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Medical Affairs Committee
South Carolina Senate
Gressette Building, Room 105
1101 Pendleton Street
Columbia, South Carolina 29201

RE: OPPOSE S. 323, South Carolina’s Most Restrictive and Dangerous Proposed Abortion Ban to Date, the “Unborn Child Protection Act”

Dear Committee Members:

The National Women’s Law Center (“The Law Center” or “NWLC”), based in Washington, D.C., is a non-profit legal advocacy organization dedicated to the protection and advancement of legal rights and opportunities for women, girls, and all who face sex discrimination. The Law Center is submitting comments in opposition to Senate Bill 323 (“S. 323”),¹ which would exacerbate South Carolina’s already restrictive and harmful abortion ban. We urge the Committee to oppose this extreme and life-threatening bill.

S. 323 is South Carolina’s most restrictive and dangerous abortion ban proposal to date.² The dangers include (but certainly are not limited to) the criminalization of patients, providers, and helpers; incentivizing the targeting of a pregnant person through civil penalties; potentially chilling access to contraception and fertility care; unnecessary regulation of “non-emergency premature delivery after nineteen weeks of pregnancy;” blocking access to care for young people; and blocking information about health care. The focus of NWLC’s testimony today is twofold: (1) some of the harm S. 323 would cause South Carolinians; and (2) one of the ways S. 323 is contrary to federal law.

1. S. 323 is South Carolina’s most restrictive and dangerous proposed abortion ban to date, and, if passed, it would exacerbate harm South Carolinians already face.

After the U.S. Supreme Court erroneously overturned *Roe v. Wade* in its decision *Dobbs v. Jackson Women’s Health Organization*,³ restrictions and bans on abortion care significantly increased throughout the country. Shortly after the *Dobbs* decision, a six-

¹ South Carolina Senate Bill 323, 126th Session, 2025-2026.

² See Amalia Luxardo, *SC Senate bill is the most extreme, dangerous abortion ban in our history*, SOUTH CAROLINA DAILY GAZETTE (Sept. 16, 2025), <https://scdailygazette.com/2025/09/16/senate-bill-is-the-most-extreme-dangerous-abortion-ban-in-our-history/>.

³ *Dobbs v. Jackson Women’s Health Organization*, 597 U.S. 215 (2022).

week abortion ban went into effect in South Carolina,⁴ worsening health conditions in the state and subjecting South Carolinians to devastating trauma.⁵ Although South Carolina abortion law is already among the most restrictive in the country, S. 323 proposes to push the state's abortion law even further, worsening the already disastrous reproductive health care landscape and making punishment for those seeking, providing, or sharing information about abortion care harsher and more expansive.

One way that S. 323 achieves this is through its language equating embryos and fetuses to children or persons. This language necessarily takes away rights and freedoms of individuals who are or could be pregnant and, in the same stroke of the pen, advances the notion that an embryo or a fetus is a full, living person. Equating fetuses and embryos to children is deeply harmful and does nothing to support strong, healthy families. The consequences of this false correlation have already been felt by South Carolinians, and the harm will only worsen if S. 323 is passed. S. 323 threatens the standard of care South Carolinians receive, including emergency care and other types of reproductive care, such as fertility care. It also opens the door to more government intrusion on pregnant South Carolinians' bodies and lives, undercutting their freedom.

a. S. 323 will exacerbate the already disastrous reproductive health care landscape in South Carolina, increase denials of care, and threaten the standard of health care all South Carolinians receive, including emergency care and fertility care.

S. 323 will cause confusion and further restricts medical interventions that health care providers can take when treating a pregnant patient. Removing several exceptions from the already restrictive abortion law in South Carolina and even unnecessarily regulating "non-emergency premature delivery after nineteen weeks of pregnancy" will cause added confusion for providers and dangerous, if not deadly, harm to pregnant patients across the state. Moreover, legally recognizing a fetus or an embryo as a person puts the fetus or embryo directly at odds with the pregnant patient, leaving health care providers to balance the so-called "rights" of the fetus or embryo against the immediate needs of the living person sitting in front of them.

Although S. 323 is largely about abortion, it can and almost certainly will dictate other forms of health care South Carolinians receive. Restrictive abortion bans not only affect

⁴ Seanna Adcox, *6-week abortion ban takes effect with ruling from SC's all-male Supreme Court*, PALMETTO POLITICS (Aug. 23, 2023), https://www.postandcourier.com/politics/6-week-abortion-ban-takes-effect-with-ruling-from-scs-all-male-supreme-court/article_59cd12fa-41bd-11ee-85fa-13b4841baa68.html.

⁵ Cara Lynn Shultz, *Woman Forced to Carry Fetus for Weeks Despite No Heartbeat: 'Your Womb Becomes a Tomb'*, PEOPLE (May 6, 2025), <https://people.com/woman-forced-to-carry-fetus-no-heartbeat-abortion-law-exclusive-11728304>; Lauren Sausser, *She Was Accused of Murder After Losing Her Pregnancy. SC Woman Now Tells Her Story*, KFF HEALTH NEWS (Sept. 23, 2024), <https://kffhealthnews.org/news/article/pregnancy-loss-criminalization-homicide-south-carolina-college-student/>; Christine Glang, *SC lawmakers are playing politics with women's lives*, SOUTH CAROLINA DAILY GAZETTE (Sept. 24, 2025), <https://scdailygazette.com/2025/09/24/sc-lawmakers-are-playing-politics-with-womens-lives/>.

sexual and reproductive care, but they can impact other forms of health care. In Kentucky, for example, which has a near-total abortion ban, a pregnant patient did not receive the “‘tried and true’ curative treatment for [her] locally advanced cervical cancer” because she was pregnant and living in a state that had only narrow exceptions to its abortion ban.⁶ In addition to oncology, other areas of medicine where a patient could need medication or treatment that is inconsistent with a health pregnancy include neurology, cardiology, and rheumatology.⁷ The language of S. 323 can also have a chilling effect on providers and patients who are seeking to build families via fertility treatments, such as in vitro fertilization (IVF) and other assisted reproductive technology (ART).

Additionally, the exception written in S. 323 for emergency circumstances is wholly insufficient. Access to timely and proper emergency care is critical for anyone who can become or is pregnant. Health care providers who work in states with abortion bans report that their fear of prosecution means that they have deviated from providing the standard of care, including in emergency situations.⁸ This is already true for South Carolina health care providers.⁹ Despite the requirements in longstanding federal law, which mandate that hospitals provide stabilizing care (including abortion care), pregnant women are being denied emergency care around the country largely due to providers’ fear and confusion about restrictive abortion laws.¹⁰ At least one-third of pregnancies involve emergency room visits,¹¹ and up to 15% of pregnancies involve life-threatening conditions during the first trimester.¹² Delays or denials of emergency abortion care can have severe and immediate consequences, including hemorrhage, infection, and, in the most severe cases, death. Patients who are denied emergency abortion care are also subject to long-term health traumas, including loss of fertility, increased risk of heart attack and stroke, and chronic

⁶ Jeannie Baumann, *Abortion Restrictions Weakening Cancer Care, Other Treatments*, BLOOMBERG LAW (Aug. 14, 2023), <https://news.bloomberglaw.com/pharma-and-life-sciences/abortion-restrictions-weakening-cancer-care-other-treatments>.

⁷ “This issue affects also cardiology, neurology, rheumatology and other specialties where patients might need medications that are inconsistent with a healthy pregnancy.” Says Rebecca Spence, chief ethics counsel for the American Society of Clinical Oncology. *Id.*

⁸ National Women’s Law Center, *The Harms of Equating Embryos and Fetuses to Persons Under the Law* (September 2025), <https://nwlc.org/wp-content/uploads/2025/09/All-Part-of-the-Plan-Factsheet-3.pdf>; see also Brittni Frederiksen, et al., *A National Survey of OBGYNs’ Experiences After Dobbs*, KFF (June 21, 2023), <https://www.kff.org/womens-health-policy/a-national-survey-of-obgyns-experiences-after-dobbs/>.

⁹ See, e.g., Christine Glang, *SC lawmakers are playing politics with women’s lives*, SOUTH CAROLINA DAILY GAZETTE (Sept. 24, 2025), <https://scdailygazette.com/2025/09/24/sc-lawmakers-are-playing-politics-with-womens-lives/>.

¹⁰ Amanda Seitz, *Emergency rooms refused to treat pregnant women, leaving one to miscarry in a lobby restroom*, AP NEWS (April 19, 2024), <https://apnews.com/article/pregnancy-emergency-care-abortion-supreme-court-roe-9ce6c87c8fc653c840654de1ae5f7a1c>.

¹¹ Saloni Malik et al., *Emergency Department Use in the Perinatal Period: An Opportunity for Early Intervention*, NATIONAL LIBRARY OF MEDICINE (August 12, 2017), <https://pubmed.ncbi.nlm.nih.gov/28811121/>.

¹² Glenn Goodwin et al., *A National Analysis of ED Presentations for Early Pregnancy and Complications: Implications for Post-Roe America*, THE AMERICAN JOURNAL OF EMERGENCY MEDICINE (August 2023), <https://www.sciencedirect.com/science/article/abs/pii/S073567572300253X?via%3Dihub>.

pelvic pain.¹³ It is up to the health care provider, not lawmakers, to decide what circumstances constitute a medical emergency and what type of stabilizing treatment to provide. The law cannot do the job of a health care provider.

S. 323's threat of stronger punishment for health care providers also will have a detrimental effect on access to health care in the state. In many ways, South Carolinians are already receiving diminished care as a direct result of the state's current abortion ban. For example, a report on maternity care in South Carolina found that "overall, women in South Carolina have a high vulnerability to adverse outcomes due to the [lack of] availability of reproductive health care services."¹⁴ South Carolina's already existing shortage of obstetrician-gynecologists (OB-GYNs)¹⁵ is likely one factor contributing to this diminished care. Compounding the harm of this ongoing crisis, data show that health care providers are actively leaving the state: in South Carolina, applications for senior OB-GYN residencies have dropped by 5.7%, and overall senior residency applications have dropped by 6.7%.¹⁶ The increased penalties health care providers would face if S. 323 were to pass, including up to 30 years in prison, will likely drive even more South Carolina providers to leave.

Fewer health care providers in South Carolina will intensify an already disastrous health crisis in the state. The most recent data on South Carolina's maternal morbidity and mortality rates show that Black women are 4.2 times more likely to die due to a pregnancy complication than white women.¹⁷ A staggering 94.4% of pregnancy-related deaths in the state were deemed preventable, and discrimination "was recognized as a contributing factor in more than one third of the pregnancy-related deaths reviewed."¹⁸ S. 323 will do nothing to improve these dire circumstances in South Carolina. Rather, S. 323 will exacerbate them.

¹³ National Women's Law Center, *Support for Maternal Health Policies Will Not Solve the Crisis in Abortion Access* (April 2023), <https://nwlrc.org/wp-content/uploads/2023/04/MaternalHealthFS.pdf>. Further, patients who develop long-term medical complications from denials of emergency abortion care must stretch their wages to cover ongoing medical treatment or they are forced to forgo treatment—a position that Black and brown women are more likely to face. *Id.*

¹⁴ March of Dimes, *Where You Live Matters: Maternity Care in South Carolina* (2023), <https://www.marchofdimes.org/peristats/assets/s3/reports/mcd/Maternity-Care-Report-SouthCarolina.pdf>.

¹⁵ Amalia Luxardo, *3 years after the fall of Roe, SC is suffering under abortion ban*, SOUTH CAROLINA DAILY GAZETTE (June 17, 2025), <https://scdailygazette.com/2025/06/17/3-years-after-the-fall-of-roe-sc-is-suffering-under-abortion-ban/>.

¹⁶ *Id.*

¹⁷ South Carolina Maternal Morbidity and Mortality Review Committee, *2024 Legislative Brief* (2024), <https://www.scstatehouse.gov/reports/DHEC/South%20Carolina%20Maternal%20Morbidity%20and%20Mortality%20Review%20Committee%202024%20LEGISLATIVE%20BRIEF.pdf>; see also Amalia Luxardo, *3 years after the fall of Roe, SC is suffering under abortion ban*, SOUTH CAROLINA DAILY GAZETTE (June 17, 2025), <https://scdailygazette.com/2025/06/17/3-years-after-the-fall-of-roe-sc-is-suffering-under-abortion-ban/>.

¹⁸ South Carolina Maternal Morbidity and Mortality Review Committee, *2024 Legislative Brief* (2024), <https://www.scstatehouse.gov/reports/DHEC/South%20Carolina%20Maternal%20Morbidity%20and%20Mortality%20Review%20Committee%202024%20LEGISLATIVE%20BRIEF.pdf>.

b. S. 323 exposes pregnant South Carolinians and those who help them to increased surveillance and punishment, potentially creating a chilling effect on South Carolinians seeking any type of pregnancy care.

S. 323 would create new criminal penalties and civil actions targeted specifically at the pregnant person, which not only opens the door to more government intrusion in the lives of pregnant women and anyone who can become pregnant but also allows for government intrusion in the very broad support networks of anyone wanting to so much as learn about an abortion. With the criminal penalties laid out in S. 323, law enforcement will likely subject pregnant and birthing people to increased intrusive investigations of their pregnancy and/or their pregnancy outcome. S. 323 could impede anyone who is pregnant from seeking any type of pregnancy care, not just abortion care, out of fear of criminalization and/or surveillance.

In fact, we know that the people of South Carolina have long been subjected to criminalization related to their pregnancy or pregnancy outcome. According to a report published by Pregnancy Justice, even before the *Dobbs* decision, South Carolina ranked second in the country for criminalizing pregnancy outcomes.¹⁹ In the first year following the *Dobbs* decision, at least 210 pregnant people nationwide were criminally charged for conduct associated with their pregnancy, pregnancy loss, or birth, marking the largest number of cases of pregnancy criminalization in a single year since researchers began tracking them.²⁰ This data indicates a rise in abortion bans can lead to a rise in pregnancy criminalization. The 210 criminal cases were initiated in twelve states, with South Carolina third on the list of states that brought the highest number of prosecutions.²¹ S. 323 will exacerbate these harms by undoubtedly increasing the number of South Carolinians subject to the criminal-legal system simply because they sought or provided medical care related to pregnancy or they helped someone obtain care.

We are concerned that S. 323's significant criminal penalties along with the already high levels of criminalization of pregnant people in South Carolina will stop pregnant people from seeking any type of pregnancy care, not just abortion care. The American College of Obstetricians & Gynecologists opposes criminalization during pregnancy and the postpartum period for this very reason: "Policies and practices that criminalize individuals during pregnancy and the postpartum period create fear of punishment that compromises [the patient-practitioner] relationship and prevents many pregnant people from seeking vital health services."²²

¹⁹ Pregnancy Justice, *South Carolina: The State of Pregnancy Criminalization* (March 2024), <https://www.pregnancyjusticeus.org/wp-content/uploads/2024/03/South-Carolina-Factsheet.pdf>.

²⁰ Wendy A. Bach & Madalyn K. Wasilczuk, *Pregnancy as a Crime: A Preliminary Report on the First Year After Dobbs*, PREGNANCY JUSTICE (September 2024), <https://www.pregnancyjusticeus.org/wp-content/uploads/2024/09/Pregnancy-as-a-Crime.pdf>.

²¹ *Id.*

²² American College of Obstetricians & Gynecologists, *Opposition to Criminalization of Individuals During Pregnancy and the Postpartum Period: Statement of Policy* (July 2024), <https://www.acog.org/clinical->

Importantly, the heightened criminalization of abortion will also deepen the existing health disparities experienced by communities of color and low-income communities. Deep racial disparities already exist when it comes to maternal and infant health,²³ and S. 323 will only cause those disparities to deepen. With law enforcement surveillance already disproportionately impacting communities of color,²⁴ increased surveillance of reproductive and intimate life can further exacerbate the lack of access to reproductive care, as concerns of criminalization can create a chilling effect for those seeking any type of pregnancy care. Low-income communities are also more likely to be subject to invasive surveillance, subjecting these communities to specific and disproportionate privacy harms.²⁵ For example, surveillance can discourage poor communities from accessing financial assistance and government benefit programs due to fears of monitoring.²⁶ If passed, we worry S. 323 will damage the health of communities of color and low-income communities throughout South Carolina.

Moreover, the breadth of criminalized behavior under S. 323 is alarmingly broad. Under S. 323, merely hosting or maintaining a website on the internet could potentially subject a person to up to 30 years of imprisonment. However, S. 323 does not only allow for significant criminal punishment, but it also creates substantial civil penalties as well. S. 323 grants both state actors as well as certain people connected to the pregnant person²⁷ to bring civil action against a pregnant person that, if they prevail, could result in forcing the pregnant person to pay tens of thousands of dollars to those who succeed in such lawsuits. We are concerned about the ways S. 323 emboldens and incentivizes the targeting of pregnant people.

[information/policy-and-position-statements/statements-of-policy/2020/opposition-criminalization-of-individuals-pregnancy-and-postpartum-period.](#)

²³ Latoya Hill et al., *Racial Disparities in Maternal and Infant Health: Current Status and Efforts to Address Them*, KFF (Oct. 25, 2024), <https://www.kff.org/racial-equity-and-health-policy/racial-disparities-in-maternal-and-infant-health-current-status-and-efforts-to-address-them/>.

²⁴ Nicol Turner Lee & Caitlin Chin, *Police Surveillance and Facial Recognition: Why Data Privacy Is Imperative for Communities Of Color*, BROOKINGS (April 12, 2022), <https://www.brookings.edu/research/police-surveillance-and-facial-recognition-why-data-privacy-is-an-imperative-for-communities-of-color/>; Samantha Lai & Brooke Tanner, *Examining the Intersection of Data Privacy and Civil Rights*, BROOKINGS (July 18, 2022), <https://www.brookings.edu/blog/techtank/2022/07/18/examining-the-intersection-of-data-privacy-and-civil-rights/> (discussing how this surveillance predates the digital age).

²⁵ Kaveh Waddell, *How Big Data Harms Poor Communities*, ATLANTIC (April 18, 2016), <https://www.theatlantic.com/technology/archive/2016/04/how-big-data-harms-poor-communities/477423/>; Danielle Keats Citron, *A Poor Mother's Right to Privacy: A Review*, 98 BOS. U. L. REV. (2018), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3100513; see also, Mary Madden, et al., *Privacy, Poverty, and Big Data: A Matrix of Vulnerabilities for Poor Americans*, 95 WASH. U. L. REV. 53, 122 (2017) (discussing “a matrix of overlapping vulnerabilities that low-income communities face in the big data era.”).

²⁶ Mary Madden, et al., *Privacy, Poverty, and Big Data: A Matrix of Vulnerabilities for Poor Americans*, 95 WASH. U. L. REV. 53, 122 (2017).

²⁷ S. 323 would allow for the father of the pregnancy, a maternal or paternal grandparent of the pregnancy, and a parent or legal guardian of a pregnant minor to bring forward a civil action against a pregnant person, with the potential to win tens of thousands of dollars if their lawsuit is successful.

2. S. 323’s removal of exceptions exacerbates already dire circumstances.

Abortion bans, including South Carolina’s current law, often include exceptions, generally in cases of rape, incest, fetal anomaly, to prevent death, or to prevent physical impairment. While exceptions in abortion law are common, they are rarely granted in practice.²⁸ This is true in South Carolina, even with existing exceptions.²⁹ In other words, exceptions are often insufficient or unworkable. In removing the current rape, incest, and fetal anomaly exceptions to South Carolina’s abortion ban without providing similar exceptions, S. 323 will force even more South Carolinians to carry a pregnancy and potentially expose them to health risks. Not only is it unspeakably cruel to force anyone, including a survivor of rape, incest, or someone knowing their pregnancy involves a fatal fetal anomaly, to carry a pregnancy, data repeatedly show “carrying an unwanted pregnancy to term is far riskier to women’s physical health than having an abortion.”³⁰

3. S. 323 requires sex discrimination that violates federal law.

There are various concerns about the legality of S. 323, both constitutional and statutory. While our legal concerns are many, NWLC’s testimony today will focus on just one: the denial of abortion care is sex discrimination, and sex discrimination by health care programs or activities that receive federal funds violates Section 1557 of the Affordable Care Act (“Section 1557”).³¹

Section 1557, the first federal law to broadly prohibit sex discrimination in health care, is a critical federal safeguard that requires covered health care entities to provide equal access to their services without discriminating on the basis of sex.³² The U.S. Department of Health and Human Services acknowledges that pregnancy and related health conditions, including the termination of pregnancy, are sex-based statuses protected from discrimination under Section 1557.³³ Because abortion is sex-based medical care, singling out abortion for unfavorable treatment discriminates on the basis of sex. Therefore, requiring a covered entity to deny abortion care when its providers are competent and willing to provide such care necessarily requires that entity to engage in a discriminatory sex-based denial of health services. Thus, S. 323 would require covered entities to violate Section 1557.

Where compliance with a state law would force a regulated entity to thwart Congress’s fundamental purpose in enacting a federal law—such as eradicating sex discrimination

²⁸ Amy Schoenfeld Walker, *Most Abortion Bans Include Exceptions. In Practice, Few Are Granted*, THE NEW YORK TIMES (Jan. 21, 2023), <https://www.nytimes.com/interactive/2023/01/21/us/abortion-ban-exceptions.html>.

²⁹ Christine Glang, *SC lawmakers are playing politics with women’s lives*, SOUTH CAROLINA DAILY GAZETTE (Sept. 24, 2025), <https://scdailygazette.com/2025/09/24/sc-lawmakers-are-playing-politics-with-womens-lives/>.

³⁰ Advancing New Standards in Reproductive Health, *Introduction to the Turnaway Study* (December 2022), <https://www.ansirh.org/sites/default/files/2022-12/turnawaystudyannotatedbibliography122122.pdf>.

³¹ 42 U.S.C. § 18116.

³² 45 C.F.R. § 92.206.

³³ 45 C.F.R. § 92.101(a)(2).

from health care—federal law preempts.³⁴ If enacted, S. 323 will add to the confusion among South Carolina health care providers about their legal obligations, protections, and threats, and, as we have seen before, it will inevitably lead to unlawful—and potentially deadly—denials of care.

Section 1557 is not S. 323’s only issue regarding legality. In fact, if passed, S. 323 will likely be challenged in court in various constitutional and statutory challenges, which will inevitably point South Carolina’s resources towards litigation, rather than helping South Carolinians or meaningfully supporting South Carolinian families.

Senate Bill 323 is a highly restrictive bill that will bring devastating impact. If passed, it will deeply harm South Carolinians. For the foregoing reasons, we urge you to oppose this dangerous bill.

³⁴ See *Arizona v. United States*, 567 U.S. 387, 399 (2012). The ACA contains a narrow non-preemption provision exempting “State laws regarding the prohibition of (or requirement of) coverage, funding, or procedural requirements on abortions.” This provision would not apply to S. 323, which goes much further by outright prohibiting—and indeed, criminalizing—nearly all abortions, including in emergency situations.