

**THE STATE OF SOUTH CAROLINA**  
**In the Supreme Court**

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IN THE COURT’S ORIGINAL JURISDICTION

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PLANNED PARENTHOOD SOUTH ATLANTIC, on behalf of itself, its patients, and its physicians and staff; KATHERINE FARRIS, M.D., on behalf of herself and her patients; GREENVILLE WOMEN’S CLINIC, on behalf of itself, its patients, and its physicians and staff; and TERRY L. BUFFKIN, M.D., on behalf of himself and his patients.....*Petitioners,*

v.

STATE OF SOUTH CAROLINA; ALAN WILSON, in his official capacity as Attorney General of South Carolina; EDWARD SIMMER, in his official capacity as Director of the South Carolina Department of Health and Environmental Control; ANNE G. COOK, in her official capacity as President of the South Carolina Board of Medical Examiners; STEPHEN I. SCHABEL, in his official capacity as Vice President of the South Carolina Board of Medical Examiners; RONALD JANUCHOWSKI, in his official capacity as Secretary of the South Carolina Board of Medical Examiners; GEORGE S. DILTS, in his official capacity as a Member of the South Carolina Board of Medical Examiners; DION FRANGA, in his official capacity as a Member of the South Carolina Board of Medical Examiners; RICHARD HOWELL, in his official capacity as a Member of the South Carolina Board of Medical Examiners; ROBERT KOSCIUSKO, in his official capacity as a Member of the South Carolina Board of Medical Examiners; THERESA MILLS-FLOYD, in her official capacity as a Member of the South Carolina Board of Medical Examiners; JENNIFER R. ROOT, in her official capacity as a Member of the South Carolina Board of Medical Examiners; CHRISTOPHER C. WRIGHT, in his official capacity as a Member of the South Carolina Board of Medical Examiners; SAMUEL H. McNUTT, in his official capacity as Chairperson of the South Carolina Board of Nursing; SALLIE BETH TODD, in her official capacity as Vice Chairperson of the South Carolina Board of Nursing; TAMARA DAY, in her official capacity as Secretary of the South Carolina Board of Nursing; JONELLA DAVIS, in her official capacity as a Member of the South Carolina Board of Nursing; KELLI GARBER, in her official capacity as a Member of the South Carolina Board of Nursing; LINDSEY K. MITCHAM, in her official capacity as a Member of the South Carolina Board of Nursing; REBECCA MORRISON, in her official capacity as a Member of the South Carolina Board of Nursing; KAY SWISHER, in her official capacity as a Member of the South Carolina Board of Nursing; ROBERT J. WOLFF, in his official capacity as a Member of the South Carolina Board of Nursing; SCARLETT A. WILSON, in her official capacity as Solicitor for South Carolina's 9th Judicial Circuit; BYRON E. GIPSON, in his official capacity as Solicitor for South Carolina's 5th Judicial Circuit; and WILLIAM WALTER WILKINS III, in his official capacity as Solicitor for South Carolina's 13th Judicial Circuit.....*Respondents,*

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**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Petitioners Planned Parenthood South Atlantic; Katherine Farris, M.D.; Greenville Women’s Clinic; and Terry L. Buffkin, M.D. (“Petitioners”), by and through their undersigned counsel and complaining of Respondents the State of South Carolina and Alan Wilson, Edward Simmer, Anne G. Cook, Stephen I. Schabel, Ronald Januchowski, George S. Dilts, Dion Franga, Richard Howell, Robert Kosciusko, Theresa Mills-Floyd, Jennifer R. Root, Christopher C. Wright, Samuel H. McNutt, Sallie Beth Todd, Tamara Day, Jonella Davis, Kelli Garber, Lindsey K. Mitcham, Rebecca Morrison, Kay Swisher, Robert J Wolff, Scarlett A. Wilson, Byron E. Gipson, and William Walter Wilkins III, all in their official capacities (“Respondents”), allege as follows:

1. Petitioners bring this as-applied challenge to South Carolina’s Senate Bill 474, 125th Gen. Assemb., Spec. Sess. (S.C. 2023) (hereinafter “S.B. 474” or the “Act”) (attached as Exhibit A) to answer a narrow question of statutory interpretation. The Act bans abortion once a so-called “fetal heartbeat” can be detected and defines “[f]etal heartbeat” as “cardiac activity, or the steady and repetitive rhythmic contraction of the fetal heart, within the gestational sac.” *Id.* (amending S.C. Code Ann. § 44-41-610(6)). A violation of the Act carries felony criminal penalties, license revocation for a physician or other professionally licensed person, and civil liability, so clarity is of utmost importance.

2. Specifically, Petitioners seek clarification to the narrow question of when the Act bans abortion. *See* S.B. 474, § 2 (adding S.C. Code Ann. § 44-41-630(B)).

3. While Petitioners previously challenged the Act’s constitutionality, this Court held that it was constitutional, allowing the ban on abortion early in pregnancy to go into effect on August 23, 2023. *See generally Planned Parenthood S. Atl. v. State*, No. 2023-000896, 2023 WL 5420648 (S.C. Aug. 23, 2023), *reh’g denied* (Aug. 29, 2023) (“*Planned Parenthood II*”).

4. At oral argument in *Planned Parenthood II*, Justice Few asked whether “the steady and repetitive rhythmic contraction of the fetal heart” (the “Clause”) was intended to define or supplement the term “cardiac activity” based on the commas surrounding the Clause. In upholding S.B. 474, the Court left this question “for another day,” *Planned Parenthood II* at \*2 n.4, and it declined to clarify the answer when it rejected Petitioners’ petition for rehearing on August 29, 2023. As a result, there is ambiguity about whether S.B. 474 prohibits abortion at the detection of the earliest embryonic electrical activity, after approximately six weeks of pregnancy as dated from a patient’s last menstrual period (“LMP”),<sup>1</sup> or at the point when the heart forms, after approximately nine weeks of pregnancy LMP.

5. Faced with the threat of severe criminal and civil penalties imposed on anyone performing an abortion in violation of the Act, since the Court’s ruling, Petitioners have had no choice but to stop providing abortion services to patients when any early embryonic electrical activity is visible on ultrasound, after approximately six weeks.

6. Petitioners seek a temporary restraining order and preliminary injunction, followed by declaratory and injunctive relief, construing the definition of “fetal heartbeat” to confirm that: (1) “cardiac activity” is modified by “the steady and repetitive rhythmic contraction of the fetal heart” such that the two phrases refer to one point in time during pregnancy, and (2) the relevant point in time addressed by the Act is the point when a heart has formed, which is after approximately nine weeks LMP, consistent with the medical consensus. Alternatively, Petitioners seek a construction of the Act that cures any vagueness in the definition of “fetal heartbeat” such that the Act bans abortion after a heart has formed, after approximately nine weeks LMP. This

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<sup>1</sup> It is standard medical practice to date pregnancy using “gestational age,” or the number of weeks and days since the first day of the patient’s last menstrual period. The LMP method of pregnancy dating can be accomplished by patient self-reporting and, when appropriate, confirmed via ultrasound.

relief is necessary to assuage provider confusion and safeguard the ability of Petitioners—and their physicians and staff—to provide medical care consistent with their medical judgment and protect their patients’ health and wellbeing.

### **PARTIES**

7. Petitioner 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) and contraceptive counseling; gender-affirming hormone therapy as well as menopausal hormone replacement therapy; screening for breast and cervical cancers; screening and treatment for sexually transmitted infections (“STIs”); pregnancy testing and counseling; physical exams; and abortion. PPSAT sues on its own behalf, on behalf of its patients whose pregnancies are between approximately six and nine weeks LMP, and on behalf of its physicians and staff.

8. Petitioner 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 whose pregnancies are between approximately six and nine weeks LMP, and on behalf of its physicians and staff.

9. 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 fourteen weeks LMP, *id.*, § 44-

41-10;<sup>2</sup> *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.

10. 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 fourteen weeks LMP.

11. GWC operates a clinic in Greenville, where absent the Act, GWC generally provides medication abortion up through ten weeks LMP and abortion by procedure up to fourteen weeks LMP.

12. Katherine Farris, M.D., is a physician licensed to practice medicine in South Carolina and serves as the Chief Medical Officer for Petitioner PPSAT. She is a board-certified physician in family medicine and a member of the American College of Obstetricians and Gynecologists, the National Abortion Federation, Physicians for Reproductive Health, and the American Academy of Family Physicians. In her role as Chief Medical Officer, Dr. Farris provides oversight, supervision, and leadership on all medical services provided by PPSAT at its South Carolina health centers, including abortion. She also provides direct medical services at PPSAT's South Carolina health centers, including, absent the Act, abortion up to fourteen weeks LMP. Dr. Farris brings this claim on behalf of herself and her patients whose pregnancies are between approximately six and nine weeks LMP.

13. 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”)

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<sup>2</sup> Measuring the gestational age of a pregnancy following fertilization is different from measuring it from the date of a patient's last menstrual period. For a patient with regular monthly periods, fertilization typically occurs two weeks after their last menstrual period (two weeks LMP). Thus, while Section 44-41-10(i) refers to the first trimester as being through “twelve weeks of pregnancy commencing with conception,” (the Act equates “[c]onception” with fertilization, *see id.*, § 44-41-10(g)), this is the equivalent to fourteen weeks LMP.

who provides a range of reproductive health care to patients, including, absent the Act, medication abortion up through ten weeks LMP and abortion by procedure up to fourteen weeks LMP. Dr. Buffkin brings this claim on behalf of himself and his patients whose pregnancies are between approximately six and nine weeks LMP.

14. Respondent State of South Carolina is a government entity charged with enforcing the laws of the State.

15. Respondent 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. Respondent Wilson has criminal and civil enforcement authority for violations of the Act, pursuant to S.C. Code Ann. § 1-7-40; S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-680). Moreover, he has the “exclusive right, in his discretion, to assign” solicitors in the State to criminal matters outside their circuits “in case of the incapacity of the local solicitor or otherwise.” S.C. Code Ann. § 1-7-350. He is sued in his official capacity.

16. Respondent 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.

17. Respondent Anne G. Cook is the President of the South Carolina Board of Medical Examiners (“BME”), which is responsible for licensing and disciplining physicians who practice in South Carolina, pursuant to S.C. Code Ann. § 40-47-10. The Act mandates that, if a physician violates the Act, the BME revoke their license. S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-690). She is sued in her official capacity.

18. Respondent Stephen I. Schabel is Vice President of the BME, which is responsible for licensing and disciplining physicians who practice in South Carolina, pursuant to S.C. Code Ann. § 40-47-10. The Act mandates that, if a physician violates the Act, the BME revoke their license. S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-690). He is sued in his official capacity.

19. Respondent Ronald Januchowski is Secretary of the BME, which is responsible for licensing and disciplining physicians who practice in South Carolina, pursuant to S.C. Code Ann. § 40-47-10. The Act mandates that, if a physician violates the Act, the BME revoke their license. S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-690). He is sued in his official capacity.

20. Respondent George S. Dilts is a Member of the BME, which is responsible for licensing and disciplining physicians who practice in South Carolina, pursuant to S.C. Code Ann. § 40-47-10. The Act mandates that, if a physician violates the Act, the BME revoke their license. S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-690). He is sued in his official capacity.

21. Respondent Dion Franga is a Member of the BME, which is responsible for licensing and disciplining physicians who practice in South Carolina, pursuant to S.C. Code Ann. § 40-47-10. The Act mandates that, if a physician violates the Act, the BME revoke their license. S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-690). He is sued in his official capacity.

22. Respondent Richard Howell is a Member of the BME, which is responsible for licensing and disciplining physicians who practice in South Carolina, pursuant to S.C. Code Ann. § 40-47-10. The Act mandates that, if a physician violates the Act, the BME revoke their license. S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-690). He is sued in his official capacity.

23. Respondent Robert Kosciusko is a Member of the BME, which is responsible for licensing and disciplining physicians who practice in South Carolina, pursuant to S.C. Code Ann.

§ 40-47-10. The Act mandates that, if a physician violates the Act, the BME revoke their license. S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-690). He is sued in his official capacity.

24. Respondent Theresa Mills-Floyd is a Member of the BME, which is responsible for licensing and disciplining physicians who practice in South Carolina, pursuant to S.C. Code Ann. § 40-47-10. The Act mandates that, if a physician violates the Act, the BME revoke their license. S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-690). She is sued in her official capacity.

25. Respondent Jennifer R. Root is a Member of the BME, which is responsible for licensing and disciplining physicians who practice in South Carolina, pursuant to S.C. Code Ann. § 40-47-10. The Act mandates that, if a physician violates the Act, the BME revoke their license. S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-690). She is sued in her official capacity.

26. Respondent Christopher C. Wright is a Member of the BME, which is responsible for licensing and disciplining physicians who practice in South Carolina, pursuant to S.C. Code Ann. § 40-47-10. The Act mandates that, if a physician violates the Act, the BME revoke their license. S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-690). He is sued in his official capacity.

27. Respondent Samuel H. McNutt is the Chairperson of the South Carolina Board of Nursing (“BoN”), which is responsible for licensing and disciplining nurses who practice in South Carolina, pursuant to S.C. Code Ann. § 40-33-10. The Act mandates that, if a licensed professional violates the Act, the appropriate licensing board revoke their license. S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-690). He is sued in his official capacity.

28. Respondent Sallie Beth Todd is the Vice Chairperson of the BoN, which is responsible for licensing and disciplining nurses who practice in South Carolina, pursuant to S.C. Code Ann. § 40-33-10. The Act mandates that, if a licensed professional violates the Act, the



appropriate licensing board revoke their license. S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-690). She is sued in her official capacity.

29. Respondent Tamara Day is the Secretary of the BoN, which is responsible for licensing and disciplining nurses who practice in South Carolina, pursuant to S.C. Code Ann. § 40-33-10. The Act mandates that, if a licensed professional violates the Act, the appropriate licensing board revoke their license. S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-690). She is sued in her official capacity.

30. Respondent Jonella Davis is a Member of the BoN, which is responsible for licensing and disciplining nurses who practice in South Carolina, pursuant to S.C. Code Ann. § 40-33-10. The Act mandates that, if a licensed professional violates the Act, the appropriate licensing board revoke their license. S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-690). She is sued in her official capacity.

31. Respondent Kelli Garber is a Member of the BoN, which is responsible for licensing and disciplining nurses who practice in South Carolina, pursuant to S.C. Code Ann. § 40-33-10. The Act mandates that if a licensed professional violates the Act, the appropriate licensing board revoke their license. S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-690). She is sued in her official capacity.

32. Respondent Lindsey K. Mitcham is a Member of the BoN, which is responsible for licensing and disciplining nurses who practice in South Carolina, pursuant to S.C. Code Ann. § 40-33-10. The Act mandates that, if a licensed professional violates the Act, the appropriate licensing board revoke their license. S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-690). She is sued in her official capacity.

33. Respondent Rebecca Morrison is a Member of the BoN, which is responsible for licensing and disciplining nurses who practice in South Carolina, pursuant to S.C. Code Ann. § 40-33-10. The Act mandates that, if a licensed professional violates the Act, the appropriate licensing board revoke their license. S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-690). She is sued in her official capacity.

34. Respondent Kay Swisher is a Member of the BoN, which is responsible for licensing and disciplining nurses who practice in South Carolina, pursuant to S.C. Code Ann. § 40-33-10. The Act mandates that, if a licensed professional violates the Act, the appropriate licensing board revoke their license. S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-690). She is sued in her official capacity.

35. Respondent Robert J Wolff is a Member of the BoN, which is responsible for licensing and disciplining nurses who practice in South Carolina, pursuant to S.C. Code Ann. § 40-33-10. The Act mandates that, if a licensed professional violates the Act, the appropriate licensing board revoke their license. S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-690). He is sued in his official capacity.

36. Respondent Scarlett A. Wilson is the Solicitor for South Carolina's Ninth Judicial Circuit, which includes the City of Charleston, where PPSAT's Charleston health center is located. In cooperation with the Attorney General, she has criminal enforcement authority for violations of the Act, pursuant to S.C. Code Ann. § 1-7-320, as well as civil enforcement. S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-680). She is sued in her official capacity.

37. Respondent Byron E. Gipson is the Solicitor for South Carolina's 5th Judicial Circuit, which includes the portion of the City of Columbia where PPSAT's Columbia health center is located. In cooperation with the Attorney General, he has criminal enforcement authority

for violations of the Act, pursuant to S.C. Code Ann. § 1-7-320, as well as civil enforcement. S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-680). He is sued in his official capacity.

38. Respondent William Walter Wilkins III is the Solicitor for South Carolina’s 13th Judicial Circuit, which includes the City of Greenville, where GWC is located. In cooperation with the Attorney General, he has criminal enforcement authority for violations of the Act, pursuant to S.C. Code Ann. § 1-7-320, as well as civil enforcement. S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-680). He is sued in his official capacity.

### **JURISDICTION AND VENUE**

39. Jurisdiction and venue are proper in this Court pursuant to article V, section 5 of the South Carolina Constitution, S.C. Code Ann. § 14-3-310, Rule 245, SCACR, and the Court’s general legal and equitable powers, including its authority to enforce the South Carolina Constitution and interpret South Carolina statutes.

### **FACTUAL ALLEGATIONS**

#### **South Carolina Abortion Law**

40. Petitioners PPSAT and GWC operate the only abortion clinics in South Carolina. They are not licensed to provide abortion beyond the first trimester of pregnancy (beyond fourteen weeks LMP).

41. Prior to 2021, abortion was legal in South Carolina until twenty-two weeks LMP.

42. However, in 2021, South Carolina enacted Senate Bill 1, 124th Gen. Assemb., Reg. Sess. (S.C. 2021) (hereinafter “S.B. 1”), which provided that “no person shall perform, induce, or attempt to perform or induce an abortion” where the “fetal heartbeat has been detected.” *Id.*, § 3 (adding S.C. Code Ann. § 44-41-680(A)).

43. Petitioners challenged S.B. 1’s constitutionality in federal court, and the U.S. District Court preliminarily enjoined its enforcement. *See generally Planned Parenthood S. Atl. v. Wilson*, 527 F.Supp.3d 801 (D.S.C. 2021), *aff’d*, 26 F.4th 600 (4th Cir. 2022). But after the U.S. Supreme Court’s ruling in *Dobbs v. Jackson Women’s Health Organization*, 142 S. Ct. 2228 (2022), the District Court granted the Respondents’ emergency motion to stay the preliminary injunction, allowing S.B. 1 to take effect. *See generally Planned Parenthood S. Atl. v. Wilson*, No. CV 3:21-00508-MGL, 2022 WL 2314508 (D.S.C. June 27, 2022). The federal court then granted Petitioners’ motion to dismiss that case without prejudice under Federal Rule of Civil Procedure 41. *See generally Planned Parenthood S. Atl. v. Wilson*, No. CV 3:21-00508-MGL, 2022 WL 2905496 (D.S.C. July 22, 2022).

44. Petitioners in this case then filed a new case in the Court of Common Pleas for the Fifth Judicial District against the Respondents in this case. The South Carolina Supreme Court then agreed to hear the case in its original jurisdiction and unanimously granted a temporary injunction against S.B. 1’s enforcement on August 17, 2022, at which point S.B. 1 had been in effect for 51 days.

45. On January 5, 2023, this Court struck down S.B. 1, finding that it violated South Carolinians’ right to privacy guaranteed by article I, section 10 of the State Constitution. *See generally Planned Parenthood South Atlantic v. State*, 438 S.C. 188, 882 S.E.2d 770 (2023), *reh’g denied* (Feb. 8, 2023) (“*Planned Parenthood I*”).

46. After the Court struck down S.B. 1, a new so-called “heartbeat ban,” S.B. 474, was introduced in the General Assembly.

47. The Act begins with three legislative findings: (1) “[a] fetal heartbeat is a key medical predictor that an unborn child will reach live birth,” S.B. 474, § 1(1); (2) “[c]ardiac activity

begins at a biologically identifiable moment in time, normally when the fetal heart is formed in the gestational sac,” *id.*, § 1(2); and (3) “[t]he State of South Carolina has a compelling interest from the outset of a woman’s pregnancy in protecting the health of the woman and the life of the unborn child,” *id.*, § 1(3).

48. The Act imposes extreme limits on abortion access in South Carolina by banning abortion early in pregnancy. *Id.*, § 2 (adding S.C. Code Ann. § 44-41-630(B)). It provides that “no person shall perform or induce an abortion” where the “fetal heartbeat has been detected.” *Id.*<sup>3</sup>

49. The Act requires health care providers to determine whether the abortion ban applies by mandating the performance of an ultrasound. *Id.* (amending S.C. Code Ann. § 44-41-630(A)).

50. S.B. 474 defines “[f]etal heartbeat” as “cardiac activity, or the steady and repetitive rhythmic contraction of the fetal heart, within the gestational sac.” *Id.* (amending S.C. Code Ann. § 44-41-610(6)).

51. Both the physician who performs an abortion and the clinic in which the abortion is performed risk severe penalties for violating the abortion ban. Those penalties include a felony offense that carries a \$10,000 criminal fine and up to two years in prison. *Id.* (adding S.C. Code Ann. §§ 44-41-630(B), 44-41-640(B)); *see also* S.C. Code Ann. § 16-1-40 (accessory liability). Moreover, any licensed professional who performs an abortion in violation of the Act will have their license revoked. S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-690).

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<sup>3</sup> S.B. 474 contains only three narrow exceptions: (1) to save the life of the pregnant patient or to prevent certain types of irreversible bodily impairment to the patient (the “Death or Permanent Injury Exception”); (2) in cases of a fetal health condition that is “incompatible” with sustained life after birth (the “Fatal Fetal Anomaly Exception”), and (3) in narrow circumstances up to twelve weeks LMP where the pregnancy is the result of rape or incest (the “Reported Rape Exception”). S.B. 474, § 2 (amending S.C. Code Ann. §§ 44-41-610(9) (defining “[m]edical emergency”), 44-41-650, 44-41-660; adding S.C. Code Ann. 44-41-640(A)–(C)).

52. Anyone performing an abortion in violation of the Act could also be subject to a civil suit brought by the person on whom the abortion was performed, their parent or guardian if they are a minor at the time of the abortion or died as a result of the abortion, a solicitor or prosecuting attorney, or the Attorney General. *Id.* (amending S.C. Code Ann. § 44-41-680). In addition to actual damages, the person performing the abortion could be liable for punitive damages, statutory damages of \$10,000 for each violation of the Act’s abortion ban, and attorney’s fees and costs, all of which are not subject to the limitations of South Carolina’s medical malpractice laws. *Id.*

53. The General Assembly adopted S.B. 474 on May 23, 2023, and it took immediate effect upon Governor Henry McMaster’s signature on May 24, 2023. *See id.*, § 14 (“This act takes effect upon approval by the Governor.”).

54. Petitioners immediately challenged the Act’s constitutionality, and it was preliminarily enjoined by the Circuit Court for the Fifth Judicial District on May 25, 2023. Order Granting Prelim. Inj., *Planned Parenthood S. Atl. v. State*, No. 2023-CP-40-002745, 2023 WL 3735109 (S.C. Com. Pls. May 26, 2023).

55. After this Court accepted the case in its original jurisdiction, it ruled that the Act was constitutional and vacated the injunction, leading the Act to take effect on August 23, 2023. *See generally Planned Parenthood II.*

56. Petitioners previously assumed that the term “fetal heartbeat” included not just a “heartbeat” once a heart has formed, but also embryonic electrical activity present before development of the cardiovascular system. Due to the Act’s severe criminal and civil penalties, since S.B. 474 went into effect, Petitioners have had to take the conservative approach of assuming

that the Act’s prohibitions apply once embryonic electrical activity can be detected—after approximately six weeks LMP (and sometimes sooner).

57. However, at oral argument in *Planned Parenthood II*, the Court identified a question of statutory interpretation—that “cardiac activity” may be defined by the clause “the steady and repetitive rhythmic contraction of the fetal heart,” based on the commas surrounding that clause. The Court expressly declined to address the issue in its ruling finding S.B. 474 constitutional. *Id.*, at \*2 n.4 (“We leave for another day . . . the meaning of ‘fetal heartbeat’ and whether the statutory definition . . . refers to one period of time during a pregnancy or two separate periods of time.”); *id.*, at \*15 (Beatty, C.J., dissenting) (“[The majority] does not resolve the anomaly appearing on the face of the legislation regarding the timing of the ‘fetal heartbeat’ ban.”).

58. Prior to the adoption of S.B. 1 and S.B. 474, South Carolina did not require abortion providers to perform ultrasounds before an abortion, but Petitioners typically performed them when medically appropriate. For example, when patients are unsure of their last menstrual period, ultrasounds can be useful to pinpoint the gestational age of the pregnancy, which may affect, for example, whether medication abortion is available for the patient.

59. Ultrasounds may be transvaginal, meaning that a probe is inserted into the patient’s vagina, or transabdominal ultrasounds, which involve placement of a probe onto the patient’s bare abdomen.

### **Abortion in South Carolina**

60. Legal abortion is one of the safest procedures in contemporary medical practice and is far safer than childbirth. A person’s risk of death associated with childbirth is approximately fourteen times higher than that associated with abortion,<sup>4</sup> and every pregnancy-related

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<sup>4</sup> Elizabeth G. Raymond & David A. Grimes, *The Comparative Safety of Legal Induced Abortion and Childbirth in the United States*, 119 *Obstetrics & Gynecology* 215, 216 (2012); *see also* Nat’l

complication is more common among people having live births than among those having abortions.<sup>5</sup>

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

62. People seek abortion for a range of reasons. The majority of people who seek abortions are already parents, and they may already struggle with basic unmet needs for their families. Other people decide that they are not ready to become parents because they are too young or want to finish school before starting a family. Some people have health complications during pregnancy that lead them to conclude that abortion is the right choice for them; indeed, for some, abortion is medically indicated to protect their lives and their health, including their reproductive health. Some people receive fetal diagnoses incompatible with sustained life after birth and wish to terminate the pregnancy rather than continue to carry a non-viable pregnancy and expose themselves to the physical and psychological changes associated with pregnancy. In some cases, people are struggling with substance abuse and decide not to become parents or have additional children during that time in their lives. Still others have an abusive partner or a partner with whom they do not wish to have children for other reasons.

63. Although patients generally obtain an abortion as soon as they are able, the vast majority of patients who (absent enforcement of the Act) obtained abortions in South Carolina were at least six weeks LMP by the time of the abortion.

64. 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,

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Acads. of Scis., Eng'g, & Med. ("Nat'l Acads."), *The Safety and Quality of Abortion Care in the United States*, at 75 tbl. 2–4 (2018), available at <http://nap.edu/24950> (finding the risk to be approximately twelve times higher).

<sup>5</sup> Raymond & Grimes, *supra* note 4, at 216.



especially patients who have irregular menstrual cycles or who experience bleeding during early pregnancy, a common occurrence that is frequently and easily mistaken for a period. Other patients may not develop or recognize symptoms of early pregnancy. Other factors, including younger age and use of hormonal contraceptives, can also result in delayed recognition of symptoms of early pregnancy.

### **The Menstrual Cycle, the Early Stages of Pregnancy, and Pregnancy Recognition**

65. Menstruation is the shedding of the lining of the uterus, during which someone will experience bleeding for around two to seven days (commonly referred to as a “period”).<sup>6</sup> While young people usually get their first period between the ages of ten and fifteen, some start menstruating earlier.<sup>7</sup>

66. For those who are actively menstruating, a menstrual cycle begins on the first day of the person’s period and ends on the first day of their next period. Some may go six to eight weeks, or even longer, without experiencing a menstrual period.<sup>8</sup> It is also very common for people to have irregular menstrual cycles that are difficult to predict because their menstrual cycle varies from month to month.<sup>9</sup>

67. During menstruation, the body prepares to release an egg cell from one of two ovaries. One of these eggs becomes mature each cycle, typically about one week after the start of

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<sup>6</sup> *How Do I Know if My Menstrual Cycle Is Normal?*, Planned Parenthood, <https://www.plannedparenthood.org/learn/health-and-wellness/menstruation/how-do-i-know-if-my-menstrual-cycle-normal> (last accessed Sept. 12, 2023).

<sup>7</sup> *Getting Your Period: What Is a ‘Normal’ Menstrual Cycle for Teens and Preteens?*, UChicago Medicine, <https://www.uchicagomedicine.org/forefront/pediatrics-articles/getting-your-period-normal-menstrual-cycle-teens-preteens> (last accessed Sept. 12, 2023); *see also Menstruation*, Planned Parenthood, <https://www.plannedparenthood.org/learn/health-and-wellness/menstruation> (last accessed Sept. 12, 2023) (“Most people get their first period between ages 12 and 14, but some people get them earlier or later than that.”).

<sup>8</sup> *How Do I Know if My Menstrual Cycle Is Normal?*, *supra* note 6.

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

a period. Halfway through the cycle, ovulation begins, releasing the egg from the ovary and through the fallopian tube towards the uterus.<sup>10</sup> While moving through the fallopian tube, the egg may join with a sperm cell through fertilization, at which point it would begin dividing into more cells as the egg moves down the fallopian tube toward the uterus. These cells (called a “blastocyst”) typically get to the uterus about three to four days after fertilization.<sup>11</sup>

68. As a medical matter, implantation constitutes the beginning of pregnancy—if and when the cells attach to the lining of the uterus. Sometimes the cells do not implant in the uterine lining, and pregnancy does not result. If the cells do implant, it typically occurs about six days after fertilization and the process takes roughly three to four days to complete. Pregnancy hormones, including human chorionic gonadotropin (“hCG”), are triggered to release by implantation and prevent the lining of the uterus from shedding so no period occurs.<sup>12</sup>

69. In medical practice, the gestational age of a pregnancy is commonly measured starting from the first day of a person’s last menstrual period, rather than from implantation. Thus, this method of dating a pregnancy starts about two to three weeks before fertilization and about three to four weeks before implantation—the point at which someone is actually pregnant.<sup>13</sup>

70. A person with a highly regular, four-week cycle would already be four weeks LMP when they miss their period, leaving only two weeks to realize they have missed their period (rather than expecting a late period), learn they are pregnant, and then arrange for an abortion before an embryonic electrical impulse can be detected by an ultrasound.

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<sup>10</sup> *Menstruation*, *supra* note 7.

<sup>11</sup> *How Pregnancy Happens*, Planned Parenthood, <https://www.plannedparenthood.org/learn/pregnancy/how-pregnancy-happens> (last accessed Sept. 12, 2023).

<sup>12</sup> *Pregnancy Tests*, Planned Parenthood, <https://www.plannedparenthood.org/learn/pregnancy/pregnancy-tests> (last accessed Sept. 12, 2023).

<sup>13</sup> *How Pregnancy Happens*, *supra* note 11.

71. For someone with a longer or irregular menstrual cycle, the gestational age could be even greater than four weeks LMP at the time of a missed period.

72. While for some people a missed period is the first sign of pregnancy, irregular menstrual cycles can also cause missed or late periods.<sup>14</sup> Irregular cycles may result from hormonal contraceptive use, age, breastfeeding, a recent miscarriage, or other common medical conditions, like diabetes.<sup>15</sup> Some pregnant people experience light bleeding that occurs upon implantation and mistake the bleeding for a menstrual period. Other early pregnancy symptoms, like fatigue, swollen or tender breasts, and nausea and/or vomiting, are not uniformly experienced during early stages of pregnancy and may also occur as premenstrual symptoms that indicate a late period is coming.<sup>16</sup>

73. A missed period may prompt someone to take a pregnancy test. At-home pregnancy tests work by detecting the hormone hCG in urine. When used after a missed period, these tests are 99% effective.<sup>17</sup>

74. Many people do not learn they are pregnant as soon as they miss their periods. On average, people are unaware of their pregnancies until between five- and six-weeks LMP, but there are various individual characteristics that are associated with later pregnancy awareness.<sup>18</sup> These characteristics include younger age, lower educational attainment, lower poverty-income ratios,

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<sup>14</sup> See *How Do I Know if My Menstrual Cycle Is Normal?*, *supra* note 6 (“A missed period is one of the first signs of pregnancy, but it doesn’t always mean you’re pregnant.”).

<sup>15</sup> *Id.*

<sup>16</sup> *Pregnancy Symptoms*, Planned Parenthood, <https://www.plannedparenthood.org/learn/pregnancy/pregnancy-symptoms> (last accessed Sept. 12, 2023) (“Many of these symptoms can also be signs of other conditions and don’t always mean that you’re pregnant.”).

<sup>17</sup> *Id.*

<sup>18</sup> Amy M. Branum & Katherine A. Ahrens, *Trends in Timing of Pregnancy Awareness Among US Women*, 21 *Maternal & Child Health J.* 715 (2017).

and hormonal contraceptive use.<sup>19</sup> Moreover, those with longer or irregular menstrual cycles or who are breastfeeding may become aware of their pregnancies later.<sup>20</sup>

### **Embryonic and Fetal Development, Including of the Cardiovascular System**

75. The developing organism in a uterus is referred to as an “embryo” in the field of medicine before approximately ten weeks of pregnancy. At the earliest stages of pregnancy, around five to six weeks LMP, an embryo is less than a fifth of an inch long.<sup>21</sup>

76. Cardiac development is a complex process that will advance throughout pregnancy and continue through birth. At minimum, the development of the four major components of a heart—the four chambers, the walls separating them, the valves connecting them, and the conduction system—cannot occur until after approximately nine weeks LMP.

77. At approximately three weeks LMP, no cardiovascular system exists. There is no heart nor circulatory system in the blastocyst.<sup>22</sup>

78. At approximately five weeks LMP, the earliest primitive cells that will develop into a heart begin to form. These cells form a straight tube that will fold in on itself to build the chambers of a heart. At this point, the organ will begin to transmit electrical impulses that cause cellular contractions.<sup>23</sup> The movement of the primitive cardiac cells caused by these early electrical impulses will not be visible on an ultrasound until approximately six weeks LMP.

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<sup>19</sup> Lawrence B. Finer et al., *Timing of Steps and Reasons for Delays in Obtaining Abortions in the United States*, 74 *Contraception* 334, 338 (2006).

<sup>20</sup> *Id.*

<sup>21</sup> *What Happens in the Second Month of Pregnancy?*, Planned Parenthood, <https://www.plannedparenthood.org/learn/pregnancy/pregnancy-month-by-month/what-happens-second-month-pregnancy> (last accessed Sept. 12, 2023).

<sup>22</sup> See Richard Van Praagh, *Congenital Heart Disease* 14 (2022); Cheryl Mei Jun Tan & Adam James Lewandowski, *The Transitional Heart: From Early Embryonic and Fetal Development to Neonatal Life*, 47 *Fetal Diagnosis and Therapy* 373, 375–76 (2020).

<sup>23</sup> See Praagh, *supra* note 22, at 16–27; Tan & Lewandowski, *supra* note 22, at 375–76; Preeta Dhanantwari et al., *Human Cardiac Development in the First Trimester: A High-Resolution*

79. By approximately six weeks LMP, the cells that develop into a heart are a tube-like organ. At this point, the heart's chambers begin to form.<sup>24</sup>

80. After approximately six weeks LMP, an ultrasound will show a flicker within the embryo. The flicker is cardiac cells, or cardiomyocytes, which have special characteristics that promote the conduction and contraction of the cell tissue. This electrical impulse is detectable before the development of any of the four major components of a heart.

81. Furthermore, these cells are not organized into a coordinated and steady heartbeat until after the development of the natural pacemakers and conduction pathways within the heart.<sup>25</sup> In other words, the embryonic electrical activity that is visible as early as six weeks LMP is neither “steady” nor “rhythmic.”

82. Furthermore, at six weeks LMP, there is no detectable sound that can be heard by a medical provider or pregnant patient. Early in pregnancy, even with ultrasound, this activity would not be audible but would instead appear as a visual flicker. The “sound” audible at six weeks is the translated electrical impulses that the ultrasound machine itself converts into sound. *Planned Parenthood I*, 438 S.C. at 222, 882 S.E.2d at 788 (Beatty, J., concurring).

83. Between approximately six and eight weeks LMP, the tube-like organ will begin to develop into four chambers.<sup>26</sup>

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*Magnetic Resonance Imaging and Episcopic Fluorescence Image Capture Atlas*, 120 *Circulation* 343, 345–46 (2009).

<sup>24</sup> See Praagh, *supra* note 22 at 27–41; Tan & Lewandowski, *supra* note 22, at 375–76; Dhanantwari et al., *supra* note 23, at 346–47.

<sup>25</sup> J. Boulin & J. M. Morgan, *The Development of Cardiac Rhythm*, 91 *Heart* 874, 874–75 (2005); Robert G. Gourdie, *Development of the Cardiac Pacemaking and Conduction System*, 69 *Birth Defects Resch.*, Part C *Embryo Today: Reviews* 46, 46–57 (2003).

<sup>26</sup> See also S.C. Dep't of Health & Env't Control, *Embryonic & Fetal Development*, <https://scdhec.gov/sites/default/files/Library/ML-017049.pdf> (last visited Sept. 12, 2023) (“The heart starts to form the normal four chambers” at 7–8 weeks LMP.)

84. Between approximately seven and ten weeks LMP, the valves will form.<sup>27</sup>

85. At approximately ten weeks LMP, cardiac septation is completed, meaning that systemic and pulmonary circulation have completely separated and the four chambers of the heart have formed. It is at this point that the structure of the heart is sufficiently developed that it would have much of the same recognizable anatomic landmarks as a mature heart, but these details are not yet visible using the current resolution of ultrasound technology.<sup>28</sup>

86. In the medical field, the developing organism present in the gestational sac during pregnancy is most accurately termed an “embryo” until at least ten weeks LMP; the term “fetus” is appropriately used after that time.

87. Thus, the Act’s reference to a “fetal heartbeat” obscures the fact that the Act could ban abortion so early in pregnancy that neither a “fetus” nor a “heart”—much less a heartbeat—exists yet as a matter of accurate medical terminology.

88. A full-term pregnancy typically lasts approximately forty weeks LMP, and the first trimester of pregnancy is usually considered to end after the thirteenth week of pregnancy.<sup>29</sup> Most pregnancy loss—otherwise known as miscarriage—occurs during the first trimester, as do the vast majority of abortions.<sup>30</sup> Roughly 15% of pregnancies end in miscarriage during the first trimester.<sup>31</sup>

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<sup>27</sup> See Praagh, *supra* note 22, at 41–45; Tan, *supra* note 22, at 377; Dhanantwari, *supra* note 23, at 347–49.

<sup>28</sup> See also S.C. Dep’t of Health & Env’t Control, *supra* note 26 (noting that the heart has formed at 9–10 weeks LMP).

<sup>29</sup> *What Happens in the Fourth Month of Pregnancy?*, Planned Parenthood, <https://www.plannedparenthood.org/learn/pregnancy/pregnancy-month-by-month/what-happens-fourth-month-pregnancy> (last accessed Sept. 12, 2023).

<sup>30</sup> *What Happens in the Third Month of Pregnancy?*, Planned Parenthood, <https://www.plannedparenthood.org/learn/pregnancy/pregnancy-month-by-month/what-happens-third-month-pregnancy> (last accessed Sept. 12, 2023).

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

## The Impact of the Act on Petitioners and Their Patients

89. As described above, Petitioners have no choice but to assume that the Act prohibits nearly all abortions after approximately six weeks LMP. Yet prior to the Act taking effect, the vast majority of people in South Carolina who obtained abortion did so after six weeks LMP, while more than half were performed before approximately nine weeks LMP.<sup>32</sup>

90. Without relief from this Court, Petitioners and their staff will continue to be forced to turn away the vast majority of patients seeking abortions, or risk substantial criminal penalties, professional sanctions, and/or civil liability. When patients with pregnancies with detectable embryonic or fetal electrical activity seek abortions, Petitioners can provide care only where they can determine that one of the extremely narrow exceptions to the Act applies.

91. In the short period since S.B. 474 went into effect, it has severely limited access to abortions in South Carolina. From when the Act went into effect on August 23, 2023, until September 8, 2023, PPSAT has provided only twelve abortions, despite the fact that 135 patients have presented to PPSAT's clinics seeking abortions. In other words, PPSAT turned away approximately 91% of people seeking abortions at their South Carolina clinics. Of those turned away, seventy-one (or about 58% of those unable to obtain abortions) had pregnancies that were nine weeks LMP or less. Many more did not schedule appointments because they were past six weeks LMP, and others likely did not even bother to call, having learned of South Carolina's new ban on abortion early in pregnancy.

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<sup>32</sup> See S.C. Dep't of Health & Env't Control, *A Public Report Providing Statistics Compiled From All Abortions Reported to DHEC—2022*, at tbl. 1 (2023), available at [https://scdhec.gov/sites/default/files/media/document/2022-Abortion\\_SC-Report.pdf](https://scdhec.gov/sites/default/files/media/document/2022-Abortion_SC-Report.pdf). State reporting data tracks the post-fertilization age rather than as dated from the patient's last menstrual period. See *supra* note 2. Thus, the state reporting data shows that a little over half of abortions in South Carolina occur at or before eight weeks LMP, but an even smaller number occur before six weeks LMP.

92. By comparison, in the sixteen days before the Act became effective, from August 6 to August 22, 2023, PPSAT provided 194 abortions. Put differently, over the same period of time, PPSAT was able to provide just 7% of the abortions it did before the abortion ban went into effect.

93. Likewise, GWC has been forced to turn away approximately half of the patients who have come in for abortion care due to detectable embryonic electrical activity since the Act went into effect on August 23, 2023. Most of these patients were below nine weeks LMP. GWC updated its website to notify patients of the changed status of the law, and many patients were likely deterred from coming into the clinic after reading news of the decision. GWC has seen a significantly lower volume of patients in the three weeks the Act has been in effect compared to its usual practice. The number of abortions it has provided during this time decreased by approximately 80% as compared to the number of abortions it provided during the same amount of time immediately preceding the Court's August 23 decision.

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

94. The Act makes it exceedingly difficult to access abortion in South Carolina. Research shows that barriers to abortion delay, and in some cases altogether prevent, people from accessing that care. Not only does delay potentially increase the cost of the medical procedure, but it also increases the risk of complications (though pre-viability abortion remains incredibly safe and far safer than carrying a pregnancy to term). Those who are ultimately prevented from accessing care may choose to self-manage their abortion outside of the health care system, potentially increasing the risks to their health. Others will be forced to carry pregnancies to term against their will.



95. 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.

96. Pregnancy can also aggravate preexisting health conditions, including hypertension and other cardiac disease, diabetes, kidney disease, autoimmune disorders, obesity, asthma, and other pulmonary diseases. 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.

97. Pregnancy may also induce or exacerbate mental health conditions. A person with a history of mental illness may experience a recurrence of their illness during pregnancy. Pregnant patients regulating a mental health condition with medication that carries risk to the fetus may need to discontinue or modify their medication in order to avoid risking harm to the fetus, effectively increasing the likelihood that mental illness recurs both during and after pregnancy. These mental health risks can be higher for patients with unintended pregnancies, who may face physical and emotional changes and risks that they did not choose to take on. Some pregnant patients also face increased risk of intimate partner violence, with the severity sometimes escalating during or after pregnancy. Homicide is a leading cause of maternal mortality; the majority are committed by an intimate partner.

98. Separate from pregnancy, labor and childbirth are themselves significant medical events with many risks, far greater than those for legal pre-viability abortion.

99. The risks and complications associated with pregnancy go beyond mortality. In some cases, labor must be medically or physically induced (for example, by physically rupturing the membranes), and labor can last hours or sometimes days and be tremendously painful. Even a pregnancy with no comorbidities or previous complications can suddenly become life-threatening during labor and delivery.

100. Each of these consequences constitutes irreparable harm to Petitioners' patients.

***The Act's Narrow Exceptions Will Harm South Carolinians.***

101. The Act's narrow exceptions to the abortion ban do not cure these harms. Even patients who are able to qualify for one of the exceptions will have their decision to have an abortion—a deeply private decision—unnecessarily scrutinized. Pregnant people with rapidly worsening medical conditions—who, prior to the Act, could have obtained an abortion without explanation—may once again be forced to wait for care until their physician determines that their condition is deadly or threatens severe enough impairment so as to meet the Death or Permanent Injury Exception.

102. Under the Reported Rape Exception, health care professionals must disclose to the local sheriff the names and contact information of rape and incest survivors in order to provide abortions to these patients at or after approximately six weeks LMP. S.B. 474, § 3 (amending S.C. Code Ann. § 44-41-640(B)–(C)). The Act's reporting requirement applies only if the patient decides to have an abortion after being told that the rape will be reported; if the patient decides not to go forward, the reporting requirement does not apply. *Id.* This requirement blatantly intrudes on a patient's right to privacy by conditioning access to health care on the disclosure of medical and

other personal information, thereby discouraging patients from accessing abortion in South Carolina.

103. Conditioning abortion access on reporting sexual assault will deny care to survivors who do not want to involve law enforcement or do not want to talk about the circumstances of their pregnancies at all. National statistics from 2021 indicate that 78% of sexual assault incidents were never reported to the police, a rate nearly two times higher than for other violent crimes.<sup>33</sup> This is due to many factors both fear-based and personal: some fear retaliation from their offenders, some are financially dependent on the offender, some believe there will not be any benefit to reporting abuse, and some require time to process their feelings after the assault—time they may not be able to spare under the Act.

104. The Fatal Fetal Anomaly Exception is likewise limited. Its narrow definition of a fatal fetal anomaly fails to account for the wide range of factors and fetal medical conditions that make an abortion medically necessary for Petitioners' patients, including serious and devastating conditions that do not rise to the level of being "incompatible with sustaining life after birth." *Id.*, § 2 (amending S.C. Code Ann. §§ 44-41-660(A), 44-41-610(5)).

***S.B. 1 Provides a Direct Preview of the Devastation that S.B. 474 Will Cause.***

105. The harm inflicted by S.B. 1 provides a direct preview of the damage the Act's enforcement—absent clarity from the Court or if construed to apply upon the detection of embryonic electrical activity—is and will continue to inflict on people and communities across South Carolina. During the time that S.B. 1 was in effect in South Carolina from June 27, 2022, until the South Carolina Supreme Court enjoined it on August 17, 2022, PPSAT's health centers in South Carolina had to cancel 490 scheduled abortions and turn away 513 additional pregnant

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<sup>33</sup> Alexandra Thompson & Susannah N. Tapp, U.S. Dep't of Just., *Criminal Victimization, 2021*, at 5 (Sept. 2022), available at <https://bjs.ojp.gov/content/pub/pdf/cv21.pdf>.

South Carolinians seeking an abortion because they were beyond the gestational age limit. GWC similarly had to turn away the majority of patients seeking abortions during that period. These numbers do not account for the many patients who had heard about the abortion ban and did not seek care because they expected to be denied abortions due to the law, who sought abortions out of state if they could afford to do so, or who tried to self-manage their abortions outside of the medical system.

106. Each patient who was denied an abortion by PPSAT or GWC was faced with traveling out of state at a great personal and economic cost; carrying a pregnancy to term against their will with physical, economic, and personal consequences; or attempting to self-manage their abortion.

107. Under S.B. 1, many South Carolinians seeking abortions were forced to travel out of state. But even patients who sought care out-of-state faced increased costs and delays, including being delayed past the gestational age at which medication abortion is available.<sup>34</sup> The barriers of travel are particularly difficult to overcome for patients with children, patients with low incomes, and patients with abusive family members or partners. These obstacles are nearly insurmountable for minors.

108. Additionally, while S.B. 1 was in force, pregnant patients in South Carolina faced significantly worsened health outcomes and delays to necessary medical care, harms that the exception for a medical emergency or to prevent death did not cure.

109. S.B. 474's Death or Permanent Injury Exception is similarly incredibly narrow and does not cover the range of situations where abortion care may be medically necessary to preserve

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<sup>34</sup> E.g., Jocelyn Grzeszczak & Seanna Adcox, *Explaining the Abortion Landscape in SC After the Supreme Court Made It a State Issue*, Post and Courier (Charleston) (July 16, 2022), [https://www.postandcourier.com/politics/explaining-the-abortion-landscape-in-sc-after-the-supreme-court-made-it-a-state-issue/article\\_647d480a-0136-11ed-895e-dfaa316a0fc3.html](https://www.postandcourier.com/politics/explaining-the-abortion-landscape-in-sc-after-the-supreme-court-made-it-a-state-issue/article_647d480a-0136-11ed-895e-dfaa316a0fc3.html).

a patient’s health, endangering patients who are experiencing time-sensitive threats to their health. As a result, physicians may be reluctant to provide care pursuant to this exception. However, if the Act were construed to ban abortion later in pregnancy—once a heart has formed, after approximately nine weeks LMP—providers would need to rely on the Death or Permanent Injury Exception for fewer patients.

110. While S.B. 1 was in effect, patients whose medical issues did not clearly qualify for the narrow exceptions were denied care, forced to wait until their conditions deteriorated, or travel to access necessary care.<sup>35</sup> Petitioners have no adequate remedy at law.

### **CLAIMS FOR RELIEF**

#### **FIRST CAUSE OF ACTION**

##### **Declaratory Judgment**

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

112. Under the Uniform Declaratory Judgments Act, “[c]ourts of record within their respective jurisdictions shall have the power to declare rights, status and other legal relations whether or not further relief is or could be claimed.” S.C. Code Ann. § 15-53-20. “Any person . . . whose rights, status, or other legal relations are affected by a statute[] . . . may have determined any question of construction or validity arising under the . . . statute.” *Id.*, § 15-53-30.

113. Petitioners’ rights are affected by the Act, and thus they request the Court construe the definition of “fetal heartbeat” to confirm that: (1) “cardiac activity” is modified by “the steady

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<sup>35</sup> Elizabeth Cohen, Naomi Thomas & Nadia Kounang, *This Conservative Christian Couple in South Carolina Have Become Outspoken Advocates for Abortion Rights*, CNN (Dec. 23, 2022), <https://www.cnn.com/2022/12/23/health/south-carolina-abortion-ivy-grace-project/index.html>; Anna Harris, *Lowcountry Woman Shares Her ‘Difficult Abortion Decision’*, WCSC (Charleston) (Jan. 5, 2023), <https://www.live5news.com/2023/01/06/live-5-exclusive-lowcountry-woman-shares-her-difficult-abortion-decision/>.

and repetitive rhythmic contraction of the fetal heart” such that the two phrases refer to one point in time during pregnancy, and (2) the relevant point in time addressed by the Act is the point when a heart has formed, which is after approximately nine weeks LMP, consistent with medical consensus.

## **SECOND CAUSE OF ACTION**

### **Vagueness**

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

115. If the Court does not find that the Act’s plain language and structure should be interpreted to apply only once a heart has formed (after approximately nine weeks LMP), in the alternative, Petitioners request that the Court construe the Act to cure the vagueness in the definition of “fetal heartbeat.”

116. 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.

117. 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)).

118. The definition of “[f]etal heartbeat” is vague because it could be read as prohibiting abortion at two different points in pregnancy, allowing for arbitrary and discriminatory enforcement. Petitioners are subject to severe criminal penalties for performing an abortion that does not conform with the statute.

119. Because the Act carries the extreme consequence of the deprivation of Petitioners' liberty if they were to provide abortions after six weeks LMP, the Act must be strictly construed against the State, and any ambiguity must be resolved in Petitioners' favor. *State v. Miles*, 421 S.C. 154, 164, 805 S.E.2d 204, 210 (Ct. App. 2017).

120. By failing to set forth clear guidelines or criteria that would allow physicians of common intelligence to discern when the Act's abortion ban does and does not apply, chilling their ability to provide abortions after six weeks LMP, Petitioners 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.

121. "A possible constitutional construction must prevail over an unconstitutional interpretation," *Curtis*, 345 S.C. at 569–70, 549 S.E.2d at 597 (quoting *Westvaco Corp. v. S.C. Dep't of Revenue*, 321 S.C. 59, 467 S.E.2d 749 (1995)), and criminal statutes "should be strictly construed against the state and in favor of the defendant." *State v. Jacobs*, 393 S.C. 584, 587, 713 S.E.2d 621, 623 (2011) (citing *State v. Blackmon*, 304 S.C. 270, 273, 403 S.E.2d 660, 662 (1991)). Petitioners thus seek an interpretation of the Act to clarify that S.B. 474's prohibition on abortions only applies once a heart has formed, which is after approximately nine weeks LMP.

**WHEREFORE**, Petitioners having respectfully complained, pray for judgment against Respondents, with the following relief:

- A. That, pursuant to the South Carolina Uniform Declaratory Judgments Act, S.C. Code Ann. §§ 15-53-10–140, the Court declare that S.B. 474's definition of "fetal heartbeat"

means that: (1) “cardiac activity” is modified by “the steady and repetitive rhythmic contraction of the fetal heart” such that the two phrases refer to one point in time during pregnancy, and (2) the relevant point in time addressed by the Act is the point when a heart has formed, which is after approximately nine weeks LMP, consistent with medical consensus; or alternatively, that the Court declare that S.B. 474’s definition of “fetal heartbeat” is vague and construe it to cure the vagueness and clarify that the Act prohibits abortion after a heart has formed, after approximately nine weeks LMP.

- B. That the Court issue a temporary restraining order followed by preliminary and permanent injunctions prohibiting Respondents and their officers, employees, servants, agents, appointees, or successors from administering, preparing for, enforcing, or giving effect to S.B. 474 and any other South Carolina statute or regulation that could be understood to give effect to S.B. 474, including through any future enforcement actions based on abortions performed during the pendency of an injunction, as they apply to pregnancies between approximately six and nine weeks LMP;
- 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 Petitioners 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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\* Applications for admission *pro hac vice*  
forthcoming

Dated: September 14, 2023

# **Exhibit A**

**South Carolina General Assembly**  
125th Session, 2023-2024

**S. 474**

**STATUS INFORMATION**

General Bill

Sponsors: Senators Grooms, Massey, Kimbrell and Adams

Document Path: SR-0235KM23.docx

Introduced in the Senate on February 1, 2023

Introduced in the House on February 14, 2023

Last Amended on May 16, 2023

Currently residing in the Senate

Summary: Abortion - Fetal Heartbeat

**HISTORY OF LEGISLATIVE ACTIONS**

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

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

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## **VERSIONS OF THIS BILL**

[02/01/2023](#)

[02/02/2023](#)

[02/03/2023](#)

[02/07/2023](#)

[02/08/2023](#)

[02/09/2023](#)

[02/13/2023](#)

[05/10/2023](#)

[05/16/2023](#)

[05/18/2023](#)

[05/23/2023](#)

1 ~~Indicates Matter Stricken~~

2 Indicates New Matter

3

4 AMENDED

5 May 16, 2023

6

**S. 474**

7

Introduced by Senators Grooms, Massey, Kimbrell and Adams

8

9 S. Printed 05/16/23--H.

[SEC 5/23/2023 11:00 AM]

10 Read the first time February 14, 2023

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## A BILL

11 TO AMEND ARTICLE 6, CHAPTER 41, TITLE 44 OF THE SOUTH CAROLINA CODE OF  
12 LAWS, RELATING TO THE FETAL HEARTBEAT AND PROTECTION FROM ABORTION  
13 ACT, SO AS TO PROVIDE THAT ABORTIONS MAY NOT BE PERFORMED IN THIS STATE  
14 AFTER A FETAL HEARTBEAT HAS BEEN DETECTED EXCEPT IN CASES OF RAPE OR  
15 INCEST DURING THE FIRST TWELVE WEEKS OF PREGNANCY, IN MEDICAL  
16 EMERGENCIES, OR IN LIGHT OF A FATAL FETAL ANOMALY; TO DEFINE NECESSARY  
17 TERMS; TO REPEAL SECTION 2 OF ACT 1 OF 2021; TO REPEAL SECTIONS 44-41-10 AND  
18 44-41-20 OF THE S.C. CODE; AND TO REPEAL ARTICLE 5, CHAPTER 41, TITLE 44 OF THE  
19 S.C. CODE SUBJECT TO CERTAIN CONDITIONS.

20 Amend Title To Conform

21

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

23

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

- 25 (1) A fetal heartbeat is a key medical predictor that an unborn child will reach live birth.
- 26 (2) Cardiac activity begins at a biologically identifiable moment in time, normally when the fetal  
27 heart is formed in the gestational sac.
- 28 (3) The State of South Carolina has a compelling interest from the outset of a woman's pregnancy in  
29 protecting the health of the woman and the life of the unborn child.

30

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

32

33

### Article 6

34

35

#### Fetal Heartbeat and Protection from Abortion

36

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

- 38 ~~—(1) “Conception” means fertilization.~~
- 39 ~~—(2) “Contraceptive” means a drug, device, or chemical that prevents conception.~~
- 40 ~~—(3) “Fetal heartbeat” means cardiac activity, or the steady and repetitive rhythmic contraction of the~~  
41 ~~fetal heart, within the gestational sac.~~
- 42 ~~—(4) “Gestational age” means the age of an unborn human individual as calculated from the first day~~

1 of the last menstrual period of a pregnant woman.

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

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

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

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

16 —(9) “Physician” means any person licensed to practice medicine and surgery, or osteopathic medicine  
17 and surgery, in this State.

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

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

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

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

31 (3) “Conception” means fertilization of an ovum by sperm.

32 (4) “Contraceptive” means a drug, device, or chemical that prevents ovulation, conception, or the  
33 implantation of a fertilized ovum in a woman’s uterine wall after conception.

34 (5) “Fatal fetal anomaly” means that, in reasonable medical judgment, the unborn child has a  
35 profound and irremediable congenital or chromosomal anomaly that, with or without the provision of  
36 life-preserving treatment, would be incompatible with sustaining life after birth.

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

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

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

7 (9) “Medical emergency” means in reasonable medical judgment, a condition exists that has  
8 complicated the pregnant woman’s medical condition and necessitates an abortion to prevent death or  
9 serious risk of a substantial and irreversible physical impairment of a major bodily function, not  
10 including psychological or emotional conditions. A condition must not be considered a medical  
11 emergency if based on a claim or diagnosis that a woman will engage in conduct that she intends to  
12 result in her death or in a substantial and irreversible physical impairment of a major bodily function.

13 (10) “Physician” means a person licensed to practice medicine in this State.

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

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

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

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

22  
23 ~~Section 44-41-620. (A) A court judgment or order suspending enforcement of any provision of this~~  
24 ~~chapter is not to be regarded as tantamount to repeal of that provision.~~

25 ~~—(B) If the United States Supreme Court issues a decision overruling Roe v. Wade, 410 U.S. 113~~  
26 ~~(1973), any other court issues an order or judgment restoring, expanding, or clarifying the authority of~~  
27 ~~states to prohibit or regulate abortion entirely or in part, or an amendment is ratified to the Constitution~~  
28 ~~of the United States restoring, expanding, or clarifying the authority of states to prohibit or regulate~~  
29 ~~abortion entirely or in part, then the Attorney General may apply to the pertinent state or federal court~~  
30 ~~for either or both of the following:~~

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

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

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



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

5  
6 Section 44-41-630. (A) An abortion provider who is to perform or induce an abortion, a certified  
7 technician, or another agent of the abortion provider who is competent in ultrasonography shall:

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

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

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

14 (B) Except as provided in Section 44-41-640, Section 44-41-650, and Section 44-41-660, no person  
15 shall perform or induce an abortion on a pregnant woman with the specific intent of causing or abetting  
16 an abortion if the unborn child's fetal heartbeat has been detected in accordance with Section 44-41-  
17 330(A). A person who violates this subsection is guilty of a felony and, upon conviction, must be fined  
18 ten thousand dollars, imprisoned for not more than two years, or both.

19  
20 ~~Section 44-41-640. If a pregnancy is at least eight weeks after fertilization, then the abortion provider~~  
21 ~~who is to perform or induce an abortion, or an agent of the abortion provider, shall tell the woman that~~  
22 ~~it may be possible to make the embryonic or fetal heartbeat of the unborn child audible for the pregnant~~  
23 ~~woman to hear and shall ask the woman if she would like to hear the heartbeat. If the woman would~~  
24 ~~like to hear the heartbeat, then the abortion provider shall, using whichever method the physician and~~  
25 ~~patient agree is best under the circumstances, make the fetal heartbeat of the unborn child audible for~~  
26 ~~the pregnant woman to hear.~~  
27 (A) It is not a violation of Section 44-41-630 if an abortion is performed  
28 or induced on a pregnant woman due to a medical emergency or is performed to prevent the death of  
29 the pregnant woman or to prevent the serious risk of a substantial and irreversible impairment of a  
30 major bodily function, not including psychological or emotional conditions, of the pregnant woman.

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

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

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

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

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

7 (3) A physician performing a medical procedure pursuant to item (1) shall make reasonable  
8 medical efforts under the circumstances to preserve the life of the pregnant woman's unborn child, to  
9 the extent that it does not risk the death of the pregnant woman or the serious risk of a substantial and  
10 irreversible physical impairment of a major bodily function of the pregnant woman, not including  
11 psychological or emotional conditions and in a manner consistent with reasonable medical practices.  
12 A medical procedure shall not be considered necessary if it is performed based upon a claim or  
13 diagnosis that the woman will engage in conduct that she intends to result in her death or in a substantial  
14 physical impairment of a major bodily function.

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

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

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

23 (C)(1) It is not a violation of Section 44-41-630 for a physician to perform a medical procedure  
24 necessary in his reasonable medical judgment to prevent the death of a pregnant woman or the serious  
25 risk of a substantial and irreversible physical impairment of a major bodily function of the pregnant  
26 woman, not including psychological or emotional conditions.

27 (2) It is presumed that the following medical conditions constitute a risk of death or serious risk  
28 of a substantial and irreversible physical impairment of a major bodily function of a pregnant woman,  
29 not including psychological or emotional conditions: molar pregnancy, partial molar pregnancy,  
30 blighted ovum, ectopic pregnancy, severe preeclampsia, HELLP syndrome, abruptio placentae, severe  
31 physical maternal trauma, uterine rupture, intrauterine fetal demise, and miscarriage. However, when  
32 an unborn child is alive in utero, the physician must make all reasonable efforts to deliver and save the  
33 life of an unborn child during the process of separating the unborn child from the pregnant woman, to  
34 the extent that it does not adversely affect the life or physical health of the pregnant woman, and in a  
35 manner that is consistent with reasonable medical practice. The enumeration of the medical conditions  
36 in this item is not intended to exclude or abrogate other conditions that satisfy the exclusions contained

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

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

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

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

16  
17 ~~Section 44-41-650. (A) Except as provided in Section 44-41-660, no person shall perform, induce,~~  
18 ~~or attempt to perform or induce an abortion on a pregnant woman before a physician determines in~~  
19 ~~accordance with Section 44-41-630 whether the human fetus the pregnant woman is carrying has a~~  
20 ~~detectable fetal heartbeat.~~

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

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

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

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

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

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

6  
7 ~~Section 44-41-660. (A) Section 44-41-650 does not apply to a physician who performs or induces an~~  
8 ~~abortion if the physician determines according to standard medical practice that a medical emergency~~  
9 ~~exists that prevents compliance with the section.~~

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

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

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

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

18 ~~—(C) For at least seven years from the date the notations are made, the physician shall maintain in his~~  
19 ~~own records a copy of the notations.~~(A) It is not a violation of Section 44-41-630 if an abortion is

20 performed or induced on a pregnant woman due to the existence of a fatal fetal anomaly. Section 44-  
21 41-630 does not apply to a physician who performs or induces an abortion if the physician or person  
22 determines according to standard medical practice that there exists a fatal fetal anomaly.

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

25 (a) the presence of a fatal fetal anomaly;

26 (b) the nature of the fatal fetal anomaly;

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

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

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

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

35  
36 ~~Section 44-41-670. A physician is not in violation of Section 44-41-650 if the physician acts in~~

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

7  
8 Section 44-41-680. ~~(A) Except as provided in subsection (B), no person shall perform, induce, or~~  
9 ~~attempt to perform or induce an abortion on a pregnant woman with the specific intent of causing or~~  
10 ~~abetting the termination of the life of the human fetus the pregnant woman is carrying and whose fetal~~  
11 ~~heartbeat has been detected in accordance with Section 44-41-630.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (4) the Attorney General.

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

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

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

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

19  
20 ~~Section 44-41-690. (A) Section 44-41-680 does not apply to a physician who performs a medical~~  
21 ~~procedure that, by any reasonable medical judgment, is designed or intended to prevent the death of~~  
22 ~~the pregnant woman or to prevent the serious risk of a substantial and irreversible impairment of a~~  
23 ~~major bodily function of the pregnant woman.~~

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

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

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

8  
9 ~~Section 44-41-700. A physician is not in violation of Section 44-41-680 if the physician acts in~~  
10 ~~accordance with Section 44-41-630 and the method used to test for the presence of a fetal heartbeat~~  
11 ~~does not reveal a fetal heartbeat.~~Reserved.

12  
13 ~~Section 44-41-710. This article must not be construed to repeal, by implication or otherwise, Section~~  
14 ~~44-41-20 or any otherwise applicable provision of South Carolina law regulating or restricting abortion.~~  
15 ~~An abortion that complies with this article but violates the provisions of Section 44-41-20 or any~~  
16 ~~otherwise applicable provision of South Carolina law must be considered unlawful as provided in such~~  
17 ~~provision. An abortion that complies with the provisions of Section 44-41-20 or any otherwise~~  
18 ~~applicable provision of South Carolina law regulating or restricting abortion but violates this article~~  
19 ~~must be considered unlawful as provided in this article. If some or all of the provisions of this article~~  
20 ~~are ever temporarily or permanently restrained or enjoined by judicial order, all other provisions of~~  
21 ~~South Carolina law regulating or restricting abortion must be enforced as though such restrained or~~  
22 ~~enjoined provisions had not been adopted; provided, however, that whenever such temporary or~~  
23 ~~permanent restraining order or injunction is stayed or dissolved, or otherwise ceases to have effect,~~  
24 ~~such provisions shall have full force and effect.~~Reserved.

25  
26 ~~Section 44-41-720. Nothing in this article prohibits the sale, use, prescription, or administration of a~~  
27 ~~drug, device, or chemical that is designed for contraceptive purposes.~~Reserved.

28  
29 ~~Section 44-41-730. A pregnant woman on whom an abortion is performed or induced in violation of~~  
30 ~~this article may not be criminally prosecuted for violating any of the provisions of this article or for~~  
31 ~~attempting to commit, conspiring to commit, or acting complicitly in committing a violation of any of~~  
32 ~~the provisions of the article and is not subject to a civil or criminal penalty based on the abortion being~~  
33 ~~performed or induced in violation of any of the provisions of this article.~~Reserved.

34  
35 ~~Section 44-41-740. (A) A woman who meets any one or more of the following criteria may file a~~  
36 ~~civil action in a court of competent jurisdiction:~~

1 ~~—(1) a woman on whom an abortion was performed or induced in violation of this article; or~~  
2 ~~—(2) a woman on whom an abortion was performed or induced who was not given the information~~  
3 ~~provided in Section 44-41-330.~~  
4 ~~—(B) A woman who prevails in an action filed pursuant to subsection (A) shall receive the following~~  
5 ~~from the person who committed the act or acts described in subsection (A):~~  
6 ~~—(1) damages in an amount equal to ten thousand dollars or an amount determined by the trier of~~  
7 ~~fact after consideration of the evidence; and~~  
8 ~~—(2) court costs and reasonable attorney's fees.~~  
9 ~~—(C) If the defendant in an action filed pursuant to subsection (A) prevails and the court finds that the~~  
10 ~~commencement of the action constitutes frivolous conduct and that the defendant was adversely~~  
11 ~~affected by the frivolous conduct, then the court shall award reasonable attorney's fees to the defendant;~~  
12 ~~provided, however, that a conclusion of frivolousness cannot rest upon the unconstitutionality of the~~  
13 ~~provision that was allegedly violated.~~Reserved.

14  
15 SECTION 3. Article 1, Chapter 41, Title 44 of the S.C. Code is amended by adding:

16  
17 Section 44-41-90. (A) No funds appropriated by the State for employer contributions to the State  
18 Health Insurance Plan may be expended to reimburse the expenses of an abortion, except as provided  
19 in Sections 44-41-640, 44-41-650, and 44-41-660.

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

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

25  
26 SECTION 4. Article 3, Chapter 17, Title 63 of the S.C. Code is amended by adding:

27  
28 Section 63-17-325. (A) A biological father of a child has a duty to pay the mother of the child the  
29 following financial obligations beginning with the date of conception:

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

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

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

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



1 the pregnancy ends, unless otherwise ordered by the court.

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

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

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

13  
14 SECTION 5. Article 1, Chapter 71, Title 38 of the S.C. Code is amended by adding:

15  
16 Section 38-71-146. All individual and group health insurance and health maintenance organization  
17 policies in this State shall include coverage for contraceptives. For purposes of this section,  
18 “contraceptive” means the same as in Section 44-41-610(4). A contraceptive may prevent ovulation,  
19 fertilization, or implantation in the uterus. A contraceptive does not include any drug, device, or  
20 medication used with the intent of terminating a pregnancy of a woman known to be pregnant. This  
21 section does not apply if an individual or entity asserts a sincerely held religious belief regarding the  
22 use of contraception.

23  
24 SECTION 6. Section 44-41-10 of the S.C. Code is amended to read:

25  
26 Section 44-41-10. As used in this chapter:

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

35 (b) “Physician” means a person licensed to practice medicine in this State.

36 (c) “Department” means the South Carolina Department of Health and Environmental Control.

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

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

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

10 (g) "Conception" means the ~~fecundation of the ovum by the spermatozoa~~ fertilization of an ovum by  
11 a sperm.

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

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

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

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

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

23 ~~(m)~~ "Minor" means a female under the age of seventeen.

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

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

29  
30 SECTION 7. Section 44-41-60 of the S.C. Code is amended to read:

31  
32 Section 44-41-60. Any abortion performed in this State must be reported by the performing  
33 physician on the standard form for reporting abortions to the State Registrar, Department of Health and  
34 Environmental Control, within seven days after the abortion is performed. The names of the patient  
35 and physician may not be reported on the form or otherwise disclosed to the State Registrar. The form  
36 must indicate from whom consent was obtained, circumstances waiving consent, and, if an exception

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

3  
4 SECTION 8. Section 44-41-70(b) of the S.C. Code is amended to read:

5  
6 (b) The department shall promulgate and enforce regulations for the licensing and certification of  
7 facilities other than hospitals as defined in Section 44-41-10(d) wherein abortions are to be performed  
8 ~~as provided for in Section 44-41-20(a) and (b).~~

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

11  
12 Section 44-41-80. (a) Any person, except as permitted by this chapter, who provides, supplies,  
13 prescribes or administers any drug, medicine, prescription or substance to any woman or uses or  
14 employs any device, instrument or other means upon any woman, with the intent to produce an abortion  
15 shall be deemed guilty of a felony and, upon conviction, shall be punished by imprisonment for a term  
16 of not less than two nor more than five years or fined not more than five thousand dollars, or both.  
17 Provided, that the provisions of this item shall not apply to any woman upon whom an abortion has  
18 been attempted or performed.

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

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

31  
32 SECTION 10. Section 44-41-330(A) of the S.C. Code is amended to read:

33  
34 (A) Except in the case of a medical emergency and in addition to any other consent required by the  
35 laws of this State, no abortion may be performed or induced without the voluntary and informed written  
36 consent of the pregnant woman and unless the following conditions have been satisfied:

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

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

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

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

12           ~~(b)~~ If an ultrasound is required to be performed, an abortion may not be performed sooner than  
13 sixty minutes following completion of the ultrasound. The ultrasound must be performed by the  
14 physician who is to perform the abortion or by a person having documented evidence that he or she is  
15 a certified sonographer under South Carolina law and who is working in conjunction with the physician.

16 The physician who is to perform the abortion or an allied health professional working in conjunction  
17 with the physician must inform the woman before the ultrasound procedure of her right to view the live  
18 ultrasound image images and hear the unborn child's fetal heartbeat, if present, at her request during or  
19 after the ultrasound procedure and to have them explained to her.

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

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

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

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

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

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

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

22  
23 SECTION 11. The Public Employee Benefit Authority and the State Health Plan shall cover prescribed  
24 contraceptives for dependents under the same terms and conditions that the Plan provides contraceptive  
25 coverage for employees and spouses. The State Health Plan shall not apply patient cost sharing  
26 provisions to covered contraceptives.

27  
28 SECTION 12. The President of the Senate, on behalf of the Senate, and the Speaker of the House of  
29 Representatives, on behalf of the House of Representatives have an unconditional right to intervene on  
30 behalf of their respective bodies in a state court action and may provide evidence or argument, written  
31 or oral, if a party to that court action challenges the constitutionality of this act. In a federal court action  
32 that challenges the constitutionality of this act the Legislature may seek to intervene, to file an amicus  
33 brief, or to present arguments in accordance with federal rules of procedure. Intervention by the  
34 Legislature pursuant to this provision does not limit the duty of the Attorney General to appear and  
35 prosecute legal actions or defend state agencies, officers or employees as otherwise provided. In any  
36 action in which the Legislature intervenes or participates, the Senate and the House of Representatives

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

2

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

4

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

12

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

14

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