STATE OF SOUTH CAROLINA
RICHLAND COUNTY

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

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

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

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

Plaintiffs,

v.

STATE OF SOUTH CAROLINA;

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

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

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

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

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

IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT

C/A No.: 2022-CP-[ ]-_____

SUMMONS

JIM C. CHOW, in his official capacity as a Member 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;

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;

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

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

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

Defendants.

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

/s/ *M. Malissa Burnette*
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July 13, 2022

STATE OF SOUTH CAROLINA
RICHLAND COUNTY

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

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IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT

C/A No.: 2022-CP-[ ]-_____

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

JIM C. CHOW, in his official capacity as a Member 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;

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;

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

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

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

Defendants.

Plaintiffs Planned Parenthood South Atlantic, Dr. Katherine Farris, M.D., Greenville Women's Clinic, and Dr. Terry L. Buffkin, M.D. ("Plaintiffs"), by and through their undersigned counsel and complaining of Defendants the State of South Carolina and Alan Wilson, Edward Simmer, Anne G. Cook, Stephen I. Schabel, Ronald Januchowski, Jim C. Chow, George S. Dilts, Dion Franga, Richard Howell, Theresa Mills-Floyd, Jennifer R. Root, Christopher C. Wright, Scarlett A. Wilson, Byron E. Gipson, and William Walter Wilkins III, all in their official capacities ("Defendants"), allege as follows:

1. Plaintiffs bring this action to challenge the constitutionality of South Carolina's Senate Bill 1, 124th Gen. Assemb., Reg. Sess. (S.C. 2021) (hereinafter "SB 1" or "the Act") which bans abortion after the detection of fetal or embryonic cardiac activity—as early as approximately six weeks of pregnancy. S.C. Code Ann. §§ 44-41-610 to -740. A violation of the Act carries felony criminal penalties, the potential for adverse licensing action, and civil liability.

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

3. In particular, the Act is an attack on families with low incomes, South Carolinians of color, and rural South Carolinians, who already face inequities in access to medical care and who will bear the brunt of the law's cruelties. South Carolinians face a critical shortage of reproductive health care providers, including obstetrician-gynecologists, and the rate at which South Carolinians, particularly Black South Carolinians, die from pregnancy-related causes is shockingly high.

4. Rather than working to end these preventable deaths and honoring South Carolinians' reproductive health care decisions, the Legislature has instead chosen to criminalize the vast majority of abortions.

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

PARTIES

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

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

8. PPSAT and GWC operate the only three abortion clinics in South Carolina. Each of PPSAT and GWC's locations holds a state license to perform first-trimester abortions, *see* S.C.

Code Ann. § 44-41-75(A), which corresponds to abortions up to 14 weeks as measured from the first day of a person's last menstrual period ("LMP"), *id.* § 44-41-10; *see also* S.C. Code Ann. Regs. 61-12.101(S)(4). At each of these facilities, physicians licensed to practice medicine in South Carolina provide abortions.

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

10. GWC operates a clinic in Greenville, where absent the Act it has historically provided medication abortion through 10 weeks LMP and abortion by procedure up to 14 weeks LMP, which corresponds to the end of the first trimester.

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

12. Dr. Terry L. Buffkin, M.D., is a physician licensed to practice medicine in South Carolina and a co-owner of GWC. He is a board-certified obstetrician/gynecologist ("OB/GYN") who provides a range of reproductive health care to patients. Absent the Act, this has historically

included medication abortion up to 10 weeks LMP and abortion by procedure up to 14 weeks LMP. Dr. Buffkin brings this claim on behalf of himself and his patients.

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

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

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

16. Defendant Anne G. Cook is the President of the South Carolina Board of Medical Examiners ("BME"), which is responsible for licensing and disciplining physicians who practice in South Carolina, pursuant to S.C. Code Ann. § 40-47-10. BME has broad authority, upon a majority vote of its members, to discipline a physician, including through license revocation for a felony conviction. *Id.* § 40-47-110(B)(2). She is sued in her official capacity.

17. Defendant Stephen I. Schabel is Vice President of the BME, which is responsible for licensing and disciplining physicians who practice in South Carolina, pursuant to S.C. Code Ann. § 40-47-10. BME has broad authority, upon a majority vote of its members, to discipline a

physician, including through license revocation for a felony conviction. *Id.* § 40-47-110(B)(2). He is sued in his official capacity.

18. Defendant Ronald Januchowski is Secretary of the BME, which is responsible for licensing and disciplining physicians who practice in South Carolina, pursuant to S.C. Code Ann. § 40-47-10. BME has broad authority, upon a majority vote of its members, to discipline a physician, including through license revocation for a felony conviction. *Id.* § 40-47-110(B)(2). He is sued in his official capacity.

19. Defendant Jim C. Chow is a Member of the BME, which is responsible for licensing and disciplining physicians who practice in South Carolina, pursuant to S.C. Code Ann. § 40-47-10. BME has broad authority, upon a majority vote of its members, to discipline a physician, including through license revocation for a felony conviction. *Id.* § 40-47-110(B)(2). He is sued in his official capacity.

20. Defendant George S. Dilts is a Member of the BME, which is responsible for licensing and disciplining physicians who practice in South Carolina, pursuant to S.C. Code Ann. § 40-47-10. BME has broad authority, upon a majority vote of its members, to discipline a physician, including through license revocation for a felony conviction. *Id.* § 40-47-110(B)(2). He is sued in his official capacity.

21. Defendant Dion Franga is a Member of the BME, which is responsible for licensing and disciplining physicians who practice in South Carolina, pursuant to S.C. Code Ann. § 40-47-10. BME has broad authority, upon a majority vote of its members, to discipline a physician, including through license revocation for a felony conviction. *Id.* § 40-47-110(B)(2). He is sued in his official capacity.

22. Defendant Richard Howell is a Member of the BME, which is responsible for licensing and disciplining physicians who practice in South Carolina, pursuant to S.C. Code Ann. § 40-47-10. BME has broad authority, upon a majority vote of its members, to discipline a physician, including through license revocation for a felony conviction. *Id.* § 40-47-110(B)(2). He is sued in his official capacity.

23. Defendant Theresa Mills-Floyd is a Member of the BME, which is responsible for licensing and disciplining physicians who practice in South Carolina, pursuant to S.C. Code Ann. § 40-47-10. BME has broad authority, upon a majority vote of its members, to discipline a physician, including through license revocation for a felony conviction. *Id.* § 40-47-110(B)(2). She is sued in her official capacity.

24. Defendant Jennifer R. Root is a Member of the BME, which is responsible for licensing and disciplining physicians who practice in South Carolina, pursuant to S.C. Code Ann. § 40-47-10. BME has broad authority, upon a majority vote of its members, to discipline a physician, including through license revocation for a felony conviction. *Id.* § 40-47-110(B)(2). She is sued in her official capacity.

25. Defendant Christopher C. Wright is a Member of the BME, which is responsible for licensing and disciplining physicians who practice in South Carolina, pursuant to S.C. Code Ann. § 40-47-10. BME has broad authority, upon a majority vote of its members, to discipline a physician, including through license revocation for a felony conviction. *Id.* § 40-47-110(B)(2). He is sued in his official capacity.

26. Defendant Scarlett A. Wilson is the Solicitor for South Carolina's Ninth Judicial Circuit, which includes the City of Charleston, where PPSAT's Charleston health center is located.

In cooperation with the Attorney General, she has criminal enforcement authority for violations of the Act, pursuant to S.C. Code Ann. § 1-7-320. She is sued in her official capacity.

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

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

JURISDICTION AND VENUE

29. This court has jurisdiction and authority to adjudicate Plaintiffs' claims under South Carolina's Uniform Declaratory Judgments Act, S.C. Code Ann. § 15-53-20; Rule 82 of the South Carolina Rules of Civil Procedure; Article 5, section 11 of the South Carolina Constitution; and the Court's general legal and equitable powers, including its authority to enforce the South Carolina Constitution as against countervailing state law.

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

FACTUAL ALLEGATIONS

Prior South Carolina Law

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

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

33. Before the enactment of the Act, South Carolina law already imposed detailed requirements on physicians performing, and patients seeking, abortions. These included a mandate that abortion providers ensure that a patient had available at least 24 hours in advance of an abortion certain materials prepared by the State. S.C. Code Ann. § 44-41-330(A)(2), (C). Patients who are unable to have the opportunity to review the State's counseling materials before coming to Plaintiffs' offices must make two separate visits.

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

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

Relevant Legislative and Procedural History

36. The South Carolina Legislature adopted the Act in February 2021, and it took immediate effect upon the Governor's approval.

37. Shortly after the Act's adoption, Plaintiffs sued the individual Defendants in this case in federal court, alleging that the Act violated the federal substantive due process rights of Plaintiffs' patients, as supported by nearly fifty years of precedent holding that states may not ban previability abortion. *See Roe v. Wade*, 410 U.S. 113 (1973); *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833 (1992). The court preliminarily enjoined the Act, finding that Plaintiffs were likely to prevail on their constitutional challenge to the abortion ban and that, as a matter of South Carolina law, other portions of the Act were not severable. *Planned Parenthood S. Atl. v. Wilson*, 527 F. Supp. 3d 801 (D.S.C. 2021). The district court subsequently stayed the case pending the U.S. Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization* No. 19-1392 (U.S. June 24, 2022), Ord. Holding Case in Abeyance at 2-3, *Planned Parenthood S. Atl. v. Wilson*, 527 F .Supp. 3d 801 (D.S.C. 2021) (No.3:21-cv-00508-MGL), and the U.S. Court of Appeals for the Fourth Circuit affirmed the preliminary injunction, *Planned Parenthood S. Atl. v. Wilson*, 26 F.4th 600 (4th Cir. 2022).

38. On June 24, 2022, the U.S. Supreme Court overruled *Roe* and *Casey*, the precedent on which Plaintiffs' sole asserted federal claim had relied. On June 27, 2022, the federal court granted the defendants' emergency motion to stay the preliminary injunction, at which time SB 1 took effect. Plaintiffs have filed a motion to dismiss that case without prejudice, consistent with Federal Rule of Civil Procedure 41. Although that case has not yet formally been dismissed in federal court, it does not raise any of the claims asserted in the case before this Court, and does not

include claims against the State of South Carolina. Moreover, Dr. Katherine Farris, a plaintiff in this case, is not a named party to the federal case.

The Challenged Act

39. The Act imposes dramatic changes to South Carolina law by banning abortion after roughly six weeks of pregnancy LMP (the "Six-Week Ban"). The Act also includes new ultrasound, mandatory disclosure, recordkeeping, reporting, and written notice requirements that are closely intertwined with the operation of the Six-Week Ban. *See, e.g.*, S.C. Code Ann. §§ 44-41-60, -330(A)(1)(b), -460(A), -640, -650.

40. The Six-Week Ban provides that "no person shall perform, induce, or attempt to perform or induce an abortion" where the "fetal heartbeat has been detected." S.C. Code Ann. § 44-41-680(A). It defines "fetal heartbeat" to include any "cardiac activity, or the steady and repetitive rhythmic contraction of the fetal heart within the gestational sac." S.C. Code Ann. § 44-41-610(3). The term, therefore, covers not just a "heartbeat" in the lay sense, but also early cardiac activity present before development of the cardiovascular system. Such cardiac activity may be detected by ultrasound as early as six weeks of pregnancy LMP (and sometimes sooner). Early in pregnancy, even with ultrasound, this activity would not be audible but would instead appear as a visual flicker.

41. As defined by the Act, a "fetal heartbeat" also need not occur in a fetus to trigger the Act's prohibition on abortion. In the medical field, the developing organism present in the gestational sac during pregnancy is most accurately termed an "embryo" until at least 10 weeks LMP; the term "fetus" is appropriately used after that time. Despite this accepted distinction, the Act defines "human fetus" to include an "individual organism of the species homo sapiens from fertilization [of an egg] until live birth." S.C. Code Ann. § 44-41-610(6).

42. The Act requires all abortion providers to determine whether the Six-Week Ban applies by newly mandating the performance of a pre-abortion ultrasound. S.C. Code Ann. § 44-41-630. The provider who is to perform the abortion must inform the patient whether a "fetal heartbeat" has been detected, along with other State-mandated information. S.C. Code Ann. § 44-41-330(A)(1), -340.

43. The Six-Week Ban contains only narrow exceptions: (1) to save the life of the pregnant patient or to prevent certain types of irreversible bodily impairment to the patient (the "Death or Permanent Injury Exception"); (2) in cases of a fetal health condition that is "incompatible" with sustained life after birth, and (3) in narrow circumstances where the pregnancy is the result of rape or incest (the "Reported Rape Exception"). S.C. Code Ann. § 44-41-680(B) (cross-referencing S.C. Code Ann. §§ 44-41-430, -690).

44. Of note, the Reported Rape Exception applies only if, within 24 hours of the abortion, the physician reports the alleged rape or incest and the patient's name and contact information to the sheriff in the county where the abortion was performed, irrespective of the patient's wishes, where the alleged crime occurred, and whether the provider has already complied with other mandatory reporting laws, where applicable. S.C. Code Ann. § 44-41-680(C). The exception makes no special provision for confidentiality, nor does it address whether the sheriff receiving the report would have authority to investigate if the rape or incest occurred in another county or state. *See id.* Moreover, the Act's reporting requirement applies only if the patient decides to have an abortion after being told that the rape will be reported; if the patient decides not to go forward, the reporting requirement does not apply. *Id.*

45. Moreover, the Death or Permanent Injury Exception provides only a narrow exception for physicians to perform an abortion after the detection of fetal or embryonic cardiac

activity where the abortion is necessary "to prevent the death of the pregnant woman or to prevent the serious risk of a substantial and irreversible impairment of a major bodily function of the pregnant woman." S.C. Code. Ann. § 44-41-690. Suicidality and mental illness, even when it leads to physical harm, does not qualify under this exception. S.C. Code Ann. § 44-41-610. Many other serious medical conditions will not qualify for the exception, endangering women's health by forcing them to remain pregnant, which is riskier to their health than abortion, or by forcing women to wait to terminate their pregnancies until the point at which their medical conditions escalate to a dangerous degree, with long-term effects.

46. Both the physician who performs an abortion and the clinic in which the abortion is performed risk severe penalties for violating the Six-Week Ban. Those penalties include a felony offense that carries a $10,000 criminal fine and up to two years in prison. S.C. Code Ann. § 44-41-680(D)); *see also* S.C. Code Ann. § 16-1-40 (accessory liability). Moreover, violation of the Six-Week Ban could result in revocation of a doctor's medical license and a clinic's license to perform abortions. S.C. Code Ann. §§ 40-47-110(A), (B)(2); 44-41-70; 44-41-75(A).

Abortion in South Carolina

47. Legal abortion is one of the safest procedures in contemporary medical practice and is far safer than childbirth. A woman's[1] risk of death associated with childbirth is approximately

[1] Plaintiffs use "woman" or "women" as a short-hand for people who are or may become pregnant, but people of all gender identities, including transgender men and gender-diverse individuals, may also become pregnant and seek abortion services, and would thus also suffer irreparable harm under the Act.

twelve times higher than that associated with abortion,[2] and every pregnancy-related complication is more common among women having live births than among those having abortions.

48. Based on a review of the available high-quality research, the National Academies of Sciences, Engineering and Medicine concluded that the abortion-related mortality rate was only 0.7 deaths per 100,000 legal abortions, as compared to the national mortality rate among individuals who carried their pregnancies to term, which is 8.8 deaths per 100,000 live births.[3] South Carolina's maternal mortality rate exceeds the national average: Between 2015 and 2019, the maternal mortality rate in South Carolina was 26.2 deaths per 100,000 live births.[4]

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

50. People seek abortion for a range of reasons. Many are already parents, having had at least one child, and they may struggle with basic unmet needs for their families. Other people decide that they are not ready to become parents because they are too young or want to finish school before starting a family. Some patients have health complications during pregnancy that lead them to conclude that abortion is the right choice for them. In some cases, patients are struggling with substance abuse and decide not to become parents or have additional children during that time in their lives. Still others have an abusive partner or a partner with whom they do not wish to have children for other reasons.

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[2] Nat'l Acads. of Scis., Eng'g, & Med., *The Safety and Quality of Abortion Care in the United States 75 tbl. 2-4* (2018).
[3] Nat'l Acads. of Scis., Eng'g, & Med., *supra* at 74, 75 tbl. 2-4.
[4] S.C. Maternal Morbidity & Mortality Rev. Comm., Legislative Brief (2021), https://scdhec.gov/sites/default/files/media/document/2021SCMMMRCLegislativeBrief.pdf.

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

52. There are many reasons why most patients do not obtain abortions before six weeks LMP. For a person with regular monthly periods, fertilization typically occurs two weeks after their last menstrual period (2 weeks LMP). Thus, even a person with a highly regular, four-week menstrual cycle would already be 4 weeks LMP when she misses her period, generally the first clear indication of a possible pregnancy. At-home pregnancy tests are not generally effective until at least 4 weeks LMP.

53. As a result, even a person with regular menstrual cycles might have roughly two weeks before the Six-Week Ban applies to learn she is pregnant, decide whether to have an abortion, and seek and obtain an abortion at one of the three available locations in South Carolina. PPSAT's Charleston and Columbia health centers typically offer abortions only two days per week due to operational limitations. GWC typically offers abortion care six days a week, but only in the mornings and early afternoons.

54. The hurdles described above apply to patients who learn very early that they are pregnant. But many patients do not know they are pregnant until at or after six weeks LMP, especially patients who have irregular menstrual cycles or who experience bleeding during early pregnancy, a common occurrence that is frequently and easily mistaken for a period. Other patients may not develop or recognize symptoms of early pregnancy.

55. Particularly for patients living in poverty or without insurance, travel-related and financial barriers also pose a barrier to obtaining an abortion before six weeks LMP. With very narrow exceptions, South Carolina bars coverage of abortion in its Medicaid program and in

private insurance plans offered on the State's Affordable Care Act exchange. S.C. Code Ann. §§ 1-1-1035, 38-71-238. Patients living in poverty or without insurance coverage available for abortion must often make difficult tradeoffs among other basic needs like food or rent to pay for their abortions. Many must seek financial assistance from extended family and friends or from local abortion funds to pay for care, a process that takes time. Moreover, many patients must navigate other logistics, such as inflexible or unpredictable job hours and childcare needs, that may delay the time when they are able to obtain an abortion.

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

57. South Carolina also typically requires patients sixteen years old or younger to obtain written parental authorization for an abortion. Without such authorization, a patient must get a court order permitting them to obtain care, *see id.* § 44-41-31 to -33, which South Carolina law expressly recognizes could take three days, *see id.* § 44-41-32(5), not including time for appeal. That process cannot realistically happen before a patient's pregnancy reaches six weeks LMP. Minor patients without a history of pregnancy may also be less likely to recognize early symptoms of pregnancy than older patients who have been pregnant before.

58. Patients whose pregnancies are the result of sexual assault or who are experiencing interpersonal violence may also need additional time to access abortion services due to ongoing

physical or emotional trauma. For these patients, too, obtaining an abortion before six weeks LMP is exceedingly difficult, if not impossible.

The Impact of the Act on Plaintiffs and Their Patients

59. As described above, the Act prohibits nearly all abortions after approximately six weeks LMP. Yet prior to the Act taking effect, the majority of people in South Carolina who obtained abortion did so after six weeks LMP.[5]

60. Now that the Act is in effect, Plaintiffs and their staff are forced to turn away the majority of patients seeking abortions, or risk substantial criminal penalties, professional sanctions, and/or civil liability. When patients with pregnancies with detectable cardiac activity seek abortions, Plaintiffs can provide care only where they can determine that one of the extremely narrow exceptions to the Six-Week Ban applies.

61. The Act makes it exceedingly difficult to access abortion in South Carolina. Patients who can scrape together the resources to do so are forced to travel hundreds of miles to out-of-state providers—if they can—to obtain medical care and, as a result, will experience delays, expenses, and other harms. Research shows that barriers to abortion delay, and in some cases altogether prevent, people from accessing that care. Not only does delay potentially increase the cost of the medical procedure, but it also increases the risk of complications (though abortion remains incredibly safe throughout gestation, and much safer than carrying a pregnancy to term).

62. While pregnancy can be a celebratory and joyful event for many families, even in an ideal scenario, pregnancy affects individuals' health and social circumstances, both during the pregnancy itself and for years afterwards. For many patients, however, reaching an out-of-state

[5] S.C. Dep't of Health and Env't Control, *A Public Report Providing Statistics Compiled from All Abortions Reported to DHEC – 2020* (2020), https://scdhec.gov/sites/default/files/media/document/2020-Abortion_SC-Report.pdf.

abortion provider will simply be impossible, and these patients will be forced to carry pregnancies to term against their will.

63. Pregnancy challenges a person's entire physiology. Individuals experience a dramatic increase in blood volume, a faster heart rate, increased production of clotting factors, breathing changes, digestive complications, and a growing uterus. These and other changes put pregnant patients at greater risk of blood clots, nausea, hypertensive disorders, and anemia, among other complications. Although many of these complications can be mild and resolve without medical intervention, some require evaluation and occasionally urgent or emergent care to preserve the patient's health or to save their life.

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

65. Pregnancy may also induce or exacerbate mental health conditions. A person with a history of mental illness may experience a recurrence of their illness during pregnancy. Some people experience dysphoria. These mental health risks can be higher for patients with unintended pregnancies, who may face physical and emotional changes and risks that they did not choose to take on.

66. Some pregnant patients also face increased risk of intimate partner violence, with the severity sometimes escalating during or after pregnancy. Homicide has been reported as a leading cause of maternal mortality, the majority caused by an intimate partner.

67. Separate from pregnancy, labor and childbirth are themselves significant medical events with many risks, far greater than those for legal previability abortion. For context, between 2015 and 2019, the maternal mortality rate in South Carolina was 26.2 deaths per 100,000 live births, far exceeding the national average.[6]

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

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

[6] S.C. Maternal Morbidity & Mortality Rev. Comm., *supra.*

70. In South Carolina, 33.5% of live births in 2017 were performed by cesarean section, as compared to 32.0% for the national average.[7] A cesarean section is an open abdominal surgery that requires hospitalization for at least a few days and carries significant risks of hemorrhage, infection, venous thromboembolism (blood clots), and injury to internal organs. This surgery can also create long term risks, including an increased risk of placenta previa in later pregnancies (when the placenta covers the cervix, resulting in vaginal bleeding) and bowel or bladder injury in future deliveries. Individuals with a history of cesarean delivery are also more likely to need cesarean delivery for subsequent births.

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

72. The Act is particularly devastating for South Carolinians with low incomes, South Carolinians of color, and rural South Carolinians, who already face inequities in access to medical care and who will bear the brunt of the Act's cruelties. Forcing patients to carry their pregnancies to term places Black patients, for example, at even greater risk of adverse health outcomes. As described above, the risk of death associated with childbirth is approximately twelve times higher than that associated with abortion,[8] and every pregnancy-related complication is more common in pregnancies ending in live births than among those ending through abortions.[9] Moreover, the maternal mortality rate in South Carolina is 2.4 times higher for Black and other non-white women as compared to white women.[10]

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[7] Ctrs. for Disease Control, Nat'l Ctr. for Health Stat., Stats of the State of South Carolina: 2017, https://www.cdc.gov/nchs/pressroom/states/southcarolina/southcarolina.htm (last reviewed April 9, 2018).
[8] Nat'l Acads. of Scis., Eng'g, & Med., *supra* at 75 tbl. 2-4.
[9] Raymond & Grimes, *supra* at 216.
[10] S.C. Maternal Morbidity and Mortality Rev. Comm., *supra*.

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

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

75. Pregnancy-related health care and childbirth are some of the costliest hospital-based health services, particularly for complicated or at-risk pregnancies. While insurance may cover most of these expenses, many pregnant patients with insurance must still pay for significant labor and delivery costs out of pocket. In 2015, of the 98.2% of commercially-insured women who had out-of-pocket spending for their labor and delivery, the mean spending for all modes of delivery was $4,569; the mean out-of-pocket spending for that same group of women for vaginal birth, specifically, was $4,314; and for C-section, specifically, was $5,161.[11] Many South Carolinians lack insurance to help offset these costs, as individuals without insurance make up 13% of all South Carolinians.[12]

76. Particularly for people already facing an array of economic hardships, the cost of pregnancy can have long-term and severe impacts on a family's financial security. For unintended pregnancies, these hardships may also be higher. People with low incomes experience unintended

[11] Michelle H. Moniz et al., *Out-of-Pocket Spending for Maternity Care Among Women With Employer-Based Insurance, 2008*, 39 Health Affairs 18, 20 (2020).
[12] S.C. Revenue & Fiscal Affs. Off., Estimated Number & Percent without Health Insurance by County 2019, https://rfa.sc.gov/data-research/population-demographics/census-state-datacenter/socioeconomic-data/Estimated-Number-Percent-without-Health-Insurance-by-County-2019 (last accessed July 13, 2022).

pregnancy at a disproportionately higher rate, due in large part to systemic barriers to contraceptive access.

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

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

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

80. The Act's narrow exceptions to the Six-Week Ban do not cure these constitutional violations. Indeed, even those patients able to qualify for one of the exceptions are harmed. Because of the Act, the decision to have an abortion—one that a patient is constitutionally entitled to make—is instead unnecessarily scrutinized.

81. Pregnant persons with rapidly worsening medical conditions—who, prior to the Act, could have obtained an abortion without explanation—will be forced to wait for care until

their conditions deteriorate to the point that they become deadly or threaten permanent impairment so as to meet the Six-Week Ban's Death or Permanent Injury Exception.

82. Under the Reported Rape Exception, health care professionals must disclose to a local sheriff the names and contact information of rape and incest survivors in order to provide abortions to these patients at or after approximately six weeks LMP. S.C. Code Ann. § 44-41-680(C). The Act's reporting requirement applies only if the patient decides to have an abortion after being told that the rape will be reported; if the patient decides not to go forward, the reporting requirement does not apply. *Id.* This requirement blatantly intrudes on a patient's right to privacy by conditioning the availability of health care on the disclosure of medical and other personal information and discouraging them from accessing abortion in South Carolina.

83. Patients facing devastating fetal diagnoses, and their physicians, will be forced to prove that the fetus "has a profound and irremediable congenital or chromosomal anomaly that, with or without the provision of life-preserving treatment, would be incompatible with sustaining life after birth," S.C. Code Ann. § 44-41-430(5), a process that is likely to delay access to care and to increase the expense and emotional toll of such a diagnosis.

84. Plaintiffs have no adequate remedy at law.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

Six-Week Ban — Privacy

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

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

87. This guarantee "creates a distinct privacy right that applies both within and outside the search and seizure context." *State v. Forrester*, 343 S.C. 637, 644, 541 S.E.2d 837, 841 (2001).

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

89. This right to medical self-determination comprises the right to abortion. Decisions about whether to remain pregnant or end a pregnancy are inherently private decisions that patients have the right to make, free from government intrusion, in consultation with their health care provider and based on their individual circumstances.

90. By banning previability abortion upon identification of embryonic or fetal cardiac activity, which may occur as early as six weeks LMP (or even sooner), the Act violates Plaintiff's patients' right to bodily integrity.

91. Moreover, by requiring pregnant people to remain pregnant and face increased medical risk associated with labor and delivery, the Act violates Plaintiff's patients' right to bodily integrity.

SECOND CAUSE OF ACTION

Six-Week Ban — Equal Protection

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

93. By banning previability abortion upon identification of embryonic or fetal cardiac activity, which may occur as early as six weeks LMP (or even sooner), the Act violates the right of Plaintiffs' patients to equal protection under the law, as guaranteed by Article I, Section 3 of the South Carolina Constitution.

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

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

96. The Act deprives pregnant people who choose to terminate their pregnancies after six weeks LMP of their fundamental privacy right to make decisions about their bodies, while allowing pregnant people who want to continue their pregnancy the full enjoyment of that fundamental right, without sufficient justification. Accordingly, it violates the Equal Protection Clause.

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

98. "For a gender-based classification to pass constitutional muster, it must serve an important governmental objective and be substantially related to the achievement of that objective." *Moore v. Moore*, 376 S.C. 467, 82, 657 S.E.2d 743, 751 (2008) (citing and quoting *State v. Wright,* 349 S.C. 310, 313, 563 S.E.2d 311, 312 (2002)).

99. By banning abortion after approximately six weeks LMP, the Act relies on and entrenches stereotypical, antiquated, and overbroad generalizations about the roles, abilities, and decision-making capacities of women.

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

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

THIRD CAUSE OF ACTION

Six-Week Ban — Substantive Due Process

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

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

104. By banning previability abortion upon identification of embryonic or fetal cardiac activity, which may occur as early as six weeks LMP (or even sooner), the Act violates the substantive due process rights of Plaintiffs' patients to life and liberty, as guaranteed by Article I, Section 3 of the South Carolina Constitution.

105. The Due Process Clause's protection of individual liberty encompasses a person's right to make decisions about whether or not to terminate a pregnancy, free from unwarranted State

intrusions. For decades, South Carolinians have relied on the availability of abortion in South Carolina, and they have the right to continue to do so.

106. The Act infringes on these fundamental substantive due process rights to life, liberty, and privacy without adequate justification.

FOURTH CAUSE OF ACTION

Six-Week Ban Death or Permanent Injury Exception — Privacy

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

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

109. SB 1, through its Death or Permanent Injury Exception, provides only a narrow exception for physicians to perform an abortion after the detection of fetal or embryonic cardiac activity where the abortion is necessary "to prevent the death of the pregnant woman or to prevent the *serious* risk of a *substantial and irreversible* impairment of a major bodily function of the pregnant woman." S.C. Code Ann. § 44-41-690 (emphasis added).

110. The Exception specifically excludes psychological conditions as qualifying medical emergencies, even if suicidality and physical harm may result. S.C. Code Ann. § 44-41-610. The exception also fails to account for the wide range of factors and medical conditions that make an abortion medically necessary, including serious and devastating conditions that do not rise to the level of threatening "irreversible" physical injury.

111. By depriving pregnant persons of the right to decide when an abortion is medically necessary, in consultation with their health care providers and based on their individual

circumstances, the State unreasonably intrudes into pregnant individuals' private medical decisions and deprives patients from receiving, and doctors from providing, treatment that promotes patients' overall health and safety. *See Hughes*, 367 S.C. at 398 n.2, 626 S.E.2d at 810 at n.2 (recognizing that prisoners have a right "grounded in the state constitutional right to privacy . . . to be free from unwanted medical intrusions").

FIFTH CAUSE OF ACTION

Six-Week Ban Death or Permanent Injury Exception — Equal Protection

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

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

114. South Carolina's Equal Protection Clause requires that all persons similarly situated be treated alike under the law. *Luckabaugh*, 351 S.C. 122 at 140-41. Any classification that impairs the exercise of fundamental rights without sufficient justification violates South Carolina's Equal Protection Clause. *Id.*

115. By imposing unnecessarily narrow medical criteria for when pregnant people can seek an abortion, thereby impairing their exercise of the fundamental right to bodily integrity on the basis of a classification that lacks adequate justification, the Death or Permanent Injury Exception violates Plaintiffs' patients' rights to equal protection, as guaranteed by Article I, Section 3 of the South Carolina Constitution.

SIXTH CAUSE OF ACTION

Six-Week Ban Death or Permanent Injury Exception — Substantive Due Process

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

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

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

SEVENTH CAUSE OF ACTION

Six-Week Ban Death or Permanent Injury Exception — Vagueness

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

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

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

122. Under the Death or Permanent Injury Exception, physicians may perform an abortion after the detection of fetal or embryonic cardiac activity only where the abortion is necessary to prevent the pregnant person's death or "*serious* risk of *substantial* and *irreversible*

physical impairment of a major bodily function of the pregnant woman." S.C. Code Ann. § 44-41-690(B) (emphasis added).

123. The exception is unconstitutionally vague because the statutory language does not permit a doctor of common intelligence to determine when a "medical emergency" is present, where the procedure is necessary to "prevent the death of the pregnant woman," or when a "serious risk of substantial and irreversible impairment of a major bodily function" is present. S.C. Code Ann. §§ 44-41-660, -690. Plaintiffs are subject to severe criminal penalties for performing an abortion that does not conform with the statute. S.C. Code Ann. § 44-41-650.

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

EIGHTH CAUSE OF ACTION

Six-Week Ban Reported Rape Exception — Informational Privacy

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

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

127. By requiring physicians to report the name and contact information of the person whose abortion was performed subject to the Reported Rape Exception to the sheriff in the county where the abortion was performed, irrespective of the patient's wishes and the sheriff's jurisdiction to investigate the alleged crime, *see* S.C. Code Ann. § 44-41-680(C), the Act violates the right of patients against unreasonable and unnecessary State intrusions into their private information.

NINTH CAUSE OF ACTION

Six-Week Ban Reported Rape Exception — Equal Protection

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

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

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

131. Similarly, SB 1 distinguishes between sexual assault survivors seeking abortion and survivors seeking other medical care by forcing only the former group to choose between maintaining their personal privacy and getting the medical care they need after an assault.

132. Through the Reported Rape Exception, SB 1 also violates the Equal Protection Clause by drawing a distinction between sexual assault survivors who do not wish to report their assault and those who choose to report, in a way that infringes on the exercise of the fundamental privacy right to bodily integrity by conditioning their ability to obtain needed healthcare on their willingness to report their assault.

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

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

135. The Six-Week Ban and its Reported Rape Requirement also are not adequately tailored under any constitutional standard to justify the discriminatory restriction imposed on sexual assault survivors. For these reasons, the Act is unconstitutional.

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

A. That, pursuant to the South Carolina Uniform Declaratory Judgments Act, S.C. Code Ann. §§ 15-53-10 to 140, the Court declare that SB 1 is invalid because laws banning abortion violate South Carolina's right to privacy and guarantees of equal protection and substantive due process, and because SB 1 is unconstitutionally vague;

B. That the Court issue a temporary restraining order followed by preliminary and permanent injunctions prohibiting Defendants and their officers, employees, servants, agents, appointees, or successors from administering, preparing for, enforcing, or giving effect to SB 1 and any other South Carolina statute or regulation that could be

understood to give effect to SB 1, including through any future enforcement actions based on abortions performed during the pendency of an injunction;

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

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

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

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

Respectfully submitted,

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* *Pro hac vice motions to be filed*

Dated: July 13, 2022

EXHIBIT A

South Carolina General Assembly
124th Session, 2021-2022

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Bill 1

~~Indicates Matter Stricken~~
Indicates New Matter

(Text matches printed bills. Document has been reformatted to meet World Wide Web specifications.)

~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

February 10, 2021

S. 1

Introduced by Senators Grooms, Verdin, Kimbrell, Garrett, Martin, Shealy, Climer, Corbin, Cromer, Rice, Adams, Hembree, Gambrell, Loftis and Campsen

S. Printed 2/10/21--H.

Read the first time February 2, 2021.

THE COMMITTEE ON JUDICIARY

To whom was referred a Bill (S. 1) to enact the "South Carolina Fetal Heartbeat and Protection from Abortion Act"; to amend Chapter 41, Title 44 of the 1976 code, etc., respectfully

REPORT:

That they have duly and carefully considered the same and recommend that the same do pass:

CHRIS MURPHY for Committee.

A BILL

TO ENACT THE "SOUTH CAROLINA FETAL HEARTBEAT AND PROTECTION FROM ABORTION ACT"; TO AMEND CHAPTER 41, TITLE 44 OF THE 1976 CODE, RELATING TO ABORTIONS, BY ADDING ARTICLE 6, TO REQUIRE TESTING FOR A DETECTABLE FETAL HEARTBEAT BEFORE AN ABORTION IS PERFORMED ON A PREGNANT WOMAN, TO PROHIBIT THE PERFORMANCE OF AN ABORTION IF A FETAL HEARTBEAT IS DETECTED, TO PROVIDE MEDICAL EMERGENCY EXCEPTIONS, TO REQUIRE CERTAIN DOCUMENTATION AND RECORDKEEPING BY PHYSICIANS PERFORMING ABORTIONS, TO CREATE A CIVIL ACTION FOR A PREGNANT WOMAN UPON WHOM AN ABORTION IS PERFORMED, TO CREATE CRIMINAL PENALTIES, AND FOR OTHER

PURPOSES; TO AMEND SECTION 44-41-460(A) OF THE 1976 CODE, RELATING TO THE REQUIRED REPORTING OF ABORTION DATA TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL, TO ADD REPORTING OF FETAL HEARTBEAT TESTING AND PATIENT MEDICAL CONDITION DATA; AND TO AMEND SECTION 44-41-330(A)(1) OF THE 1976 CODE, RELATING TO A PREGNANT WOMAN'S RIGHT TO KNOW CERTAIN INFORMATION, TO REQUIRE NOTIFICATION OF THE DETECTION OF A FETAL HEARTBEAT.

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

SECTION 1. This act shall be known and may be cited as the "South Carolina Fetal Heartbeat and Protection from Abortion Act".

SECTION 2. The General Assembly hereby finds, according to contemporary medical research, all of the following:

(1) as many as thirty percent of natural pregnancies end in spontaneous miscarriage;

(2) fewer than five percent of all natural pregnancies end in spontaneous miscarriage after the detection of a fetal heartbeat;

(3) over ninety percent of in vitro pregnancies survive the first trimester if a fetal heartbeat is detected;

(4) nearly ninety percent of in vitro pregnancies do not survive the first trimester if a fetal heartbeat is not detected;

(5) a fetal heartbeat is a key medical predictor that an unborn human individual will reach live birth;

(6) a fetal heartbeat begins at a biologically identifiable moment in time, normally when the fetal heart is formed in the gestational sac;

(7) the State of South Carolina has legitimate interests from the outset of a pregnancy in protecting the health of the pregnant woman and the life of the unborn child who may be born; and

(8) in order to make an informed choice about whether to continue a pregnancy, a pregnant woman has a legitimate interest in knowing the likelihood of the human fetus surviving to full-term birth based upon the presence of a fetal heartbeat.

SECTION 3. Chapter 41, Title 44 of the 1976 Code is amended by adding:

"ARTICLE 6

Fetal Heartbeat and Protection from Abortion

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

(1) 'Conception' means fertilization.

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

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

(4) 'Gestational age' means the age of an unborn human individual as calculated from the first day of the last menstrual period of a pregnant woman.

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

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

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

(8) 'Medical emergency' means a condition that, by any reasonable medical judgment, so complicates the medical condition of a pregnant woman that it necessitates the immediate abortion of her pregnancy to avert her death without first determining whether there is a detectable fetal heartbeat or for which the delay necessary to determine whether there is a detectable fetal heartbeat will create serious risk of a substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions. A condition must not be considered a medical emergency if based on a claim or diagnosis that a woman will engage in conduct that she intends to result in her death or in a substantial and irreversible physical impairment of a major bodily function.

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

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

(11) 'Spontaneous miscarriage' means the natural or accidental termination of a pregnancy and the expulsion of the human fetus, typically caused by genetic defects in the human fetus or physical abnormalities in the pregnant woman.

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

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

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

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

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

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

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

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

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

Section 44-41-640. If a pregnancy is at least eight weeks after fertilization, then the abortion provider who is to perform or induce an abortion, or an agent of the abortion provider, shall tell the woman that it may be possible to make the embryonic or fetal heartbeat of the unborn child audible for the pregnant woman to hear and shall ask the woman if she would like to hear the heartbeat. If the woman would like to hear the heartbeat, then the abortion provider shall, using whichever method the physician and patient agree is best under the circumstances, make the fetal heartbeat of the unborn child audible for the pregnant woman to hear.

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

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

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

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

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

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

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

(C) For at least seven years from the date the notations are made, the physician shall maintain in his own records a copy of the notations.

Section 44-41-670. A physician is not in violation of Section 44-41-650 if the physician acts in accordance with Section 44-41-630 and the method used to test for the presence of a fetal heartbeat does not reveal a fetal heartbeat.

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

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

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

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

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

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

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

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

Section 44-41-690. (A) Section 44-41-680 does not apply to a physician who performs a medical procedure that, by any reasonable medical judgment, is designed or intended to prevent the death of the pregnant woman or to prevent the serious risk of a substantial and irreversible impairment of a major bodily function of the pregnant woman.

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

(C) A physician who performs a medical procedure as described in subsection (A) shall place the written document required by subsection (B) in the pregnant woman's medical records. For at least seven years from the date the document is created, the physician shall maintain a copy of the document in his own records.

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

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

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

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

article and is not subject to a civil or criminal penalty based on the abortion being performed or induced in violation of any of the provisions of this article.

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

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

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

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

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

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

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

SECTION 4. Section 44-41-460(A) of the 1976 Code is amended by adding appropriately numbered new items at the end to read:

"( ) The information related to fetal heartbeat testing required pursuant to Sections 44-41-630, 44-41-660, and 44-41-690, as applicable.

( ) Whether the reason for the abortion was to preserve the health of the pregnant woman and, if so, the medical condition that the abortion was asserted to address and the medical rationale for the conclusion that an abortion was necessary to address that condition. If the reason for the abortion was other than to preserve the health of the pregnant woman, then the report must specify that maternal health was not the purpose of the abortion. This information must also be placed in the pregnant woman's medical records and maintained for at least seven years thereafter."

SECTION 5. Section 44-41-330(A)(1) of the 1976 Code is amended to read:

"(1)(a) The woman must be informed by the physician who is to perform the abortion or by an allied health professional working in conjunction with the physician of the procedure to be involved and by the physician who is to perform the abortion of the probable gestational age of the embryo or fetus at the time the abortion is to be performed. If an ultrasound is performed, an abortion may not be performed sooner than sixty minutes following completion of the ultrasound. The physician who is to perform the abortion or an allied health professional working in conjunction with the physician must inform the woman before the ultrasound procedure of her right to view the ultrasound image at her request during or after the ultrasound procedure.

(b) If the physician who intends to perform or induce an abortion on a pregnant woman has determined pursuant to Section 44-41-630 that the human fetus the pregnant woman is carrying has a detectable fetal heartbeat, then that physician shall inform the pregnant woman in writing that the human fetus the pregnant woman is carrying has a fetal heartbeat. The physician shall further inform the pregnant woman, to the best of the physician's knowledge, of the statistical probability, absent an induced abortion, of bringing the human fetus possessing a detectable fetal heartbeat to term based on the gestational age of the human fetus or, if the director of the department has specified statistical probability information, shall provide to the pregnant woman that

information. The department may promulgate regulations that specify information regarding the statistical probability of bringing an unborn child possessing a detectable fetal heartbeat to term based on the gestational age of the unborn child. Any regulations must be based on available medical evidence."

SECTION 6. Section 44-41-60 of the 1976 Code is amended to read:

"Section 44-41-60. Any abortion performed in this State must be reported by the performing physician on the standard form for reporting abortions to the State Registrar, Department of Health and Environmental Control, within seven days after the abortion is performed. The names of the patient and physician may not be reported on the form or otherwise disclosed to the State Registrar. The form must indicate from whom consent was obtained, ~~or~~ circumstances waiving consent, and, if an exception was exercised pursuant to Section 44-41-660, which exception the physician relied upon in performing or inducing the abortion."

SECTION 7. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, then such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 8. The repeal or amendment by this act of any law, whether temporary, permanent, civil, or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon or alter, discharge, release, or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 9. This act takes effect upon approval by the Governor.

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