SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

SISTERSONG WOMEN OF COLOR REPRODUCTIVE JUSTICE COLLECTIVE, on behalf of itself and its members *et al.*, Plaintiffs v. STATE OF GEORGIA, Defendant	)	CIVIL ACTION 2022CV367796

ORDER ON MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS AND MOTION TO DISMISS

Plaintiffs are seeking a judgment declaring certain provisions of the LIFE Act[1] unconstitutional (and a permanent injunction prohibiting their enforcement). On 24-25 October 2022, the Court conducted a bench trial during which the parties presented evidence in support of their opposing positions. Also before the Court are Plaintiffs' motion for partial judgment on the pleadings and Defendant's motion to dismiss. For the reasons discussed below, the Court GRANTS Plaintiffs' motion for partial judgment on the pleadings in part and DENIES it in part, finding that two sections of the LIFE Act were void *ab initio*. The Court also DENIES the portion of Defendant's motion to dismiss -- concerning O.C.G.A. § 16-12-141's health records access provision -- not made moot by the Court's void *ab initio* ruling.[2]

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[1] 2019 Ga. Laws Act 234 (H.B. 481).

[2] Given these rulings, the Court need not -- and indeed ought not, since the effect of this decision is to return the important *policy* question of how Georgians weigh privacy rights, bodily autonomy, and fetal rights to the Legislature for its careful consideration in light of the many legal, political, and societal developments

The LIFE Act: A Brief Legal History

On 4 April 2019, the Georgia Legislature passed H.B. 481, entitled the "Living Infants Fairness and Equality (LIFE) Act." Governor Kemp signed it on 7 May 2019 and it took effect -- or at least the constitutional portions of it did -- on 1 January 2020. The LIFE Act consists of sixteen sections, only three of which do Plaintiffs challenge as void *ab initio*: Sections 4, 10, and 11. Section 4 of the LIFE Act amended O.C.G.A. § 16-12-141 to, among other things, criminalize abortions occurring after an unborn child has a detectable heartbeat,[3] a development which both sides agree typically occurs around six weeks after the mother's last menstrual period.[4] Section 10 amended O.C.G.A. § 31-9B-2, concerning a physician's obligations when performing abortions, to require doctors to make "a determination of the presence of a detectable human heartbeat … of an unborn child" before performing any abortion (absent medical emergency or a medically futile pregnancy). Finally, Section 11 amended O.C.G.A. § 31-9B-3 to add a requirement that any physician who performs an abortion after detecting a fetal heartbeat must report to the Department of Public Health the exception to the ban imposed by Section 4 of the Act that

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since the LIFE Act was passed -- reach the issues presented during the latter portions of the October 2022 proceedings concerning Plaintiffs' request for declaratory relief. However, the Court is prepared to do so, without additional hearings (or briefing…), should an appellate court return this matter for further consideration consistent with its opinion.

[3] The statute refers to a "detectable human heartbeat", but it is unclear why the second adjective is necessary.

[4] Section 4 also added several exceptions to the post-heartbeat abortion ban, to include certain non-mental health medical emergencies and rape or incest (but only if a police report is filed).

applied to justify the otherwise illegal procedure. The Act wrought other statutory changes as well, all consistent with its policy theme that unborn children are "natural persons," but its fundamental alteration to abortion law in Georgia was the contraction of the ban on abortions from roughly twenty weeks (*i.e.*, viability) down to a mere six weeks -- a time at which many women are unaware or at best unsure if they are pregnant.

Again, the LIFE Act did all these things in the spring of 2019, when the supreme law of this land unequivocally was -- and had been for nearly half a century -- that laws unduly restricting abortion before viability were unconstitutional. *See Roe v. Wade*, 410 U.S. 113, 153 (1973) (the constitutional right of privacy, "founded in the Fourteenth Amendment's concept of personal liberty and restrictions upon state action [is] broad enough to encompass a woman's decision whether or not to terminate her pregnancy"); *Planned Parenthood v. Casey*, 505 U.S. 833, 846 (1992) (reaffirming "the right of the woman to choose to have an abortion before viability and to obtain it without undue influence from the State"); *see also Etkind v. Suarez*, 271 Ga. 352, 354 (1999) (recognizing that, under *Casey*, Georgia "cannot unduly interfere with a woman's constitutional right to obtain an abortion" and that prohibiting abortions before viability constitutes such undue interference).

Given this unbroken chain of U.S. Supreme Court decisions affirming the right to pre-viability abortions, many of the same plaintiffs from this suit promptly challenged the LIFE Act in federal court, where a judge in the Northern District of Georgia unsurprisingly found certain provisions of the Act, including Section 4, to be unconstitutional abridgments

of a woman's right to privacy. *SisterSong Women of Color Reprod. Justice Collective v. Kemp*, 472 F. Supp. 3d 1297, 1304 (N.D.Ga. 2020) (ruling that the holdings in *Roe* and *Casey* were "binding upon this Court"). That district court order was reversed by the Eleventh Circuit Court of Appeals following the U.S. Supreme Court's ruling in *Dobbs v. Jackson Women's Health Organization*, 597 U.S. ---, 142 S. Ct. 2228 (2022), which overruled *Roe* and *Casey* and the nearly half-century of constitutional precedent that had accreted on the basis of those holdings. *SisterSong Women of Color Reprod. Justice Collective v. Governor of Georgia*, 40 F.4th 1320 (11th Cir. 2022).

Faced with this seismic change[5] in constitutional jurisprudence, as fifty years of abortion law (and good faith reliance on that law) were summarily jettisoned, Plaintiffs turned to Georgia courts for relief, as the *Dobbs* decision shifted the constitutional questions of reproductive freedom, personal autonomy, and the balancing of the rights of the mother and the unborn child to the states. And so, as mentioned, Plaintiffs filed their

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[5] The State argues that *Dobbs* reflects no change in constitutional law "because there was *never* a federal constitutional right to abortion." (Defendant's Response at 2; emphasis in original). Except there was. For 50 years. And we know it because the very same Supreme Court told us so. Repeatedly. Those prior pronouncements carried no lesser effect and were entitled to no less deference in Georgia or anywhere else in the Republic than that which we all must afford the *Dobbs* decision. *Dobbs* is now the law of the land; this Court and every other court in America are bound to apply it faithfully and completely. Yet *Dobbs*' authority flows not from some mystical higher wisdom but instead basic math. The *Dobbs* majority is not somehow "more correct" than the majority that birthed *Roe* or *Casey*. Despite its frothy language disparaging the views espoused by previous Justices, the magic of *Dobbs* is not its special insight into historical "facts" or its monopoly on constitutional hermeneutics. It is simply numbers. More Justices today believe that the U.S. Constitution does not protect a woman's right to choose what to do with her body than did in that same institution 50 years ago. This new majority has provided our nation with a revised (and controlling) interpretation of what the unchanged words of the U.S. Constitution really mean. And until that interpretation changes again, it is the law.

instant complaint seeking first a declaratory judgment that certain parts of the LIFE Act are unconstitutional under the Georgia Constitution on due process and equal protection grounds. Assuming success on that front, Plaintiffs' second prayer for relief is an injunction prohibiting the enforcement of the purportedly unconstitutional portions of the LIFE Act.[6]

Georgia's Void *Ab Initio* Doctrine: Explained and Applied

However, before reaching the merits of Plaintiffs' constitutional claims as they exist today, the Court must first consider whether there is even a law "on the books" for it to assess.[7] In Georgia, it is fundamental that "[l]egislative acts in violation of this Constitution or the Constitution of the United States are void, and the judiciary shall so declare them." Ga. Const., Art. I, § II, ¶ V; see also *Beall v. Beall*, 8 Ga. 210, 219–20 (1850). But there is a timing element to this analysis: "The time with reference to which the constitutionality of an act of the general assembly is to be determined is *the date of its*

[6] Plaintiffs also filed an emergency motion for a preliminary injunction halting enforcement of the LIFE Act. The Court denied that motion on sovereign immunity grounds in an Order dated 15 August 2022.

[7] The Court appreciates Defendant's observation that, literally speaking, there is in fact a law "on the books". (Indeed, there sits O.C.G.A. § 16-12-141 as amended by the LIFE Act on pages 17-19 of the 2021 Supplement to Volume 14B of the Official Code of Georgia on the undersigned's bookshelf.) Defendant is correct that the void *ab initio* doctrine discussed below does not mean that laws are "erased" or "destroyed." Rather, it means only and simply that the laws were never to be given effect because they were void at birth and do not somehow spring to life because of a change in constitutional exegesis coming from a higher court. Put differently: "An unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed." *Herrington v. State*, 103 Ga. 318, 320 (1898), quoting *Norton v. Shelby County*, 118 U.S. 425, 442 (1886).

passage, and, if it is unconstitutional, then it is forever void." *Jones v. McCaskill*, 112 Ga. 453, 37 S.E. 724, 725 (1900) (emphasis added)[8]; *see also Grayson-Robinson Stores, Inc. v. Oneida, Ltd.*, 209 Ga. 613, 617 (1953) (same); *Frankel v. Cone*, 214 Ga. 733, 738 (1959), *disapproved of on other grounds by Lott Invest. Corp. v. Gerbing*, 242 Ga. 90 (1978); *Strickland v. Newton Cnty.*, 244 Ga. 54, 55 (1979) ("The general rule is that an unconstitutional statute is wholly void and of no force and effect from the date it was enacted."); *Adams v. Adams*, 249 Ga. 477, 478–79 (1982) (same).

In other words, per controlling Georgia precedent, the proper legal milieu in which to assess the LIFE Act's constitutionality is not our current post-*Roe Dobbsian* era but rather the legal environment that existed when H.B. 481 was enacted. At that time -- the spring of 2019 -- everywhere in America, including Georgia, it was unequivocally unconstitutional for governments -- federal, state, or local -- to ban abortions before viability. And yet the LIFE Act, through Section 4, did just that: a doctor faced with a request to end a pre-viability pregnancy, *i.e.*, at a time when the fetus absolutely could not survive outside the mother's womb, would be committing a felony if she honored her patient's wishes. Such bans were banned. Section 4 of H.B. 481 was void *ab initio*. It did not become the law of Georgia when it was enacted and it is not the law of Georgia now.

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[8] *Jones* was partially overruled in *Bldg. Auth. of Fulton Cnty. v. State of Ga.*, 253 Ga. 242, 243 n.1 (1984), which held that, in those liminal cases in which a statute was enacted under one state constitution but challenged only after a new constitution had been adopted, the statute should be assessed under *both* constitutions. That rare exception does not apply to the LIFE Act, as the same state constitution was in effect at its passage as is now.

Under *Dobbs*, it may someday become the law of Georgia, but only after our Legislature determines in the sharp glare of public attention that will undoubtedly and properly attend such an important and consequential[9] debate whether the rights of unborn children justify such a restriction on women's right to bodily autonomy and privacy.[10] *Grayson-Robinson Stores*, 209 Ga. at 617 (void statute can be made effective only by re-enactment).

Section 10 of the LIFE Act does not suffer the same fate. That section, as discussed above, amended O.C.G.A. § 31-9B-2 to require doctors to make "a determination of the presence of a detectable human heartbeat … of an unborn child" before performing any abortion (absent medical emergency or a medically futile pregnancy). While this provision includes an element of the six-week ban, *i.e.*, the presence of a detectable heartbeat, it does not itself prohibit any medical procedures. Rather, it merely adds a step to the abortion process: determine if the fetus has a heartbeat. This determination could serve several purposes, one forbidden at the time the LIFE Act was passed (*i.e.*, foreclosing the abortion) and one acceptable (*i.e.*, providing the mother with more information about the nature and state of her pregnancy). This latter goal was plainly part of the LIFE Act's purpose, as Section 7 of H.B. 481 -- which Plaintiffs do not challenge -- amended O.C.G.A. § 31-9A-3 (relating to voluntary and informed consent to abortion) to require that a doctor

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[9] Unlike the debate that informed the passage of H.B. 841, whose facially unconstitutional six-week ban doomed the law upon enactment and made for an essentially symbolic vote for legislators, a next round of abortion legislation will carry real consequences for legislators and their constituents alike.

[10] At which time the debate will promptly return to the courts -- but it must start with a Legislature acting *within* the bounds of the current constitutional framework.

performing an abortion first inform her patient of the presence of a detectable heartbeat (which, of course, the doctor cannot do if she has not first determined if one exists). Such notice requirements are not unduly burdensome. *See, e.g., Edwards v. Beck*, 8 F.Supp.3d 1091, 1098 (E.D.Ark. 2014) (finding that Arkansas's heartbeat testing requirement was severable from its LIFE Act-esque abortion restriction where the testing requirement obligated the physician to inform the pregnant woman that her unborn child possessed a detectable heartbeat). They are instead part of the State's "legitimate goal of protecting the life of the unborn" through "legislation aimed at ensuring a decision that is mature and informed, even when in doing so the State expresses a preference for childbirth over abortion." *Casey*, 505 U.S. at 883, *overruled on other grounds by Dobbs,* 597 U.S. ---, 142 S. Ct. 2228.

Finally, the Court finds that Section 11 of H.B. 481 -- which, as mentioned above, mandates that any physician who performs an abortion after detecting a fetal heartbeat must report to the Department of Public Health the exception to the ban imposed by Section 4 that justified the otherwise illegal procedure -- was also unconstitutional at the time it was passed into law and so is also void *ab initio*. Because, in the spring of 2019, criminalizing post-heartbeat but pre-viability abortions was unconstitutional, so too was any requirement that medical providers somehow publicly justify their decision to comply with their patients' wishes for a pre-viability procedure. Section 11 cannot survive independently of Section 4 -- indeed, it makes no sense in the absence of Section 4.

The Motion to Dismiss

The State filed a motion to dismiss all claims set forth in Plaintiffs' complaint. For the reasons discussed above, the State's motion is DENIED as moot as to Plaintiffs' constitutional attacks on Sections 4 and 11 of the LIFE Act. Those provisions exist on paper only; they have never had legal effect in Georgia. They were and are void and must be re-enacted in our post-*Roe* world if they are to become the law of Georgia. The State's motion is GRANTED as to Section 10; it was and remains constitutional and stands as law in Georgia alongside all other parts of the LIFE Act save Sections 4 and 11.

That leaves only subsection (f) of O.C.G.A. § 16-12-141, which authorizes the district attorney access to medical records pertaining to abortions performed in the district attorney's judicial circuit. Subsection (f) was amended slightly but not substantively by Section 4 of the LIFE Act.[11] Significantly, Plaintiffs challenge the constitutionality of subsection (f) in either form, pre-LIFE Act amendment or post-, asserting that it violates the privacy rights of patients who receive abortions. The State in its motion to dismiss points out several problems with Plaintiffs' claim, including a lack of standing and a lack of facial unconstitutionality. The Court finds that Plaintiffs' claim survives this initial legal attack and will address the claim on the merits in a subsequent order.

[11] Specifically, the LIFE Act renamed the relevant records from "hospital records" to "health records" and expanded the venue for district attorney access from the judicial circuit where the procedure occurred to both that circuit and the circuit in which the patient resides. Section 4 of H.B. 481.

First, as to standing, Plaintiffs, as medical providers (as well as the collective Plaintiff SisterSong), enjoy standing to bring constitutional claims on behalf of their patients (and members) because there exists a set of provable facts that would show that (1) these Plaintiffs have suffered an "injury in fact," (2) they are closely related to the third parties (here, patients or association members), and (3) the third parties are hindered in some way from protecting their interests. *Feminist Women's Health Ctr. v. Burgess*, 282 Ga. 433, 435 (2007) (medical provider standing); *Black Voters Matter Fund, Inc. v. Kemp*, 313 Ga. 375, 381 (2022) (associational standing). Importantly, and contrary to the State's argument, this third-party claim doctrine flows not from the U.S. Supreme Court abortion rights jurisprudence cast aside by *Dobbs*. Rather, *Burgess* and its progeny drew from *Powers v. Ohio*, 499 U.S. 400, 410-11 (1991), a case involving race-based exclusions of jurors in criminal prosecutions.

Second, as to facial unconstitutionality, given the strong privacy protections Georgia's Supreme Court has declared our State's Constitution affords medical records, the Court cannot say that, as a matter of law, Plaintiffs' claim fails. To the contrary, there is a strong vein of constitutional jurisprudence suggesting the opposite. *See, e.g., King v. State*, 272 Ga. 788, 790 (2000) ("Because Georgia recognizes an even broader concept of privacy [than the right of privacy afforded by the Federal Constitution], the personal medical records of this state's citizens clearly are protected by that right as guaranteed by our constitution."). Just as an example, for a provision like subsection (f) to survive the strict scrutiny it must receive because it impinges upon the patient's right to privacy, it

must further a compelling State interest and be narrowly drawn to achieve that interest. *Powell v. State*, 270 Ga. 327, 333 & n. 5 (1998). While law enforcement and public safety are indeed species of compelling State interest, *King v. State*, 276 Ga. 126, 128 (2003), there is nothing "narrow" about a statutory provision purportedly focused on abortion that would empower a prosecutor to obtain *all* "health (or hospital) records" of a patient.

Where Are We Now?

What does this ruling mean? Most fundamentally, it means that courts -- not legislatures -- define the law. This is nothing new, but it seems increasingly forgotten (or ignored): "It is emphatically the province and duty of the judicial department to say what the law is." *Marbury v. Madison*, 5 U.S. 137, 177 (1803); *see also Beall v. Beall*, 8 Ga. 210, 219–20 (1850). If the courts have spoken, clearly and directly, as to what the law is, as to what is and is not constitutional, legislatures and legislators are not at liberty to pass laws contrary to such pronouncements. This does not, as the State protests, leave the legislative branch powerless in the face of "judicial supremacy run amok." (Defendant's Response at 1). To the contrary, "[t]he inherent powers of our State General Assembly are awesome.... [It] is absolutely unrestricted in its power to legislate, so long as it does not undertake to enact measures prohibited by the State or Federal Constitution." *Sears v. State of Ga.*, 232 Ga. 547, 553–54 (1974) (citation omitted). The void *ab initio* doctrine and its application to something like the LIFE Act properly cabins that broad legislative authority to set policy for our State and for the people who comprise it: do what you will, only do so within the bounds of the constitution that the courts have established. Put differently, this

ruling is merely a reinforcement of what ought to be for everyone the uncontroversial notion that, if the judicial branch has declared a constitutional right, legislatures exceed their authority, improperly expand their role, and fundamentally alter the balance struck by the separation of powers when they enact laws they know to be plainly and facially unconstitutional. Those laws are void upon passage.

More practically, this ruling means that the O.C.G.A. § 16-12-141 now in effect is the version that was in effect on 31 December 2019, before the LIFE Act purported to become the law of Georgia. The amendments to O.C.G.A. § 16-12-141 made by Section 4 of H.B. 481 are gone and the law reverts to what was constitutional at the time of the Act's passage.[12] Similarly, O.C.G.A. § 31-9B-3 returns to its prior version, before Section 11's amendments took effect. All other changes wrought by the LIFE Act remain in full force. They either were not challenged or, in the case of Section 10, were not unconstitutional at the time the Act became law.[13] Whether Georgia's Constitution

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[12] There is one statutory anomaly created by this outcome. The prior (and now effective) version of O.C.G.A. § 16-12-141 (attached to this Order) requires a physician, before performing an abortion, to determine the "probable gestational age" of the fetus in accordance with O.C.G.A. § 31-9B-2. O.C.G.A. § 16-12-141(c)(1). However, as discussed above, Section 10 of the LIFE Act has properly and within the bounds of constitutional law as they were known and defined in 2019 supplanted references to "probable gestational age" in O.C.G.A. § 31-9B-2 with "presence of a detectable human heartbeat." That is the measure doctors must now take per O.C.G.A. § 31-9B-2, whereas O.C.G.A. § 16-12-141, in its constitutional form that now again controls, requires doctors to determine gestational age. Until it is removed, this statutory cross-reference will be somewhat nonsensical, but it does not make the overarching statutory framework regulating abortions unworkable, impracticable, or unconstitutional. Physicians will simply need to make *both* determinations (and share both with their patients -- which, from the record established in this case, appears to be the standard medical practice anyway).

[13] A note on severability: the LIFE Act is severable -- at least in the manner it is being severed here (*i.e.*, Sections 4 and 11 excised from the remainder) -- for at least two reasons. First, the Act says so: H.B. 481

countenances a post-heartbeat ban (with certain exceptions for medical emergencies, rape, etc.) is not being decided here because that is not (yet) the law in Georgia.

> The general rule is that an unconstitutional statute, though having the form and name of law, is in reality no law, but is wholly void, and in legal contemplation is as inoperative as if it had never been passed. Such a statute leaves the question that it purports to settle just as it would be had the statute not been enacted.

Commissioners of Roads & Revenues of Fulton Cnty. v. Davis, 213 Ga. 792, 794 (1958) (citation omitted). Our state legislators are now, under *Dobbs*, free to move away from a post-viability ban in an effort to strike a different balance between the interests of fetal life and women's bodily autonomy, should they conclude that that is what is best for Georgians.

Conclusion

Sections 4 and 11 of the LIFE Act were plainly unconstitutional when drafted, voted upon, and enacted. They are therefore void *ab initio* and of no effect. The State and any of its agents, to include any County, Municipal, or other local authority, are hereby ENJOINED from seeking to enforce in any manner the post-heartbeat ban on abortion

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contained a severance provision (Section 14) invoking O.C.G.A. § 1-1-3, the Georgia Code's severability provision. That statute asserts that a "declaration or adjudication" such as that set forth in this Order finding one part of a legislative enactment unconstitutional "shall not affect the remaining portions of … such Act … which shall remain of full force and effect as if such portion so declared or adjudged invalid or unconstitutional were not originally a part of … such Act…." However, while "the presence of a severability clause ... reverses the usual presumption that the legislature intends the Act to be an entirety, and creates an opposite presumption of separability[,] the severability clause does not change the rule that in order for one part of [an Act] to be upheld as severable when another is stricken as unconstitutional, they must not be mutually dependent on one another." *Daimler Chrysler Corp. v. Ferrante*, 281 Ga. 273, 275 (2006) (punctuation and citation omitted). Here they are not. While all operative provisions of H.B. 481 spring from the common policy theme espoused in paragraph (6) of Section 2 of the Act (recognizing unborn children as natural persons), these provisions are not mutually dependent upon one another (other than Sections 4 and 11). Rather, they amend different statutory schemes to reflect the Legislature's determination that unborn children should enjoy the same rights and protections as the "born" do.

procedures in Georgia because there is no legal basis for them to do that which is not the law of this State. These entities are to be guided by the language of the version of O.C.G.A. § 16-12-141 in effect at the time the LIFE Act was passed. It is attached to this Order for ease of reference.

SO ORDERED this 15th day of November 2022.

JUDGE ROBERT C.I. MCBURNEY
Superior Court of Fulton County

§ 16-12-141. When and where procedure authorized; physician authorized to perform procedure

(a) No abortion is authorized or shall be performed in violation of subsection (a) of Code Section 31-9B-2.

(b) (1) No abortion is authorized or shall be performed after the first trimester unless the abortion is performed in a licensed hospital, in a licensed ambulatory surgical center, or in a health facility licensed as an abortion facility by the Department of Community Health.

(2) An abortion shall only be performed by a physician licensed under Article 2 of Chapter 34 of Title 43.

(c) (1) No abortion is authorized or shall be performed if the probable gestational age of the unborn child has been determined in accordance with Code Section 31-9B-2 to be 20 weeks or more unless the pregnancy is diagnosed as medically futile, as such term is defined in Code Section 31-9B-1, or in reasonable medical judgment the abortion is necessary to:

(A) Avert the death of the pregnant woman or avert serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman. No such condition shall be deemed to exist if it is based on a diagnosis or claim of a mental or emotional condition of the pregnant woman or that the pregnant woman will purposefully engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function; or

(B) Preserve the life of an unborn child.

As used in this paragraph, the term "probable gestational age of the unborn child" has the meaning provided by Code Section 31-9B-1.

(2) In any case described in subparagraph (A) or (B) of paragraph (1) of this subsection, the physician shall terminate the pregnancy in the manner which, in reasonable medical judgment, provides the best opportunity for the unborn child to survive unless, in reasonable medical judgment, termination of the pregnancy in that manner would pose a greater risk either of the death of the pregnant woman or of the substantial and irreversible physical impairment of a major bodily function of the pregnant woman than would another available method. No such greater risk shall be deemed to exist if it is based on a diagnosis or claim of a mental or emotional condition of the pregnant woman or that the pregnant woman will purposefully engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function. If the child is capable of sustained life, medical aid then available must be rendered.

(d) Hospital or other licensed health facility records shall be available to the district attorney of the judicial circuit in which the hospital or health facility is located.