care Act exchange. While we offer discounts to many patients, patients must pay out of pocket or seek private financial assistance for the remainder.

S.B. 474's Impact on the Clinic, Its Practices, and Patients

16. I understand that the Act bans the provision of abortion care in South Carolina upon detection of any embryonic or fetal cardiac activity, which in my experience occurs very early in pregnancy, potentially as early as 6 weeks LMP, and many months before a fetus could be viable.

17. The Act contains only narrow exceptions that will not apply to the vast majority of patients who seek abortion care after detection of a "fetal heartbeat." The Act contains an exception to prevent "the death of the pregnant woman" and to prevent "the serious risk of a substantial and irreversible impairment of a major bodily function" of the pregnant woman. S.B. 474 § 2 (amending S.C. Code Ann. § 44-41-640(A)).

18. The Act prevents physicians from acting in patients' best interests even when they are ill and facing serious health risks—unless and until the point at which the patient's life is threatened or they are faced with "substantial and irreversible impairment of a major bodily function." *Id.* In addition, the Act's narrow medical exception deliberately excludes

"psychological or emotional conditions," cruelly depriving patients at risk of self-harm from accessing abortion care. *Id.*

19. I also understand that the Act would permit abortions in the case of a "fatal fetal anomaly," which it defines to mean "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), 44-41-660).

20. I understand that if a patient's pregnancy was the result of rape or incest, the physician may perform an abortion only where the pregnancy is "not more than twelve weeks" and only if they report the allegation (including the patient's name and contact information) to the sheriff in the county where the rape or incest occurred within 24 hours, notify the patient before performing the abortion that the allegation will be reported to the sheriff, and declare in writing that the abortion was performed pursuant to this exception and that these criteria have been satisfied. *Id*. (amending S.C. Code Ann. § 44-41-650). This requirement is particularly disturbing, as patients who are victims of rape and incest present extremely sensitive situations, and the Act's reporting requirement applies regardless of the patient's age and even over the patient's objection. Over the years, I have treated patients who have experienced sexual violence, and, in my experience, most of these patients do not want to file a report with law enforcement, for safety or other reasons. A physician's approach to care for these patients should be guided by patients' best interests within the bounds of existing reporting laws.

21. I understand that the Act also requires a physician or other health professional to inform the patient of her right to view the live ultrasound images and to "hear" the "fetal heartbeat" if present and "have them explained to her." If the patient declines, she must complete a form

acknowledging that she declined to do so and that her decision was not based on any "undue influence" from another person. *Id.* § 10 (amending S.C. Code Ann. § 44-41-330(A)(1)(b)–(d)).

22. I understand that violations of the Act are subject to felony liability, as well as civil and professional penalties. *Id.* § 2 (amending S.C. Code Ann. §§ 44-41-630 through 44-41-660, 44-41-680 through 44-41-690); S.C. Code Ann. § 44-41-80. Given the serious nature of the penalties imposed, neither Dr. Campbell nor I would provide abortion care in violation of the Act.

23. The vast majority (over approximately three-quarters) of the Clinic's patients seek abortion care after 6 weeks, 0 days LMP. If the ban remains in effect, most patients seeking abortions at the Clinic will not be able to obtain abortion care and will be forced to either carry their pregnancy to term and give birth against their will or go out of the state to obtain an abortion. In addition, I fear that some patients may resort to unsafe means to terminate their pregnancies.

24. Many women, including many of my patients, have no reason to suspect they may be pregnant as early as 6 weeks LMP. For a woman with an average menstrual cycle of a period every 28 days, 6 weeks LMP is just two weeks past a missed period.

25. Many women also do not have any of the physical indicators of pregnancy, including a missed period, during early pregnancy. Many women do not menstruate at regular intervals and/or sometimes go beyond 6 weeks without experiencing a menstrual period, and therefore may not realize they are pregnant when they miss a period for that reason. In addition, many women experience bleeding in early pregnancy, called implantation bleeding, that is easily and frequently mistaken for a period.

26. Further, women who have certain medical conditions, who are breastfeeding, or who are using hormonal contraceptives may not notice a missed menstrual period at 6 weeks LMP. Breastfeeding may suppress menstruation for weeks or months, and even when a woman's period

returns, it may continue to be irregular. It is not uncommon for women who are breastfeeding to have no period for weeks or months, have irregular periods, skip periods, or have their period return and then go months before the next one. Women with certain medical conditions may have irregular periods or non-menstrual bleeding. Anxiety may cause irregular periods. And women using hormonal contraceptives can get pregnant but may not have regular periods or experience a period at all.

27. In addition, although some women experience nausea and vomiting during early pregnancy, many do not, or do not develop these symptoms until after 6 weeks LMP.

28. For all these reasons, many women may be at least 6 weeks pregnant but not realize they are pregnant.

29. When South Carolina's previous 6-week ban on abortion went into effect for nearly eight weeks in June through August of 2022, the Clinic had to turn away the majority of patients who came in seeking abortion care. In July 2022, when that ban was in effect, the Clinic was only able to provide abortion care to approximately one-third of the number of patients it served in May 2022 (immediately prior to the ban) and to approximately one-quarter of the number of patients it would go on to serve in August 2022 (the month after the ban was blocked).

30. Many patients who came to the Clinic for abortion care during that time were past the gestational limit of the 6-week ban. After having already taken time off from work or school, arranging for childcare, and finding transportation to the clinic, they would have to do it all again, but this time they would have to travel out of state to get care. This was devastating to my patients.

31. Because of the Act, we will have to turn away patients again. The Clinic already has 16 patients scheduled for procedural abortions through the end of this week and would likely have provided medication abortion to approximately 45-65 patients during that same period. Based

on my multiple decades of experience with the Clinic, most of these patients will be past 6 weeks LMP and therefore will not be able to obtain abortion care at the Clinic, or in the State at all, because of the Act.

32. Many patients will come in for abortion care this week, only to find out once they are already at the clinic that they can no longer access that care in South Carolina.

33. The closest abortion provider outside South Carolina to the Clinic is about 65 miles away in Asheville, North Carolina.[2] For those patients who are able to travel out of state, they will need to pay for the additional costs of travel and will likely face delays in accessing care we could have otherwise provided.

34. Many of our patients will not be able to travel out of state. A significant percentage of the Clinic's patients are enrolled in Medicaid. Patients who cannot travel will be forced to continue their pregnancies or may attempt to self-manage their abortions.

35. In my experience, women decide to have abortions for a variety of reasons, including to protect or preserve their physical or mental health; to provide care to existing children—many patients already have at least one child—and family members; to avoid forgoing educational or economic opportunities due to unplanned childbirth; and to avoid raising children with absent, unwilling, or abusive partners, just to name a few. Access to safe and legal abortion benefits the health and wellbeing of my patients and their families. 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

[2] I understand that North Carolina has passed a ban on abortions after 12 weeks LMP that will go into effect on July 1, 2023.

pregnancy rather than continue to carry a non-viable pregnancy and expose themselves to the physical and psychological changes associated with pregnancy.

36. Women who are pregnant should have the ability to make their own decisions about their pregnancies, taking into account their unique values, goals, and circumstances. The Act takes that decision out of the hands of the woman and gives it to the State instead.

37. The narrow exceptions would still not allow for abortions in the vast majority of circumstances, and the patients who require abortions to avert the risk of death or to prevent substantial impairment of a major bodily function would likely need to receive care in a hospital on an emergency basis. If the Act goes into effect, it would force the Clinic to end the vast majority of its abortion care. Neither I nor the other clinician at the Clinic can risk the potential criminal, civil, and professional liability that the Act imposes.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: May 23, 2023

Terry L. Buffkin, M.D.

NOTARY PUBLIC

State of SC

County of Greenville

The foregoing instrument was acknowledged before me this 5/23/2023 (date)

by Dr. Terry L. Buffkin.

(notary signature)

(notary name)

My Commission Expires
January 21, 2025

(Seal)