STATE OF SOUTH CAROLINA **RICHLAND COUNTY**	**IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT**
PLANNED PARENTHOOD SOUTH ATLANTIC, on behalf of itself, its patients, and physicians and staff, *et al.*, *Plaintiffs*, v. SOUTH CAROLINA, *et al*., *Defendants*.	C/A No.: 2023-CP-[ ]-_____ **PLAINTIFFS' EMERGENCY MOTION FOR A TEMPORARY RESTRAINING ORDER** **EMERGENCY HEARING REQUESTED**

Pursuant to Rule 65 of the South Carolina Rules of Civil Procedure, Plaintiffs move the Court for a Temporary Restraining Order to enjoin Defendants from enforcing South Carolina's Senate Bill 474, 125th Gen. Assemb., Spec. Sess. (S.C. 2023) (hereinafter "S.B. 474" or the "Act"), which bans abortion after approximately six weeks of pregnancy with very limited exceptions. Plaintiffs, the last remaining outpatient abortion providers in South Carolina, seek emergency relief to preserve the status quo as it stood prior to the Act's enactment. Plaintiffs request an emergency hearing on this motion at the Court's earliest convenience—today, if possible.

As explained in the accompanying memorandum in support, its attached affidavits and exhibits, the complaint, and its attached exhibit, injunctive relief is urgently necessary to prevent continued irreparable harm to Plaintiffs and their physicians, staff, and patients from S.B. 474 taking effect and banning the vast majority of abortions in South Carolina. Plaintiffs have numerous patients scheduled for abortion services in the coming days, including Thursday, May 24, 2023, and Friday, May 26, 2023. Most of these patients will almost certainly be past S.B. 474's gestational age limit. Unless S.B. 474 is enjoined, these patients will be forced to travel out of state and wait days or weeks for an abortion, if they can obtain an abortion at all, and endure financial,

physical, and emotional costs of forced pregnancy, for which they cannot be made whole after judgment.

In January, the South Carolina Supreme Court held that a virtually identical abortion ban violates the South Carolina Constitution's right to privacy. S.B. 474 suffers from the same infirmity. The Court should therefore block its enforcement immediately by granting Plaintiffs' motion for a temporary restraining order and enjoin Defendants 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.

A proposed order will be filed separately.

Respectfully submitted,

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Dated: May 24, 2023

STATE OF SOUTH CAROLINA **RICHLAND COUNTY**	**IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT**
PLANNED PARENTHOOD SOUTH ATLANTIC, on behalf of itself, its patients, and physicians and staff, *et al.*, *Plaintiffs*, v. SOUTH CAROLINA, *et al*., *Defendants*.	C/A No.: 2023-CP-[ ]-_____ **PLAINTIFFS' MEMORANDUM IN SUPPORT OF THEIR EMERGENCY MOTION FOR A TEMPORARY RESTRAINING ORDER** **EMERGENCY HEARING REQUESTED**

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INTRODUCTION AND NATURE OF THE CASE

Just four months ago, the South Carolina Supreme Court struck down a ban on abortion after approximately six weeks of pregnancy, Senate Bill 1, 124th Gen. Assemb., Reg. Sess. (S.C. 2021) ("S.B. 1"), as an unconstitutional infringement on South Carolina's fundamental right to privacy. *See generally Planned Parenthood S. Atl. v. State*, 438 S.C. 188, 882 S.E.2d 770 (2023), *reh'g denied* (Feb. 8, 2023) (hereinafter, "*Planned Parenthood I*"). The ink on the Supreme Court's January 5, 2023 decision was barely dry before the Senate introduced a nearly identical law on February 1, Senate Bill 474, 125th Gen. Assemb., Spec. Sess. (S.C. 2023) ("S.B. 474" or the "Act"), again banning abortion after approximately six weeks. The General Assembly adopted S.B. 474 on May 23, 2023, and Governor Henry McMaster signed it today, immediately banning constitutionally protected health care across South Carolina. Many patients will come in for abortion care tomorrow morning, only to find out once they are already at the clinic that they can no longer access that care in South Carolina. Plaintiffs therefore seek emergency relief to prevent the widespread and irreversible harm that S.B. 474 is already inflicting and will inflict each day it remains in effect.

Without that relief, the Act will continue to cause immediate, irreparable harm to Plaintiffs, the last remaining outpatient abortion providers in South Carolina, and to their patients. Plaintiffs have numerous patients scheduled for abortion services in the coming days. But if the Act remains in effect, Plaintiffs will not be able to provide abortions to most of those patients. Relief is thus necessary to preserve the status quo as it has existed for nearly half a century.

This case is open and shut. The South Carolina Constitution contains a right to privacy. S.C. Const. art. I, § 10. And that right "has no meaning if [this State's courts] fail to limit how closely the state may regulate our personal, medical, intimate, and moral decisions." *Planned*

Parenthood I, 438 S.C. at 217, 882 S.E.2d at 786 (Beatty, C.J., concurring). Because decisions related to having a family are some of the most personal that South Carolinians will ever make, the Act is an unreasonable invasion of the constitutional right to privacy. *Id.*, 438 S.C. at 195, 882 S.E.2d at 774 (Hearn, J.); *Id.*, 438 S.C. at 223–24, 882 S.E.2d at 789 (Beatty, C.J., concurring); *Id.*, 438 S.C. at 268–69, 882 S.E.2d at 813–14 (Few, J., concurring in the judgment). And because this Court is bound by decisions of the South Carolina Supreme Court, it must find that this law, which is identical in all material respects to S.B. 1, likewise violates South Carolinians' fundamental right to privacy.

If permitted to remain in effect, the Act will leave huge numbers of women[1] in South Carolina without any access to legal abortion in their communities, thus forcing people who are pregnant to carry a pregnancy to term against their will; to remain pregnant if and until they can travel out of state to access critical, time-sensitive abortion, at great cost to themselves and their families; or to attempt to self-manage their abortions outside the medical system. 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 already face a critical shortage of reproductive health care providers, including obstetrician-gynecologists, and the rate at which South Carolinians, particularly Black South Carolinians, die

[1] Plaintiffs use "woman" or "women" as a short-hand for people who are or may become pregnant, but people of many gender identities, including transgender men and gender-diverse individuals, may become pregnant and seek abortion and are also harmed by the Act. *See Reprod. Health Servs. v. Strange*, 3 F.4th 1240, 1246 n.2 (11th Cir. 2021) ("[N]ot all persons who may become pregnant identify as female."), *reh'g en banc granted, opinion vacated on other grounds*, 22 F.4th 1346 (11th Cir. 2022), *and abrogated on other grounds by Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022) .

from pregnancy-related causes is already shockingly high. The Act will only exacerbate these serious problems unless it is enjoined.

Plaintiffs seek a temporary restraining order to prevent enforcement of S.B. 474 and to safeguard themselves and their patients from ongoing grave and irreparable harms.

STATEMENT OF FACTS

A. Access to Abortion Under Prior South Carolina Law

Plaintiffs Planned Parenthood South Atlantic ("PPSAT") and Greenville Women's Clinic, P.A. ("GWC") are health care providers in South Carolina that offer a range of sexual and reproductive health services, including abortion. Decl. of Katherine Farris, M.D. ("Farris Decl.") ¶ 21; Decl. of Terry L. Buffkin, M.D. ("Buffkin Decl.") ¶¶ 2–3. PPSAT operates health centers in Columbia and Charleston, Farris Decl. ¶ 20, and GWC operates a clinic in Greenville, Buffkin Decl. ¶ 2. Working with physicians licensed to practice medicine in South Carolina, PPSAT and GWC run the only clinics in the state that provide abortion services to the public. Farris Decl. ¶¶ 26–27; Buffkin Decl. ¶ 15. They hold state licenses for each of their clinics to perform abortions through the end of the first trimester, *see* S.C. Code Ann. § 44-41-75(A), which corresponds to 14 weeks of pregnancy as measured from the first day of the last menstrual period ("LMP"), *id.* § 44-41-10; S.C. Code Ann. Regs. 61-12.101(S)(4); Farris Decl. ¶¶ 23, 26; Buffkin Decl. ¶ 7. Plaintiff Terry L. Buffkin, M.D., is one of the two physicians who provide care at GWC and a co-owner of the clinic. Buffkin Decl. ¶ 2. He is a board-certified obstetrician-gynecologist. *Id.* ¶ 1. Plaintiff Katherine Farris, M.D., is the Chief Medical Officer for PPSAT and is one of the physicians who provide abortion at PPSAT's South Carolina health centers. Farris Decl. ¶ 1.

Plaintiffs' patients seek abortions for a range of reasons. Most are already parents, having had at least one child, and they may struggle with basic unmet needs for their families. Farris Decl.

¶ 30; *see* Buffkin Decl. ¶ 35. 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. Farris Decl. ¶ 30; *see* Buffkin Decl. ¶ 35. Some patients 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. Farris Decl. ¶ 30; Buffkin Decl. ¶ 35. 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. Farris Decl. ¶ 30; Buffkin Decl. ¶ 35. Others are struggling with substance abuse or have an abusive partner or a partner with whom they do not wish to have children for other reasons. Farris Decl. ¶ 30; Buffkin Decl. ¶ 35. Although patients generally obtain an abortion as soon as they are able, the vast majority of patients who seek abortions in South Carolina are at least six weeks pregnant by the time they do so. Farris Decl. ¶ 32; Buffkin Decl. ¶ 23. The difficulty of obtaining an abortion before they are six weeks LMP will be especially pronounced for marginalized South Carolinians, including those living in poverty and Black and Hispanic women. Farris Decl. ¶¶ 41–42. Accordingly, the vast majority of Plaintiffs' patients will likely be unable to access abortion under the Act.

B. Legislative and Litigation History

S.B. 474 is the latest in South Carolina's efforts to restrict access to abortion care. Following the U.S. Supreme Court's ruling in *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022), S.B. 474's predecessor—S.B. 1—went into effect on June 27, 2022, banning abortion in South Carolina after approximately six weeks LMP. Plaintiffs filed a challenge to S.B. 1 in this Court. By the time the South Carolina Supreme Court granted a temporary

injunction against S.B. 1's enforcement on August 17, 2022, the law had been in effect for 51 days. However, it did not take effect again because on January 5, 2023, the South Carolina Supreme Court permanently enjoined S.B. 1, finding that it impermissibly infringed upon South Carolinians' fundamental right to privacy as guaranteed in article I, section 10 of the South Carolina Constitution. Less than one month later, S.B. 474, which is virtually identical to S.B. 1, was introduced in the Senate. S.B. 474 was signed by Governor McMaster today and became immediately effective upon his signature.

C. The Act's Requirements and Impact on Plaintiffs and Patients

The Act imposes dramatic changes, almost identical to those imposed by S.B. 1, to South Carolina law by banning abortion after roughly six weeks LMP (the "Six-Week Ban"). S.B. 474, § 2 (adding S.C. Code Ann. § 44-41-630(B)). The Six-Week Ban provides that "no person shall perform or induce an abortion" where a "fetal heartbeat has been detected." *Id.*

The Act's reference to a "fetal heartbeat" is doubly inaccurate and misleading. First, the Act would ban abortion so early that the pregnancy is still an embryo, not yet a "fetus"; the developing pregnancy is an "embryo" until at least ten weeks LMP, only after which the term "fetus" is used. Farris Decl. ¶ 7. Despite this accepted distinction, the Act defines "[u]nborn child" to include an "individual organism of the species homo sapiens from conception until live birth." S.B. 474, § 2 (adding S.C. Code Ann. § 44-41-610(14)). Second, the Act would ban abortion upon the presence of any cardiac activity, even though no heart has yet developed. It defines "[f]etal heartbeat" to include any "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)). The term, therefore, covers not just a "heartbeat" in the lay sense, but also early cardiac activity present before development of any cardiovascular system. Farris Decl. ¶ 7. Such cardiac activity may be

detected by transvaginal ultrasound as early as six weeks LMP (and sometimes sooner). *Id.* ¶¶ 8, 25. Early in pregnancy, even with an ultrasound, this activity would not be audible but would instead appear as a visual flicker. *Id.*

The Act requires that a physician or other health care professional inform the patient of their right to view the ultrasound, hear the "fetal heartbeat" if present, and have them explained, all under the guise of "informed consent." S.B. 474, § 2 (amending S.C. Code Ann. §§ 44-41-330(A), 44-41-630(A)). This is despite the fact that, if the ultrasound detects fetal or embryonic cardiac activity, the patient cannot have an abortion.

Both the physician who performs an abortion and the clinic in which the abortion is performed are subject to 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 as well as revocation of professional licensure. *Id.* (adding S.C. Code Ann. §§ 44-41-630(B), 44-41-640(B), 44-41-650(C), 44-41-660(C); amending S.C. Code Ann. § 44-41-690)); *see also* S.C. Code Ann. § 16-1-40 (accessory liability). Anyone performing an abortion in violation of the Six-Week Ban 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 Six-Week Ban, and attorney's fees and costs, all of which are not subject to the limitations of South Carolina's medical malpractice laws. *Id.*

The Six-Week Ban contains only a few narrow exceptions: (1) to save the life of the pregnant patient or prevent certain types of substantial physical impairment of a major bodily

function (the "Death or Substantial Injury Exception") but expressly excluding any psychological conditions, emotional conditions, or suicidality of the pregnant person; (2) in cases of a fetal diagnosis that is "incompatible" with sustained life after birth (the "Fatal Fetal Anomaly Exception"); and (3) where the pregnancy is the result of rape or incest and is reported to law enforcement (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)).

Of note, the Reported Rape Exception, similar to the one in S.B. 1, applies only if, within 24 hours of the abortion, the physician reports the rape or incest *and the patient's name and contact information* to the sheriff in the county where the abortion was performed. *Id.* (amending S.C. Code Ann. § 44-41-650(B)); *see also* S.B. 1, § 3 (adding S.C. Code Ann. § 44-41-680(C)). This report must occur irrespective of the patient's wishes and whether the provider has already complied with other applicable mandatory reporting laws. S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-650(B)). The exception makes no special provision for confidentiality. *See id.* Moreover, the Act's reporting requirement applies only if the patient decides to have an abortion after being told that the rape will be reported; if the patient decides not to go forward, the reporting requirement does not apply. *Id.* In this way, the Act conditions the availability of abortion (but no other kind of health care) on the public disclosure of the patient's private medical and other personal information. But unlike S.B. 1, which allowed abortions under its narrow rape and incest exception up to 22 weeks LMP, S.B. 474's rape and incest exception is limited to 12 weeks LMP,

a window more than two months shorter. *Compare id.* (amending S.C. Code Ann. § 44-41-650(A)) *with* S.B. 1, § 3 (adding S.C. Code Ann. § 44-41-680(B)(1)–(2)).[2]

Now that the Act is in effect, Plaintiffs and their staff are forced to turn away South Carolinians in need of abortions who have a "fetal heartbeat" as defined in the Act, except for those who meet one of these very narrow exceptions. Farris Decl. ¶¶ 13, 51–54; Buffkin Decl. ¶¶ 10–11, 31. This is before many patients even know they are pregnant. Farris Decl. ¶¶ 33–37; Buffkin Decl. ¶¶ 24–28. People may not know they are pregnant until or after six weeks LMP for a range of reasons, including because of irregular menstrual cycles as a result of common medical conditions, contraceptive use, age, and breastfeeding; because many pregnant patients experience light bleeding when a fertilized egg is implanted in the uterus, which is often mistaken for a menstrual period; and because pregnancy is not always easy to detect. Farris Decl. ¶¶ 33–37; Buffkin Decl. ¶¶ 25–26. Even those who learn of their pregnancies before six weeks LMP may face additional logistical delays in arranging an appointment for an abortion, including raising money for the abortion and arranging time off work, transportation, and childcare. Farris Decl. ¶¶ 38–43, 45.

Based on their experience when S.B. 1 was in effect, Plaintiffs expect that most of the patients scheduled for abortions in the coming days will ultimately be ineligible for abortions under

[2] If denied an abortion, women whose pregnancies are the result of rape may be forced to share custody or otherwise parent the child with their rapist. South Carolina law permits, but does not require, a court to terminate a rapist's parental rights only where the petitioning parent demonstrates by clear and convincing evidence (1) that the child was conceived as a result of criminal sexual conduct; (2) the rapist was convicted in a criminal court of competent jurisdiction for the criminal sexual conduct that led to the child's conception; and (3) termination is in the best interest of the child. S.C. Code Ann. § 63-7-2570(11); *S.C. Dep't of Soc. Servs. v. Smith*, 423 S.C. 60, 76, 814 S.E.2d 148, 156 (2018) ("The grounds for [termination of parental rights] must be proven by clear and convincing evidence."). Some people forced to carry to term a pregnancy resulting from rape or incest will not be able to meet this strict evidentiary bar.

S.B. 474. Farris Decl. ¶ 8; Buffkin Decl. ¶ 31. For patients with detectable embryonic or fetal cardiac activity, these patients' only option will be to remain pregnant until they are able to travel out of state to access critical, time-sensitive abortion, at great cost to themselves and their families; to carry to term and give birth against their will; or to attempt to self-manage their abortions outside the medical system. Without relief from this Court, the Act will cause grave and irreparable harm to Plaintiffs, their staff, and patients.

The devastating impact of the Act is certain and predictable based on the harms experienced while S.B. 1 was in effect. Banning abortion after approximately 6 weeks LMP forced Plaintiffs to turn away the majority of their patients seeking abortion care. Farris Decl. ¶ 51; Buffkin Decl. ¶ 29. Plaintiffs' patients were forced to travel out of state to access abortion care if traveling was financially and logistically attainable. Farris Decl. ¶ 51. As with S.B. 1, the Act will disproportionately harm Plaintiffs' patients with low incomes, patients of color, and patients in rural areas. Farris Decl. ¶ 52.

ARGUMENT

"The purpose of an injunction is to preserve the status quo and prevent possible irreparable injury to a party pending litigation." *Greenville Bistro, LLC v. Greenville County*, 435 S.C. 146, 160, 866 S.E.2d 562, 569 (2021) (citing and quoting *AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 51, 674 S.E.2d 505, 509 (Ct. App. 2009)). A temporary restraining order is warranted where (1) it has a likelihood of success on the merits; (2) the plaintiff would suffer irreparable harm; and (3) there is no adequate remedy at law. *Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 586–87, 694 S.E.2d 15, 17 (2010). A "plaintiff is not required to prove an absolute legal right when seeking" temporary injunctive relief. *AJG Holdings*, 382 S.C. at 51, 674 S.E.2d at 509. A "reasonable question as to the existence of such a right" is sufficient. *Id.*

Here there can be no question of such a right when four months ago the South Carolina Supreme Court invalidated a virtually identical ban. Therefore, Plaintiffs are likely to succeed on the merits of their claim that the Act violates South Carolina's constitutional right to privacy. Moreover, the Act will inflict irreparable harm on Plaintiffs, their physicians and staff, and their patients, and there is no adequate remedy at law. Plaintiffs are therefore entitled to a temporary restraining order barring enforcement of the Act.

I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS OF THEIR RIGHT TO PRIVACY CLAIM.

Article I, section 10, of the South Carolina Constitution, unlike the U.S. Constitution, expressly guarantees a right to privacy. That section provides that "[t]he right of the people to be *secure in their persons*, houses, papers, and effects against unreasonable searches and seizures *and unreasonable invasions of privacy* shall not be violated . . . ." S.C. Const. art. I, § 10 (emphasis added). Earlier this year, the South Carolina Supreme Court held that a ban on abortion after approximately six weeks gestation violated that right. The Court recognized South Carolinians' right to medical autonomy and "that the decision to terminate a pregnancy rests upon the utmost personal and private considerations imaginable." *Planned Parenthood I*, 438 S.C. at 195, 882 S.E.2d at 774.

Despite this clear holding, the General Assembly has passed a law similar in all material respects to the invalidated ban, S.B. 1. It cannot be that a six-week ban can be unconstitutional one month and miraculously pass constitutional muster the next. The South Carolina Supreme Court's ruling is unmistakably binding precedent, and thus, Plaintiffs are likely to succeed on the merits of their claim that the Act, like S.B. 1, impermissibly infringes on South Carolinians' constitutional right to privacy.

S.B. 474, like S.B. 1, runs afoul of article I, section 10's broad textual guarantee of protections against unreasonable invasions of privacy and directly conflicts with precedent recognizing this strong privacy right under the South Carolina Constitution. *Planned Parenthood I* is controlling here: a law prohibiting abortion at the earliest weeks of pregnancy—foreclosing South Carolinians' autonomous medical decision-making about their own bodies and pregnancies—unreasonably invades South Carolinians' constitutional right to personal privacy. Finally, S.B. 474 is substantially identical to S.B. 1 and fails to cure the constitutional defects of S.B. 1 identified in *Planned Parenthood I*. For these reasons, it is unconstitutional.

A. The South Carolina Constitution Guarantees a Broad Right to Privacy.

In construing provisions of the state Constitution, South Carolina courts "'look to the ordinary and popular meaning of the word used' . . . [and] appl[y] rules of construction similar to those used to construe statutes." *State v. Long*, 406 S.C. 511, 514, 753 S.E.2d 425, 426 (2014) (quoting *Richardson v. Town of Mount Pleasant*, 350 S.C. 291, 294, 566 S.E.2d 523, 525 (2002)); *see also Planned Parenthood I*, 438 S.C. at 232, 882 S.E.2d at 794 (Beatty, C.J., concurring) ("[W]e will look to the ordinary and plain meaning of the terms and employ rules similar to statutory construction . . . ."); *Planned Parenthood I*, 438 S.C. at 199, 882 S.E.2d at 776 (Hearn, J.) ("In interpreting this text, we must . . . give the words their plain and ordinary meaning . . . ."). "When a constitutional provision is clear, [courts] must discern the intent behind the provision only from its text, and should not resort to other evidence of intent." *Planned Parenthood I*, 438 S.C. at 259, 882 S.E.2d at 808 (Few, J., concurring in the judgment); *see also Acker v. Cooley*, 177 S.C. 144, 145, 181 S.E. 10, 11 (1934) (acknowledging that "legislative interpretation of a constitutional provision should be given much weight" but declining to do so when the provision "is not ambiguous").

Article I, section 10, of the South Carolina Constitution, unlike the U.S. Constitution, expressly guarantees a right to privacy. That privacy right is appropriately broad, as demonstrated by its text. "[T]he word 'privacy'—though broad—is clear as to its scope: it includes *all forms of privacy*. . . . Thus, when used without limitation in article I, section 10, the term 'privacy' means *the full panoply of privacy rights* Americans have come to enjoy over the history of our Nation." *Planned Parenthood I,* 438 S.C. at 260, 882 S.E.2d at 808-09 (Few, J., concurring in the judgment). And the text makes clear that any infringement of that right must not be "unreasonable." S.C. Const. art. I, § 10. In other words, the "standard for reviewing the constitutionality of a statute under this provision is whether the privacy restriction is unreasonable as a matter of law." *Planned Parenthood I*, 438 S.C. at 287, 882 S.E.2d at 823 (Few, J., concurring in the judgment); *see also Planned Parenthood I*, 438 S.C. at 238, 882 S.E.2d at 797 (Beatty, C.J., concurring) ("[R]easonableness provides a limiting princip[le.]").

B. South Carolina Supreme Court Precedent Confirms that the Constitutional Right to Privacy Is Broad.

In addition to drawing on and being consistent with article I, section 10's text, the South Carolina Supreme Court's decision in *Planned Parenthood I* analyzed precedent recognizing that South Carolinians' right to privacy is well established and includes the right to privacy in medical decision making.

In *Singleton v. State*, 313 S.C. 75, 88, 437 S.E.2d 53, 60 (1993), for example, the South Carolina Supreme Court ruled that article I, section 10 protects a person's "right to decide what is to be done medically with one's brain and body . . . and the freedom from unwarranted physical interference with one's person." In that case, a prisoner challenged the State's efforts to forcibly medicate him to address his mental incompetence prior to execution. The Court held that "the South Carolina Constitutional right of privacy would be violated if the State were to sanction

forced medication solely to facilitate execution" *notwithstanding* his "very limited privacy interest when weighed against the State's penological interest." 313 S.C. at 89, 437 S.E.2d at 61.

The South Carolina Supreme Court has repeatedly reaffirmed *Singleton*. In *State v. Forrester*, the Court reiterated that article I, section 10 protects a privacy right broader than that guaranteed by the U.S. Constitution and that that right "applies both within and outside the search and seizure context." 343 S.C. 637, 644, 541 S.E.2d 837, 841 (2001). In *Hughes v. State*, which considered the petitioner's mental competence to waive his right to post-conviction relief, the Supreme Court echoed *Singleton*'s central holding that prisoners have a right "grounded in the state constitutional right to privacy . . . to be free from unwanted medical intrusions" such as forced medication. 367 S.C. 389, 398 n.2, 626 S.E.2d 805, 810 n.2 (2006). In *Planned Parenthood I*, too, the Supreme Court reaffirmed *Singleton*, explaining that "certain instances of medical intervention implicate the right to be secure in one's person from unreasonable invasions of privacy." 438 S.C. at 206, 882 S.E.2d at 780; *see also Planned Parenthood I*, 438 S.C. at 233, 882 S.E.2d at 794 (Beatty, C.J., concurring) ("Any objective reading of *Singleton* requires a conclusion that the Court officially recognized a right to bodily autonomy encompassed in our right to privacy that is protected by article I, section 10.").

C. Restrictions on Abortion Infringe on South Carolinians' Right to Privacy.

Restrictions on abortion infringe on the right to privacy because they encroach on the right to make decisions about what is done to one's body. "[A]ny medical procedures a pregnant woman chooses to have—including an abortion—or chooses not to have—implicate her privacy interests." *Planned Parenthood I*, 438 S.C. at 269, 882 S.E.2d at 814 (Few, J., concurring in the judgment). The decision whether to remain pregnant is in many ways no different than choosing to undergo other medical procedures, such as taking medication (as in *Singleton*), "organ transplants, blood

transfusions, [and] mental health treatment." *Id.*, 438 S.C. at 252, 882 S.E.2d at 804 (Beatty, C.J., concurring). Although these procedures, like abortion, are "not specifically named in our constitution," they nonetheless, also like abortion, "affect[] bodily integrity and medical care." *Id.* (Beatty, C.J., concurring); *see also id.*, 438 S.C. at 206, 882 S.E.2d at 780 ("[I]n reaching [the] decision [in *Singleton*], we did not ask whether our constitution specifically prohibited forced medication of an inmate in order to carry out an execution. Just as the provision does not specifically refer to abortion, neither does it mention forcing medication on an inmate."). Thus, as Justice Hearn recognized, courts in sister states have surveyed caselaw "where the privacy right was implicated in medical decision-making and concluded that abortion was no different." *Id.*, 438 S.C. at 208, 882 S.E.2d at 781 (citing *Women of State of Minn. by Doe v. Gomez*, 542 N.W.2d 17, 27 (Minn. 1995)).

Indeed, there can be no question that abortion care implicates South Carolinians' privacy rights. As the South Carolina Supreme Court has recognized, "the decision to terminate a pregnancy rests upon the utmost personal and private considerations imaginable." *Id.*, 438 S.C. at 195, 882 SE.2d at 774; *id.*, 438 S.C. at 217, 882 S.E.2d at 786 (Beatty, C.J., concurring) ("If the right of privacy *means anything*, it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so *fundamentally* affecting a person as *the decision whether to bear or beget a child*." (quoting *Eisenstadt v. Baird*, 405 U.S. 438, 453 (1972))). "The privacy interests also arise in conversations a pregnant woman might have with her husband or boyfriend, her minister or other professional counselor, her doctor, and other loved ones and friends she might turn to for guidance and advice in making an informed choice about whether to continue the pregnancy." *Id.*, 438 S.C. at 267, 882 S.E.2d at 813 (Few, J., concurring in the judgment); *see also id.*, 438 S.C. at 224, 882 S.E.2d at 789 (Beatty, C.J., concurring) ("These

decisions have traditionally been made in consultation with a woman's medical provider, along with family, including a spouse or partner, and with considerations as to a woman's existing physical and mental health, employment and school obligations, any existing children, and financial circumstances."). In other words, "[t]he choice of whether to continue a pregnancy or to have an abortion is an inherently private matter that implicates article I, section 10." *Id.*, 438 S.C. at 276, 882 S.E.2d at 818 (Few, J., concurring in the judgment).

D. The Act Reproduces S.B. 1's Constitutional Defects.

Like S.B. 1, S.B. 474 infringes on South Carolinians' right to privacy and is unreasonable as a matter of law. The Act imposes a ban on abortion—with narrow exceptions—at the earliest stages of pregnancy before many people even know they are pregnant. It thus entirely forecloses the opportunity for most South Carolinians to get an abortion.

In *Planned Parenthood I*, the South Carolina Supreme Court held that a law that does not allow South Carolinians a sufficient period of time to get an abortion unreasonably violates the constitutional right to privacy—and that, as a matter of law, a six-week limit is not reasonable. *E.g., id.*, 438 S.C. at 217, 882 S.E.2d at 786 (Any gestational-age based restriction on abortion "must afford a woman sufficient time to determine she is pregnant and to take reasonable steps to terminate that pregnancy. Six weeks is, quite simply, not a reasonable period of time for these two things to occur, and therefore the Act violates our state Constitution's prohibition against unreasonable invasions of privacy."). S.B. 474 simply duplicates S.B. 1's unconstitutional ban on abortion after approximately six weeks LMP. S.B. 474 provides South Carolinians with a fleeting period in which to get an abortion—just four weeks after fertilization, as Justice Few recognized, and two or fewer weeks after missing a period. *See id.*, 438 S.C. at 276, 882 S.E.2d at 817–18 (Few, J., concurring in the judgment). "This is before many women . . . even know they are

pregnant." *Id.* 438 S.C. at 195; 882 S.E.2d at 774; *accord id.*, 438 S.C. at 238, 882 S.E.2d at 797 (Beatty, C.J., concurring); *see also supra* at 8–9; Farris Decl. ¶¶ 33–37; Buffkin Decl. ¶¶ 24–28 (explaining why many do not know they are pregnant before six weeks LMP).

S.B. 474 is nearly identical to S.B. 1, and the differences between the two that do exist do not cure the constitutional defects of S.B. 1. To the contrary, S.B. 474 shortened the exception for South Carolinians who have become pregnant as a result of rape or incest from 22 weeks LMP to 12 weeks LMP. *Compare* S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-650(A)) *with* S.B. 1, § 3 (adding S.C. Code Ann. § 44-41-680(B)). Narrowing this window by more than two months makes S.B. 474 less reasonable than S.B. 1, not more so.

At bottom, because the Act is materially identical to S.B. 1, it cannot stand. Plaintiffs are likely to succeed on the merits of their constitutional right to privacy claim. A ban on abortion "usurps a woman's authority to make medical decisions regarding her reproductive health, including the decision whether to have children, and places this power, instead, solely in the hands of a political body." *See Planned Parenthood I*, 438 S.C. at 223, 882 S.E.2d at 789 (Beatty, C.J., concurring). By banning abortion upon identification of embryonic or fetal cardiac activity, the Act prevents pregnant people from exercising autonomy over their bodies, and in turn, the course of their lives. Plaintiffs are thus likely to prevail on their claim that the Act violates the right to privacy guaranteed by article I, section 10.

II. THE ACT WILL IRREPARABLY HARM PLAINTIFFS AND THEIR PATIENTS.

In addition to the irreparable harm of violating constitutional rights, S.B. 474 is already causing grave harm by forcing Plaintiffs to turn away the vast majority of South Carolinians seeking abortions. As noted above, Plaintiffs have many patients scheduled for abortion services during the remainder of this week; most of these South Carolinians will be beyond S.B. 474's

gestational age limit, and few, if any, will fall within S.B. 474's narrow exceptions. As a result, Plaintiffs will be forced to turn them away. *See* Farris Decl. ¶¶ 13, 91; Buffkin Decl. ¶ 31.

"[W]hether a wrong is irreparable" is a question that is "not decided by narrow and artificial rules," but instead determined based on the facts of the case. *Kirk v. Clark*, 191 S.C. 205, 211, 4 S.E.2d 13, 16 (1939); *see also Peek v. Spartanburg Reg'l Healthcare Sys.*, 367 S.C. 450, 626 S.E.2d 34 (Ct. App. 2005). "The Courts proceed realistically if the threatened wrong involves actual damage; the mere uncertainty of fixing the measure of such damage to the injured party may itself be sufficient to justify the exercise of equitable jurisdiction." *Kirk*, 191 S.C. at 211, 4 S.E.2d at 16.

As an initial matter, an injunction is required to prevent a deprivation of Plaintiffs' patients' constitutionally protected right to privacy. *Planned Parenthood I*, 438 S.C. at 195, 882 S.E.2d at 774. Generally, when a plaintiff has demonstrated a loss of a constitutional right, no further showing of irreparable injury is required. *E.g.*, *B. P. J. v. W. Va. State Bd. of Educ.*, 550 F. Supp. 3d 347, 357 (S.D. W. Va. 2021) ("When a party has shown a likelihood of a constitutional violation, the party has shown an irreparable harm."); *Henry v. Greenville Airport Comm'n*, 284 F.2d 631, 633 (4th Cir. 1960) ("The District Court has no discretion to deny relief by preliminary injunction to a person who clearly establishes by undisputed evidence that he is being denied a constitutional right."); 11A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2948.1 (3d ed. 2022) (collecting cases). The presumption of irreparable injury from a constitutional violation applies with special force in the context of abortion: "[T]he abortion decision is one that simply cannot be postponed, or it will be made by default with far-reaching consequences." *Bellotti v. Baird*, 443 U.S. 622, 643 (1979); *see also Deerfield Med. Ctr. v. City of Deerfield Beach*, 661 F.2d 328, 338 (5th Cir. Unit B 1981) (infringement of constitutional right to

decide whether to have an abortion "mandates" a finding of irreparable injury because an infringement "cannot be undone by monetary relief").[3]

But here, in addition, if left in place, S.B. 474 will be catastrophic for South Carolinians—as previewed with the devastating impact of S.B. 1 last year. The Act will force many people seeking abortion to carry a pregnancy to term against their will, with all of the physical, emotional, and financial costs that entails. Some South Carolinians will inevitably turn to self-managed abortion by buying pills or other items online and outside the U.S. healthcare system, which may in some cases be unsafe or expose them to criminal risk. Farris Decl. ¶ 51. And even South Carolinians who are ultimately able to obtain an abortion—either because they have been able to scrape together resources to travel out of state or if they are one of the very few who can satisfy one of the law's narrow exceptions—will suffer irreparable harm. *Id.* ¶¶ 55–73. Finally, Plaintiffs and their staff will also suffer harms that cannot possibly be compensated after judgment.

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

The Act threatens severe, actual, and irreparable damage to South Carolinians' lives and livelihood—harms that are more than sufficient to justify entry of injunctive relief. *See Kirk*, 191 S.C. at 211, 4 S.E.2d at 16.

The Act's consequences for South Carolinians who lose access to time-sensitive abortion care or who are forced to seek it out of state, at great cost and delay, are substantial and entirely foreseeable. S.B. 1 was in effect from June 27, 2022 until August 17, 2022. During that time,

[3] Where persuasive, South Carolina courts may look to federal case law, as well as precedent from other states, as to the scope of irreparable harm. *E.g.*, *Peek*, 367 S.C. at 455, 626 S.E.2d at 37 & n.2 (considering how other appellate courts have considered issues of loss of a professional practice to find that "[t]he complete loss of a professional practice can be an irreparable harm"); *Levine v. Spartanburg Reg'l Servs. Dist.*, 367 S.C. 458, 465 n.3, 626 S.E.2d 38, 42 n.3 (Ct. App. 2005) (citing other appellate courts' decisions in finding that irreparable harm had occurred).

Plaintiffs—who previously provided the majority of abortions performed in South Carolina—were forced to turn away people seeking this vital health care. PPSAT was compelled to cancel 490 scheduled abortions and turn away 513 pregnant South Carolinians seeking abortions, while GWC had to turn away the vast majority of patients. Farris Decl. ¶ 51; Buffkin Decl. ¶ 29. These South Carolinians were forced to travel out of state for abortions, if they could afford to do so; to remain pregnant against their will; or to attempt to self-manage their abortions outside of the medical system. Farris Decl. ¶ 51.

If S.B. 474 remains in effect, South Carolinians will be forced to carry their pregnancies to term and give birth. *See id.* ¶ 58. For these patients, who will suffer a range of physical, mental, and economic consequences, there is no effective monetary remedy after judgment for the impact of forced pregnancy on health and bodily autonomy.

Even an uncomplicated pregnancy challenges a person's entire physiology. *Id.* ¶ 59. However, many pregnant people experience complications. *See id.* ¶¶ 59–61. Pregnancy can cause new and serious health conditions or aggravate pre-existing health conditions. *Id.* ¶ 61. It can also induce or exacerbate mental health conditions, which are excluded by the Act's Death or Substantial Injury Exception. *Id.* ¶ 62. Some pregnant patients also face an increased risk of intimate partner violence—including possible homicide, with the severity sometimes escalating during or after pregnancy. *Id.* ¶ 63. Indeed, homicide, most frequently caused by an intimate partner, is a leading cause of maternal mortality. *Id.*

Separate from pregnancy, labor and childbirth are themselves significant medical events with many risks. *Id.* ¶ 64. Between 2015 and 2019, the maternal mortality rate in South Carolina was 26.2 deaths per 100,000 live births, exceeding the national average. *Id.* And the risk of mortality from pregnancy and childbirth is approximately 14 times greater than for legal pre-

viability abortion. *Id.* ¶ 28. The health risks of childbirth also go beyond mortality. Complications from labor and childbirth occur at a rate of over 500 per 1,000 delivery hospital stays. *Id.* ¶ 65. Even a normal pregnancy with no comorbidities or complications can suddenly become life-threatening during labor and delivery. *See id.*

Patients of color are even more at risk for negative pregnancy and childbirth-related health outcomes. In particular, Black and Hispanic/Latina South Carolinians face heightened risks of pregnancy-related complications, compared to non-Hispanic white women. *Id.* ¶ 68. Maternal mortality rates in particular are especially high among people of color in South Carolina at 42.3 deaths per 100,000 live births, 2.4 times the rate for white women in the state. *Id.* ¶ 64 & n.55.

If the Act remains in effect, it will also lead to long-term negative impacts for people forced to give birth and for their existing children. Roughly 55% of PPSAT's South Carolina patients who have an abortion already have one or more children. *Id.* ¶ 30. Women who seek but are denied an abortion are, when compared to those who are able to access abortion, more likely to moderate their future goals, and less likely to be able to exit abusive relationships. *Id.* ¶ 73. Their existing children are also more likely to suffer measurable reductions in achievement of child developmental milestones and an increased chance of living in poverty. *Id*. As compared to women who received an abortion, women denied an abortion are also less likely to be employed full-time, more likely to be raising children alone, more likely to receive public assistance, and more likely to not have enough money to meet basic living needs. *Id*.

The economic impact of forced pregnancy, childbirth, and parenting will also have potentially exponential, negative effects on South Carolina families' financial stability. Some side-effects of pregnancy render people entirely unable to work, or unable to work the same number of hours as they otherwise would. *Id.* ¶ 69. Pregnancy-related discrimination can also result in lower

earnings for women during pregnancy, and the impacts of discrimination during pregnancy continue over time. *Id*. Further, South Carolina does not require private employers to provide paid family leave, meaning that for many pregnant South Carolinians, time taken to recover from pregnancy and childbirth or to care for a newborn is unpaid. *Id.* A typical South Carolinian who takes four weeks of unpaid leave could lose more than $2,800 in income. *Id*.

Pregnancy-related health care and childbirth are also some of the costliest hospital-based health services, particularly for complicated or at-risk pregnancies. *Id.* ¶ 70. While insurance may cover most of these expenses, many pregnant patients with insurance must still pay for significant labor and delivery costs out of pocket, impacting a patient's existing children and other dependents. Beyond childbirth, raising a child is expensive in terms of direct costs and due to lost wages. *Id.* ¶ 71. In sum, pregnancy and parenting is hugely consequential in South Carolinians' lives, and being denied an abortion has long-term, negative effects on individuals' physical and mental health, economic stability, and the wellbeing of their families, including existing children.

In addition to these physical, mental, and economic injuries, the Act also imposes irreparable harm on Plaintiffs' patients by impinging on one of the most private and consequential decisions a person will make in a lifetime: whether to become or remain pregnant. *Planned Parenthood I*, 438 S.C. at 210, 882 S.E.2d at 782 ("[F]ew decisions in life are more private than the decision whether to terminate a pregnancy."). In this way, the Act will have an impact on a person's existing family that cannot be compensated by future monetary damages. *See* Farris Decl. ¶¶ 69, 73. Many people decide that adding a child to their family is well worth the risks and consequences of pregnancy and childbirth. Conversely, together with their partners and with the support of other loved ones and trusted individuals, including religious and spiritual advisors,

thousands of South Carolinians each year determine that abortion is the right decision for them. *Id.* ¶ 30.

B. The Act Will Irreparably Harm Patients Forced to Try to Obtain Abortions Outside of South Carolina.

Although some of those forced to remain pregnant may eventually be able to obtain abortions out of state, they will also suffer irreparable injury if the Act remains in effect.

First, people will be forced to remain pregnant against their will, with all the attendant risks and medical consequences, until they can obtain out-of-state abortion care, likely later in pregnancy than if they had had abortion access in South Carolina. *Id.* ¶ 57.[4]

Second, these South Carolinians will suffer the additional costs and burdens associated with substantial travel. At this time, the nearest abortion providers outside of South Carolina to PPSAT's Columbia health center are in Charlotte, North Carolina (the closest of which is about 98 miles away, one way); Asheville, North Carolina (about 160 miles away, one way); and Fayetteville, North Carolina (the closest of which is about 163 miles away, one way). *Id.* ¶ 55 And from PPSAT's Charleston health center, the nearest abortion providers outside of South Carolina are in Wilmington, North Carolina (about 177 miles away, one way) and Fayetteville, North Carolina (the closest of which is about 201 miles away, one way). *Id.* The nearest abortion provider outside South Carolina to Greenville Women's Clinic is about 65 miles away in Asheville, North Carolina. Buffkin Decl. ¶ 33.[5] Under S.B. 1, some patients were delayed in their travel due to

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[4] *See, e.g.*, 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/; 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.

[5] North Carolina has enacted a ban on abortion after 12 weeks LMP that will go into effect July 1, 2023. Senate Bill 20, 2023 Leg., 2023–24 Sess. (N.C. 2023) ("S.B. 20"). That act also contains additional restrictions that will make it particularly difficult to obtain abortion care in North

logistical and financial obstacles and could only access a more costly procedural abortion because they had exceeded the gestational age for which medication abortion is approved.[6]

Third, some patients may also be forced to compromise the confidentiality of their decision to have an abortion in order to obtain transportation or child care for their travel to an appointment out of state. Farris Decl. ¶ 56.

Each of these impacts constitutes irreparable harm. *See, e.g.*, *Planned Parenthood of Kan. v. Andersen*, 882 F.3d 1205, 1236 (10th Cir. 2018) ("A disruption or denial of . . . patients' health care cannot be undone after a trial on the merits." (internal quotations omitted)); *Harris v. Bd. of Supervisors, L.A. Cnty.*, 366 F.3d 754, 766 (9th Cir. 2004) (irreparable harm where individuals would experience complications and other adverse effects due to delayed medical treatment); *Banks v. Booth*, 468 F. Supp. 3d 101, 123 (D.D.C. 2020) (same).

C. The Act's Exceptions Do Not Cure These Irreparable Harms.

Even patients who might meet the Six-Week Ban's limited exceptions will suffer irreparable harm in accessing abortions. Physicians caring for pregnant patients with rapidly worsening medical conditions—who, prior to the Act, could have obtained an abortion without explanation—may be forced to wait for care until their conditions become deadly or threaten substantial impairment of a major bodily function so as to meet the Death or Substantial Injury

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Carolina. For example, it requires certain state-mandated information that must be given at least 72-hour prior to an abortion to be given in person, meaning people accessing abortion care in North Carolina may need to make *at least* two trips to the health center. *See* S.B. 20 (amending N.C. Gen. Stat. Ann. §§ 90-21.82(b)(1), 90-21.83A(b)(1)). In other words, the 98-mile journey from Columbia to Charlotte would actually require a South Carolinian to travel nearly 400 miles total. And while there are also abortion providers in Georgia, Georgia also currently bans abortions after about six weeks LMP. Farris Decl. ¶ 54 & n.46; Ga. Code Ann. § 16-12-141.

[6] *See, 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.

Exception. Farris Decl. ¶ 84. Significantly, the Death or Substantial Injury Exception makes no allowances for risks to patients' mental health, even when they are suicidal, making the Exception narrower—thereby placing more women in danger—than when South Carolina first liberalized its abortion laws in 1970, prior to *Roe v. Wade*. *See* S.C. Code Ann. § 16-87(1) (1970) (allowing abortion if "there is substantial risk that continuance of the pregnancy would threaten the life or gravely impair the *mental* or physical health of the woman") (emphasis added). Again, this impact is not theoretical; while S.B. 1 was in effect, patients were forced to wait for their conditions to worsen before they could access necessary medical care, some with permanent consequences of that delay.[7]

Patients facing devastating fetal diagnoses will only be able to obtain abortions in cases of "fatal fetal anomal[ies]." S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-660). In such a case, a physician may have their "reasonable medical judgment" second guessed as to whether the fetus in fact "has a profound and irremediable congenital or chromosomal anomaly that, with or without the provision of life-preserving treatment, would be incompatible with sustaining life after birth." *Id.* (amending S.C. Code Ann. § 44-41-610(5)).

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[7] *See, e.g.*, Claire Donnelly, *South Carolina OB-GYNs Are Consulting Criminal Attorneys Post-*Roe, WFAE (Sept. 8, 2022), https://www.wfae.org/health/2022-09-08/sc-ob-gyns-are- consulting-criminal-attorneys-post-roe ("We have delayed care for other patients until they developed signs that they were sick enough for everyone to feel confident that they met the legal exception definition in the law."); Becky Budds, *South Carolina OB-GYN Describes Practice Under Proposed Abortion Law*, WLTX (Sept. 9, 2022), https://www.wltx.com/article/news/politics/south-carolina-ob-gyns-proposed-abortion-law/101-ea9bd1e9-c498-4457-9370-19d719a41501 ("We've had to stop and consult attorneys and delay people's care while we tried to figure out if we were going to lose our medical license or go to jail if we provided the care that [pregnant patients] needed."); Dan Ladden-Hall, *Lawmaker Tearily Explains Teen Almost Lost Uterus Because of Abortion Law He Voted For*, Daily Beast (Aug. 17, 2022), https://www.thedailybeast.com/neal-collins-south-carolina-pol-emotional-after-teen-almost-loses-uterus-due-to-abortion-law-he-voted-for.

Sexual assault survivors in South Carolina will be faced with choosing between abortion services and maintaining their privacy in deciding whether to come forward about the assault, a "choice" forced on no other autonomous patient in South Carolina's medical system. Farris Decl. ¶¶ 76–81. Moreover, their opportunity to access abortion services will be further curtailed by the Act's narrowed Reported Rape Exception that only extends until 12 weeks LMP compared to the 22-week LMP period imposed by S.B. 1.[8]

D. The Act Will Irreparably Harm Plaintiffs and Their Staff.

Plaintiffs and their physicians and staff will also be irreparably injured by the Act, which eliminates their ability to offer abortion to many South Carolinians who need it. The Act interferes with the ability of Plaintiffs—and their physicians and staff—to provide medical care consistent with their medical judgment and in support of patient wellbeing. *See Joseph v. S.C. Dep't of Lab., Licensing & Regul.*, 417 S.C. 436, 452, 790 S.E.2d 763, 771 (2016) (recognizing physicians' "right to practice medicine in the best interests of their patients"). Plaintiffs and staff will also face reputational harm and harm to their professional licenses from the threat of severe criminal and licensing penalties posed by the Act. These harms too are irreparable. *Peek*, 367 S.C. at 455, 626 S.E.2d at 37 (holding that a physician's "loss of professional practice and career" was an irreparable harm); *Levine*, 367 S.C. at 465 n.3, 626 S.E.2d at 42 n.3 (same).

[8] S.B. 1 tied its rape and incest exceptions to the "post-fertilization" age of the fetus rather than the gestational age as calculated from the first day of the last menstrual period of the pregnant person. *Compare* S.B. 1, § 3 (adding S.C. Code Ann. § 44-41-680(B)) ("the probable post-fertilization age of the fetus is fewer than twenty weeks") *with* S.B. 474, § 2 (amending S.C. Code Ann. § 44-41-610(7)) (defining "'[g]estational age' . . . as calculated from the first day of the last menstrual period of a pregnant woman"). Twenty weeks post-fertilization roughly correlates to 22 weeks LMP. *See* Compl. for Declaratory & Injunctive Relief at 6 n.2.

III. PLAINTIFFS DO NOT HAVE AN ADEQUATE REMEDY AT LAW.

"Equitable relief is generally available only where there is no adequate remedy at law." *Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n*, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989). "An 'adequate remedy' at law is one which is as certain, practical, complete and efficient to attain the ends of justice and its administration as the remedy in equity." *Id.* (citing 27 *Am. Jur. 2d Equity* § 94 (1966)).

No damages award could compensate Plaintiffs and their patients for the harms inflicted by S.B. 474. In the absence of equitable relief from this Court, Plaintiffs do not have an adequate remedy at law to prevent Defendants from enforcing the Act and violating the rights of Plaintiffs' patients under the South Carolina Constitution.

CONCLUSION

In January, the South Carolina Supreme Court made clear that a ban on abortion after approximately six weeks of pregnancy violates South Carolinians' rights. By enacting S.B. 474, a law nearly identical to S.B. 1, the General Assembly and the Governor have disregarded this coordinate branch of government and again unreasonably infringed on South Carolinians' right to privacy. This Court should thus grant Plaintiffs' motion for a temporary restraining order, followed by a preliminary injunction, and enjoin Defendants 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. Plaintiffs respectfully request that the Court waive any security under S.C. R. Civ. P. 65(c), in light of the constitutional interests at stake and Plaintiffs' critical role in

providing medical services to South Carolinians who might otherwise not have access to these services.

Respectfully submitted,

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* *Pro hac vice motions to be filed*

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