No. 2023-000856

The Supreme Court of the State of South Carolina

PLANNED PARENTHOOD SOUTH ATLANTIC, ET AL.,
RESPONDENTS,

v.

STATE OF SOUTH CAROLINA, ET AL.,
APPELLANTS.

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

BRIEF OF SOUTH CAROLINA ASSOCIATION OF PREGNANCY CARE CENTERS AND DAYBREAK LIFECARE CENTER AS *AMICI CURIAE* IN SUPPORT OF APPELLANTS

CHRISTOPHER E. MILLS
(S.C. Bar No. 101050)
Spero Law LLC
557 East Bay Street #22251
Charleston, SC 29413
(843) 606-0640
cmills@spero.law

Counsel for Amici Curiae

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES

OTHER AUTHORITIES

RULES

CONSTITUTIONAL PROVISIONS

INTRODUCTION

The Respondents' action fails almost in its entirety for a simple reason: they lack standing. Most of the Respondent Abortion Centers' claims do not allege that their own constitutional rights have been violated. After all, abortionists do not have a constitutional right to abort unborn children. Their claims, then, are derivative claims purportedly asserted on behalf of hypothetical third parties not before the Court. But it is bedrock standing law that "one may not assert the violation of another's constitutional rights." *Rosenthal v. Unarco Indus., Inc.*, 278 S.C. 420, 425, 297 S.E.2d 638, 642 (1982). This Court has squarely held that "one cannot obtain a decision as to the invalidity of an act on the ground that it impairs" "the privacy rights of . . . pregnant women" who are not plaintiffs. *State v. McKnight*, 352 S.C. 635, 651, 576 S.E.2d 168, 176 (2003). That holding precludes Respondents' derivative claims.

This prohibition on third-party standing is especially strong when a conflict of interest exists between the plaintiff and the party it purports to represent. Here, the Abortion Centers' action would deprive the women whose rights they purport to assert of relevant information, choices, and the ability to vindicate rights in court *against the Centers themselves*. By seeking to invalidate the Act—which provides injured women with a cause of action against the Abortion Centers—the Centers are directly attacking the rights of women. To confer third-party standing—or any

other type of standing—on a plaintiff seeking to take away rights from the first party would be absurd.

Beyond this intractable conflict of interest, any assertion of third-party standing would also fail because the Respondents make no attempt to allege (much less prove) any requirements for a plaintiff to receive the extraordinary right to bring claims on behalf of a third party. Of course, this Court has never adopted federal law's narrow permission for third-party standing claims, and it should not do so now. But even assuming that limited doctrine applies, the third-party plaintiff must allege and prove several elements—and the Respondents do not. They allege no close relationship with the women they might sell their services to, much less a hindrance preventing these women from speaking for themselves. And any suggestion of a unity of interests would be fatally undercut by the fact that the Abortion Centers seek relief that will harm women they purport to stand in for. Any of these three deficiencies would be enough to hold that the Abortion Centers lack third-party standing. That the Respondents' derivative claims suffer from all three deficiencies makes the case easy.

As Justice Few has noted, "[p]olitical questions surrounding abortion have produced as much impassioned disagreement as any issue of our time." *Planned Parenthood S. Atl. v. State*, 438 S.C. 188, 289, 882 S.E.2d 770, 825 (2023) (opinion concurring in the judgment). Especially when those passions reach the judici-

ary, this "Court must act on the basis of law." *Id.*, 438 S.C. at 290, 882 S.E.2d at 825. Under "well-established principles of law," *id.*, the Respondents lack standing to assert most of their claims, and those claims must be dismissed. Those claims must await a proper plaintiff, with proper incentives, in a proper case. Abandoning core jurisdictional principles because of perceived public pressure to resolve this contentious issue would abrogate the promise that ours is "a government of laws, not of men." *State v. Moorer*, 152 S.C. 455, 530–31, 150 S.E. 269, 295 (1929). "In light of th[e] overriding and time-honored concern about keeping the Judiciary's power within its proper constitutional sphere," this Court should "put aside the natural urge to proceed directly to the merits of an important dispute and to 'settle' it for the sake of convenience and efficiency." *Hollingsworth v. Perry*, 570 U.S. 693, 704–05 (2013) (cleaned up). "In an era of frequent litigation, class actions, sweeping injunctions with prospective effect, and continuing jurisdiction to enforce judicial remedies, courts must be more careful to insist on the formal rules of standing, not less so." *Bodman v. State*, 403 S.C. 60, 68, 742 S.E.2d 363, 367 (2013) (cleaned up). The separation of powers is worth more than a passing dispute. The Respondents lack standing.

INTEREST OF *AMICI*

South Carolina Association of Pregnancy Care Centers is a unified association of pregnancy care centers focused on saving lives through clinical services and

saving souls through the Gospel of Jesus Christ. The Centers within the association provide compassionate care for women facing unplanned pregnancies, including a variety of free and confidential services.

Daybreak LifeCare Center is a nonprofit organization in Columbia that seeks to show the love of Christ to the surrounding community and offer a helping hand to women facing unplanned pregnancies and those in need of sexual health services. The Center provides free and confidential services to women seeking to empower them to make informed health choices regarding pregnancy.

STATEMENT OF ISSUES

Whether the Respondents lack standing to assert derivative claims.

STATEMENT OF THE CASE

Amici adopt the Appellants' statement of the case.

LEGAL STANDARD

"In our constitutional system of government with its separation of powers, courts exercise the limited constitutional function of the 'judicial power.'" *Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n*, 407 S.C. 67, 81, 753 S.E.2d 846, 853 (2014) (quoting S.C. Const. art. V, § 1). "Accordingly, courts are limited to resolving cases and the powers inherent in that function." *Id.* "Courts are not bodies for the resolution of public policy and generalized grievances." *Id.*

One of the "fundamental prerequisite[s] to instituting an action" is standing. *Youngblood v. S.C. Dep't of Soc. Servs.*, 402 S.C. 311, 317, 741 S.E.2d 515, 518

(2013). Standing "may exist by statute, through the principles of constitutional standing, or through the public importance exception." *Id.* The Respondents do not suggest that they have statutory standing, as they do not point to any statute that "confers a right to sue" on them. *Id.* "When no statute confers standing, the elements of constitutional standing must be met." *Id.*

"[T]he 'irreducible constitutional minimum of standing'" requires an injury-in-fact, causation, and redressability. *Sea Pines Ass'n for Prot. of Wildlife, Inc. v. S.C. Dep't of Nat. Res.*, 345 S.C. 594, 601, 550 S.E.2d 287, 291 (2001) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). "The party seeking to establish standing carries the burden of demonstrating each of the three elements." *Id.* An injury-in-fact requires "an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not 'conjectural' or 'hypothetical.'" *Id.* (quoting *Lujan*, 504 U.S. at 560).

"In order for an injury to be particularized, it must affect the plaintiff in a personal and individual way." *Carnival*, 407 S.C. at 75, 753 S.E.2d at 850; *see Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016) (same). To put a finer point on it, particularity requires that the plaintiff allege a violation of "*his* [legal] rights, not just the [legal] rights of other people." *Id.* at 333–34; *Carnival*, 407 S.C. at 76, 753 S.E.2d at 851 (plaintiffs must "allege a particularized injury . . . to themselves"). And "standing is not dispensed in gross": "a plaintiff must demonstrate standing

for each claim he seeks to press and for each form of relief that is sought." *Town of Chester, N.Y. v. Laroe Ests., Inc.*, 581 U.S. 433, 439 (2017) (cleaned up).

Under these principles, "[i]t is settled that one may not assert" a claim alleging "the violation of another's constitutional rights." *Rosenthal*, 278 S.C. at 425, 297 S.E.2d at 642. Many times this Court has said that when a party "does not base his argument on a violation of his own constitutional rights, but on a violation of another's rights," "such a vicarious assertion of constitutional rights is wholly without merit." *State v. McDonald*, 267 S.C. 588, 589, 230 S.E.2d 617, 617 (1976); *see In re Amir X.S.*, 371 S.C. 380, 384 n.2, 639 S.E.2d 144, 146 n.2 (2006) ("[O]ne to whom application of a statute is constitutional may not attack the statute on grounds that it might be unconstitutional when applied to other people."); *Curtis v. State*, 345 S.C. 557, 576, 549 S.E.2d 591, 600–01 (2001) (holding that a seller of medical products "does not have standing to assert" that a law "unconstitutionally invades the privacy rights of" customers); *Stone v. Salley*, 244 S.C. 531, 537, 137 S.E.2d 788, 790 (1964) (holding that a plaintiff "cannot obtain a decision as to the invalidity of [an] Act on the ground that it impairs the rights of others"), *overruled on other grounds by R.L. Jordan Co. v. Boardman Petroleum, Inc.*, 338 S.C. 475, 478, 527 S.E.2d 763, 765 (2000); *Tripp v. Tripp*, 240 S.C. 334, 342, 126 S.E.2d 9, 13 (1962) ("[I]f by the alleged unconstitutional aspect of the statute the rights of

others may be impaired, that is a matter with which appellant is not properly concerned, for he is the champion of his own rights only, not theirs.").

This Court has specifically applied this bar on third-party standing to right to privacy claims asserted on behalf of pregnant women, explaining that even if a plaintiff "raises a number of legitimate concerns," as long as the plaintiff "is in reality attempting to assert the privacy rights of other pregnant women," the plaintiff "does not have standing." *McKnight*, 352 S.C. at 651, 576 S.E.2d at 176. "[O]ne cannot obtain a decision as to the invalidity of an act on the ground that it impairs the rights of others." *Id.* The Court has applied the same rule to privacy assertions made by medical sellers on behalf of their customers. *Curtis*, 345 S.C. at 576, 549 S.E.2d at 601.

The U.S. Supreme Court has held as a matter of federal law that in "limited" circumstances "where it is *necessary* to grant a third party standing," a litigant may be able to "assert the rights of another." *Kowalski v. Tesmer*, 543 U.S. 125, 129–30 (2004) (emphasis added). For instance, in certain contexts, a parent can assert a child's rights—though not always, even in that intimate relationship where the parent is often *required* to act on the child's behalf. *Compare Prince v. Massachusetts*, 321 U.S. 158 (1944), *with Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 15 (2004) (no standing where "the interests of this parent and this child are not

parallel and, indeed, are potentially in conflict"), *abrogated on other grounds by Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118 (2014).

This Court has not adopted federal law's third-party standing doctrine. *See, e.g.*, *Prot. & Advoc. for People with Disabilities, Inc. v. S.C. Dep't of Disabilities & Special Needs*, 415 S.C. 526, 532, 783 S.E.2d 835, 838 (Ct. App. 2016) (holding that even guardians of disabled individuals lacked third-party standing). But even under federal law, beyond the usual standing "minimum[s]," "a party seeking third-party standing [must] make two additional showings": (1) that it "has a 'close' relationship with the person who possesses the right," and (2) that "there is a 'hindrance' to the possessor's ability to protect h[er] own interests." *Kowalski*, 543 U.S. at 129–30 (quoting *Powers v. Ohio*, 499 U.S. 400, 411 (1991)). And if the plaintiff's and the first party's interests "are potentially in conflict," there is no third-party standing. *Elk Grove*, 542 U.S. at 15. A "fail[ure] to allege" and provide "evidence" of even one of these factors dooms any third-party standing effort. *Freilich v. Upper Chesapeake Health, Inc.*, 313 F.3d 205, 214–15 (4th Cir. 2002) (holding that a doctor who failed to "allege a hindrance to her patients' ability to protect their own interests" "lacks standing"). These stringent requirements reflect a "healthy concern that if the claim is brought by someone other than one at whom the constitutional protection is aimed," then courts "might be 'called upon to decide abstract questions of wide public significance even though other gov-

ernmental institutions may be more competent to address the questions and even though judicial intervention may be unnecessary to protect individual rights.'" *Kowalski*, 543 U.S. at 129 (cleaned up). Like all standing questions, these requirements are assessed "for each claim [the plaintiff] seeks to press and for each form of relief that is sought." *Town of Chester*, 581 U.S. at 439.

A "lack of standing" removes "the court's subject matter jurisdiction." *S.C. Pub. Int. Found. v. Wilson*, 437 S.C. 334, 340, 878 S.E.2d 891, 894 (2022). "The lack of subject matter jurisdiction can be raised at any time, can be raised for the first time on appeal, and can be raised *sua sponte* by the court." *McCain v. Brightharp*, 399 S.C. 240, 247, 730 S.E.2d 916, 919 (Ct. App. 2012) (quoting *Town of Hilton Head Island v. Godwin*, 370 S.C. 221, 223, 634 S.E.2d 59, 60–61 (Ct. App. 2006)). "Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court *shall* dismiss the action." Rule 12(h)(3), SCRCP (emphasis added).

ARGUMENT

The Abortion Centers lack standing to assert most of their conflicted, derivative claims—including all claims involved in this Court's prior decision—because those claims are based entirely on alleged rights of their "patients." *See* Compl. ¶¶ 109, 126, 128, 139, 153, 156, 157, 174, 177, 186, 191, 194, 213. Respondents do not claim (and do not have) any constitutional right to abort unborn children.

See Greenville Women's Clinic v. Bryant, 222 F.3d 157, 173 (4th Cir. 2000) ("No authority exists to support a conclusion that abortion clinics or abortion providers have a fundamental liberty interest in performing abortions free from governmental regulation."). No women seeking a personal right to an abortion are plaintiffs. And this Court has never recognized third-party standing, instead holding that third-party plaintiffs "do[] not have standing" "to assert the privacy rights of . . . pregnant women." *McKnight*, 352 S.C. at 651, 576 S.E.2d at 176. This Court need not proceed any further: the Respondents lack standing to assert their derivative claims.

Even assuming that federal law's narrow third-party standing doctrine were to be imported into South Carolina law, the Abortion Centers have not attempted to carry their burden of showing third-party standing. They have alleged no close relationship with women they might sell their services to, much less a hindrance to such women asserting their own rights. They "seek only to assert the constitutional rights of an undefined, unnamed, indeed unknown, group of women who they hope will be their patients in the future." *June Medical Servs. LLC v. Russo*, 140 S. Ct. 2103, 2173–74 (2020) (Gorsuch, J., dissenting). And any suggestion of a unity of interests would be fatally undercut by the fact that the Abortion Centers seek relief that will harm women they purport to stand in for, depriving mothers of vital information and the ability to vindicate statutory rights *against them*. Courts roundly

reject standing in such conflict-laden circumstances—including other state decisions involving similar challenges post-*Dobbs*.

Nor do abortionists have automatic third-party standing to challenge any regulation pertaining to their businesses. The Abortion Centers do not have a unique exemption from standing rules that require plaintiffs to allege a violation of their own rights. And because a proper plaintiff can bring the relevant claims, the Respondents do not qualify for the narrow "public importance" exception to standing. The Respondents lack standing.

I. This Court does not sanction third-party standing.

As shown, this Court has often and repeatedly denied third-party standing. *Supra* pp. 6–7 (collecting cases). And it does not appear to have imported federal law's narrow third-party standing doctrine. It should not do so now. The federal courts did not sanction third-party standing until the twentieth century, traditionally "adher[ing] to the rule that '[a] court will not listen to an objection made to the constitutionality of an act by a party whose rights it does not affect and who has therefore no interest in defeating it.'" *Kowalski*, 543 U.S. at 135 (Thomas, J., concurring) (quoting *Clark v. Kansas City*, 176 U.S. 114, 118 (1900)). This adherence is required by the limited nature of the judicial power—"to resolv[e] cases." *Carnival*, 407 S.C. at 81, 753 S.E.2d at 853. "When a private plaintiff seeks to vindicate someone else's legal injury, he has no private right of his own genuinely at

stake in the litigation." *June Medical*, 140 S. Ct. at 2146 (Thomas, J., dissenting); *see id.* at 2145–26; *supra* pp. 5–7 (collecting cases from this Court stating the same). Nor does such a third-party plaintiff have the necessary particularized injury from the alleged violation. *See Carnival*, 407 S.C. at 75, 753 S.E.2d at 850 ("In order for an injury to be particularized, it must affect the plaintiff in a personal and individual way.").

This Court should adhere to its prohibition on third-party standing, a prohibition that follows from the nature of the judicial power. As shown next, however, the Court need not decide whether third-party standing can ever be permissible under state law because the Abortion Centers fail to prove their entitlement to such standing even under federal law's third-party standing rules.

II. The Abortion Centers do not demonstrate or even allege the factual predicates for third-party standing.

Under federal law, a third-party plaintiff must show a close relationship with the first party, a hindrance to that party's ability to protect its interests, and a unity of interests. *Kowalski*, 543 U.S. at 130. Here, the Abortion Centers do not allege relevant facts, much less prove them, even though it is their burden to do both. *See Town of Arcadia Lakes v. S.C. Dep't of Health & Env't Control*, 404 S.C. 515, 529, 745 S.E.2d 385, 392 (Ct. App. 2013) ("[E]ach element must be supported in the same way as any other matter on which the plaintiff bears the burden of proof,

i.e., with the manner and degree of evidence required at the successive stage of the litigation." (quoting *Lujan*, 504 U.S. at 561)).

Other decisions—including state appellate courts considering similar claims after *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022)—have rejected standing in cases like this. That conclusion is made obvious by the inherent conflicts of interest posed by the Respondents' suit, which seeks to deprive the women they purport to represent of legal rights against abortionists.

A. The Abortion Centers have no close relationship with women.

First, the Abortion Centers did not plead facts or offer any evidence showing any degree of closeness between them and women who might use their services. The abortionists are obviously "involved" in the abortion procedure, *Singleton v. Wulff*, 428 U.S. 106, 117 (1976) (plurality opinion), but they have not pleaded or shown any evidence of a close relationship, much less one that is free from obvious conflicts. If anything, their allegations and declarations undermine any suggestion of such a relationship. They say that women who use their services "obtain an abortion as soon as they are able," Farris Decl. ¶ 32, ruling out any suggestion of long-term treatment or counseling relationships. They highlight their desire to provide abortion pills without even seeing the mother in person. Compl. ¶ 85. They emphasize that one center, if not for the Act, would have provided sixteen "procedural abortions" and forty-five to sixty-five "medication abortion[s]" in only the

last few days of one week. Buffkin Decl. ¶ 31; *see also* Farris Decl. ¶ 91 (77 patients). With such a volume, no meaningful interaction is possible. There is no close relationship. *See McCorvey v. Hill*, 385 F.3d 846, 851 (5th Cir. 2004) (Jones, J., concurring) ("[W]omen are often herded through their procedures with little or no medical or emotional counseling.").

Moreover, the available evidence confirms the absence of any close relationship. Planned Parenthood's lead abortionist—a Respondent here, Katherine Farris—is a part-time doctor who drives in from out-of-state to perform abortions.[1] Many abortionists are "hired by clinics on a fee-per-procedure basis to perform large volumes of brief procedures on sedated patients whom they never saw before and will never see again." Brief for the Respondent/Cross-Petitioner 47, *June Medical Servs. LLC v. Gee*, Nos. 18-1323, 18-1460, 2019 WL 7372920 (U.S. Dec. 26, 2019). That the Respondents "do not even know who those women are" is "enough to preclude third-party standing." *June Medical*, 140 S. Ct. at 2174 (Gorsuch, J., dissenting). Respondent Greenville Women's Clinic apparently charges for ultra-

[1] *See* Carey Dunne, *Tired of hiding: five doctors who provide abortions come out*, The Guardian (Aug. 6, 2019), https://www.theguardian.com/world/2019/aug/05/doctors-who-provide-abortions-us-choice (describing Farris as a "family physician in North Carolina" who does "part-time work as" an abortionist "at several Planned Parenthood clinics"); VICE News, *South Carolina Fetal Heartbeat Bill Basically Bans Abortions*, YouTube (Feb. 25, 2021), https://www.youtube.com/watch?v=bsguneKgc6s&ab_channel=VICENews ("Dr. Farris drove in from out of state to work in this clinic."); *see also* Farris Decl. ¶ 20; *id.* Ex. A.

sounds, perhaps explaining why Respondents vehemently object to having to offer the mother a choice to see an ultrasound of the child.[2] And the Clinic's surgical abortion release form is *prefilled* with the statement "Patient Confident with Decision," again suggesting that Respondents have no interest in giving mothers information that might lead them to make any other choice:

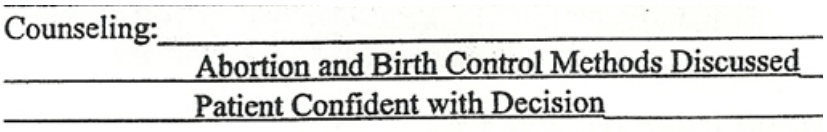
Counseling:
Abortion and Birth Control Methods Discussed
Patient Confident with Decision

Figure 1: Greenville Women's Clinic Prefilled Surgical Abortion Release Form[3]

In sum, the Abortion Centers' plainly transactional relationship with the women who come through their doors belies any notional "close relationship" they might belatedly assert. Their publicly available documents show an effort to automate their processes, *i.e.*, by *pre-filling* comment blocks with the words "Patient Confident with Decision." Their abortionists commute from out-of-state to perform drive-by abortions on sedated patients. The Abortion Centers have made every effort to *minimize* the care and counselling they provide before completing an abortion for a fee—hence their strenuous objections to providing ultrasounds to mothers. The Abortion Centers have no close relationship with the women they "serve";

[2] *Fees*, Greenville Women's Clinic, https://www.greenvillewomensclinic.com/fees (last visited June 8, 2023) (showing that Greenville Women's Clinic charges $160 for an ultrasound).

[3] *Surgical Abortion Release Form*, Greenville Women's Clinic, https://tinyurl.com/yrfu4rz5 (last visited June 8, 2023).

they could hardly be said to have a relationship *at all*. Respondents have failed to allege the requisite close relationship.[4]

B. No hindrance justifies the Abortion Centers' third-party participation.

Second, the Centers have not suggested any hindrance whatsoever to women asserting their own rights. As the Fourth Circuit has explained, a party's "fail[ure] to allege" and provide "evidence" of "sufficient obstacles to the patients bringing suit themselves" requires dismissal of a third-party claim—including in the doctor-patient context. *Freilich*, 313 F.3d at 215. Further, South Carolina women can challenge abortion regulations—as individual women have done in many other abortion cases across the country.[5] This history "disprove[s]" any hindrance as a

---

[4] Even if Respondents had alleged such a relationship, they would have the burden of *proving* that relationship at trial. "'At the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice' to withstand a motion to dismiss. Elements of standing, however, 'are not mere pleading requirements but rather an indispensable part of the plaintiff's case'; therefore, 'each element must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, *i.e.*, with the manner and degree of evidence required at the successive stage of the litigation.'" *Town of Arcadia Lakes*, 404 S.C. at 529, 745 S.E.2d at 392–93 (Ct. App. 2013) (quoting *Lujan*, 504 U.S. at 561). So to the extent that the Respondents can show some genuine dispute of fact about the closeness of their relationship with unidentified women, discovery is required.

[5] *See, e.g.*, *Zurawski v. Texas*, No. D-1-GN-23-000968 (353rd Tex. D. Ct., Travis Cnty., filed Mar. 6, 2023), 2023 WL 2403722; *Leavitt v. Jane L.*, 518 U.S. 137, 139 (1996) (per curiam); *Hodgson v. Minnesota*, 497 U.S. 417, 429 (1990); *H.L. v. Matheson*, 450 U.S. 398, 400 (1981); *Williams v. Zbaraz*, 448 U.S. 358, 361 (1980); *Harris v. McRae*, 448 U.S. 297, 303 (1980); *Poelker v. Doe*, 432 U.S. 519, 519 (1977) (per curiam); *Maher v. Roe*, 432 U.S. 464, 467 (1977).

matter of law. *Kowalski*, 543 U.S. at 132; *see also Hodak v. City of St. Peters*, 535 F.3d 899, 904–05 (8th Cir. 2008) (collecting cases). Women do not need abortionists to speak for them.

C. The Abortion Centers have intractable conflicts of interest with the women they purport to represent.

Third, the relationship between the Abortion Centers and the women they purport to speak for is not only attenuated, but also riven with conflicts. The Supreme Court has held that when a plaintiff's interests are even "potentially in conflict" with the first party's interests, third-party standing does not exist. *Elk Grove*, 542 U.S. at 15. Multiple *actual* conflicts exist here.

First and foremost, the Abortion Centers' suit involves a unique and inescapable conflict of interest because it seeks to deprive the women the Centers purport to represent of the right to sue *them* for at least $10,000. S.B. 474, § 2 (to be codified at S.C. Code Ann. § 44-41-680(B)). If a "potential" conflict eliminates third-party standing, this actual conflict must. Not only do the Abortion Centers seek to deny mothers the option to listen to the heartbeat *and* see the ultrasound *and* receive information, they seek to deny mothers the ability to vindicate statutory rights in court against the Abortion Centers. A starker conflict of interest can scarcely be imagined.

The Abortion Centers will be unable to cite any case analyzing this issue and holding that a third party has standing to attack legal rights of the first party against

the third party. Cases considering similar conflicts have roundly rejected third-party standing. *Stanley v. Darlington Cnty. Sch. Dist.*, 84 F.3d 707, 716 (4th Cir. 1996) (where the plaintiff "would have been required to promote the very claim it was resisting," "[s]uch a conflict is disqualifying"); *Pony v. County of Los Angeles*, 433 F.3d 1138, 1148 (9th Cir. 2006) (no standing to assert claims "directly adverse to [the first party's] interests"); *In re Majestic Star Casino*, 716 F.3d 736, 763 (3d Cir. 2013) (same); *Jonida Trucking, Inc. v. Hunt*, 124 F.3d 739, 742 (6th Cir. 1997) (similar); *Friedman v. Harold*, 638 F.2d 262, 266 & n.8 (1st Cir. 1981) (denying standing where "the third party's 'rights' are being used as a means of helping the litigant to the detriment of the person or persons whose rights are being asserted"); *Am. Libr. Ass'n v. Odom*, 818 F.2d 81, 87 (D.C. Cir. 1987) (similar); *cf. Cap. Cities Cable, Inc. v. Crisp*, 467 U.S. 691, 700 n.6 (1984) ("[R]espondent plainly lacks standing to raise a claim concerning his adversaries' constitutional rights in a case in which those adversaries have never advanced such a claim.").

Still other conflicts exist. Respondents' desire to operate their clinics largely free from government oversight poses at least a potential conflict with the paramount health and safety interests of women using their services. "[F]ew decisions in life are more private than the decision whether to terminate a pregnancy." *PPSA*, 438 S.C. at 210, 882 S.E.2d at 782 (plurality opinion). As this Court and the U.S. Supreme Court have recognized, women making these choices have an interest in

ensuring their own health and safety, and "the State's interest in protecting maternal health . . . is unquestionably part of its larger interest in promoting the health and welfare of its citizenry." *Id.*, 438 S.C. at 211, 882 S.E.2d at 782; *see Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292, 2309 (2016); *see also Manning v. Hunt*, 119 F.3d 254, 266 (4th Cir. 1997); *Bryant*, 222 F.3d at 173, 175. But Respondents' interest is to reduce compliance costs and oversight while providing as many abortions as possible.

Indeed, Respondents complain at length about their legal requirements to provide women adequate information to make informed choices, notwithstanding that the Fourth Circuit has squarely rejected the argument that this information is "unnecessary." Farris Decl. ¶ 46; Buffkin Decl. ¶ 21; Compl. ¶ 85; *see Bryant*, 222 F.3d at 175 (explaining that "these regulations impose a modest cost increase *for increased medical safety*" and assurance "of a dignified and safe procedure," which "serves the complex public interests on the subject" (emphasis added)). Respondents complain about the difficulties women have in paying their fees and that some "take longer to make a decision" and cannot always purchase their services immediately. Farris Decl. ¶¶ 53, 74; Buffkin Decl. ¶ 15; Compl. ¶ 87. They complain about an inability to recruit more "reproductive health care providers." Compl. ¶ 4. They complain about their lack of access to state Medicaid dollars. Compl. ¶ 74; Farris Decl. ¶ 43. And they complain that the State gives women in-

formation that might lead them to not pay for Respondents' "services." Compl. ¶¶ 45, 85.

Consider the Act's requirement that the abortionist give the mother certain information before any abortion is performed. For instance, the abortionist must give the mother the choice to see the ultrasound, tell the mother that a heartbeat (if it is present) may be audible, and give her the option to hear it. *See* S.B. 474, § 10 (to be codified at S.C. Code Ann. § 44-41-330(A)). The Abortion Centers—who charge women for ultrasounds—object to providing mothers this information. But even before *Dobbs*, the Supreme Court held that from "the earliest stages of pregnancy, the State may enact rules and regulations designed to encourage her to know that there are philosophic and social arguments of great weight that can be brought to bear in favor of continuing the pregnancy to full term and that there are procedures and institutions to allow adoption of unwanted children as well as a certain degree of state assistance if the mother chooses to raise the child." *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 872 (1992).

This conflict of interest is not theoretical. In considering the law, the Senate Medical Affairs Committee heard testimony from a mother who was told "lies" before her abortions—including "that my baby was just a blob of tissue"—and who explained that "after the abortion, I suffered from anger, grief, guilt, shame, and regret." Senate Medical Affairs Committee Hearing on S. 1327, S. 1373, & S.

1348, at 4:50.40 (Aug. 17, 2022), *available at* https://www.scstatehouse.gov/video/archives.php?key=12481&part=1. Likewise, in considering the previous law, the Senate Medical Affairs Committee heard testimony from a mother who was pressured by an abortionist into having an abortion without being given an ultrasound or adequate information, leading her "on a path towards self-destruction" with suicidal thoughts, depression, and regret. Senate Medical Affairs Committee Hearing on S. 1, at 2:15.00 (Jan. 14, 2021), *available at* https://www.scstatehouse.gov/video/archives.php?key=10644&part=1 (select "Thursday, Jan. 14, 2021 10:00 am").

Tragically, this story is not unique. *Amici* regularly hear similar stories from women across South Carolina. As the U.S. Supreme Court has explained, "[i]t is self-evident that a mother who comes to regret her choice to abort must struggle with grief more anguished and sorrow more profound when she learns, only after the event, what she once did not know." *Gonzales v. Carhart*, 550 U.S. 124, 159-60 (2007).

By challenging the Act, Respondents seek to continue denying mothers the choices to view their ultrasound, listen to the fetal heartbeat, and receive adequate information. *See* S.B. 474, § 10 (to be codified at S.C. Code Ann. § 44-41-330(A). Respondents cannot "reasonably be expected properly to frame the issues" before the Court, *Sec'y of State of Md. v. Joseph H. Munson Co.*, 467 U.S. 947, 956

(1984), because at least some mothers Respondents claim to speak for would reasonably want to preserve these choices. This conflict of interest confirms the "longstanding principle that [first] parties themselves usually will be the best proponents of their own rights." *Freilich*, 313 F.3d at 215 (cleaned up).

Take a concrete example of how the Respondents misframe the issues. They constantly refer to "The Six-Week Ban." *E.g.*, Compl. ¶¶ 57, 58, 62, 71, 72, 73, 89, 110, 114, 145, 162, 164; Memorandum in Support of Plaintiffs' Motion for Temporary Restraining Order 5, 6, 10, 23. But the law says nothing about six weeks. Respondents and their declarants say that transvaginal ultrasounds can detect heartbeats at six weeks, Farris Decl. ¶ 8, but the law does not require that type of ultrasound. Instead, it allows "whichever method the physician and pregnant woman agree is best under the circumstances." S.B. 474, § 2 (to be codified at S.C. Code Ann. § 44-41-630(A)(1)). Doppler ultrasounds "can detect a fetal heartbeat usually between thirteen to fifteen weeks of gestational age."[6] Again, a proper plaintiff would present actual facts for a proper adjudication. Planned Parenthood,

[6] David F. Forte, *Life, Heartbeat, Birth: A Medical Basis for Reform*, 74 Ohio St. L.J. 121, 141 (2013) (citing Peter W. Callen, Ultrasonography in Obstetrics and Gynecology 12 (5th ed. 2008)); *accord* Avick G. Mitra et al., *Transvaginal Versus Transabdominal Doppler Auscultation of Fetal Heart Activity: A Comparative Study*, 175 Am. J. Obstet. Gynecol. 41 (1996), https://www.ncbi.nlm.nih.gov/pubmed/8694073.

by contrast, incorrectly frames the issues in a way geared towards its own incentives, untethered from the interests of women.

In sum, it is unsurprising that Respondents wish to expedite abortion procedures and avoid accountability in court. No business likes to be regulated. But it would be unprecedented to hold that Respondents may stand in for the very women who would be deprived of information, choices, and legal rights if their lawsuit were to succeed. Again, *no* case analyzing such a conflict has held that a third party has standing to attack legal rights of the first party against the third party itself.[7]

[7] Contrary to Respondents' repeated insinuations, *e.g.*, Memorandum in Support of Plaintiffs' Motion for Temporary Restraining Order 2, 20; Farris Decl. ¶¶ 40, 41, 45, 47, 52, 69; Compl. ¶¶ 4, 84, 86, the Act protects all South Carolinians equally. Respondents' citations of various health disparities are particularly ill-taken given that:

- As Justice Thomas previously noted, Planned Parenthood founder Margaret Sanger "initiated the 'Negro Project,'" a "birth-control program geared toward" Blacks, who she considered "'the great problem of the South'"—but did "'not want word to go out that we want to exterminate the Negro population,'" *Box v. Planned Parenthood of Indiana & Kentucky, Inc.*, 139 S. Ct. 1780, 1788 (2019) (Thomas, J., concurring);
- Famed "Planned Parenthood President Alan Guttmacher and other abortion advocates endorsed abortion for eugenic reasons and promoted it as a means of controlling the population and improving its quality," *id.* at 1787; and,
- Even today, Respondents terminate Black and other minority babies at over three times the rate of white babies. S.C. Department of Health and Environmental Control, South Carolina Vital and Morbidity Statistics, Vol. 1, at 93 (2020), *available at* https://tinyurl.com/53ubjm9n.

D. State appellate courts are denying standing in similar cases.

Especially after *Dobbs*, other state supreme courts agree with the above analysis, holding that abortionists lack standing to obtain injunctive relief in challenges to similar statutes. For instance, in *Cameron v. EMW Women's Surgical Center, P.S.C.*, an abortion center challenged Kentucky's "trigger ban" and "heartbeat ban," both of which carry criminal and civil penalties for those who perform abortions in violation of the laws. 664 S.W.3d 633, 641–42 (Ky. 2023). The Supreme Court of Kentucky held that the abortion center lacked third-party standing. *Id.* at 659. Reading *Dobbs* as acknowledging that the U.S. Supreme Court's "previous practice of granting abortion providers third-party standing on behalf of their patients to challenge state abortion statutes was a misapplication of its third-party standing doctrine" (more on this below), the court considered federal law's third-party standing requirements. *Id.* at 654.

In particular, the court looked to *Elk Grove*, where (as noted) the U.S. Supreme Court held that there cannot be third-party standing "when there is a potential conflict of interest between the plaintiff and the third party." *Id.* at 657. The Kentucky Supreme Court reasoned that because the challenged statutes allowed a woman to sue a provider who illegally performs an abortion on her, there is a conflict between "the abortion providers' interest in not being civilly or criminally prosecuted under the statutes" and "a pregnant woman's interest in receiving ade-

quate medical care." *Id.* at 658. The court concluded that this conflict of interest precluded the abortionists' assertion of third-party standing.

Similarly, in *State v. Planned Parenthood of Southwest & Central Florida,* Planned Parenthood challenged a law prohibiting abortions after fifteen weeks. The Florida Court of Appeals held that "the trial court had no lawful authority to issue a temporary injunction" because Planned Parenthood lacked standing. 342 So. 3d 863, 868 (Fla. Dist. Ct. App. 2022), *review granted*, No. SC22-1050, 2023 WL 356196 (Fla. Jan. 23, 2023). The court reasoned that the claims were "based on the allegation that [the abortionists] are in doubt regarding *their* ability to *provide* abortions, not that they themselves may be prohibited from obtaining an abortion." *Id.* (emphasis in original). Emphasizing that "pregnant women can[] assert their own rights in court," the court "h[e]ld that [the abortionists] cannot obtain temporary injunctive relief as they cannot assert the privacy rights of pregnant women." *Id.* at 867–68.

For the same reasons, the Abortion Centers lack standing here. As in *Cameron*, they are trying to deprive women of legal rights against them so cannot possibly pretend to represent those women here. Like the Kentucky statute, S.B. 474 carries other potential criminal and civil penalties. S.B. 474, § 2 (to be codified at S.C. Code Ann. § 44-41-630, 44-41-690). Communicating their desire to "safeguard themselves," Compl. ¶ 7, the Abortion Centers make clear their primary

concern: to continue performing as many abortions as possible without regulatory oversight. But the Abortion Centers have no right to perform abortions. And there is an inherent conflict between the women's interest in receiving proper and quality medical care and Abortion Centers' interest in avoiding prosecution—and suits by injured women. The Abortion Centers lack third-party standing to assert their derivative claims.

III. The Abortion Centers do not otherwise have third-party standing.

The Abortion Centers will likely claim that they—unlike *every other* litigant in *every other* type of case—need not prove *any* of the third-party standing requirements to assert the constitutional rights of another. But again, "standing is not dispensed in gross"; "[t]o the contrary, a plaintiff must demonstrate standing for each claim he seeks to press and for each form of relief that is sought." *Town of Chester*, 581 U.S. at 439 (cleaned up). Standing is necessarily a case-by-case, claim-by-claim inquiry. *See Freilich*, 313 F.3d at 215. Yet—even assuming third-party standing is ever permissible—the Abortion Centers have not made any of the necessary allegations to prosecute third-party claims.

In other cases, abortionists have responded that they have standing because they allege an injury-in-fact, often pointing to potential enforcement actions. They say that abortionists always have standing to assert hypothetical patients' rights. The Abortion Centers might also claim that they qualify for the narrow "public im-

portance" exception to standing under South Carolina law. Both responses are wrong.

A. An injury-in-fact is not enough for third-party standing.

First, it makes no difference if the challenged legislation operates directly against the Abortion Centers. That means only that the abortionists alleged an injury-in-fact and might have first-party standing *if* they were asserting their own constitutional claims. Here, for most of their claims (and all the relevant ones), they are not. The third-party standing requirements are *in addition* to the other constitutional requirements. *E.g.*, *Freilich*, 313 F.3d at 215 (explaining that "a plaintiff must demonstrate" "an injury-in-fact" *and* "a close relationship" and "a hindrance"). Otherwise, there would be no third-party standing limitation at all. *See Warth v. Seldin*, 422 U.S. 490, 499 (1975) (explaining that "even when the plaintiff has alleged injury sufficient to meet the 'case or controversy' requirement, this Court has held that the plaintiff generally must assert his own legal rights and interests"); *see also Heald v. District of Columbia*, 259 U.S. 114, 123 (1922) ("It has been repeatedly held that one who would strike down a state statute as violative of the federal Constitution must show that he is within the class of persons with respect to whom the act is unconstitutional and that the alleged unconstitutional feature injures him.").

For instance, *Curtis v. State* is precisely on point. There, a seller of urine kits tried to allege that regulations on sales violated the right to privacy, among many other claims. 345 S.C. 557, 575, 549 S.E.2d 591, 600 (2001). The seller had an injury-in-fact: the law imposed criminal sanctions on the seller. *See id.*, 345 S.C. at 566, 549 S.E.2d at 595. But this Court still held that the seller "does not have standing to assert the constitutional rights of his customers," including that the law "unconstitutionally invades the[ir] privacy rights." *Id.*, 345 S.C. at 576, 549 S.E.2d at 600–01.

Similarly, in *State v. McDonald*, the plaintiff was injured by information introduced at his trial obtained through an alleged violation of the constitutional rights of several of the witnesses in the trial. 267 S.C. 588, 230 S.E.2d 617 (1976). He experienced an injury-in-fact because the trial resulted in his conviction. *Id.* But this injury-in-fact could not give him third-party standing to assert "a violation of another's rights." *Id.*

A variation on this argument that the Abortion Centers may float is that they have standing because they are directly regulated. But again, that is merely a restatement of their alleged injury-in-fact, not a justification for giving them third-party standing. The U.S. Supreme Court in *Kowalski* made clear that the third-party standing requirements still apply to directly regulated parties, even if sometimes in a "forgiving" way. 543 U.S. at 130. In *Sessions v. Morales-Santana*, for

instance, the Supreme Court applied the hindrance and close relationship requirements to a directly regulated party. 582 U.S. 47, 57 (2017).

Even if the third-party requirements are applied in a "forgiving" manner, *Kowalski*, 543 U.S. at 130, the Abortion Centers could not satisfy them. As explained above, women do not need abortionists to speak for them. The Abortion Centers carry out dozens of abortions per day using abortionists who drive in from out of state, they charge for ultrasounds, and they even pre-fill their abortion release forms with "Patient Confident with Decision." They have no close relationship with women who might use their services. Moreover, the Abortion Centers have multiple conflicts of interests with the women they purport to represent. Beyond trying to deprive mothers of adequate information, the Abortion Centers' suit also seeks to deny women the right to sue *them* if the abortionist does not follow the law.

The Abortion Centers may recycle a laundry list of abortion cases that did not discuss the issues above and found either that the third-party standing requirements were satisfied in the particular case or that the argument had been waived. These cases are irrelevant, and the Abortion Centers' anticipated reliance on their inapposite (or absent) analysis is unavailing. Here, a uniquely severe and obvious conflict exists on the face of the law. The Abortion Centers have made no effort to even allege the third-party standing requirements. Standing cannot be waived. And

most, if not all, of the decisions the Abortion Centers will presumably rely on predated the Supreme Court's rejection of certain abortion decisions as "ignor[ing] the Court's third-party standing doctrine." *Dobbs*, 142 S. Ct. at 2275 (rejecting *June Medical*[8] and *Whole Woman's Health*).

In pre-*Dobbs* cases, the Abortion Centers relied on several cases that were irrelevant even at the time. For instance, the Abortion Centers cited statutory appendices in two cases reflecting a private right of action, but those cases did not actually consider this issue. *See Casey*, 505 U.S. at 907; *Planned Parenthood of Idaho, Inc. v. Wasden*, 376 F.3d 908, 917, 942 (9th Cir. 2004). They also cited a "Procedural History" footnote stating in generic terms that the plaintiffs "have standing." *Karlin v. Foust*, 188 F.3d 446, 456 & n.5 (7th Cir. 1999). No standing argument at all was made in *Karlin*.[9] Finally, they pointed to an equally generic footnote in an order where standing had not been challenged. *Preterm-Cleveland v. Yost*, 394 F. Supp. 3d 796, 803 n.6 (S.D. Ohio 2019).[10] "[A]n unchallenged and untested assumption" does not "bind[] future courts." *United States v. Norman*, 935

[8] Regardless, the *June Medical* plurality's discussion of the merits of third-party standing was dicta (as the argument had been waived), was not binding (as not joined by a majority), never suggested *any* conflict of interests, and was necessarily confined to the facts of the case and the challenged law. *See June Medical*, 140 S. Ct. at 2118 (plurality opinion) ("The State's unmistakable concession of standing . . . bars our consideration of it here.").

[9] *See* Combined Reply Br., 1998 WL 34077613 (Aug. 28, 1998).

[10] *See* Defendants' Response, 2019 WL 8165759 (June 5, 2019).

F.3d 232, 241 (4th Cir. 2019); *see Wallace v. Interamerican Tr. Co.*, 246 S.C. 563, 569, 144 S.E.2d 813, 816 (1965) (where a point "does not seem to have been made in" prior cases, those cases "are therefore not controlling" on that point); *Breland v. Love Chevrolet Olds, Inc.*, 339 S.C. 89, 95, 529 S.E.2d 11, 14 (2000) (similar); *see also United States v. L.A. Tucker Truck Lines, Inc.*, 344 U.S. 33, 38 (1952) ("[T]his Court is not bound by a prior exercise of jurisdiction in a case where it was not questioned and it was passed sub silentio.").

The Abortion Centers may also cite a pre-*Dobbs* decision from the District of South Carolina, notwithstanding that decision remained before the Fourth Circuit on appeal until it was vacated and thus rendered null. *See Planned Parenthood S. Atl. v. Wilson*, 527 F. Supp. 3d 801, 808 (D.S.C. 2021), *vacated*, No. 21-1369, 2022 WL 2900658 (4th Cir. July 21, 2022). All of the same flaws discussed above applied to that vacated decision, which failed to address the inherent conflict of interest posed by the Abortion Centers' claims.

The Abortion Centers may also rely on *Singleton v. Wulff*, where the plurality of the U.S. Supreme Court spent pages applying the third-party requirements set forth above, describing them as "factual." 428 U.S. at 112–18. Yet the Abortion Centers here made no relevant allegations, even though it is their burden throughout the litigation to demonstrate standing. And the *Singleton* plurality's fact-intensive, pages-long discussion of these requirements disproves that there is any

automatic abortionist standing rule. That is especially true since the controlling concurrence in *Singleton* found standing based on "two facts": (1) the abortionists had "a financial stake in the outcome of the litigation," and (2) they claimed "that the statute impair[ed] their own constitutional rights." *Id.* at 121 (Stevens, J., concurring in part); *see Marks v. United States*, 430 U.S. 188, 193 (1977) (narrowest opinion controls). Here, in the relevant claims, the Abortion Centers do not and cannot allege that the Act impairs their own rights.

In all events, whatever was true in other cases involving other facts, the Abortion Centers seek here to *deny* mothers rights by depriving them of the opportunity to view an ultrasound of their child, withholding relevant information from them, and stripping them of their right to sue the Centers. That is not asserting their patients' rights—it is taking them away. The Abortion Centers have never identified any case finding third-party standing where the third-party plaintiff brought a derivative action to deprive the first party of legal causes of action *against the plaintiff*.

Analyzing such a scenario in any other medical or doctor-patient context underscores the unsoundness of the Abortion Centers' novel automatic abortionist standing rule. For instance, if abortionists, under the guise of vindicating rights of actual or hypothetical customers, can automatically challenge any regulation that affects their business—no matter how directly the regulation protects such custom-

ers *from them*—there is no apparent reason they could not sue "on behalf of" women to disregard the law's protections of personal patient information. Or challenge any sanction against abortionists who provide "egregious and substandard care" to the women who they supposedly represent. *Planned Parenthood of Wis., Inc. v. Van Hollen*, 738 F.3d 786, 802–03 (7th Cir. 2013) (Manion, J., concurring in part and in judgment) ("Dr. Gosnell physically assaulted and performed a forced abortion on a minor and left fetal remains in a woman's uterus causing her excruciating pain."); *id.* at 807–10 (collecting similar examples).

In no other area of law would such an absurd proposition be countenanced, and the Court should not sanction it here. Abortionists do not have a special exemption from fundamental legal principles or ordinary litigation rules. The Abortion Centers lack standing, and all third-party claims should be dismissed.

B. The Abortion Centers do not have public importance standing.

Though this Court has recognized a narrow exception to standing for certain issues of public importance, the exception requires that there be a need to issue a ruling—even though the plaintiffs lack standing—to provide future guidance. *Sloan v. Sanford*, 357 S.C. 431, 434, 593 S.E.2d 470, 472 (2004). The Court is "cautious with this exception, lest it swallow the rule." *Jowers v. S.C. Dep't of Health & Env't Control*, 423 S.C. 343, 360, 815 S.E.2d 446, 455 (2018) (cleaned up). Especially given the dubious grounding of this purported exception to stand-

ing, the Court's caution makes sense: "Few exercises of the judicial power are more likely to undermine public confidence in the neutrality and integrity of the Judiciary than one which casts the Court in the role of a Council of Revision, conferring on itself the power to invalidate laws at the behest of anyone who disagrees with them." *Bodman*, 403 S.C. at 68, 742 S.E.2d at 367 (quoting *Ariz. Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125, 145–46 (2011)).

This exception could not apply here. First, the inherent conflict of interest posed by Respondents' suit precludes any assertion of public importance standing to launch an attack on the rights of women they purport to represent. No public importance standing case appears to sanction such a conflicted assertion of standing. Whatever the contours of the public importance exception, it could not allow a plaintiff to launch a derivative action to take away the rights of the first party against the plaintiff. As explained, one problem with such conflicted suits is that the plaintiff will not have the proper incentives when framing and litigating the case. This inherent problem precludes any form of standing, whether third-party or public importance. Letting a third party attack the rights of parties who *would* have standing would be a perverse extension of this narrow exception to normal standing rules.

Second, the Abortion Centers' action would not qualify for the public importance exception anyway. The Abortion Centers are driven by their own inter-

ests, which are not a matter of public concern. *See, e.g.*, Compl. ¶¶ 203-13. And the suit certainly does not present a public issue inextricably connected to a need for future guidance. "'Public importance' standing should be invoked only where the challenge cannot be otherwise raised, and should not be used to evade the application of other well-established standards." *Bodman*, 403 S.C. at 76, 742 S.E.2d at 371 (2013) (Pleicones, J., concurring); *see id.*, 403 S.C. at 68–69, 742 S.E.2d at 367 (majority opinion) (cautioning against "an overzealous use of this exception"). Here, "the claims asserted by Plaintiffs could be brought by other parties who can show the required injury"—and do not have an inherent conflict of interest. *Carnival*, 407 S.C. at 81, 753 S.E.2d at 853. That fact makes "the public importance exception inapplicable." *Id.* As explained above, a proper plaintiff can easily bring suit, presenting the Court with an appropriate vehicle to resolve a case with full airing of relevant facts by parties with appropriate interests. The Respondents lack standing to assert their derivative claims.

IV. The Court should vacate its previous decision.

The same standing flaws existed in this Court's prior case, *Planned Parenthood South Atlantic v. State*, 438 S.C. 188, 882 S.E.2d 770 (2023). Neither the parties nor the Court there apparently addressed standing. But because these same plaintiffs lacked standing to press third-party claims, and this Court's decision was based on those third-party claims, the decision was void for lack of sub-

ject-matter jurisdiction. Thus, this Court should both vacate its prior decision and dismiss the Respondents' derivative claims here.

Absent a plaintiff with standing, the Court lacks subject matter jurisdiction. *See Wilson*, 437 S.C. at 340, 878 S.E.2d at 894. "[J]udgments from courts which lacked subject matter jurisdiction" are "void." *Ware v. Ware*, 404 S.C. 1, 11, 743 S.E.2d 817, 822 (2013). "A void judgment is one that, from its inception, is a complete nullity and is without legal effect." *Id.* (cleaned up); *see also Blakely v. Frazier*, 20 S.C. 144, 155 (1883) ("[J]urisdiction involves two elements—the subject-matter and the parties. If either of these elements are wanting the judgment is null and void, and may be disregarded wherever met with.").

Because the Abortion Centers in this Court's prior decision lacked standing for all the same reasons discussed above, that decision is void and must be vacated. *See, e.g.*, *Arnal v. Fraser*, 371 S.C. 512, 522, 641 S.E.2d 419, 424 (2007) (nullifying orders that were "void for lack of jurisdiction"); *see also Harvey v. Tyler*, 69 U.S. 328, 345 (1864) ("If there is a total want of jurisdiction, the proceedings are void, and a mere nullity, and confer no right and afford no justification; and may be rejected when collaterally drawn in question." (cleaned up)).[11]

[11] At a minimum, a previous decision issued without jurisdiction is not "binding" precedent. *Blakely*, 20 S.C. at 154.

CONCLUSION

For these reasons, this Court should dismiss the Respondents' third-party claims for lack of standing, remand the remaining claims to the circuit court, and vacate its prior decision.

Respectfully submitted,

s/ *Christopher Mills*
CHRISTOPHER E. MILLS
(S.C. Bar No. 101050)
Spero Law LLC
557 East Bay Street #22251
Charleston, SC 29413
(843) 606-0640
cmills@spero.law

Counsel for Amici Curiae

JUNE 13, 2023

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 211, SCAR, I, Christopher E. Mills, an attorney, certify that the foregoing complies with the length and formatting requirements of Rules 211 and 267, SCAR.

Dated: June 13, 2023

s/ Christopher Mills
Christopher E. Mills