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THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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**SC SUPREME COURT**

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas  
Honorable Clifton Newman, Circuit Court Judge

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Appellate Case No. 2023-000896

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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. .... Respondents,

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; 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,

and

HENRY McMASTER, in his official capacity as Governor of the State of South Carolina;  
G. MURRELL SMITH, JR., in his official capacity as Speaker of the South Carolina House  
of Representatives; and THOMAS C. ALEXANDER, in his official capacity as President of  
the South Carolina Senate, .....Intervenors-Defendants,

Of whom HENRY McMASTER, in his official capacity as Governor of the State of South  
Carolina; G. MURRELL SMITH, JR., in his official capacity as Speaker of the South  
Carolina House of Representatives; THOMAS C. ALEXANDER, in his official capacity as  
President of the South Carolina Senate; STATE OF SOUTH CAROLINA; and ALAN  
WILSON, in his official capacity as Attorney General of South Carolina .....Appellants.

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[PROPOSED] BRIEF OF *AMICUS CURIAE*

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<i>Buck v. Bell</i> , 274 U.S. 200 (1927).....	22, 30
<i>Relf v. Weinberger</i> , 372 F.Supp. 1196 (D.D.C. 1974), <i>vacated</i> , 565 F.2d 722 (D.C. Cir. 1977).....	23, 24, 30
<b>Other Authorities</b>	
<i>ABLE SC Advocacy, Persons with Disabilities Right to Parent Act, ABLE South Carolina</i> (accessed June 19, 2023) <a href="https://www.able-sc.org/get-support/advocacy/">https://www.able-sc.org/get-support/advocacy/</a> .....	30
<i>Access, Autonomy, &amp; Dignity: Abortion Care For People With Disabilities</i> , 6, 14-15 (Sept. 2021), <a href="https://live-national-partnership-for-women-dev.pantheonsite.io/wp-content/uploads/2023/02/repro-disability-abortion.pdf?wpId=70997">https://live-national-partnership-for-women-dev.pantheonsite.io/wp-content/uploads/2023/02/repro-disability-abortion.pdf?wpId=70997</a> .....	30, 31, 32
Adam McCann, <i>Best &amp; Worse States to Have a Baby</i> , WalletHub, Aug. 8, 2022, <a href="https://wallethub.com/edu/best-and-worst-states-to-have-a-baby/6513">https://wallethub.com/edu/best-and-worst-states-to-have-a-baby/6513</a> .....	10
Alexandra Minna Stern, <i>Sterilized in the Name of Public Health</i> , 95 AM. J. OF PUB. HEALTH 1128 (July 2005) <a href="http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1449330/pdf/0951128.pdf">http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1449330/pdf/0951128.pdf</a> .....	23
Alhusen, <i>et al.</i> , <i>Intimate partner violence during pregnancy: maternal and neonatal outcomes</i> , J Womens Health (Jan. 2015) <a href="https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4361157/">https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4361157/</a> .....	26, 27
Bennett, Purser, et al., <i>Measuring Access to Obstetric Services in South Carolina</i> South Carolina Center for Rural and Primary Healthcare, July 2019, <a href="https://www.scruralhealth.org/sites/scruralhealth/files/Documents/Research%20Briefs/Access%20to%20Obstetric%20Services%20in%20South%20Carolina%207.23.2019.pdf">https://www.scruralhealth.org/sites/scruralhealth/files/Documents/Research%20Briefs/Access%20to%20Obstetric%20Services%20in%20South%20Carolina%207.23.2019.pdf</a> .....	11
Brandon Lockett, <i>Graphic: South Carolina’s shortage of OB-GYNs</i> , The Post and Courier, Aug. 21, 2022, <a href="https://www.postandcourier.com/graphic-south-carolinas-shortage-of-ob-gyns/html_5395306c-0d06-11ed-891d-8f2d1db6d0e9.html">https://www.postandcourier.com/graphic-south-carolinas-shortage-of-ob-gyns/html_5395306c-0d06-11ed-891d-8f2d1db6d0e9.html</a> .....	10
Branum, A.M., Ahrens, K.A., <i>Trends in Timing of Pregnancy Awareness Among US Women</i> , 21 <i>Matern. Child Health J</i> 715–726 (2017) <a href="https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5269518/">https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5269518/</a> .....	6
Coker, <i>et al.</i> , <i>Partner violence during pregnancy and risk of adverse pregnancy outcomes</i> , 4 <i>Paediatric &amp; Perinatal Epidemiology</i> 18, 260–269 (2004) <a href="https://doi.org/10.1111/j.1365-3016.2004.00569.x">https://doi.org/10.1111/j.1365-3016.2004.00569.x</a> .....	27

Shailja Dayal, Peter L. Hong, <i>Premature Rupture of Membranes, StatPearls (July 18, 2022)</i> <a href="https://www.ncbi.nlm.nih.gov/books/NBK532888/">https://www.ncbi.nlm.nih.gov/books/NBK532888/</a> .....	15, 16
Lawrence B. Finer, et al., <i>Reasons U.S. Women Have Abortions: Quantitative and Qualitative Perspectives</i> , 37 <i>Perspectives on Sexual and Reproductive Health</i> 3, 110-118 (2005) <a href="https://www.guttmacher.org/journals/psrh/2005/reasons-us-women-have-abortions-quantitative-and-qualitative-perspectives">https://www.guttmacher.org/journals/psrh/2005/reasons-us-women-have-abortions-quantitative-and-qualitative-perspectives</a> ; <a href="https://www.verywellhealth.com/reasons-for-abortion-906589">https://www.verywellhealth.com/reasons-for-abortion-906589</a> .....	8
Diana Greene Foster, et al., <i>Comparison of Health, Development, Maternal Bonding, and Poverty Among Children Born After Denial of Abortion vs After Pregnancies Subsequent to an Abortion</i> , <i>J. of Am. Med. Ass’n. Pediatrics</i> (Nov. 2018) <a href="https://jamanetwork.com/journals/jamapediatrics/fullarticle/2698454">https://jamanetwork.com/journals/jamapediatrics/fullarticle/2698454</a> .....	18
Holes, et al., <i>Rape-related pregnancy: Estimates and descriptive characteristics from a national sample of women</i> , <i>Am. J. of Obstetrics &amp; Gynecology</i> (Aug. 1995) <a href="https://doi.org/10.1016/S0002-9378(96)70141-2">https://doi.org/10.1016/S0002-9378(96)70141-2</a> .....	28
Holland, Brynn, “The ‘Father of Modern Gynecology’ Performed Shocking Experiments on Enslaved Women,” <a href="https://www.history.com/news/the-father-of-modern-gynecology-performed-shocking-experiments-on-slaves">https://www.history.com/news/the-father-of-modern-gynecology-performed-shocking-experiments-on-slaves</a> .....	21
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<a href="https://www.ivygraceproject.com/ivys-story">https://www.ivygraceproject.com/ivys-story</a> .....	13
<a href="https://www.plannedparenthood.org/planned-parenthood-south-atlantic/for-patients/abortion-services/abortion-types">https://www.plannedparenthood.org/planned-parenthood-south-atlantic/for-patients/abortion-services/abortion-types</a> .....	12
J WOMENS HEALTH (Jan. 2015) <a href="https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4361157/">https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4361157/</a> .....	26, 27
Jamie Ducharme, <i>For People With Disabilities, Losing Abortion Access Can Be a Matter of Life or Death</i> , <i>Time</i> (Jan. 25, 2023) <a href="https://time.com/6248104/abortion-access-people-with-disabilities/">https://time.com/6248104/abortion-access-people-with-disabilities/</a> .....	30, 31
Lombardo, Paul, “A Century of Eugenics in America: From the Indiana Experiment to the Human Genome Era.” <a href="https://books.google.com/books?id=FAB-6RzKAQIC&amp;pg=PR9#v=onepage&amp;q&amp;f=false">https://books.google.com/books?id=FAB-6RzKAQIC&amp;pg=PR9#v=onepage&amp;q&amp;f=false</a> .....	22
Madeleine Ware, Cara Delay, and Beth Sundstrom, <i>Abortion and Black Women’s Health Networks in South Carolina, 1940–70</i> .....	22, 23, 24

National Women’s Law Center, <i>Forced Sterilization of Disabled People in the United States</i> (Washington: 2022), <a href="https://nwlc.org/wp-content/uploads/2022/01/%C6%92.NWLC-SterilizationReport_2021.pdf">https://nwlc.org/wp-content/uploads/2022/01/%C6%92.NWLC-SterilizationReport_2021.pdf</a> .....	30
Nat’l Inst. of J., <i>Most Victims Know Their Attacker</i> (Sept. 30, 2008) <a href="https://nij.ojp.gov/topics/articles/most-victims-know-their-attacker">https://nij.ojp.gov/topics/articles/most-victims-know-their-attacker</a> .....	29
NAT’L PUB. RADIO (Aug. 18, 2022) <a href="https://www.npr.org/2022/08/18/1111344810/abortion-ban-states-social-safety-net-health-outcomes">https://www.npr.org/2022/08/18/1111344810/abortion-ban-states-social-safety-net-health-outcomes</a> .....	10
NAT’L PUB. RADIO, May 13, 2023 <a href="https://www.npr.org/2023/05/13/1176007305/texas-abortion-woman-killed-boyfriend">https://www.npr.org/2023/05/13/1176007305/texas-abortion-woman-killed-boyfriend</a> .....	26
NAT’L PUB. RADIO (Nov. 15, 2022) <a href="https://www.npr.org/sections/health-shots/2022/11/15/1135882310/miscarriage-hemorrhage-abortion-law-ohio">https://www.npr.org/sections/health-shots/2022/11/15/1135882310/miscarriage-hemorrhage-abortion-law-ohio</a> .....	17
NEW ENGL. J. OF MED. (Aug. 4, 2022) <a href="https://www.nejm.org/doi/full/10.1056/NEJMp2207423">https://www.nejm.org/doi/full/10.1056/NEJMp2207423</a> .....	17
NPR, <a href="https://www.npr.org/sections/health-shots/2021/09/02/1033727679/fetal-heartbeat-isnt-a-medical-term-but-its-still-used-in-laws-on-abortion">https://www.npr.org/sections/health-shots/2021/09/02/1033727679/fetal-heartbeat-isnt-a-medical-term-but-its-still-used-in-laws-on-abortion</a> .....	6
Emily Olson, <i>A Texas woman was killed by her boyfriend after getting an abortion, police say</i> , Nat’l Pub. Radio, May 13, 2023 <a href="https://www.npr.org/2023/05/13/1176007305/texas-abortion-woman-killed-boyfriend">https://www.npr.org/2023/05/13/1176007305/texas-abortion-woman-killed-boyfriend</a> .....	26
PAEDIATRIC & PERINATAL EPIDEMIOLOGY 18, 260–269 (2004) <a href="https://doi.org/10.1111/j.1365-3016.2004.00569.x">https://doi.org/10.1111/j.1365-3016.2004.00569.x</a> .....	27
Pallitto, <i>et al.</i> , <i>Intimate partner violence, abortion, and unintended pregnancy: results from the WHO multi-country study on women’s health and domestic violence</i> , <i>Int J Gynaecol Obstet</i> , (Sept. 6, 2012) <a href="https://doi.org/10.1016/j.ijgo.2012.07.003">https://doi.org/10.1016/j.ijgo.2012.07.003</a> .....	25
PBS NEWSHOUR (Jul. 19, 2022) <a href="https://www.pbs.org/newshour/health/how-abortion-bans-will-likely-lead-to-more-deadly-infections">https://www.pbs.org/newshour/health/how-abortion-bans-will-likely-lead-to-more-deadly-infections</a> .....	17
PBS NEWSHOUR (Jul. 19, 2022) <a href="https://www.pbs.org/newshour/show/doctors-worry-abortion-laws-will-hinder-treatment-of-patients-in-life-or-death-situations">https://www.pbs.org/newshour/show/doctors-worry-abortion-laws-will-hinder-treatment-of-patients-in-life-or-death-situations</a> .....	14
PBS NEWSHOUR (May 1, 2023) <a href="https://www.pbs.org/newshour/show/idahos-strict-abortion-laws-create-uncertainty-for-ob-gyns-in-the-state">https://www.pbs.org/newshour/show/idahos-strict-abortion-laws-create-uncertainty-for-ob-gyns-in-the-state</a> .....	16, 19
Post & Courier, Apr. 12, 2023, <a href="https://www.postandcourier.com/health/black-infant-deaths-are-up-40-percent-in-south-carolina-moms-are-at-risk-too/article_6a466dba-d954-11ed-9acc-5bf2cc7af548.html">https://www.postandcourier.com/health/black-infant-deaths-are-up-40-percent-in-south-carolina-moms-are-at-risk-too/article_6a466dba-d954-11ed-9acc-5bf2cc7af548.html</a> .....	9

Rachel Treisman, <i>States with the toughest abortion laws have the weakest maternal supports, data shows</i> .....	10
Lauren J. Ralph, Diana Green Foster, Rana Barar, Corinne H. Rocca, <i>Home pregnancy test use and timing of pregnancy confirmation among people seeking health care</i> , 107 <i>Contraception</i> 10-16 (2021) <a href="https://www.contraceptionjournal.org/article/S0010-7824(21)00438-8/fulltext">https://www.contraceptionjournal.org/article/S0010-7824(21)00438-8/fulltext</a> .....	7
Roberts, <i>et al.</i> , <i>Risk of violence from the man involved in the pregnancy after receiving or being denied an abortion</i> , <i>BMC Med</i> , 12, 144 (2014). <a href="https://doi.org/10.1186/s12916-014-0144-z">https://doi.org/10.1186/s12916-014-0144-z</a> .....	27
Saluja, Bani, and Zenobia Bryant. “How Implicit Bias Contributes to Racial Disparities in Maternal Morbidity and Mortality in the United States.”.....	21
Laura Santhanam, <i>How abortion bans will likely lead to more deadly infections</i> , PBS NewsHour (Jul. 19, 2022) <a href="https://www.pbs.org/newshour/health/how-abortion-bans-will-likely-lead-to-more-deadly-infections">https://www.pbs.org/newshour/health/how-abortion-bans-will-likely-lead-to-more-deadly-infections</a> .....	17
Isabel V. Sawhill, Katherine Guyot, <i>Preventing unplanned pregnancy: Lessons from the states</i> , Brookings Institute (2019), <a href="https://www.brookings.edu/research/preventing-unplanned-pregnancy-lessons-from-the-states/">https://www.brookings.edu/research/preventing-unplanned-pregnancy-lessons-from-the-states/</a> .....	8
<u><i>The Turnaway Study</i>, Advancing New Standards in Reproductive Health (accessed Jun. 16, 2023)</u> <a href="https://www.ansirh.org/sites/default/files/publications/files/the_harms_of_denying_a_woman_a_wanted_abortion_4-16-2020.pdf">https://www.ansirh.org/sites/default/files/publications/files/the_harms_of_denying_a_woman_a_wanted_abortion_4-16-2020.pdf</a> .....	17
SC HealthViz, Geospatial Health Stats & Policy Research, Maternal and Child Health, updated Sep. 23, 2020, <a href="https://www.schealthviz.sc.edu/aim">https://www.schealthviz.sc.edu/aim</a> .....	9
Soc. Sec. Admin., <i>DI23022.540 Aortic Atresia</i> , Program Operations Manual System (accessed June 16, 2023) <a href="https://secure.ssa.gov/poms.nsf/lnx/0423022540">https://secure.ssa.gov/poms.nsf/lnx/0423022540</a> .....	13
<i>Statistical Tables</i> , NCJ 250200 (Nov. 2016) <a href="https://bjs.ojp.gov/content/pub/pdf/capd0914st.pdf">https://bjs.ojp.gov/content/pub/pdf/capd0914st.pdf</a> .....	31
<u><i>Statistics</i>, South Carolina Coalition Against Domestic Violence and Sexual Assault (accessed June 16, 2023)</u> <a href="https://www.sccadvasa.org/wp-content/uploads/2023/04/SCCADVASA-2023-Media-Fact-Sheet.pdf">https://www.sccadvasa.org/wp-content/uploads/2023/04/SCCADVASA-2023-Media-Fact-Sheet.pdf</a> (reported from 2022, collected from 11 of their 15 Member Rape Crisis Centers).....	28, 29
Elizabeth Tobin-Tyler, <i>A Grim New Reality — Intimate-Partner Violence after Dobbs and Bruen</i> , <i>New Eng. J. of Med.</i> (Oct. 6, 2022) <a href="https://www.nejm.org/doi/full/10.1056/NEJMp2209696">https://www.nejm.org/doi/full/10.1056/NEJMp2209696</a> .....	25, 26
2018, UNITED HEALTH FOUND., <a href="https://assets.americashealthrankings.org/app/uploads/allstatesums-hwc2022.pdf">https://assets.americashealthrankings.org/app/uploads/allstatesums-hwc2022.pdf</a> .....	9

<i>United States</i> , Fact Sheet, Guttmacher Institute (2019) <a href="https://www.guttmacher.org/fact-sheet/unintended-pregnancy-united-states">https://www.guttmacher.org/fact-sheet/unintended-pregnancy-united-states</a> .....	7
WALLETHUB, Aug. 8, 2022, <a href="https://wallethub.com/edu/best-and-worst-states-to-have-a-baby/6513">https://wallethub.com/edu/best-and-worst-states-to-have-a-baby/6513</a> .....	10
Who Experimented On Slaves, No Longer On Pedestal In NYC, April 17, 2018, <a href="https://www.npr.org/sections/thetwo-way/2018/04/17/603163394/-father-of-gynecology-who-experimented-on-slaves-no-longer-on-pedestal-in-nyc">https://www.npr.org/sections/thetwo-way/2018/04/17/603163394/-father-of-gynecology-who-experimented-on-slaves-no-longer-on-pedestal-in-nyc</a> .....	21
<i>Women’s Existing Children</i> , J. OF PEDIATRICS (Oct. 30, 2018) <a href="https://doi.org/10.1016/j.jpeds.2018.09.026">https://doi.org/10.1016/j.jpeds.2018.09.026</a> .....	18



## INTEREST OF AMICI CURIAE

The organizations supporting this submission dedicate their time fighting to ensure that human rights standards match the democratic principles on which this nation was founded; that all people, regardless of race, color or creed, have equal access to the right to make decisions about their own bodies, and to the health care services necessary to do so, and to the privacy right the South Carolina Constitution grants them with respect to those decisions.

WREN, the Women's Rights and Empowerment Network, is a South Carolina-based nonprofit organization created to build a movement to advance the health, economic well-being, and rights of South Carolina's women, girls, and gender expansive people. WREN educates the public on gender justice issues and promotes laws and policies that create an environment where South Carolinians have access to the resources that they need to thrive. WREN is committed to ensuring comprehensive access to health coverage and equitable care, including abortion services, because everyone deserves access to health care, when and where they need it, without financial difficulty, discrimination, barriers or stigma.

Able SC is a disability-led organization seeking transformational changes in systems, communities and individuals. Able SC supports each person's ability to choose what's best for them. People with disabilities already have barriers to rights and healthcare. Healthcare rights, like abortions, are important to people with disabilities. These rights give us the freedom and privacy to make decisions about ourselves. Ending the right to an abortion will make more barriers for us. We deserve the right to access the medical treatment we need. Able SC believes that abortion care is a treatment we should have access to. Access to healthcare is a part of what we need to live free and well.

Deborah Billings, PhD conducts research, evaluation, and programmatic work globally on sexual and reproductive health, rights, and justice, including access to safe abortion, post-abortion

and contraceptive care, prevention of intimate partner and sexual violence, and prenatal-birthing-postpartum group-based care for the past 35 years. She served as a Research Associate with Ipas for 15 years, working to document the impact of restrictive abortion legislation on the health and lives of women around the world and collaborating with health systems to create rights-based services. Currently, she is an Adjunct Associate professor at the Arnold School of Public Health and Faculty Affiliate in Women's and Gender Studies as well as the Institute for Families in Society, University of South Carolina (“USC”), Adjunct Associate Professor, Gillings School of Global Public Health, The University of North Carolina at Chapel Hill, Senior Advisor to Group Care Global, and independent researcher. She regularly consults with agencies and organizations, including the World Health Organization (“WHO”), Pan American Health Organization (“PAHO”), World Bank, UN Trust Fund to End Violence against Women (“UNTF”), and The Fund for Global Human Rights. Her current work focuses on the impact of (de)criminalizing abortion in Mexico and the U.S. (with Dr. Natalia Deeb-Sossa, UC Davis).

Cara Delay is Professor of History at the College of Charleston. Her research analyzes the history of women, gender and culture in Ireland, the American South and the Atlantic World. Her award-winning body of scholarship includes more than 30 peer-reviewed journal articles and chapters. Her new book (co-authored with Beth Sundstrom), *Catching Fire: Women’s Health Activism in Ireland*, is available through Oxford University Press; and another project, *Menstruation: A Global History*, is under contract with Polity Press.

Bambi W Gaddist, DrPH is co-founder and former CEO of the South Carolina HIV Council (SCHC), a 501 (c) 3, non-profit HIV prevention organization, including the Wright Wellness Center for 28 years. Bambi W. Gaddist committed the past 40-plus years of her professional life working in the area of human sexuality with a specific focus on HIV/AIDS/STI prevention, community mobilization and advocacy, behavioral intervention, research, and program

development. She served as an Education Associate with the SC Department of Education (SDE-FY1988-1995) to provide technical assistance and capacity building to superintendents, principals, and public-school teachers in comprehensive health policy, reproductive health, pregnancy and STD prevention. Dr. Gaddist serves as Principle of Structural Health Dynamics, LLC where provides public health strategies and programs that build advocacy and strengthen healthcare access. She serves as Co-PI for two healthcare access initiatives in collaboration with the seven Historically Black Colleges and Universities (“HBCUs”) in South Carolina. Dr. Gaddist was selected as one of seven national Faith Ambassadors (Fred Hutchinson Cancer Research Center) and recruited to advance COVID/HIV education conversations and create awareness of clinical trial research among faith and community/lay leaders, rural, and under-served communities that struggle with healthcare access.

The Hive Community Circle "The Hive" is a statewide, culturally-specific, peer advocacy organization serving survivors of sexual assault, intimate partner violence, and stalking in SC. We center reproductive justice for all survivors of abuse and violence. Survivors should have the reproductive autonomy to make decisions that they believe are best for their bodies and their future and denying them of these rights denies them their ability to exercise the right to choose. This barrier further impacts underserved communities such as Black Indigenous Survivors of Color who are faced with barriers that hinder their abilities to attain safety, wellness, and economic mobility.

Palmetto State Abortion Fund seeks to remove all barriers that prevent access to abortion care. PSAF was formed in December 2021 and in its' first year funded over 200 abortion procedures as well as assisted with emotional and logistical needs, which include traveling for care. The Court's decision will impact our patients here in the state of South Carolina, and will also impact neighboring states as our region turns into a reproductive healthcare desert. These impacts

will be immediate, and they will damage the mental, financial, emotional, and physical well-being of our patients.

Jill Perry has been unjustly victimized by the government of South Carolina and Supreme Court overturn of Roe v Wade. On June 27th 2022, the South Carolina legislature banned abortion after 6 weeks of gestation, which is 12 to 16 weeks earlier than HLHS can be detected. At the time, there were exceptions to the ban for rape, incest or the life of the mother but no exceptions for fetal anomalies. During the legislative hearings on S.474, Jill testified at the South Carolina House meeting with the hopes to educate legislatures on their devastating impact on decisions regarding abortion. She continues to educate the public and policymakers via the Ivy Grace Project about how people like her are negatively impacted on a financial, mental and physical level by the short-sighted and cruel decisions made by state and federal government officials.

SisterSong – The National Women of Color Reproductive Justice Collective is a Southern-based national membership organization formed in 1997 by 16 organizations of women of color from four minority communities (Native American, African American, Latina and Asian American) who recognized that their constituents have the right and responsibility to represent themselves and their communities, and the equally compelling need to advance the perspectives and needs of all women of color. SisterSong's mission is to strengthen and amplify the collective voices of Indigenous women and women of color to achieve Reproductive Justice by eradicating reproductive oppression and securing human rights. SisterSong's purpose for nearly 20 years has been to build an effective network of individuals and Appendix 7a organizations to improve institutional policies and systems that impact the reproductive lives of marginalized communities.

As the National Women of Color Reproductive Justice Collective, SisterSong has defined Reproductive Justice as the human right to have children, not have children, and parent children in safe and healthy environments. Over the years, SisterSong expanded its definition of Reproductive

Justice to include the human right to bodily autonomy from any form of reproductive oppression. SisterSong also supports the expansion of Reproductive Justice into other social justice movements and is committed to training the next generation of feminists/activists on the evolution of the Reproductive Justice framework, centering on The International Declaration of Human Rights. As a national collective, SisterSong's purpose is to create spaces for movement leaders and organizations to engage in continual professional and organizational development toward the sustainability and longevity of Reproductive Justice work and to provide a platform for the movement to work together collaboratively on shared policy and advocacy goals for the advancement of Reproductive Justice.

The Court's decision here will have immediate and long-term consequences for the health and economic well-being of South Carolinians. Because Amici fight to protect South Carolinian's right to privacy in making medical decisions about their own body and to protect women's<sup>1</sup> access to the medical care they need, Amici and the communities they serve have a direct interest in this case.

## INTRODUCTION

Less than six months ago, this Court reviewed a nearly identical statute, S.B. 1 (hereinafter, the "2021 Law"), which has now been repurposed with no substantive change in language or purpose as S.B. 474 (hereinafter, the "2023 Law"). Amici are reproductive rights, health and justice organizations and allies, all collectively rooted in the belief that all individuals and communities should have the economic, social and political power and resources to make decisions about their bodies, health, sexuality, families and communities with dignity and self-determination. Unfortunately, across the country, and particularly in South Carolina, the freedom to make those decisions remains a constant and daily struggle. As this submission shows, the struggle in accessing

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<sup>1</sup> Woman or women are intended to be inclusive of all individuals, including transgender, gender non-binary, and cisgender people who have reproductive health experiences and necessities that are impacted by polices and court decisions pertaining to abortion services.

reproductive care, specifically for women of color, creates an ongoing risk to mental and physical health because existing barriers impede access to even base-level obstetric and gynecological care.

Allowing the statute to stand will have far-reaching and devastating consequences for all South Carolinians, but will be especially devastating for low-income people, survivors of intimate partner violence, survivors of rape and incest, people with disabilities, and women of color—particularly Black women. *Amici* respectfully urge this Court to adhere to the well-reasoned precedent set less than six months ago, and strike down the 2023 Law as an unconstitutional attempt to limit critical rights of South Carolinians.

## ARGUMENT

### I. **The 2023 Law Permits the Average Woman Between a Few Days and a Week to Access Abortion Care.**

Access to obstetric and gynecologic (“OB/GYN”) care related to pregnancy, including abortion care, starts with the discovery that a person is pregnant. Most people do not discover they are pregnant until the fifth or sixth week of pregnancy<sup>2</sup>—the exact period in which they could obtain an abortion under the 2023 Law.<sup>3</sup> A study by the National Center for Health Statistics, Centers for Disease Control and Prevention found that, on average, women find out about their pregnancies at five-and-a-half weeks.<sup>4</sup>

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<sup>2</sup> Pregnancy is measured from the first day of the last menstrual period (“LMP”). Selena Simmons-Duffin, Carrier Feibel, *The Texas abortion ban hinges on ‘fetal heartbeat.’ Doctors call that misleading*, NAT’L PUB. RADIO, <https://www.npr.org/sections/health-shots/2021/09/02/1033727679/fetal-heartbeat-isnt-a-medical-term-but-its-still-used-in-laws-on-abortion>.

<sup>3</sup> The “fetal heartbeat” trigger used by the 2023 Law refers to the electrical activity of a tube of cells in an *embryo* that will eventually form into a heart—but which embryo is not a fetus and which tube of cells is neither structurally nor functionally a heart. This electrical activity is typically detectable at 5-6 weeks of pregnancy—as measured from the first day of the last menstrual period. *Id.*

<sup>4</sup> Branum, A.M., Ahrens, K.A., *Trends in Timing of Pregnancy Awareness Among US Women*, 21 MATERN. CHILD HEALTH J 715–726 (2017) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5269518/>.

This makes sense. The average menstrual cycle is three to five weeks long—but that timeframe can be longer, shorter, or irregular, and can change based on stress, illness, diet, exercise, sleep and other factors. And pregnancy is measured from the first day of the last menstrual cycle, so a woman with an average three-to-five-week menstrual cycle is already three to five weeks pregnant (or further along) when the pregnancy becomes detectable at her first missed period. A person can therefore already be five weeks pregnant before a missed menstrual period raises suspicions of a potential pregnancy—effectively compressing the six-week timeframe in which to seek an abortion into one week or less.

This already short timeframe is further compressed for those who are not actively trying to conceive. Studies show that nearly half of all pregnancies are unintended. Given the common variation in menstrual cycles, those who are not actively trying to conceive are more likely to attribute a missed period to simply being “late” due to other factors, and are less likely to suspect a potential pregnancy immediately on the day of the missed menstrual period.

Even after suspicions are raised by a missed menstrual period, the potential for false negative results from at-home pregnancy tests can further delay early pregnancy detection. While at-home pregnancy tests claim to be 99% accurate, this efficacy rate is based on use in laboratory settings with trained professionals. In reality, false negatives are fairly common—and are often caused by not waiting until after the first day of the missed menstrual period before administering the test. Medical experts thus recommend waiting a few days to a week before retesting, if pregnancy suspicions remain after an initial negative test result. Moreover, people are often forced to wait several weeks before they can schedule an appointment with their OB/GYN, depending on availability. Given these additional obstacles, realistically it may be 9-10 weeks before a pregnancy can be confirmed, long-after the six-week ban limits access to an abortion.

This leaves pregnant people with precious little time (if any) to make a significant health and family planning decision, and to seek out and obtain an abortion, if they so choose. The question of whether to obtain an abortion is a significant one involving careful consideration of several factors. Some of those factors include financial ability, health issues, job security, mental or emotional readiness, relationship status, educational or career goals, and responsibility for other children or dependents.<sup>5</sup> Yet since nearly half of all pregnancies are unintended,<sup>6</sup> it is unlikely that women considering abortion expected to have to undertake that consideration at the very moment that they discover they are pregnant—or have the decision made for them.

## **II. South Carolina’s Abysmal Access to Women’s Health Care Makes It Highly Unlikely Any Woman Could Access Abortion Care Under the Ban.**

There is already a crisis in access to OB/GYN care in South Carolina. South Carolina women, especially women of color, face myriad health challenges and a dearth of supportive policies that might alleviate them. These barriers will be significantly exacerbated by the 2023 Law.

In 2022, South Carolina ranked 43rd in the country for women and children’s health, with a women’s mortality rate (including maternal mortality) in the bottom quintile nationally (41st).<sup>7</sup> South Carolina also ranked poorly on low birthweight (46th),<sup>8</sup> and racial disparity in low birthweight (37th).<sup>9</sup> South Carolina’s infant and maternal mortality rates are already astronomically high—the infant death rate of 7.3 per 1,000 live births was 35 percent higher than the U.S. average of 5.4 per

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<sup>5</sup> Lawrence B. Finer, et al., *Reasons U.S. Women Have Abortions: Quantitative and Qualitative Perspectives*, 37 *Perspectives on Sexual and Reproductive Health* 3, 110-118 (2005) <https://www.guttmacher.org/journals/psrh/2005/reasons-us-women-have-abortions-quantitative-and-qualitative-perspectives>; <https://www.verywellhealth.com/reasons-for-abortion-906589>.

<sup>6</sup> Isabel V. Sawhill, Katherine Guyot, *Preventing unplanned pregnancy: Lessons from the states*, Brookings Institute (2019), <https://www.brookings.edu/research/preventing-unplanned-pregnancy-lessons-from-the-states/>.

<sup>7</sup> America’s Health Rankings, *Maternal Mortality in South Carolina in 2018*, UNITED HEALTH FOUND., <https://assets.americashealthrankings.org/app/uploads/allstatesums-hwc2022.pdf> at pdf page 83-84.

<sup>8</sup> *Id.* at 84.

<sup>9</sup> *Id.*



1,000, and the maternal mortality rate of 36.9 per 100,000 live births was more than double the U.S. average of 17.3.<sup>10</sup>

These numbers are even higher for infants and women of color. According to the POST & COURIER's analysis of South Carolina official data:

The death rate for Black infants rose nearly 40 percent between 2017 and 2021 and was 2.4 times higher than for Whites (*sic*), a gap that increased over the last five years, the report showed. The death rate for Black mothers was 67 percent higher than for White mothers and nearly triple the U.S. average for all women, according to the analysis of state and federal data.<sup>11</sup>

The difficulty South Carolinians—specifically, women of color—face in accessing medical care, including, critically, OB/GYN care, is a key factor contributing to these health challenges. South Carolina ranks 49th among all states and the District of Columbia for places to have a baby, based on metrics including OB/GYNs and pediatricians per capita.<sup>12</sup> That rating reflects the abysmal access to OB/GYN care across South Carolina: 14 of South Carolina's 46 counties have no OB/GYNs at all, and two more have fewer than one OB/GYN per 10,000 women ages 15 to 44.<sup>13</sup> Of the remaining 30 counties, only 12 have more than five OB/GYNs per 10,000 women ages 15 to 44.<sup>14</sup>

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<sup>10</sup> Tom Corwin, Black infant deaths are up 40 percent in South Carolina. Moms are at risk, too, Post & Courier, Apr. 12, 2023, [https://www.postandcourier.com/health/black-infant-deaths-are-up-40-percent-in-south-carolina-moms-are-at-risk-too/article\\_6a466dba-d954-11ed-9acc-5bf2cc7af548.html](https://www.postandcourier.com/health/black-infant-deaths-are-up-40-percent-in-south-carolina-moms-are-at-risk-too/article_6a466dba-d954-11ed-9acc-5bf2cc7af548.html).

<sup>11</sup> *Id.* See also SC HealthViz, Geospatial Health Stats & Policy Research, Maternal and Child Health, updated Sep. 23, 2020, <https://www.schealthviz.sc.edu/aim>

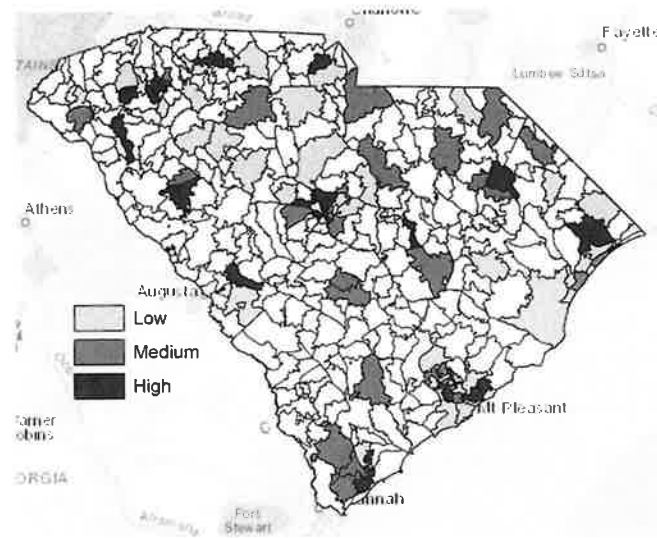
<sup>12</sup> Adam McCann, *Best & Worst States to Have a Baby*, WALLETHUB, Aug. 8, 2022, <https://wallethub.com/edu/best-and-worst-states-to-have-a-baby/6513>.

<sup>13</sup> Brandon Lockett, *Graphic: South Carolina's shortage of OB-GYNs*, THE POST AND COURIER, Aug. 21, 2022, [https://www.postandcourier.com/graphic-south-carolinas-shortage-of-ob-gyns/html\\_5395306c-0d06-11ed-891d-8f2d1db6d0e9.html](https://www.postandcourier.com/graphic-south-carolinas-shortage-of-ob-gyns/html_5395306c-0d06-11ed-891d-8f2d1db6d0e9.html); <https://www.scahec.net/scohw/data/reports/136-SCOHW-Data-Book-2021.pdf> at 101.

<sup>14</sup> *Id.*

Further, OB/GYNs are concentrated around major metropolitan areas<sup>15</sup>—so much so that a third of South Carolinians live in maternity care deserts, “places where there is no hospital offering obstetric care, no birth center and no obstetric provider.”<sup>16</sup>

Figure 3: Distribution of Obstetric Providers, by Zip Code



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As a result of these maternity care deserts, South Carolinians who want to access OB/GYN care face enormous barriers. Access to abortion is more vital in these maternity care deserts where

<sup>15</sup> Brandon Lockett, *Graphic: South Carolina’s shortage of OB-GYNs*, THE POST AND COURIER, Aug. 21, 2022, [https://www.postandcourier.com/graphic-south-carolinas-shortage-of-ob-gyns/html\\_5395306c-0d06-11ed-891d-8f2d1db6d0e9.html](https://www.postandcourier.com/graphic-south-carolinas-shortage-of-ob-gyns/html_5395306c-0d06-11ed-891d-8f2d1db6d0e9.html).

<sup>16</sup> Rachel Treisman, *States with the toughest abortion laws have the weakest maternal supports, data shows*, NAT’L PUB. RADIO (Aug. 18, 2022) <https://www.npr.org/2022/08/18/1111344810/abortion-ban-states-social-safety-net-health-outcomes>.

<sup>17</sup> Bennett, Purser, et al., *Measuring Access to Obstetric Services in South Carolina* South Carolina Center for Rural and Primary Healthcare, July 2019, <https://www.scruralhealth.org/sites/scruralhealth/files/Documents/Research%20Briefs/Access%20to%20Obstetric%20Services%20in%20South%20Carolina%207.23.2019.pdf> at 6; *see also id.* at 1 (noting that data was drawn from 2018 licensure data, and considered as obstetrics providers “those with an active license for the following specialties: Obstetrics, Obstetrics and Gynecology, Gynecology, Neo-Natal, Maternal Fetal Medicine, and Neonatal-Perinatal Medicine. Also included in these data are Family Medicine residency sites that are known to provide obstetric services.”).

pregnancy and birth carry serious health risks that South Carolinians should not be forced to undergo.

South Carolinians' access to abortion is even more restricted than OB/GYN care, even under South Carolina's current laws.<sup>18</sup> There are few abortion providers. Only three facilities are licensed as abortion clinics in South Carolina, with limited hours when abortion care is available. Even if a person seeking an abortion had an OB/GYN provider (and many do not), that provider might be a doctor, nurse practitioner, physicians' assistant, or midwife. Although most OB/GYN care can be provided by a broader range of clinicians, including physician's assistants and nurse practitioners, abortion providers in South Carolina must be physicians. Even then, doctors can refuse to provide abortion care for any reason. These barriers place additional restrictions on South Carolinians' access to abortion care by diminishing the number of providers available to provide care in the state.

Further, the challenge of finding a health care provider willing and able to provide abortion care is not the only barrier to abortion access in South Carolina. Abortion has a high financial and time cost. Assuming the person seeking abortion was able to make an appointment with a doctor willing to provide care, the person would have to self-pay for the abortion (about \$500 to \$2300).<sup>19</sup> For many women, this unforeseen cost would need to be saved over time before accessing abortion care. Many of these women work and have other children, and would need to arrange for childcare and time off from work to access abortion services. Since 71% of women ages 15-44 in South Carolina live in a county without an abortion clinic, they must travel significant distances to access abortion.

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<sup>18</sup> <https://www.bethevoicesc.org/updates/what-does-it-take-to-get-an-abortion-in-south-carolina/>

<sup>19</sup> <https://www.plannedparenthood.org/planned-parenthood-south-atlantic/for-patients/abortion-services/abortion-types>

Access to abortion is often more complicated, as reasons for seeking an abortion are highly varied and may involve different timing. For instance, South Carolina’s 2023 Law does not appropriately account for fetal abnormalities; it exempts less than a dozen lethal abnormalities from the ban, but ignores potentially catastrophic and life-limiting non-lethal fetal anomalies. Such fetal diagnoses may not be detectable in early pregnancy, and special testing may be required to determine whether the condition would permit the baby to have a quality of life.

An example is the fetal diagnosis of Hypoplastic Left Heart Syndrome (“HLHS”) that Jill Perry and her husband, Matthew Hartle, faced when Jill’s pregnancy was at 18 weeks of gestation. HLHS varies in severity—while it can be medically managed in mild cases, HLHS can also be fatal without multiple surgeries at and after birth, including, in many cases, heart transplantation.<sup>20</sup> To determine the severity of the HLHS diagnosis, the couple waited four weeks for an amniocentesis and fetal echocardiogram, which confirmed that the HLHS was very severe and accompanied by another fatal fetal cardiac abnormality, aortic atresia.<sup>21</sup> By the time they had the information they needed to understand the severity of the fetal abnormalities, Jill was 22 weeks gestation, and had to seek abortion care out of state at personal financial and time cost.<sup>22</sup>

This is unjust.

### **III. Abortion Bans Uniquely Impact Women of Color and Other Historically Marginalized Groups.**

The lack of access to abortion the 2023 Law would have an insidious, racialized impact. Even if women of color had the same opportunity to access abortion under the 2023 Law as their white counterparts in South Carolina, there would *still* be a disproportionate impact for women of color, and especially Black women's health outcomes. This racialized impact is compounded

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<sup>20</sup> <https://www.ivygraceproject.com/ivys-story>.

<sup>21</sup> *Id.*; Soc. Sec. Admin., *DI23022.540 Aortic Atresia*, PROGRAM OPERATIONS MANUAL SYSTEM (accessed June 16, 2023) <https://secure.ssa.gov/poms.nsf/lnx/0423022540>.

<sup>22</sup> <https://www.ivygraceproject.com/ivys-story>.

because access to abortion care is constrained for other historically marginalized groups where women of color are over-represented compared to their white counterparts, especially for survivors of intimate partner or sexual violence and people with disabilities.

**A. Abortion Bans Put South Carolinians at a Great Risk, and Have A Disparate Impact on Women of Color.**

Abortion bans significantly harm the health of women and children. If the 2023 Law were in effect, its effect on South Carolinians would be both immediate and far-reaching. It would worsen health outcomes for individuals, diminish the well-being of South Carolina women and children at a population level, and weaken OB/GYN care in South Carolina. These effects are heightened for people of color, who generally experience worse maternal and infant health outcomes than their white counterparts.

*First*, abortion bans are linked to worse health outcomes for individuals. Even healthy pregnancies carry risk, which is greater than abortion in the first or second trimester. Data from states with abortion bans shows an increase in preventable deadly infections and hemorrhages, because the law's licensure, civil, and criminal penalties create heightened risks for physicians to provide medically indicated healthcare for their patients. Providers have to consider not only their patients' care, but also what care the law allows, in states where abortion is banned. This can impede emergency care in a life-threatening crisis.<sup>23</sup>

An OB/GYN in South Carolina described a patient who presented at her emergency room with an ectopic pregnancy—a non-viable pregnancy which has implanted outside the uterus, often in

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<sup>23</sup> *Doctors worry abortion laws will hinder treatment of patients in life-or-death situations*, PBS NEWSHOUR (Jul. 19, 2022) <https://www.pbs.org/newshour/show/doctors-worry-abortion-laws-will-hinder-treatment-of-patients-in-life-or-death-situations>. As one provider observed, “in high-risk obstetrics, we see completely healthy patients where everything is going well, and then they go to deliver, and there’s hemorrhage or a blood clot in the lung.” *Id.*

the fallopian tube. The OB/GYN noted that ectopic pregnancies present a severe risk of maternal death from hemorrhage when they rupture. The OB/GYN explained:

The patient had driven herself from another nearby hospital . . . because when she had been presented there in pain and had an ultrasound, the ectopic pregnancy had a heartbeat. The emergency room doctors and Ob/Gyn doctors, frightened and unsure what was legal to perform and what was not, told the patient to ‘follow up’ with her Ob/Gyn and sent her home. She had enough sense to drive to my hospital where she was taken to the Operating Room within an hour. We took out her swollen and bleeding fallopian tube and saved her life.

The OB/GYN emphasized that this patient was facing a life-threatening medical emergency but, because of the fear around the 2023 Law, which the State House had been debating the same week this emergency presented, doctors at the first hospital had not properly addressed her case. They were, in the OB/GYN’s words, “too confused by legislation and too scared their license would be taken away to care for her appropriately.” Even though the 2023 Law exempts ectopic pregnancies and a handful of other conditions from the abortion ban, its requirement for physicians to “make all reasonable efforts to deliver and save the life of an unborn child” when performing such abortions may swallow that exception, creating more uncertainty. *See* 2023 Law, § 44-41-640(B)(3).

The same South Carolina OB/GYN confronted a similar situation on June 15, 2023, after enactment of the 2023 Law, when “another woman walk[ed] in – 16 weeks [pregnant], ruptured her bag [of amniotic fluid], and was sent home by another hospital while five centimeters dilated because [the fetus] still had a heartbeat and they ‘didn’t know what to do.’” Very early rupture of the amniotic sac is associated with maternal and fetal infection, and fetal demise.<sup>24</sup> Generally,

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<sup>24</sup> See Shailja Dayal, Peter L. Hong, *Premature Rupture of Membranes*, StatPearls (July 18, 2022) <https://www.ncbi.nlm.nih.gov/books/NBK532888/> (for patients at less than 24 weeks of gestation, recommending “patient counseling, expectant management or induction of labor, antibiotics can be considered as early as 20 0/7 weeks of gestation, GBS prophylaxis/corticosteroids/tocolysis/magnesium sulfate are not recommended before viability”).

hospitalization, antibiotics, and “expectant management” (closely watching a patient’s condition but not giving treatment unless symptoms appear or change) are the proper protocol for patients before 24 weeks of gestation.<sup>25</sup> This patient was also denied proper medical treatment because of fear and confusion caused by the 2023 Law.

The risk of an individual suffering a worse medical outcome because of an abortion ban was also documented by an Idaho OB/GYN. While treating a patient with a ruptured ectopic pregnancy—a life-threatening emergency that could lead to internal bleeding and sepsis—she paused to consider the legality of the treatment she needed to perform:

We needed to move quickly to stabilize her and save a life. When I got to the operating room and I removed the ectopic pregnancy, which at that point was problematic legally, I knew that I needed to do what my oath requires me to do, to prioritize the safety of my patient.

And I also knew that I was putting myself, theoretically, potentially, at risk of felony charges, which would have a minimum of two years in jail, loss of my medical license for six months.<sup>26</sup>

Just as doctors are pausing in considering whether to afford medical care, patients experiencing complications from pregnancy are also pausing before seeking care due to fears stemming from abortion regulations. An OB/GYN described a patient with life-threatening blood loss “trying to figure out if me, as the provider, was going to report her for—if she did decide that she wanted to do a [dilation and curettage (“D&C”)] procedure to save her life over the life of her fetus versus asking me questions about her own health care.”<sup>27</sup> Delays in D&C procedures in cases

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<sup>25</sup> *Id.* (“Generally, patients with preterm PROM should be admitted to hospital with periodic assessment for infection, placental abruption, umbilical cord compression, fetal well-being, and labor.”)

<sup>26</sup> *Idaho’s strict abortion laws create uncertainty for OB-GYNs in the state*, PBS NEWSHOUR (May 1, 2023) <https://www.pbs.org/newshour/show/idahos-strict-abortion-laws-create-uncertainty-for-ob-gyns-in-the-state>.

<sup>27</sup> *Idaho’s strict abortion laws create uncertainty for OB-GYNs in the state*, PBS NEWSHOUR (May 1, 2023) <https://www.pbs.org/newshour/show/idahos-strict-abortion-laws-create-uncertainty-for-ob-gyns-in-the-state>.

of a prematurely open cervix or rupture of membranes can result in infection, or a miscarriage that the body does not expel on its own.<sup>28</sup> If untreated, the patient may require a blood transfusion, a hysterectomy or other surgeries, ultimately risking the patient's life.<sup>29</sup>

The risk of adverse effects on patients' healthcare are heightened when abortion bans, like the 2023 Law, are unclear about what constitutes an emergency.<sup>30</sup> People experiencing life-threatening pregnancy complications are forced to carry until they become sick enough to qualify for medical emergency exceptions.<sup>31</sup> This is another example of how abortion bans result in worse health outcomes for individuals.

**Second**, and more broadly, abortion bans are linked to poorer health and economic outcomes for mothers and children on a population level. The Turnaway Study, a rigorous, longitudinal study comparing women who received the abortions they sought with women who were "turned away" from an abortion because of legal restrictions, provides extensive data on the health consequences of being denied abortion care. It found that, unlike people who received wanted abortions, those denied abortions are more likely to experience life-threatening complications from pregnancy—including eclampsia and postpartum hemorrhage—and death.<sup>32</sup> Two women in the study population died in childbirth after being denied abortion.<sup>33</sup>

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<sup>28</sup> Laura Santhanam, *How abortion bans will likely lead to more deadly infections*, PBS NEWSHOUR (Jul. 19, 2022) <https://www.pbs.org/newshour/health/how-abortion-bans-will-likely-lead-to-more-deadly-infections>.

<sup>29</sup> *Id.*; see also Selena Simmons-Duffin, *Her miscarriage left her bleeding profusely. An Ohio ER sent her home to wait*, NAT'L PUB. RADIO, (Nov. 15, 2022) <https://www.npr.org/sections/health-shots/2022/11/15/1135882310/miscarriage-hemorrhage-abortion-law-ohio>.

<sup>30</sup> Arey et al., *A Preview of the Dangerous Future of Abortion Bans — Texas Senate Bill 8*, NEW ENGL. J. OF MED. (Aug. 4, 2022) <https://www.nejm.org/doi/full/10.1056/NEJMp2207423>.

<sup>31</sup> *Id.*

<sup>32</sup> *The Turnaway Study*, Advancing New Standards in Reproductive Health (accessed Jun. 16, 2023) [https://www.ansirh.org/sites/default/files/publications/files/the\\_harms\\_of\\_denying\\_a\\_woman\\_a\\_wanted\\_abortion\\_4-16-2020.pdf](https://www.ansirh.org/sites/default/files/publications/files/the_harms_of_denying_a_woman_a_wanted_abortion_4-16-2020.pdf)

<sup>33</sup> *Id.*



Though the state suggests that the 2023 Law is aimed at protecting infant life, in reality, infants and children face significant health consequences from abortion bans. Children born because their mothers were denied abortion experienced poorer maternal bonding than children born after their mothers had received an abortion.<sup>34</sup> Studies also show lower child development scores for existing children of women who were denied an abortion than for children whose mothers received a wanted abortion.

Abortion bans have a significant and demonstrable effect on women's and children's socioeconomic status. There is extensive data on the economic consequences of being denied abortion care via the Turnaway Study. Women who were turned away from a wanted abortion and later gave birth were nearly four times as likely to be living in poverty six months later and three times as likely to be unemployed relative to those who received an abortion. Years after an abortion denial, women were more likely not to have enough money to cover basic living expenses like food, housing and transportation. They were 78% more likely to end up with delinquent debt and 81% more likely to have an increase in negative credit. The consequences are intergenerational: children born as a result of abortion denial, and children whose mothers were denied abortion of a subsequent pregnancy, are more likely to live in poverty than children born from a subsequent pregnancy to women who received an abortion.<sup>35</sup> The 2023 Law will thus likely further the cycle of poverty for generations to come.

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<sup>34</sup> Diana Greene Foster, *et al.*, *Comparison of Health, Development, Maternal Bonding, and Poverty Among Children Born After Denial of Abortion vs After Pregnancies Subsequent to an Abortion*, J. OF AM. MED. ASS'N. PEDIATRICS (Nov. 2018) <https://jamanetwork.com/journals/jamapediatrics/fullarticle/2698454>.

<sup>35</sup> Diana Greene Foster, *et al.*, *Effects of Carrying an Unwanted Pregnancy to Term on Women's Existing Children*, J. OF PEDIATRICS (Oct. 30, 2018) <https://doi.org/10.1016/j.jpeds.2018.09.026>; Diana Greene Foster, *et al.*, *Comparison of Health, Development, Maternal Bonding, and Poverty Among Children Born After Denial of Abortion vs After Pregnancies Subsequent to an Abortion*, J. OF AM. MED. ASS'N. PEDIATRICS (Nov. 2018) <https://jamanetwork.com/journals/jamapediatrics/fullarticle/2698454>.

*Third*, abortion bans lead to long-term impacts to maternal mortality and morbidity. If OB/GYNs are not trained on how to provide abortion care, obstetric care as a whole is diminished.<sup>36</sup> In 2023, applicants to OB-GYN residency programs decreased by 10.5 percent in states with total abortion bans.<sup>37</sup> In South Carolina, this would only exacerbate the current shortage of OB/GYN providers.

Each of these impacts is heightened for people of color.

**B. Abortion Bans Uniquely Impact Women of Color.**

In South Carolina, as in the United States as a whole, women of color lack the same access to medical care as white women. As a result, women of color will be uniquely impacted if the 2023 Law goes into effect.

On top of the population-wide delays in early pregnancy detection, discussed in Section I, *supra*, women of color face systemic disparities that can further delay pregnancy recognition. Women of color are less likely to have access to reproductive health information, including information about menstrual cycle timing and pregnancy symptoms that would raise suspicions of pregnancy. Women of color are also less likely to have access to quality health care, including quality at-home pregnancy tests. Accordingly, while on average, women detect pregnancy at five-to-six weeks, women of color are likely to discover that they are pregnant days to weeks later.

As explained throughout this brief, women of color do not have the same access to OB/GYN care as their white counterparts. Women of color are less likely to have an OB/GYN provider, and are more likely to rely on clinics for reproductive health care. Even if a person seeking an abortion had a doctor as their OB/GYN provider and the doctor met the requirements to

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<sup>36</sup> <https://rollcall.com/2022/08/10/medical-schools-students-review-training-amid-abortion-bans/>

<sup>37</sup> *Idaho's strict abortion laws create uncertainty for OB-GYNs in the state*, PBS NEWSHOUR (May 1, 2023) <https://www.pbs.org/newshour/show/idahos-strict-abortion-laws-create-uncertainty-for-ob-gyns-in-the-state>.

provide an abortion under South Carolina law, as discussed in Section II, *supra*, doctors in South Carolina can refuse to provide abortion care for any reason. Further, women of color are more likely to be denied requested health care than their white counterparts.

The result of these barriers is a high time cost for accessing abortion care. Women of color are less able to bear that high time cost—resulting in further delays in accessing abortion care. As a result, the abortion ban provides women of color with virtually no opportunity to make an informed choice. The 2023 Law’s ban on abortions after six weeks deprives women of color of any meaningful access to the health care and information they need to make informed decisions about their own bodies, as well as any meaningful access to an abortion.

Women of color have long been oppressed by medicine and the government. The history of Black women in this country is one of forced control over their reproduction. Authority over a Black woman’s reproduction has been in everyone’s hands except that of the Black woman, who has been denied the right to bodily autonomy throughout our nation’s history.

In the antebellum era, the enslavement of Black women was reproductive oppression. An enslaved woman’s value was the work she did and increased value she could bring to her white, male enslavers’ investment through childbearing. Through forced relationships between enslaved men and women and the rape of enslaved women by the white men in authority over them, the enslavers guaranteed the continuation of the slave trade. The children that were born were often forcibly removed from their mothers, violently severing the mother-child relationship. As dehumanizing as slavery is, enslaved women were denied even further their humanity by forced pregnancies for the profitability of their enslavers.

Modern gynecology owes a deep debt to enslaved women. South Carolina gynecologist J. Marion Sims performed surgeries on enslaved women in the 1800s without consent and without

anesthesia<sup>38</sup>. Robbed of their voice and personhood, we only know of the identify of Sims' victims, Lucy, Anarcha and Betsy, through his notes. His chosen subjects where brutally operated on up to 30 times and deemed to not feel pain<sup>39</sup>. The enslaved women's bodies were used to benefit the advancement of gynecology, the health of white women, and Sim's legacy instead of their own. The notion that Black individuals do not feel pain as their white counterparts do persists in the medical field<sup>40</sup>. This leads to increased suffering, erosion of trust with medical professionals, and increased death rates, especially maternal mortality rates<sup>41</sup>.

Following emancipation, women of color, including Black women and indigenous women, became the focus for forced or involuntary sterilizations. The rise in popularity of eugenics increased control of reproduction of those individuals that were less desirable as members of a society. These "unfit" individuals included those in poverty, those with mental or physical disabilities, or people of color. Beginning in 1907, states started passing eugenics-based forced sterilization laws, with Indiana leading these horrific efforts in the U.S. and worldwide, and thirty

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<sup>38</sup> Domonske, Camila, NPR, 'Father Of Gynecology,' Who Experimented On Slaves, No Longer On Pedestal In NYC, April 17, 2018, <https://www.npr.org/sections/thetwo-way/2018/04/17/603163394/-father-of-gynecology-who-experimented-on-slaves-no-longer-on-pedestal-in-nyc>. See also Holland, Brynn, "The 'Father of Modern Gynecology' Performed Shocking Experiments on Enslaved Women," <https://www.history.com/news/the-father-of-modern-gynecology-performed-shocking-experiments-on-slaves>.

<sup>39</sup> Holland, Brynn, "The 'Father of Modern Gynecology' Performed Shocking Experiments on Enslaved Women," <https://www.history.com/news/the-father-of-modern-gynecology-performed-shocking-experiments-on-slaves>

<sup>40</sup> Hoffman, Kelly M.; Trawalter, Sophie, Axt, Jordan R.; and Oliver, M. Norman, "Racial bias in pain assessment and treatment recommendations, and false beliefs about biological differences between blacks and whites," *Proceedings of the National Academy of Sciences*, Vol. 113, No. 16, April 19, 2016.

<sup>41</sup> Saluja, Bani, and Zenobia Bryant. "How Implicit Bias Contributes to Racial Disparities in Maternal Morbidity and Mortality in the United States." *Journal of women's health* (2002) Vol. 30,2 (Feb. 2021), pp. 270-273.

states following.<sup>42</sup> These laws were generally upheld: the U.S. Supreme Court upheld the Virginia Sterilization Act of 1924 that allowed for compulsory sterilization of institutionalized “mental” patients in *Buck v. Bell*, 274 U.S. 200 (1927).

Along with the eugenics movement in America, “fears of moral degeneration led to an increased surveillance of working-class urban neighborhoods in the United States by the 1940s.”<sup>43</sup> In Charleston, these neighborhoods were overwhelmingly Black. As leading academics explained,

The surveillance of Black women’s bodies and sexual practices, combined with fears of urban vice in an age of reform, caused white authorities in South Carolina increasingly to turn their attention to what women were doing in African American neighborhoods. Charleston police became particularly concerned about a series of abortion cases in 1942–3.<sup>44</sup>

The American Medical Association had begun in 1847 to campaign to outlaw abortions performed by “unorthodox” practitioners (derisively called “quacks”).<sup>45</sup> Throughout the 1920s, 1930s, and 1940s there was a rise of in the prosecution of Black women in abortion cases, including in South Carolina.<sup>46</sup> This criminalization had a disparate impact on Black women’s health needs, which were primarily treated in the home by “granny” midwives who learned their craft from other Black women.<sup>47</sup> The patterns in prosecution remained consistent in later decades, “including the amplified focus on prosecuting urban Black women as well as women’s persistent commitment to local healthcare networks.”<sup>48</sup>

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<sup>42</sup>Lombardo, Paul, “A Century of Eugenics in America: From the Indiana Experiment to the Human Genome Era. <https://books.google.com/books?id=FAB-6RzKAQIC&pg=PR9#v=onepage&q&f=false>.

<sup>43</sup> Madeleine Ware, Cara Delay, and Beth Sundstrom, *Abortion and Black Women’s Health Networks in South Carolina, 1940–70*, *Gender & History*, Vol. 32 No. 3 October 2020, p. 644

<sup>44</sup> *Id.*

<sup>45</sup> Madeleine Ware, Cara Delay, and Beth Sundstrom, *Abortion and Black Women’s Health Networks in South Carolina, 1940–70*, *Gender & History*, Vol. 32 No. 3 October 2020, p. 641

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

During the Jim Crow era, segregation heightened the disparities within women's health for Black women. With the decline of lay midwives and the increase of economic disparities for Black women, few had realistic options for dealing with unwanted pregnancy. Unmarried white women had the option of maternity homes where they could wait out their pregnancy and then place their children up for adoption. There were no maternity homes for Black women in the same circumstance. This lack of access coupled with the shame of being an unmarried mother and the economic burden of having to care for a child outweighed the 'evil' of abortion.<sup>49</sup>

Forcible sterilization of women of color persisted until the 1970s. Federally funded welfare programs, primarily in the South and West, underwrote the coerced sterilization of thousands of poor women of color, often gaining "consent" through the threat of denial of welfare benefits.<sup>50</sup> Medical students in the South practiced surgical skills by performing hysterectomies on poor Black women without their informed consent. The was so common it developed its own nickname, "Mississippi appendectomy."

The impact of these sterilization procedures came to light in the case *Relf v. Weinberger*, 372 F.Supp. 1196 (D.D.C. 1974), *vacated*, 565 F.2d 722 (D.C. Cir. 1977), decided fifty years after the Supreme Court permitted forced sterilization of mental patients in *Buck*. In *Relf*, African-American sisters had been sterilized as children aged 12 and 14, due to their intellectual disabilities, while their mother was misled to believe that her daughters were receiving birth control shots. The *Relf* case disclosed that federally funded programs were responsible for the sterilization of 100,000 to 150,000

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<sup>49</sup> *Id.* at 643

<sup>50</sup> Alexandra Minna Stern, *Sterilized in the Name of Public Health*, 95 AM. J. OF PUB. HEALTH 1128 (July 2005) <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1449330/pdf/0951128.pdf>.

people *each year*. *Id.* at 1199. Indeed, in North Carolina, 65% of sterilizations were performed on African-American women even though they only made up 25% of the population.<sup>51</sup> .

The women's liberation movements of the 1960s and 1970s increased the disparity in the portrayal of Black women and how they were perceived by the women's health activists. As leading academics in South Carolina explained:

Fears of overpopulation straining the economy and taxing the welfare system complicated the 'sexual revolution' for Black women. White advocates for increased contraception and abortion accessibility framed these initiatives as 'pregnancy control' for sexually free and empowered white women versus 'population control' for allegedly irresponsible and sexually deviant Black women.<sup>52</sup>

For as long as our country has existed, Black women have been at the center reproductive injustice and abuse. Their humanity and personhood have been subjugated in favor of the interests of others, whether it be the property rights of slavers, the medical advances of gynecology at their expense, or the racial purity ideals of the eugenics movement. The common element has always been that Black women have lacked the authority to make decisions about their own bodies and their own health. Restricting access to reproductive healthcare in the form of a 6-week abortion ban would codify a new policy of disenfranchisement and injustice.

### **C. Abortion Bans Uniquely Impact Survivors of Intimate Partner Violence and Sexual Assault.**

#### **1. Survivors of Intimate Partner Violence**

The 2023 Law places a disproportionate burden on survivors of intimate partner violence, which in turn places a disproportionate burden on historically marginalized groups, including women of color, and younger women. Studies have shown that between 6% and 22% of people

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<sup>51</sup> [Unwanted Sterilization and Eugenics Programs in the United States](#)". *Independent Lens*. Retrieved 2018-03-21.

<sup>52</sup> Madeleine Ware, Cara Delay, and Beth Sundstrom, *Abortion and Black Women's Health Networks in South Carolina, 1940–70*, *Gender & History*, Vol. 32 No. 3 October 2020, p 647.

seeking abortion report intimate partner violence.<sup>53</sup> Black, Indigenous, and Latino people are at a higher risk than White women of experiencing intimate partner violence, and intimate-partner-violence-related homicide. In addition, younger women between 18 and 29 years old are more likely to be victims of intimate-partner-violence-related homicides.<sup>54</sup> Intimate partner violence may take the form of rape, “coercion . . . or an abusive partner’s sabotage of contraception,” resulting in an unintended pregnancy.<sup>55</sup> Having a child with an abusive partner tethers the pregnant partner to him, creating wide-ranging impacts on the pregnant person and the child. To limit these survivors’ access to abortion care is cruel and unjust.

Pregnancy is associated with new and increasingly severe intimate partner violence, and homicide is the leading cause of pregnancy-associated death in the United States, with pregnant and postpartum women two times more likely to die from homicide than two of the other most common severe pregnancy complications, hemorrhage and hypertensive disorders, combined.<sup>56</sup>

Intimate partner violence can also manifest in an abusive partner threatening “harm if a pregnant person seeks an abortion.”<sup>57</sup> This is especially troubling in the context of the 2023 Law’s reporting requirements. If an abusive partner gained access to the medical records of their partner who received an abortion, the abuser would find written documentation of the abortion and the

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<sup>53</sup> Pallitto, *et al.*, *Intimate partner violence, abortion, and unintended pregnancy: results from the WHO multi-country study on women’s health and domestic violence*, INT J GYNAECOL OBSTET, (Sept. 6, 2012) <https://doi.org/10.1016/j.ijgo.2012.07.003>.

<sup>54</sup> Elizabeth Tobin-Tyler, *A Grim New Reality — Intimate-Partner Violence after Dobbs and Bruen*, NEW ENG. J. OF MED. (Oct. 6, 2022) <https://www.nejm.org/doi/full/10.1056/NEJMp2209696>.

<sup>55</sup> Elizabeth Tobin-Tyler, *A Grim New Reality — Intimate-Partner Violence after Dobbs and Bruen*, NEW ENG. J. OF MED. (Oct. 6, 2022) <https://www.nejm.org/doi/full/10.1056/NEJMp2209696>.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*



reason for it. *See* 2023 Law 474 § 44-41-640. This could lead to violence.<sup>58</sup> For instance, in May 2023 in Texas, a state where abortion is banned, a man fatally shot his ex-girlfriend after learning she had traveled out of state to receive an abortion shortly after their breakup.<sup>59</sup> The man had an outstanding arrest warrant from March 2023, which stated that he had “beat[en] the victim, a woman pregnant with his child, several times throughout their relationship, including trying to strangle her and leaving her with a black eye.”<sup>60</sup> The victim feared not only for herself, but also for her children from previous relationships, whom the man had threatened to harm.<sup>61</sup>

Although research has not identified why, pregnant people facing intimate partner violence are less likely to recognize “the early signs of pregnancy”—*i.e.*, signs of pregnancy that could be determined within the six weeks allowed by the 2023 Law.<sup>62</sup> In addition, people facing intimate partner violence experience difficulty in accessing abortion care, which they must do undetected. People facing intimate partner violence typically struggle to escape their abusive partner, whereas the Turnaway Study found that ***abortion resulted in a reduction of physical violence*** from the man involved in the pregnancy. Among women seeking abortion, having an abortion was associated with a reduction over time in physical violence from the Man Involved in Pregnancy (“MIP”), while carrying the pregnancy to term was not. Terminating an unwanted pregnancy may allow women to

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<sup>58</sup> Elizabeth Tobin-Tyler, *A Grim New Reality — Intimate-Partner Violence after Dobbs and Bruen*, NEW ENG. J. OF MED. (Oct. 6, 2022) <https://www.nejm.org/doi/full/10.1056/NEJMp2209696>.

<sup>59</sup> Emily Olson, *A Texas woman was killed by her boyfriend after getting an abortion, police say*, NAT’L PUB. RADIO, May 13, 2023 <https://www.npr.org/2023/05/13/1176007305/texas-abortion-woman-killed-boyfriend>.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *See, e.g.,* Alhusen, *et al.*, *Intimate partner violence during pregnancy: maternal and neonatal outcomes*, J WOMENS HEALTH (Jan. 2015) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4361157/>.

avoid physical violence from the MIP, whereas continuing an unwanted pregnancy appears to result in sustained physical violence over time.<sup>63</sup>

In short, these studies show that women who were denied wanted abortions were significantly less able to escape their abusive relationships. S.B. 474 would perpetuate this trend by denying care to the vast majority of South Carolinians who seek an abortion.

The Turnaway Study further reinforces that denying or banning abortion has multi-generational effects: the children born from these pregnancies grow up witnessing or experiencing abuse that could have been avoided. Witnessing or experiencing abuse has well-established detrimental effects on the fetus and child. Intimate partner violence is linked to low birth weight and increased rates of preterm birth, both of which are well established leading causes of neonatal morbidity and mortality, even after adjusting for other causes of low birth weight and preterm birth.<sup>64</sup> The severity of intimate partner violence during pregnancy also directly correlates to worse neonatal outcomes.<sup>65</sup> Indeed, a study of women attending South Carolina family practice clinics in 1997 and 1998 showed that abuse during pregnancy was significantly associated with an increased risk of perinatal death—death of the fetus after 20 weeks gestation, or up to 28 days after birth.<sup>66</sup>

## 2. Survivors of Rape

The 2023 Law will drastically limit the availability of abortion to survivors of rape, and could physically endanger survivors. *First*, of the over 3,500 South Carolinians (including about 1,500

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<sup>63</sup> Roberts, *et al.*, *Risk of violence from the man involved in the pregnancy after receiving or being denied an abortion*, BMC MED, 12, 144 (2014). <https://doi.org/10.1186/s12916-014-0144-z>.

<sup>64</sup> Alhusen, *et al.*, *Intimate partner violence during pregnancy: maternal and neonatal outcomes*, J WOMENS HEALTH (Jan. 2015) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4361157/>.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*; Coker, *et al.*, *Partner violence during pregnancy and risk of adverse pregnancy outcomes*, 4 PAEDIATRIC & PERINATAL EPIDEMIOLOGY 18, 260–269 (2004) <https://doi.org/10.1111/j.1365-3016.2004.00569.x>.

minors) who experience sexual assault each year,<sup>67</sup> an estimated 5% of those at reproductive age will become pregnant as a result.<sup>68</sup> Although the 2023 Law includes an exception for pregnant people who are survivors of rape, that exception is time-limited to 12 weeks, and does not allow adequate time for survivors to detect an unwanted pregnancy and decide whether to seek abortion care. Moreover, it is common for rape victims to not seek immediate medical attention and not realize they are pregnant until the second trimester,<sup>69</sup> which, under the 2023 Law, is too late to seek abortion care.

For instance, a South Carolina OB/GYN doctor described seeing a young pregnant rape survivor who had done all the “right” things—reported her crime and undergone forensic examination—only to later determine that she was pregnant:

I saw a 16-year-old pregnant rape victim in my office last week. By the time she got to me, she had seen the police, been processed by [the South Carolina Law Enforcement Division], been examined by Forensic Pediatrics, discovered to be pregnant, and finally sent to me. She arrived in my office with her mother, both of them tearful, but ready for the visit. She had no idea how far into her pregnancy she was, and an ultrasound in my office established that she was 12 weeks and 3 days.

That young rape survivor would be barred from getting an abortion in South Carolina under the 2023 Law. Moreover, many minors will be unable to obtain the parental consent or judicial bypass required under South Carolina law for a minor to receive an abortion, resulting in further delays on top of any delay brought on by the requirement to report the rape to law enforcement. As

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<sup>67</sup> *Statistics*, SOUTH CAROLINA COALITION AGAINST DOMESTIC VIOLENCE AND SEXUAL ASSAULT (accessed June 16, 2023) <https://www.sccadvasa.org/wp-content/uploads/2023/04/SCCADVASA-2023-Media-Fact-Sheet.pdf> (reported from 2022, collected from 11 of their 15 Member Rape Crisis Centers)

<sup>68</sup> Holes, et al., *Rape-related pregnancy: Estimates and descriptive characteristics from a national sample of women*, AM. J. OF OBSTETRICS & GYNECOLOGY (Aug. 1995) [https://doi.org/10.1016/S0002-9378\(96\)70141-2](https://doi.org/10.1016/S0002-9378(96)70141-2).

<sup>69</sup> *Id.*

a result, many survivors of rape would be forced to carry an unwanted pregnancy, unless they have the resources to travel to a clinic out of state or attempt to self-manage their abortion.

**Second**, and even more alarmingly, the 2023 Law's Section 44-41-650 requires the physician who performs the abortion to report the allegation of rape to the sheriff in the county where the abortion was performed with the survivor's name and contact information, and document in the survivor's medical records that the physician notified the sheriff of the rape allegation. The physician must also notify the survivor that rape allegations will be reported to the sheriff. This violates the confidential relationship between a doctor and patient, and forces survivors to have their rape reported without their consent,

Section 44-41-650 of the 2023 Law could even endanger survivors of rape. Most survivors who become pregnant from rape were raped by a known perpetrator.<sup>70</sup> For adolescents, that known perpetrator is often a relative.<sup>71</sup> Moreover, rape is a strong indicator of domestic and family violence.<sup>72</sup> Survivors of rape by a known perpetrator may decide not to report rape for their own personal safety or well-being, and should not have that reporting decision removed from their control. As with intimate partner violence discussed above (*see* Section III.C.1, *supra*), if the family member or acquaintance who perpetrated a rape discovered that the survivor had sought an abortion and thus the crime was reported to authorities, they could further harm the survivor. This is an unacceptable outcome.

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<sup>70</sup> Nat'l Inst. of J., *Most Victims Know Their Attacker* (Sept. 30, 2008) <https://nij.ojp.gov/topics/articles/most-victims-know-their-attacker>.

<sup>71</sup> *Statistics*, SOUTH CAROLINA COALITION AGAINST DOMESTIC VIOLENCE AND SEXUAL ASSAULT (accessed June 16, 2023) <https://www.sccadvasa.org/wp-content/uploads/2023/04/SCCADVASA-2023-Media-Fact-Sheet.pdf> (reported from 2022, collected from 11 of their 15 Member Rape Crisis Centers).

<sup>72</sup> *Id.*

#### D. Abortion Bans Uniquely Impact People with Disabilities

People with disabilities are uniquely injured—and re-injured—through abortion bans such as the 2023 Law. Many people with disabilities, especially people of color with disabilities, have been stripped of their bodily autonomy through forced sterilization.<sup>73</sup> See *Buck v. Bell*, 274 U.S. at 200 (upholding forced sterilization of patients in a psychiatric institution); *Relf*, 372 F. Supp. at 1196 (discussing forced sterilization of African American girls with intellectual disabilities); Section III.B., *supra*. Although state-supported sterilization has declined, it is still legal in thirty-one states and the District of Columbia,<sup>74</sup> and people with disabilities still receive sterilization without their informed consent for the convenience of their caretakers; their reproductive and sexual health is disregarded.<sup>75</sup> Indeed, until 2017, children of people with disabilities could be removed by the State of South Carolina for the sole reason of the parent’s disability.<sup>76</sup> Two wrongs do not make a right—first restricting the bodily autonomy rights of individuals with disabilities and now forcing them to carry unwanted pregnancies (or pregnancies that will endanger their health) only exacerbates the historical harm.

For some people with disabilities, pregnancy can convert a chronic condition into a life-threatening one. One woman with a connective tissue disorder was informed by doctors that

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<sup>73</sup> NAT’L P’SHP FOR WOMEN & FAMILIES & AUTISTIC SELF ADVOCACY NETWORK, *Access, Autonomy, & Dignity: Abortion Care For People With Disabilities*, 6, 14-15 (Sept. 2021), <https://live-national-partnership-for-women-dev.pantheonsite.io/wp-content/uploads/2023/02/repro-disability-abortion.pdf?wpId=70997>

<sup>74</sup> NATIONAL WOMEN’S LAW CENTER, *Forced Sterilization of Disabled People in the United States* (Washington: 2022), <https://nwlc.org/wp-content/uploads/2022/01/%C6%92.NWLC.SterilizationReport.2021.pdf>.

<sup>75</sup> NAT’L P’SHP FOR WOMEN & FAMILIES & AUTISTIC SELF ADVOCACY NETWORK, *Access, Autonomy, & Dignity: Abortion Care For People With Disabilities*, 6, 14-15 (Sept. 2021), <https://live-national-partnership-for-women-dev.pantheonsite.io/wp-content/uploads/2023/02/repro-disability-abortion.pdf?wpId=70997>; see also Jamie Ducharme, *For People With Disabilities, Losing Abortion Access Can Be a Matter of Life or Death*, TIME (Jan. 25, 2023) <https://time.com/6248104/abortion-access-people-with-disabilities/>.

<sup>76</sup> See *ABLE SC Advocacy, Persons with Disabilities Right to Parent Act*, ABLE SOUTH CAROLINA (accessed June 19, 2023) <https://www.able-sc.org/get-support/advocacy/>.

pregnancy could result in organ rupture, which would be a life-threatening emergency.<sup>77</sup> Another woman with a heart defect was similarly informed that her condition was too precarious for pregnancy—any pregnancy would overtax her delicate cardiovascular system, and could put her into heart failure.<sup>78</sup> With the lack of clarity on life-of-the-mother exceptions in abortion bans, like the one in the 2023 Law, people with disabilities may be unable to access abortion until a health emergency occurs, potentially leading to life-limiting complications or death, and certainly creating a greater tax on the health care delivery and insurance systems.<sup>79</sup> The 2023 Law’s vague exception for life-threatening pregnancies will endanger disabled people.

In addition to the inadequacy of the life-threatening-pregnancy exception, the 2023 Law’s exception for rape does not meet the needs of people with disabilities. People with disabilities are three times more likely to be the victim of rape or other sexual assault than the general population, and the likelihood of such crimes against people with intellectual disabilities is even higher—at seven times more likely than the general population.<sup>80</sup> These rapes may result in pregnancy. A caregiver or guardian may coerce reproductive decision-making, underscoring the need for people with disabilities to have bodily autonomy.<sup>81</sup> In addition, people with disabilities are also significantly more likely to experience intimate partner violence, as compared to people without disabilities.<sup>82</sup>

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<sup>77</sup> Jamie Ducharme, *For People With Disabilities, Losing Abortion Access Can Be a Matter of Life or Death*, TIME (Jan. 25, 2023) <https://time.com/6248104/abortion-access-people-with-disabilities/>.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> Erika Harrell, *Crime Against Persons with Disabilities, 2009-2014 - Statistical Tables*, NCJ 250200 (Nov. 2016) <https://bjs.ojp.gov/content/pub/pdf/capd0914st.pdf>; NAT’L P’SHP FOR WOMEN & FAMILIES & AUTISTIC SELF ADVOCACY NETWORK, *Access, Autonomy, & Dignity: Abortion Care For People With Disabilities*, 6, 14-15 (Sept. 2021), <https://live-national-partnership-for-women-dev.pantheonsite.io/wp-content/uploads/2023/02/repro-disability-abortion.pdf?wpId=70997>

<sup>81</sup> NAT’L P’SHP FOR WOMEN & FAMILIES & AUTISTIC SELF ADVOCACY NETWORK, *Access, Autonomy, & Dignity: Abortion Care For People With Disabilities*, 6, 14-15 (Sept. 2021), <https://live-national-partnership-for-women-dev.pantheonsite.io/wp-content/uploads/2023/02/repro-disability-abortion.pdf?wpId=70997>

<sup>82</sup> *Id.* at 14-15.

Thus, “the lack of access to abortion care could disproportionately impact people with disabilities who may be seeking to leave an abusive intimate partner and who may find their short- and long-term safety further compromised by the inability to access such care.”<sup>83</sup>

## CONCLUSION

The 2023 Law unconstitutionally denies all South Carolinians a meaningful opportunity to access abortion. The worst impacts of the 2023 Law would be concentrated on women of color, particularly Black women, and other historically marginalized groups, including people with disabilities and survivors of intimate partner and sexual violence. The 2023 Law cannot stand.

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Respectfully Submitted,

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<sup>83</sup> *Id.*