

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of South Carolina

PLANNED PARENTHOOD SOUTH ATLANTIC, on behalf of itself, its physicians and staff, and its patients, et al.

Plaintiff(s)

v.

ALAN WILSON, in his official capacity as Attorney General of South Carolina, et al.

Defendant(s)

Civil Action No. 3:21-cv-00508-MGL

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Alan Wilson, Attorney General Rembert Dennis Building 1000 Assembly Street, Room 519 Columbia, SC 29211

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: M. Malissa Burnette Burnette Shutt & McDaniel. PA P.O. Box 1929 Columbia, SC 29202

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Robin L. Blume CLERK OF COURT

Date: 02/18/2021



s/Charles L. Bruorton Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of South Carolina

PLANNED PARENTHOOD SOUTH ATLANTIC, on behalf of itself, its physicians and staff, and its patients, et al.

Plaintiff(s)

v.

ALAN WILSON, in his official capacity as Attorney General of South Carolina, et al.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Edward Simmer, Director South Carolina Department of Health and Environmental Control 2600 Bull St. Columbia, SC 29201

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: M. Malissa Burnette Burnette Shutt & McDaniel. PA P.O. Box 1929 Columbia, SC 29202

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 02/18/2021

Signature of Clerk or Deputy Clerk

Civil Action No. _____

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_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
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Other *(specify)*: _____

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UNITED STATES DISTRICT COURT

for the

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Plaintiff(s)

v.

ALAN WILSON, in his official capacity as Attorney General of South Carolina, et al.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Anne G. Cook, President Board of Medical Examiners 110 Centerview Dr. Columbia, SC 29210

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: M. Malissa Burnette Burnette Shutt & McDaniel. PA P.O. Box 1929 Columbia, SC 29202

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 02/18/2021

Signature of Clerk or Deputy Clerk

Civil Action No. _____

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on *(date)* _____ , and mailed a copy to the individual's last known address; or

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designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

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Other *(specify)*: _____

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UNITED STATES DISTRICT COURT

for the

District of South Carolina

PLANNED PARENTHOOD SOUTH ATLANTIC, on behalf of itself, its physicians and staff, and its patients, et al.

Plaintiff(s)

v.

ALAN WILSON, in his official capacity as Attorney General of South Carolina, et al.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Stephen I. Schabel, Vice President Board of Medical Examiners 110 Centerview Dr. Columbia, SC 29210

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: M. Malissa Burnette Burnette Shutt & McDaniel. PA P.O. Box 1929 Columbia, SC 29202

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 02/18/2021

Signature of Clerk or Deputy Clerk

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on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____

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UNITED STATES DISTRICT COURT

for the

District of South Carolina

PLANNED PARENTHOOD SOUTH ATLANTIC, on behalf of itself, its physicians and staff, and its patients, et al.

Plaintiff(s)

v.

ALAN WILSON, in his official capacity as Attorney General of South Carolina, et al.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Ronald Januchowski, Secretary Board of Medical Examiners 110 Centerview Dr. Columbia, SC 29210

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: M. Malissa Burnette Burnette Shutt & McDaniel. PA P.O. Box 1929 Columbia, SC 29202

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 02/18/2021

Signature of Clerk or Deputy Clerk

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I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

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for the

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Plaintiff(s)

v.

ALAN WILSON, in his official capacity as Attorney General of South Carolina, et al.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Jim C. Chow, Member Board of Medical Examiners 110 Centerview Dr. Columbia, SC 29210

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: M. Malissa Burnette Burnette Shutt & McDaniel. PA P.O. Box 1929 Columbia, SC 29202

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 02/18/2021

Signature of Clerk or Deputy Clerk

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This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

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UNITED STATES DISTRICT COURT

for the

District of South Carolina

PLANNED PARENTHOOD SOUTH ATLANTIC, on behalf of itself, its physicians and staff, and its patients, et al.

Plaintiff(s)

v.

ALAN WILSON, in his official capacity as Attorney General of South Carolina, et al.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) George S. Dilts, Member Board of Medical Examiners 110 Centerview Dr. Columbia, SC 29210

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: M. Malissa Burnette Burnette Shutt & McDaniel. PA P.O. Box 1929 Columbia, SC 29202

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 02/18/2021

Signature of Clerk or Deputy Clerk

Civil Action No. _____

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This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

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UNITED STATES DISTRICT COURT

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District of South Carolina

PLANNED PARENTHOOD SOUTH ATLANTIC, on behalf of itself, its physicians and staff, and its patients, et al.

Plaintiff(s)

v.

ALAN WILSON, in his official capacity as Attorney General of South Carolina, et al.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Dion Franga, Member Board of Medical Examiners 110 Centerview Dr. Columbia, SC 29210

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: M. Malissa Burnette Burnette Shutt & McDaniel. PA P.O. Box 1929 Columbia, SC 29202

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 02/18/2021

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

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This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of South Carolina

PLANNED PARENTHOOD SOUTH ATLANTIC, on behalf of itself, its physicians and staff, and its patients, et al.

Plaintiff(s)

v.

ALAN WILSON, in his official capacity as Attorney General of South Carolina, et al.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Ronald Howell, Member Board of Medical Examiners 110 Centerview Dr. Columbia, SC 29210

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: M. Malissa Burnette Burnette Shutt & McDaniel. PA P.O. Box 1929 Columbia, SC 29202

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 02/18/2021

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

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This summons for *(name of individual and title, if any)* _____
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I personally served the summons on the individual at *(place)* _____
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I left the summons at the individual's residence or usual place of abode with *(name)* _____
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on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

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AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of South Carolina

PLANNED PARENTHOOD SOUTH ATLANTIC, on behalf of itself, its physicians and staff, and its patients, et al.

Plaintiff(s)

v.

ALAN WILSON, in his official capacity as Attorney General of South Carolina, et al.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Theresa Mills-Floyd, Member Board of Medical Examiners 110 Centerview Dr. Columbia, SC 29210

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: M. Malissa Burnette Burnette Shutt & McDaniel. PA P.O. Box 1929 Columbia, SC 29202

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 02/18/2021

Signature of Clerk or Deputy Clerk

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Other *(specify)*: _____

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Plaintiff(s)

v.

ALAN WILSON, in his official capacity as Attorney General of South Carolina, et al.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Jeffrey A. Walsh, Member Board of Medical Examiners 110 Centerview Dr. Columbia, SC 29210

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: M. Malissa Burnette Burnette Shutt & McDaniel. PA P.O. Box 1929 Columbia, SC 29202

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CLERK OF COURT

Date: 02/18/2021

Signature of Clerk or Deputy Clerk

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UNITED STATES DISTRICT COURT

for the

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PLANNED PARENTHOOD SOUTH ATLANTIC, on behalf of itself, its physicians and staff, and its patients, et al.

Plaintiff(s)

v.

ALAN WILSON, in his official capacity as Attorney General of South Carolina, et al.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Christopher C. Wright, Member Board of Medical Examiners 110 Centerview Dr Columbia, SC 29210

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: M. Malissa Burnette Burnette Shutt & McDaniel. PA P.O. Box 1929 Columbia, SC 29202

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Date: 02/18/2021

Signature of Clerk or Deputy Clerk

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UNITED STATES DISTRICT COURT

for the

District of South Carolina

PLANNED PARENTHOOD SOUTH ATLANTIC, on behalf of itself, its physicians and staff, and its patients, et al.

Plaintiff(s)

v.

ALAN WILSON, in his official capacity as Attorney General of South Carolina, et al.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Scarlett A. Wilson, Solicitor 9th Judicial Circuit O.T. Wallace County Office Building 101 Meeting Street, 4th Floor Charleston, SC 29401

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: M. Malissa Burnette Burnette Shutt & McDaniel. PA P.O. Box 1929 Columbia, SC 29202

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 02/18/2021

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of South Carolina

PLANNED PARENTHOOD SOUTH ATLANTIC, on behalf of itself, its physicians and staff, and its patients, et al.

Plaintiff(s)

v.

ALAN WILSON, in his official capacity as Attorney General of South Carolina, et al.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Byron E. Gipson, Solicitor 5th Judicial Circuit 1701 Main Street, P.O. Box 192 Columbia, SC 29201

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: M. Malissa Burnette Burnette Shutt & McDaniel. PA P.O. Box 1929 Columbia, SC 29202

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 02/18/2021

Signature of Clerk or Deputy Clerk

Civil Action No. _____

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on *(date)* _____ , and mailed a copy to the individual's last known address; or

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designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____

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I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

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UNITED STATES DISTRICT COURT

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Plaintiff(s)

v.

ALAN WILSON, in his official capacity as Attorney General of South Carolina, et al.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) W. Walter Wilkins III, Solicitor 13th Judicial Circuit 305 E North Street Greenville, SC 29601

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: M. Malissa Burnette Burnette Shutt & McDaniel. PA P.O. Box 1929 Columbia, SC 29202

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 02/18/2021

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

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Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
(Columbia Division)**

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

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

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

Plaintiffs,

v.

Case No. 3:21-cv-00508-MGL

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;

JIM C. CHOW, in his official capacity as a Member of the South Carolina Board of Medical Examiners;

GEORGE S. DILTS, in his official capacity as a Member of the South Carolina Board of Medical Examiners;

DION FRANGA, in his official capacity as a Member of the South Carolina Board of Medical Examiners;

RICHARD HOWELL, in his official capacity as a Member of the South Carolina Board of Medical Examiners;

THERESA MILLS-FLOYD, in her official capacity as a Member of the South Carolina Board of Medical Examiners;

JEFFREY A. WALSH, in his official capacity as a Member of the South Carolina Board of Medical Examiners;

CHRISTOPHER C. WRIGHT, in his official capacity as a Member of the South Carolina Board of Medical Examiners;

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

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

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

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. Plaintiffs bring this civil rights action under 42 U.S.C. § 1983 to challenge the constitutionality of Senate Bill 1 (hereinafter “SB 1” or “the Act”), South Carolina’s latest attempt to prevent patients from exercising their constitutional right to abortion. *See* SB 1, attached as Exhibit A, *to be codified at* S.C. Code Ann. §§ 44-41-610 *et seq.* South Carolina Governor Henry McMaster has vowed to sign the Act immediately, at which point the Act will take immediate effect and cause imminent harm to Plaintiffs and their patients.

2. The Act bans abortion after the detection of fetal or embryonic cardiac activity, which occurs as early as approximately six weeks of pregnancy, as dated from the first day of a pregnant person’s last menstrual period (“LMP”). Because that point in pregnancy is roughly four months before any fetus could be viable after birth, the Act prohibits Plaintiffs from providing previability abortions to their South Carolina patients. A violation of the Act would carry felony criminal penalties, the potential for adverse licensing action, and civil liability.

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

4. Rather than working to end these preventable deaths and honoring South Carolinians’ reproductive health care decisions, the Legislature has instead chosen to criminalize nearly all abortions. Its adoption of this law is in flagrant violation of nearly five decades of settled Supreme Court precedent, starting with *Roe v. Wade*, 410 U.S. 113 (1973), which held that a

patient has a constitutionally protected right to end a pregnancy prior to viability. Since *Roe*, no court considering the constitutionality of a law that bans abortions beginning at a gestational age prior to viability has upheld that law. To the contrary, decades of unanimous precedent have made clear that a ban on such abortions violates the Fourteenth Amendment to the U.S. Constitution.

5. Plaintiffs seek declaratory and injunctive relief preventing enforcement of SB 1 to safeguard themselves, their patients, and physicians and other staff from this unconstitutional law.

JURISDICTION & VENUE

6. This Court has jurisdiction under 28 U.S.C. §§ 1331 and 1343.

7. Plaintiffs' action for declaratory and injunctive relief is authorized by 28 U.S.C. §§ 2201 and 2202; by Rules 57 and 65 of the Federal Rules of Civil Procedure; and by the general legal and equitable powers of this Court.

8. Venue in this district is proper under 28 U.S.C. § 1391 because the events giving rise to this action occurred in the district, where each of the Plaintiffs provides previability abortion services and where SB 1 would be enforced, and because all of the Defendants reside here.

9. Under District of South Carolina Local Rule 3.01, this case should be assigned to the Columbia Division because Defendants include the Attorney General, the Director of the Department of Health and Environmental Control, and the Solicitor for South Carolina's 5th Judicial Circuit, all of whom maintain offices in the division. Assignment to the Columbia Division is also proper because Plaintiff Planned Parenthood South Atlantic ("PPSAT") operates a health center in Columbia that provides abortions banned by SB 1 and serves abortion patients who reside in the Columbia Division and whose constitutional rights are violated by the challenged law.

PARTIES

A. Plaintiffs

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

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

12. 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, which corresponds to abortions up to 14 weeks LMP, *id.* § 44-41-10; *see also* S.C. Code Ann. Regs. 61-12.101(S)(4). At each of these facilities, physicians licensed to practice medicine in South Carolina provide abortions.

13. PPSAT operates two health centers in the state, one in Columbia and the other in Charleston. At each location, PPSAT provides medication abortion up to 11 weeks LMP, and abortion by procedure up to 14 weeks LMP.

14. GWC operates a clinic in Greenville, where it generally provides medication abortion through 10 weeks LMP and abortion by procedure up to 14 weeks LMP.

15. Dr. Terry L. Buffkin, M.D., is a physician licensed to practice medicine in South Carolina and a co-owner of GWC. He is a board-certified obstetrician/gynecologist (“OB/GYN”) who provides a range of reproductive health care to patients, including medication abortion and abortion by procedure up to 14 weeks LMP. Dr. Buffkin brings this claim on behalf of himself and his patients.

B. Defendants

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

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

18. Defendant Anne G. Cook is the President of the South Carolina Board of Medical Examiners (“BME”), which is responsible for licensing and disciplining physicians who practice in South Carolina, pursuant to S.C. Code Ann. § 40-47-10. BME has broad authority, upon a

majority vote of its members, to discipline a physician, including through license revocation for a felony conviction. *Id.* § 40-47-110(B)(2). She is sued in her official capacity.

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

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

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

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

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

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

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

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

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

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

28. Defendant Scarlett A. Wilson is the Solicitor for South Carolina’s 9th Judicial Circuit, which includes the City of Charleston, where PPSAT’s Charleston health center is located. In cooperation with the Attorney General, she has criminal enforcement authority for violations of the Act, pursuant to S.C. Code Ann. § 1-7-320. She is sued in her official capacity.

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

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

FACTUAL ALLEGATIONS

I. Prior South Carolina Law

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

32. Viability is generally understood as the point when a fetus has a reasonable chance for sustained life after birth, with or without artificial support. South Carolina law has long contained a “legal presumption” that “viability occurs no sooner than the twenty-fourth week of

pregnancy,” S.C. Code Ann. § 44-41-10(1); *see also* S.C. Code Reg. 61-12, § 101(T), and it has banned the performance of nearly all post-viability abortions, *see* S.C. Code Ann. § 44-41-450.¹

33. As noted above, Plaintiffs operate the only abortion clinics in South Carolina. They do not provide abortion beyond 14 weeks LMP. Because no embryo or fetus is viable at or before this time, Plaintiffs perform only previability abortions.

34. Before the enactment of SB 1, South Carolina law already imposed detailed requirements on physicians performing, and patients seeking, abortions. These include a mandate that abortion providers ensure that a patient had available at least 24 hours in advance of an abortion certain materials prepared by the State. *Id.* § 44-41-330(A)(2), (C). Patients who are unable to have the opportunity to review the State’s biased counseling materials before coming to Plaintiffs’ offices must make two separate visits.

35. Prior to SB 1’s adoption, South Carolina did not require abortion providers to perform ultrasounds before an abortion, but Plaintiffs performed them when medically indicated. 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.

36. Early in pregnancy, Plaintiffs generally perform ultrasounds transvaginally, meaning that a probe is inserted into the patient’s vagina. As a pregnancy progresses, they typically perform transabdominal ultrasounds, which involve placement of a probe onto the patient’s bare abdomen.

¹ Indeed, South Carolina has banned even previability abortions beginning at 20 weeks post-fertilization (22 weeks LMP), *see* S.C. Code Ann. § 44-41-450, a restriction that to date has not been challenged in court and which does not affect Plaintiffs’ current provision of abortion services.

II. The Challenged Act

37. The South Carolina Senate passed SB 1 on January 28, 2021, and the House of Representatives adopted an identical version of the bill on February 18. The Act is now before South Carolina Governor Henry McMaster, who urged the Legislature to adopt the bill and has vowed to sign it “immediately.”² The Act will take immediate effect upon his approval. SB 1, § 9.

38. The Act leaves in place the existing legal presumption that “viability occurs no sooner than the twenty-fourth week of pregnancy,” S.C. Code Ann. § 44-41-10(1), and the restriction that already prohibits nearly all post-viability abortions, *id.* § 44-41-450.

39. However, the Act imposes dramatic changes to South Carolina law by banning abortion after roughly six weeks of pregnancy LMP (the “Six-Week Ban”). The Act also includes new ultrasound, mandatory disclosure, recordkeeping, reporting, and written notice requirements that are closely intertwined with the operation of the Six-Week Ban. *See, e.g.*, SB 1, § 3 (adding S.C. Code Ann. §§ 44-41-640, -650); *id.* § 4 (amending S.C. Code Ann. § 44-41-460(A)); *id.* § 5 (adding S.C. Code Ann. § 44-41-330(A)(1)(b)); *id.* § 6 (amending S.C. Code Ann. § 44-41-60).

40. The Six-Week Ban provides that “no person shall perform, induce, or attempt to perform or induce an abortion” where the “fetal heartbeat has been detected.” SB 1, § 3 (adding S.C. Code Ann. §§ 44-41-680(A), -690). It defines “fetal heartbeat” to include any “cardiac activity, or the steady and repetitive rhythmic contraction of the fetal heart within the gestational sac.” *Id.* (adding S.C. Code Ann. § 44-41-610(3)). The term, therefore, covers not just a “heartbeat” in the lay sense, but also early cardiac activity present before development of the cardiovascular

² Gov. Henry McMaster, State of the State Address, Jan. 13, 2021 (“Send me the heartbeat bill and I will immediately sign it into law.”); Gov. Henry McMaster (@henrymcmaster), Twitter (Jan. 26, 2021, 12:26 PM), <https://twitter.com/henrymcmaster/status/1354118432900460544> (“As the Heartbeat Bill goes to the Senate floor today, I urge my colleagues in the General Assembly to send this bill to my desk for my signature!”).

system. Such cardiac activity may be detected by transvaginal ultrasound as early as six weeks of pregnancy LMP (and sometimes sooner). Early in pregnancy, even with ultrasound, this activity would not be audible but would instead appear as a visual flicker.

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

42. The Act requires all abortion providers to determine whether the Six-Week Ban applies by newly mandating the performance of a pre-abortion ultrasound for every patient. *Id.* (adding S.C. Code Ann. § 44-41-630). The provider must inform the patient when a “fetal heartbeat” has been detected, along with other State-mandated information designed to discourage the patient who can no longer obtain an abortion at all in South Carolina from going elsewhere to terminate her pregnancy. *Id.* (adding S.C. Code Ann. § 44-41-640); *id.* § 5 (amending S.C. Code Ann. § 44-41-330(A)(1)).

43. The Six-Week Ban contains only narrow exceptions: (1) to save the life of the pregnant patient; (2) to prevent certain types of irreversible bodily impairment to the patient; (3) in cases of a fetal health condition that is “incompatible” with sustained life after birth, and (4) in narrow circumstances where the pregnancy is the result of rape or incest. *Id.* § 3 (adding S.C. Code Ann. § 44-41-680(B), which cross-references S.C. Code Ann. § 44-41-430(5)). Of note, the rape and incest exceptions apply only if, within 24 hours of the abortion, the physician reports the alleged rape or incest and the patient’s name and contact information to the sheriff in the county

where the abortion was performed, irrespective of the patient’s wishes, where the alleged crime occurred, and whether the provider has already complied with other mandatory reporting laws, where applicable. *Id.* (adding S.C. Code Ann. § 44-41-680(C)).

44. Both the physician who performs an abortion, and the clinic in which the abortion is performed, risk severe penalties for violating the Six-Week Ban. Those penalties include a felony offense that carries a \$10,000 criminal fine and up to two years in prison. *Id.* § 3 (adding S.C. Code Ann. § 44-41-680(D)); *see also* S.C. Code Ann. § 16-1-40 (accessory liability). Moreover, violation of the Six-Week Ban could result in revocation of a doctor’s medical license and a clinic’s license to perform abortions. S.C. Code Ann. §§ 40-47-110(A), (B)(2); 44-41-70; 44-41-75(A). The Act also creates a new civil cause of action that authorizes a patient “on whom an abortion was performed or induced” in violation of the Six-Week Ban to sue the abortion provider for damages, and to recoup her court costs and attorney’s fees as well. SB 1, § 3 (adding S.C. Code Ann. § 44-41-740).

III. Abortion in South Carolina

45. Legal abortion is one of the safest procedures in contemporary medical practice and is far safer than childbirth. A woman’s risk of death associated with childbirth is approximately fourteen times higher than that associated with abortion, and every pregnancy-related complication is more common among women having live births than among those having abortions.³

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

³ Plaintiffs use “woman” or “women” as a short-hand for people who are or may become pregnant, but people of all gender identities, including transgender men and gender-diverse individuals, may also become pregnant and seek abortion services, and would thus also suffer irreparable harm under SB 1.

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

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

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

50. As a result, even a person with regular menstrual cycles might have roughly two weeks before the Six-Week Ban applies to learn she is pregnant, decide whether to have an abortion, and seek and obtain an abortion at one of the three available locations in South Carolina. The Charleston and Columbia health centers generally offer abortions only two days per week due to operational limitations.

51. South Carolina abortion providers generally do not initiate an abortion until sometime between 4 and 5 weeks LMP, when a pregnancy can first be located in the uterus using transvaginal ultrasound. Accordingly, even patients who discover that they are pregnant at an early date could have just a matter of days between the point when a pregnancy can be located in the uterus and when an ultrasound would detect cardiac activity.

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

53. Particularly for patients living in poverty or without insurance, travel-related and financial barriers also pose a barrier to obtaining an abortion before six weeks LMP. With very narrow exceptions, South Carolina bars coverage of abortion in its Medicaid program and in private insurance plans offered on the State's Affordable Care Act exchange. S.C. Code Ann. §§ 1-1-1035; 38-71-238. Patients living in poverty or without insurance coverage available for abortion must often make difficult tradeoffs among other basic needs like food or rent to pay for their abortions. Many must seek financial assistance from extended family and friends or from local abortion funds to pay for care, a process that takes time. Moreover, many patients must navigate other logistics, such as inflexible or unpredictable job hours and childcare needs, that may delay the time when they are able to obtain an abortion.

54. The COVID-19 pandemic has only exacerbated these impediments, particularly for Black patients whose communities have been hardest hit by illness and the related economic downturn. Patients understandably fear the health risks of being in a clinic and traveling across the

state to obtain health care. In addition, many South Carolinians are navigating job losses or reductions in hours, related loss of health insurance, and a lack of child care due to COVID, all of which may delay the point when a patient recognizes she is pregnant and when she is actually able to obtain an abortion.

55. As described in part above, South Carolina has enacted numerous medically unnecessary statutory and regulatory requirements that must be met before a patient may obtain an abortion, including that abortion providers ensure that patients had certain State-mandated information available to them at least 24 hours in advance of an abortion. S.C. Code Ann. § 44-41-330(A)(2), (C). South Carolina also prohibits the use of telehealth for medication abortion, closing off a safe and effective option for many patients to obtain an abortion, particularly during the COVID-19 pandemic. *See id.* § 40-47-37(C)(6).

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

57. Patients whose pregnancies are the result of sexual assault or who are experiencing interpersonal violence may need additional time to access abortion services due to ongoing physical or emotional trauma. For these patients, too, obtaining an abortion before six weeks LMP is exceedingly difficult, if not impossible.

IV. The Impact of the Act on Plaintiffs and Their Patients

58. As described above, the Act prohibits nearly all abortions after approximately six weeks LMP, a point in pregnancy that is many months before viability. Yet the vast majority of abortion patients in South Carolina who obtain abortion do so *after* six weeks LMP.

59. SB 1 will force Plaintiffs and their physicians to turn away the majority of patients seeking previability abortions, or risk substantial criminal penalties, professional sanctions, and/or civil liability.

60. The Act will make it virtually impossible to access abortion in South Carolina. Patients who can scrape together the resources will be forced to travel out of state for medical care. Many others who cannot do so will be forced to carry a pregnancy to term against their will or seek ways to end their pregnancies without medical supervision, some of which may be unsafe.

61. The Act will be particularly devastating for South Carolinians with low-incomes, South Carolinians of color, and rural South Carolinians, who already face inequities in access to medical care and who will bear the brunt of the Act's cruelties. Forcing patients to carry their pregnancies to term will place Black patients, for example, at even greater risk of adverse health outcomes. As described above, the risk of death associated with childbirth is approximately 14 times higher than that associated with abortion, and every pregnancy-related complication is more common in pregnancies ending in live births than among those ending through abortions. Moreover, Black and other non-white women in South Carolina are 2.6 times more likely to die from pregnancy-related causes than white women.⁴

⁴ S.C. Maternal Morbidity and Mortality Rev. Comm., Legislative Brief (Mar. 2020), <https://www.scstatehouse.gov/reports/DHEC/mmmr-2020-Final.pdf>.

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

63. The Act's narrow exceptions to the Six-Week Ban do not cure these constitutional violations. Indeed, even those patients able to qualify for one of the exceptions will be harmed. Because of the Act, the decision to have an abortion—one that a patient is constitutionally entitled to make—will instead be carefully scrutinized. Moreover, the Act will require health care professionals to disclose to a local sheriff the names and contact information of sexual assault survivors in order to provide care to these patients at or after approximately six weeks LMP. This requirement blatantly intrudes on a patient's right to privacy and autonomy and will effectively prevent patients from accessing abortion in South Carolina.

64. Plaintiffs have no adequate remedy at law.

**CLAIM FOR RELIEF
(Substantive Due Process)**

65. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 64 above.

66. By banning previability abortion upon identification of embryonic or fetal cardiac activity, which may occur as early as six weeks LMP (or even sooner), the Act violates the substantive due process rights of Plaintiffs' patients to previability abortion, as guaranteed by the Fourteenth Amendment to the U.S. Constitution.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs request that this Court:

67. Declare that SB 1 is unconstitutional under the Fourteenth Amendment to the U.S. Constitution;

68. Issue preliminary and permanent injunctive relief, without bond, enjoining Defendants, their employees, agents, and successors from enforcement of SB 1 statewide;
69. Award Plaintiffs their attorneys' fees and costs pursuant to 42 U.S.C. § 1988; and
70. Grant such other relief as this Court deems just and proper.

Respectfully submitted,

/s/ M. Malissa Burnette

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Dated: February 18, 2021

* *Pro hac vice motions to be filed*

EXHIBIT A

South Carolina General Assembly
124th Session, 2021-2022

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Bill 1

~~Indicates Matter Stricken~~

Indicates New Matter

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COMMITTEE REPORT

February 10, 2021

S. 1

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

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

Read the first time February 2, 2021.

THE COMMITTEE ON JUDICIARY

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

REPORT:

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

CHRIS MURPHY for Committee.

A BILL

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

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

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

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

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

- (1) as many as thirty percent of natural pregnancies end in spontaneous miscarriage;
- (2) fewer than five percent of all natural pregnancies end in spontaneous miscarriage after the detection of a fetal heartbeat;
- (3) over ninety percent of in vitro pregnancies survive the first trimester if a fetal heartbeat is detected;
- (4) nearly ninety percent of in vitro pregnancies do not survive the first trimester if a fetal heartbeat is not detected;
- (5) a fetal heartbeat is a key medical predictor that an unborn human individual will reach live birth;
- (6) a fetal heartbeat begins at a biologically identifiable moment in time, normally when the fetal heart is formed in the gestational sac;
- (7) the State of South Carolina has legitimate interests from the outset of a pregnancy in protecting the health of the pregnant woman and the life of the unborn child who may be born; and
- (8) in order to make an informed choice about whether to continue a pregnancy, a pregnant woman has a legitimate interest in knowing the likelihood of the human fetus surviving to full-term birth based upon the presence of a fetal heartbeat.

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

"ARTICLE 6

Fetal Heartbeat and Protection from Abortion

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

- (1) 'Conception' means fertilization.
- (2) 'Contraceptive' means a drug, device, or chemical that prevents conception.
- (3) 'Fetal heartbeat' means cardiac activity, or the steady and repetitive rhythmic contraction of the fetal heart, within the gestational sac.
- (4) 'Gestational age' means the age of an unborn human individual as calculated from the first day of the last menstrual period of a pregnant woman.

- (5) 'Gestational sac' means the structure that comprises the extraembryonic membranes that envelop the human fetus and that is typically visible by ultrasound after the fourth week of pregnancy.
- (6) 'Human fetus' or 'unborn child' each means an individual organism of the species homo sapiens from fertilization until live birth.
- (7) 'Intrauterine pregnancy' means a pregnancy in which a human fetus is attached to the placenta within the uterus of a pregnant woman.
- (8) 'Medical emergency' means a condition that, by any reasonable medical judgment, so complicates the medical condition of a pregnant woman that it necessitates the immediate abortion of her pregnancy to avert her death without first determining whether there is a detectable fetal heartbeat or for which the delay necessary to determine whether there is a detectable fetal heartbeat will create serious risk of a substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions. A condition must not be considered a medical emergency if based on a claim or diagnosis that a woman will engage in conduct that she intends to result in her death or in a substantial and irreversible physical impairment of a major bodily function.
- (9) 'Physician' means any person licensed to practice medicine and surgery, or osteopathic medicine and surgery, in this State.
- (10) 'Reasonable medical judgment' means a medical judgment that would be made by a reasonably prudent physician who is knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.
- (11) 'Spontaneous miscarriage' means the natural or accidental termination of a pregnancy and the expulsion of the human fetus, typically caused by genetic defects in the human fetus or physical abnormalities in the pregnant woman.

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

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

- (1) a declaration that any one or more of the statutory provisions specified in subsection (A) are constitutional; or
- (2) a judgment or order lifting an injunction against the enforcement of any one or more of the statutory provisions specified in subsection (A).

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

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

- (1) perform an obstetric ultrasound on the pregnant woman, using whichever method the physician and pregnant woman agree is best under the circumstances;
- (2) during the performance of the ultrasound, display the ultrasound images so that the pregnant woman may view the images; and

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

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

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

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

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

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

- (1) the physician's belief that a medical emergency necessitating the abortion existed;
- (2) the medical condition of the pregnant woman that assertedly prevented compliance with Section 44-41-650; and
- (3) the medical rationale to support the physician's conclusion that the pregnant woman's medical condition necessitated the immediate abortion of her pregnancy to avert her death.

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

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

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

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

- (1) the pregnancy is the result of rape, and the probable post-fertilization age of the fetus is fewer than twenty weeks;
- (2) the pregnancy is the result of incest, and the probable post-fertilization age of the fetus is fewer than twenty weeks;
- (3) the physician is acting in accordance with Section 44-41-690; or
- (4) there exists a fetal anomaly, as defined in Section 44-41-430.

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) damages in an amount equal to ten thousand dollars or an amount determined by the trier of fact after consideration of the evidence; and
- (2) court costs and reasonable attorney's fees.

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

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

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

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

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

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

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

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

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

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

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

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

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

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