UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

NATALIE DAWN BINGHAM, M.D., M.P.H., *et al*., *Plaintiffs*, v. ALAN McCRORY WILSON, in his official capacity as Attorney General of South Carolina, *et al*., *Defendants,* and HENRY DARGAN McMASTER, in his official capacity as Governor of the State of South Carolina, *Intervenor-Defendant.*	)	CASE NO. 2:25-cv-00163-RMG

PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS

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INTRODUCTION

This Court should reject the Defendants' Motion for Partial Judgment on the Pleadings, which is an ill-disguised attempt at a second bite at the apple. This Court already rejected many of the flawed arguments comprising the Motion in denying Defendants' motion to dismiss the Plaintiff physicians' claim that the Health Exception to South Carolina's Abortion Ban is unconstitutionally vague. *See* Order & Op. (ECF No. 88). That includes the Defendants' faulty reliance on materially different exceptions to other abortion bans whose vagueness under the Constitution has never been tested in court. *See* Mot. to Dismiss (ECF No. 70) at 16–17. The Motion for Partial Judgment on the Pleadings fails to establish any reason to disturb this Court's earlier conclusions.

Apart from that, Defendants overlook the meaningful differences between the Health Exception to South Carolina's Abortion Ban and the medical emergency exception in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), *abrogated by Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022). Unlike the Health Exception to South Carolina's Abortion Ban, the medical emergency exception in *Casey* deferred to the individual physician's good faith clinical judgment. *Compare* S.C. Code Ann. §§ 44-41-640(B)(1)–(C)(1), *with Casey*, 505 U.S. at 879 (quoting 18 Pa. C.S. § 3203 (1990)). And unlike South Carolina, Pennsylvania did not broadly criminalize abortion care, which increases the scrutiny of abortion providers, physicians' fears of misinterpreting any exceptions, and the risk of arbitrary or discriminatory prosecution against them. *See United States v. Williams*, 553 U.S. 285, 304 (2008).

These consequential distinctions apply in equal measure to most of the other exceptions that the Defendants erroneously rely on. Many of the exceptions that the Defendants erroneously rely on *further* differ from the Health Exception because the cost of getting them wrong was

something less than imprisonment.[1] *See Carolina Youth Action Project; D.S. by and through Ford v. Wilson*, 60 F.4th 770, 781 (4th Cir. 2023) (internal citations omitted) ("[L]aws imposing criminal penalties . . . are subject to a stricter standard" than 'purely civil statutes.'").

What is more, the Court in *Casey* did not consider whether the medical emergency exception at issue was unconstitutionally vague. At the same time, the analysis it did conduct unwittingly supports that the Health Exception is unconstitutionally vague. *See Casey*, 505 U.S. at 880 (accepting that preeclampsia could qualify under the medical emergency exception whereas one of the few conditions "presumed" to qualify under the Health Exception is limited to "severe preeclampsia"); S.C. Ann. § 44-41-640(C)(2).

The Defendants misguidedly state that the Supreme Court "must have understood" the exception in *Casey* because it analyzed whether the exception violated the then-federal constitutional right to abortion. Mot. for Partial J. on the Pleadings (ECF No. 105) at 1. But the clarity needed to determine whether a provision burdens abortion access fundamentally differs from the clarity needed to 1) provide fair notice of when personally providing an abortion would expose one to criminal penalties, and the clarity needed to 2) ensure fair enforcement of an abortion restriction. *See Williams*, 553 U.S. at 304. Defendants erect a strawman in protesting that the Fourteenth Amendment requires "'mathematical certainty'" in language or certainty in "hard cases at the margins." Mot. for Partial J. on the Pleadings (ECF No. 105) at 14 (quoting *Grayned v. City of Rockford*, 408 U.S. 104, 110 (1972)). The Plaintiff physicians request neither. What they request is relief from their day-to-day apprehension that providing an abortion to a particular patient pursuant

[1] Notably, only one of the challenged statutes in *Casey* associated with the medical emergency exception imposed criminal penalties. *See* 18 Pa. Cons. Stat. § 3205(c) (establishing criminal penalties for performing an abortion without first obtaining the informed consent specified by law); *id.* § 3205(b) (establishing a medical emergency exception to the informed consent law).

to the standard of care to address her unpredictable, and sometimes-rapidly changing, medical affliction will destroy their lives because the abortion is later determined to fall outside the Health Exception's non-medical and ambiguous language. *See, e.g.*, First Am. Compl. (ECF No. 10) ¶¶ 112–119 ("Am. Compl.") (describing Plaintiff physicians' struggle to determine whether or when "serious risk of a substantial and irreversible impairment of a major bodily function" reaches deep vein thrombosis, diabetes, sickle cell disease, and cancer, among the countless other medical afflictions that can occur during a pregnancy).

Plaintiff physicians respectfully request that this Court deny the Defendants' Motion, which rehashes previously ineffective arguments and suffers from a piecemeal approach to statutes at odds with federal vagueness doctrine.

LEGAL STANDARDS

I. Judgment on the Pleadings

When reviewing a motion for judgment on the pleadings, courts "apply the standard for a Rule 12(b)(6) motion." *Edwards v. City of Goldsboro*, 178 F.3d 231, 243 (4th Cir. 1999). Under that standard, a court must deny the motion unless it "appears certain that the plaintiff cannot prove any set of facts in support of his claim entitling him to relief." *Id.* at 244. The court must "accept all facts pled in the complaint as true and 'draw all reasonable inferences in favor of the plaintiff.'" *Short v. Hartman*, 87 F.4th 593, 603 (4th Cir. 2023) (quoting *Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc.*, 591 F.3d 250, 253 (4th Cir. 2009)). In the context of a civil rights complaint like this one, courts are "especially solicitous of the wrongs alleged" and should not dismiss a complaint "unless it appears to a certainty that the plaintiff would not be entitled to relief *under any legal theory which might plausibly be suggested by the facts alleged*." *Edwards*, 178 F.3d at 244 (internal citation omitted). Ultimately, the standard for a Rule 12(c) motion is "fairly restrictive"

because "hasty or imprudent use of this summary procedure by the courts violates the policy in favor of ensuring to each litigant a full and fair hearing on the merits of his or her claim or defense." *Lewis v. Excel Mechanical, LLC*, No. 2:13-cv-281-PMD, 2013 WL 4585873, at *2 (D.S.C. 2013) (quoting 5C Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1368 (3d 2011)).

II. Void for Vagueness

The void for vagueness doctrine "is rooted in the Due Process Clause of the Fifth and Fourteenth Amendments." *Manning v. Caldwell for City of Roanoke*, 930 F.3d 264, 272 (4th Cir. 2019). A state law violates due process if it "fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement." *Williams*, 553 U.S. at 304. Criminal laws like South Carolina's Abortion Ban are subject to exacting scrutiny because "[t]he essential purpose of the 'void for vagueness' doctrine is to warn individuals of the criminal consequences of their conduct." *Jordan v. De George*, 341 U.S. 223, 230 (1951); *see Kolender v. Lawson*, 461 U.S. 352, 358 n.8 (1983). Serious professional penalties, such as license suspensions or revocations, are quasi-criminal. *See In re Gillespie*, No. 23-CV-1819, 2023 WL 7548181, at *1 (4th Cir. Nov. 14, 2023) ("[A]ttorney disciplinary proceedings are 'of a quasi-criminal nature.'") (quoting *In re Ruffalo*, 390 U.S. 544, 551 (1968)). "[E]ven laws that nominally impose only civil consequences warrant a 'relatively strict test' for vagueness if the law is 'quasi-criminal' and has a stigmatizing effect." *Manning*, 930 F.3d at 273 (quoting *Vill. of Hoffman Ests. v. Flipside, Hoffman Ests., Inc.*, 455 U.S. 489, 498–500 (1982)).

ARGUMENT

I. Defendants' Reliance on *Casey* is Misplaced Because *Casey* Involved a Meaningfully Different Exception and Did Not Consider Whether the Exception Was Unconstitutionally Vague

A. Key Differences Between the Exception in *Casey* and the Health Exception

Defendants improperly point to the following definition of "medical emergency" in *Casey* as proof of the Health Exception's constitutionality: "that condition which, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function." 505 U.S. at 879 (quoting 18 Pa. C.S. § 3203 (1990)).

That is, *Casey* involved a medical emergency exception that allowed physicians to use their "good faith clinical judgment" to determine whether an immediate abortion was medically necessary under the exception's terms. By contrast, the Health Exception to South Carolina's Abortion Ban uses a "reasonable medical judgment" standard. S.C. Code Ann. § 44-41-640(C)(1); *see id.* § 44-41-640(B)(1). That standard subjects physicians to criminal liability and professional discipline if they provide an abortion pursuant to the Health Exception in good faith, but a prosecutor and other physicians second-guess their individual clinical judgment—which is then deemed "unreasonable."[2] *See Colautti v. Franklin*, 439 U.S. 379, 395 (1979), *abrogated on other grounds by Dobbs*, 597 U.S. 215 (2022) ("Because of the absence of a scienter requirement in the provision directing the physician to determine whether the fetus is or may be viable, the statute is little more

[2] "'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." S.C. Code Ann. § 44-41-610(13).

than 'a trap for those who act in good faith.'") (quoting *United States v. Ragen*, 314 U.S. 513, 524 (1942)); Am. Compl. (ECF No. 10) ¶ 123.

Provisions that lack a specific intent requirement, such as the Health Exception, are more susceptible to being unconstitutionally vague. *See Colautti*, 439 U.S. at 395 ("[T]he constitutionality of a vague statutory standard is closely related to whether that standard incorporates a requirement of *mens rea*."); *Papachristou v. City of Jacksonville*, 405 U.S. 156, 163 (1972) ("Nor are they protected from being caught in the vagrancy net by the necessity of having a specific intent to commit an unlawful act."); *Bryce Motor Lines v. United States*, 342 U.S. 337, 342 (1952) ("Th[e] requirement of the presence of culpable intent as a necessary element of the offense does much to destroy any force in the argument that application of the Regulation would be so unfair that it must be held invalid."); *see also United States v. United States Gypsum Co.*, 438 U.S. 422 (1978) ("We start with the familiar proposition that 'the existence of a *mens rea* is the rule of, rather than the exception to, the principles of Anglo-American criminal jurisprudence.'") (quoting *Dennis v. United States*, 341 U.S. 494, 500 (1951)).

In *Women's Medical Professional Corporation v. Voinovich*, for example, the Sixth Circuit held that two health exceptions to a ban on abortion after viability that were remarkably like the Health Exception were unconstitutionally vague because they lacked a specific intent requirement. 130 F.3d 187, 206 (6th Cir. 1997), *abrogated on other grounds by Dobbs*, 597 U.S. 215 (2022). The health exceptions applied if the physician determined "*in good faith and in the exercise of reasonable medical judgment*" that the abortion is necessary to prevent "a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman." *Id.* at 204, 206 (emphasis added) (quoting Ohio Rev. Code Ann. § 2919.17(A)(1) (1996) & *id.* § 2919.16(F) (1995)). The court of appeals reasoned that, contrary to criminal law principles, the reasonable

medical judgment standard meant that "a physician need not act wilfully (sic) or recklessly in determining whether a medical emergency or medical necessity exists in order to be held criminally or civilly liable." *Id.* at 204.

Likewise, Plaintiff physicians need not act willfully or recklessly in determining whether the Health Exception—which lacks any good faith element at all—permits an abortion in a particular circumstance to be held criminally or civilly liable. All that needs to happen is that other physicians credibly disagree that an abortion was reasonable pursuant to the Health Exception's non-medical and convoluted language. *See* Am. Compl. (ECF No. 10) ¶¶ 112–119; *see City of Chicago v. Morales*, 527 U.S. 41, 57 (1999) ("[T]he vagueness that dooms this ordinance is not the product of uncertainty about the normal meaning of 'loitering,' but rather about what loitering is covered by the ordinance and what is not."). This is eminently possible in the field of abortion care, which not only involves the complexity and uncertainty of medicine overall, and pregnancy in particular, but also is extremely contentious. *See, e.g.*, Am. Compl. (ECF No. 10) ¶¶ 114, 118–119, 134, 136, 153; *Planned Parenthood of Wis., Inc. v. Van Hollen*, 738 F.3d 786, 798–99 (7th Cir. 2013) ("Given the passions that swirl about abortion rights and their limitations there is a danger that party experts will have strong biases, clouding their judgments.").

Accordingly, although South Carolina's Abortion Ban is void for vagueness, *see F.C.C. v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012), Plaintiff physicians have requested relief in the alternative that includes the ability to use only their "good faith medical judgment" to determine whether a particular health condition meets the Health Exception's terms. Am. Compl. at 48; *see Fargo Women's Health Org. v. Schafer*, 18 F.3d 526, 534 (8th Cir. 1994) (rejecting plaintiffs' argument that the "major bodily function," "immediate," and "grave" elements of a medical

emergency exception were unconstitutionally ambiguous because "the reference to doctor's clinical judgment save[d] the statute from vagueness").

The medical emergency exception in *Casey* is also meaningfully different from the Health Exception to South Carolina's Abortion Ban because Pennsylvania did not broadly criminalize abortion. In *Casey*, Pennsylvania allowed abortion up to viability, and instead restricted access to abortion in particular ways—including informational requirements and parental notification for minors—that included medical emergency exceptions. 505 U.S. at 844, 846. By contrast, South Carolina criminalizes abortion in most circumstances, so abortion is de facto suspect. *See* S.C. Code Ann. § 44-41-630(B). In other words, the Health Exception is one of the extremely few and therefore conspicuous grounds for providing abortion care. *See* S.C. Code Ann. §§ 44-41-610–690. This increases the scrutiny of abortion providers, which both increases physicians' fears of misinterpreting the Health Exception and the risk of arbitrary or discriminatory enforcement against them.[3] *See* Am. Compl. (ECF No. 10) ¶ 129 & 129 n.16, ¶ 130 & n.17. Greater notice is required of when someone's conduct would violate a law when the law imposes criminal penalties because the price of getting it wrong is one's personal freedom. *Jordan*, 341 U.S. at 230; *see*

[3] The Defendants also mistakenly cite an inapposite 1983 Pennsylvania medical emergency exception: "That condition which, on the basis of the physician's best clinical judgment, so complicates a pregnancy as to necessitate the immediate abortion of same to avert the death of the mother or for which a 24–hour delay will create grave peril of immediate and irreversible loss of major bodily function." Mot. for Partial J. on the Pleadings (ECF No. 105) at 7; *Casey*, 505 U.S. at 978 n.3 (Rehnquist, J., concurring in the judgment in part and dissenting in part) (citing 18 Pa. Cons. Stat. § 3203 (1983)). That exception deferred to "the physician's best clinical judgment" and therefore eased the uncertainty plaguing the reasonable medical judgment standard. 18 Pa. Cons. Stat. § 3203 (1983). To make matters worse, no court ever considered whether the exception was unconstitutional, much less unconstitutionally vague. The Supreme Court's purported reference to the exception with "apparent approval" concerned the availability of a medical emergency exception, not its scope. *Casey*, 505 U.S. at 978 (Rehnquist, C.J., concurring in the judgment in part and dissenting in part); *Thornburgh v. Am. Coll. of Obstetricians & Gynecologists*, 476 U.S. 747, 771 (1986), *abrogated on other grounds by Dobbs*, 597 U.S. 215 (2022).

Kolender, 461 U.S. at 358 n.8. Sufficient notice is especially important when the challenged provision not only carries criminal penalties, but the overall conduct at issue is presumptively criminal.

B. *Casey* Lacks a Vagueness Analysis

Casey is also immaterial to the Health Exception's constitutionality because it did not consider whether the medical emergency exception was unconstitutionally vague. Rather, "[p]etitioners argue[d] that the definition [wa]s too narrow" and therefore violated the then-right to abortion. *Casey*, 505 U.S. at 880.

Although *Casey* said nothing about the medical emergency exception's vagueness as a constitutional matter, the Court's analysis unwittingly supports that the Health Exception is unconstitutionally vague. *Id.* The Court noted that the district court had held that the medical emergency exception violated the then-right to abortion because it did not cover certain conditions, including "preeclampsia." *Id.* But the Supreme Court credited the Court of Appeals' conclusion that the exception covered the conditions because "it is undisputed that under some circumstances each of these conditions could lead to an illness with substantial and irreversible consequences." *Id.* While *Casey* accepted that the exception in that case covered preeclampsia, South Carolina's General Assembly has limited the medical conditions "presumed" to "constitute a risk of death or serious risk of a substantial and irreversible physical impairment of a major bodily function" to "*severe* preeclampsia." S.C. Code Ann. § 44-41-640(C)(2) (emphasis added). This leaves the Plaintiff physicians in the unenviable position of deciphering when "preeclampsia" becomes "severe preeclampsia" from the legislature's perspective, and whether mere "preeclampsia" as opposed to "severe preeclampsia" justifies an abortion under the Health Exception. *See* Am. Compl. (ECF No. 10) ¶¶ 112–13, 116.

The Defendants wrongly contend that the Supreme Court must have understood the medical emergency exception to "pass on [its] constitutionality." See Mot. for Partial J. on the Pleadings (ECF No. 105) at 2. They inappropriately conflate the clarity needed to determine whether a provision burdens abortion access with the clarity needed to 1) provide fair notice of when personally providing an abortion would expose one to criminal penalties, and the clarity needed to 2) ensure fair enforcement of an abortion restriction. *See Williams*, 553 U.S. at 304.

To illustrate, unlike the Plaintiff physicians and enforcement officials, the Supreme Court never needed to determine when, if ever, the relevant exception permitted a physician to terminate a pregnancy that is rapidly exacerbating a specific patient's kidney disease, with uncertain long-term effects, *see* Am. Compl. (ECF No. 10) ¶¶ 116, 118, or the pregnancy of a diabetic patient at indeterminate risk for sepsis, *see id.* ¶¶ 112 –14, 116, 118. Put differently, unlike the Plaintiff physicians and enforcement officials, the Supreme Court did not need to determine how to *apply* an exception in the countless number of complex and unpredictable scenarios that can occur during a pregnancy. As in *Colautti*, the Plaintiff physicians try to determine whether an abortion is permitted "after considering a number of variables." 439 U.S. at 395; *see Voinovich*, 130 F.3d at 205 ("The determination of whether a medical emergency or necessity exists, like the determination of whether a fetus is viable, is fraught with uncertainty and susceptible to being subsequently disputed by others."); Am. Compl. (ECF No. 10) ¶¶ 113, 116–17. "In the face of these uncertainties, it is not unlikely that experts will disagree over whether" something constitutes a "serious risk of a substantial or irreversible impairment of a major bodily function." *Colautti*, 439 U.S. at 396; S.C. Code Ann. § 44-41-640(B); *see* Am. Compl. (ECF No. 10) ¶¶ 120–21. "The prospect of such disagreement, in conjunction with a statute imposing strict civil and criminal liability for an erroneous determination" . . . could have a profound chilling effect on the willingness of physicians to

perform abortions . . . in the manner indicated by their best medical judgment." *Colautti*, 439 U.S. at 396; *see Planned Parenthood, Sioux Falls Clinic v. Miller*, 63 F.3d 1452, 1465 (8th Cir. 1995) ("We also hold that, without a scienter requirement, this strict criminal-liability statute will have a 'profound chilling effect on the willingness of physicians to perform abortions.'") (quoting *Colautti*, 439 U.S. at 296); *see, e.g.*, Am. Compl. (ECF No. 10) ¶¶ 110, 125, 127.

Indeed, just last year, a three-judge Tennessee court held that the plaintiffs were likely to succeed on the merits of their claim that a "Medical Necessity Exception" to an abortion ban virtually identical to the Health Exception is unconstitutionally vague under the state constitution.[4] *Blackmon v. Tennessee*, No. 23-1196-IV(I), at 24–26 (Tenn. Ch. Oct. 17, 2024) (concerning Tenn. Code Ann. § 39-15-213(c)). The court noted that "the issue of which conditions, and the timing of when they present and escalate to life-threatening conditions, constitute medical emergencies within the Medical Necessity Exception is demonstrably unclear, notwithstanding the 'reasonable medical judgment' of the physician standard set forth in the Exception." *Id.* at 21. The court also considered instances of a medical center "routinely discussing whether to provide abortion care and declining to do so because it is unclear whether [doctors] would be protected from prosecution." *Id.* at 25; *see* Am. Compl. (ECF No. 10) ¶¶ 121, 127 ("Dr. Seal lacked the approval needed to intervene until the patient was on the brink of needing dialysis. Until then, Dr. Seal's hospital could not conclude that her condition was 'irreversible enough.'")

Unlike in *Casey*, one of the key questions in both *Blackmon* and this case is whether the relevant exception provides fair notice to the physicians it regulates, and the officials entrusted

[4] "The Fourteenth Amendment to the United States Constitution and Article I, section 8 of the Tennessee Constitution are synonymous and provide the same protection with regard to the vagueness doctrine." *Nunn v. Tenn. Dep't of Corrs.*, 547 S.W.3d 163, 195 n.20 (Tenn. Ct. App. 2017) (citing *City of Knoxville v. Entm't Res., LLC*, 166 S.W.3d 650, 655 (Tenn. 2005)).

with enforcing it, in the circumstances in which it arguably applies. *Williams*, 553 U.S. at 304. In claiming that the Health Exception "has a discernable meaning when it comes to abortion regulation" even if "*it has no inherent meaning in medicine*," Mot. for Partial J. on the Pleadings (ECF No. 105) at 13 (emphasis added), Defendants ignore that physicians are the focus of the vagueness inquiry and of this Court's prior order. Order and Op. (ECF No. 88) at 5 ("[T]aking the allegations in Plaintiffs' Complaint as true, the use of terms that are not commonly employed by medical professions in their practice fails to provide Plaintiffs fair notice of what conduct falls outside the Health and Fatal Fetal Anomaly Exceptions and potentially subjects them to criminal liability and the loss of their medical licenses."); *see McCormack v. Herzog*, 788 F.3d 1017, 1031 (9th Cir. 2015); *abrogated by Dobbs*, 597 U.S. 215 (holding that challenged abortion restriction was unconstitutionally vague because its words were not "terms of art with specific definitions in the medical context"); *see also Planned Parenthood S. Atl. v. Stein*, 742 F.Supp.3d 472, 484 (M.D. N.C. 2024) (holding that requirement to confirm intrauterine pregnancy before providing a medication abortion was unconstitutionally vague in part because "[l]aw enforcement officials may not be familiar with the medical community's understanding of the term 'probable intrauterine pregnancy'").

II. Defendants' Reliance on Exceptions to Other Laws is Misplaced Because the Vast Majority of Those Exceptions Are Materially Different

A. Key Differences Between Exceptions to Other Abortion Restrictions and Bans and the Health Exception

Defendants already unsuccessfully argued that the Health Exception to South Carolina's Abortion Ban is not unconstitutionally vague because exceptions to other abortion bans contain

some of the same language.[5] *See* Mot. to Dismiss (ECF No. 70) at 15–16. Defendants have offered no reason to disturb this Court's holding rejecting that argument.

Defendants compound their error here by citing a host of exceptions to a wide variety of abortion restrictions that, like the exceptions to other abortion bans, contain some of the same language as the Health Exception, but are materially different for the purposes of unconstitutional vagueness.[6] And as in *Casey*, courts have not considered whether the vast majority of the exceptions that Defendants erroneously rely on are unconstitutionally vague.[7]

As **Exhibit A** reflects, unlike the Health Exception to South Carolina's Abortion Ban, almost all of the exceptions to the wide variety of abortion restrictions cited by Defendants 1) defer

[5] *Students Engaged in Advancing Texas v. Paxton*, 765 F. Supp. 3d 575, 603 (W.D. Tex. 2025), is distinguishable from this case because "Plaintiffs ha[d] not at th[at] stage provided evidence demonstrating the term's vagueness when it appears" in the challenged statute. As this Court's order on Defendants' motion to dismiss confirmed, the Plaintiff physicians have met their burden at this stage in this case. Order and Op. (ECF No. 88) at 5. Moreover, the court in *Paxton* "decline[d] to reach th[e vagueness] ground" because it had already "enjoined the statute on the grounds that it fail[ed] strict scrutiny." 765 F. Supp. 3d at 603.

[6] *Rose v. Locke*, 423 U.S. 48, 50 (1975), and *Brown v. City of Albion*, 136 F.4th 331, 345 (6th Cir. 2025), are inapposite. In *Rose*, the U.S. Supreme Court emphasized that the state Supreme Court had twice confirmed that the language at issue included the plaintiff's conduct. 423 U.S. at 52 (citing *Fisher v. State*, 277 S.W.2d 340 (Tenn. 1955) and *Sherrill v. State*, 321 S.W.2d 811, 812 (1959)). And in *Brown*, the words at issue were either defined by the challenged ordinance or had "ordinary meanings," 136 F.4th at 345, which are insufficient to notify physicians of how they can practice medicine without risking incarceration. Consequently—and unlike the present case—the plaintiff in *Brown* "c[ould] point to no term . . . that ha[d] an ambiguous meaning," and she failed to "suggest some meaning other than the one proposed [by the court]" or "indicate that any of th[e] terms leave substantial discretion to the enforcing officers as to who or what might fall into one of the defined categories." *Id.* at 345–46; *see* Am. Compl. (ECF No. 10) ¶¶ 111–19, 122–23, 127.

[7] There are several reasons why physicians may not have challenged these exceptions as unconstitutionally vague apart even from their material differences from the Health Exception. For instance, the abortion restriction was challenged on a basis other than vagueness, potentially making any vagueness in the exception moot. Additionally, the fear of having provided a criminally prohibited abortion in the past because of an exception's unconstitutional vagueness may chill physicians from coming forward with a vagueness claim. *See* Am. Compl. (ECF No. 10) ¶¶ 123–24, 129–31.

to the physician's good faith clinical judgment, *see supra* at 5-8; 2) are associated with abortion restrictions that lack criminal penalties, *see supra* at *id*. and/or 3) are associated with abortion restrictions that were challenged on a basis other than vagueness—usually the then-federal abortion right—potentially making any vagueness in the exception moot. Moreover, unlike the Health Exception to South Carolina's Abortion Ban, the exceptions to the wide variety of abortion restrictions were not one of the extremely few, non-criminal grounds for providing legal abortion care in the state. *See supra* at 12-13.

As **Exhibit B** reflects, unlike the Health Exception to South Carolina's Abortion Ban, every abortion ban exception that the Defendants erroneously rely on 1) allows the physician to exercise their good faith clinical judgment, *see infra* at 15-16; and/or 2) is associated with an abortion ban that was challenged on a basis other than vagueness—usually under a state constitution—potentially making any vagueness in the exception moot.

B. Key Differences Between the EMTALA Provision and the Health Exception

The Defendants' reference to EMTALA remains puzzling for at least two reasons. *See* Mot. to Dismiss (ECF No. 70) at 15–16. First, the EMTALA provision most analogous to the Health Exception, "emergency medical condition," is far more detailed than the Health Exception. In addition to "serious impairment to bodily functions" and "serious dysfunction of any bodily organ or part," the EMTALA provision identifies "a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy . . . ." 42 U.S.C. § 1395dd(e)(1)(A)(i)–(ii).

Second, the Defendants' reliance on EMTALA is hard to square with *Moyle v. United States*, the crux of which was disagreement over whether EMTALA—notwithstanding its more detailed provision—requires abortion care in any circumstances. 603 U.S. 324, 328 (2024) (Kagan, J., concurring) ("EMTALA requires hospitals to provide abortions that Idaho's law prohibits."); *id.* at 361 (Alito, J., dissenting) ("Far from requiring hospitals to perform abortions, EMTALA's text unambiguously demands that Medicare-funded hospitals protect the health of both a pregnant woman *and* her 'unborn child.'") (quoting 42 U.S.C. § 1395dd(e)(1)(A)(i)). Thus, EMTALA's disparate language, which itself is fiercely disputed, has no bearing on the constitutionality of the Health Exception here.

C. Key Differences Between Prior Exceptions to South Carolina Abortion Restrictions and the Health Exception

That two prior South Carolina medical emergency exceptions included "serious risk" and "substantial and irreversible impairment of a major bodily function" scarcely converts the unconstitutionally vague Health Exception into a constitutional one. *See* Mot. for Partial J. on the Pleadings (ECF No. 105) at 12 –13.

Like virtually every other exception that the Defendants improperly point to, the prior medical emergency exceptions differ meaningfully from the Health Exception. Specifically, 1995 South Carolina Acts Number 1, Section 8, allowed a physician to exercise her "good faith judgment." This gave her solace that she would not be convicted of a crime or stripped of her hard-earned livelihood and reputation for an honest mistake motivated by her calling to protect her patients. *See* Am. Compl. (ECF No. 10) ¶¶ 128–129. Like most others subject to criminal penalties, she would need to act willfully or recklessly in determining whether a provision permitted particular conduct to suffer life-altering penalties. *See Voinovich*, 130 F.3d at 204.

Additionally, abortion care was not broadly criminalized and de facto suspect in 1995 or 2016, so the exceptions were not one of the rare grounds for providing abortion care. Thus, the scrutiny of abortion providers, their fears of misinterpreting the exceptions, and the risk of arbitrary or discriminatory prosecution against them was worlds apart. *See supra* at 1, 8.

Defendants' approach to prior South Carolina medical emergency exceptions suffers from the same fatal flaws as their other contentions. The constitutional right to be free from unduly vague laws requires courts to consider a challenged provision in its entirety. *See, e.g.*, *Stover v. Fingerhut Direct Mktg., Inc.*, 709 F. Supp. 2d 473, 483 (S.D.W. Va. 2009) ("The Court looks to a statute as a whole, not at disembodied fragments, to assess whether its commands are impermissibly vague.") (citing *Grayned*, 408 U.S. at 110). In this case, the notion that 1) deference to a physician's good faith clinical judgment, 2) a lack of criminal penalties, or 3) a climate in which abortion care is widely available would not mitigate the undue vagueness of "serious risk of a substantial and irreversible impairment of a major bodily function" defies decades of federal precedent. *See, e.g.*, *Colautti*, 439 U.S. at 395; *Jordan*, 341 U.S. at 230.

Defendants' insistence that the Health Exception must be intelligible to the physicians because they "aren't constantly being imprisoned or having their licenses revoked" is short-sighted. Mot. for Partial J. on the Pleadings (ECF No. 105) at 13. Defendants overlook that the Constitution protects individuals from being chilled from engaging in lawful behavior, *Colautti*, 439 U.S. at 396, as the Plaintiff physicians are, *see, e.g.*, Am. Compl. (ECF No. 10) ¶¶ 5, 157, and from being wracked with uncertainty over whether they have inadvertently violated the law, *see City of Chicago*, 527 U.S. at 58 ("No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes.") (internal citation omitted), as the Plaintiff physicians are, *see, e.g.*, Am. Compl. (ECF No. 10) ¶¶ 123–24, 129.

III. Defendants Misconstrue the Void for Vagueness Standard

Defendants argue, without any basis, that the Health Exception has a "constitutional 'core' in the sense that [it] 'appl[ies] without question to certain activities,' even though [its] application in marginal situations may be a close question." *Doe v. Cooper*, 842 F.3d 833, 842 (4th Cir. 2016) (quoting *Parker v. Levy*, 417 U.S. 733, 755–56, (1974)); *see* Mot. for Partial J. on the Pleadings (ECF No. 105) at 13–14. There are two glaring problems with this. First, Defendants never identify what these activities are. By contrast, the Plaintiff physicians have identified numerous concrete examples of how they struggle to apply "serious risk of a substantial and irreversible impairment of a major bodily function." *See, e.g.*, Am. Compl. (ECF No. 10) ¶¶ 112–119 (expressing profound uncertainty about whether or when an abortion would be permissible for a patient afflicted with heart disease, severe hypertension, kidney disease, or cancer).

Second, and as *Cooper* itself recognizes in the next breath, "an unconstitutionally vague statute may still have some clearly constitutional applications." *Cooper*, 842 F.3d at 842. The Supreme Court has flatly rejected the theory that a "vague provision is constitutional merely because there is some conduct that clearly falls within the provision's grasp." *Johnson v. United States*, 576 U.S. 591, 602 (2015). For instance, a law that forbids grocers from charging an "unjust or unreasonable rate" is void for vagueness "even though charging someone a thousand dollars for a pound of sugar would surely be unjust and unreasonable." *Id.* (internal citation omitted).

Lastly, Defendants persist in mistakenly relying on *Moody v. NetChoice*, *LLC*, 603 U.S. 707 (2024). *See* Mot. to Dismiss (ECF No. 70) at 15. Unlike this case, *Moody* concerned a First Amendment overbreadth claim. *Id.* at 723–24. In any case, the Health Exception has no "plainly legitimate sweep" because, as discussed throughout this brief, it "specifies no standard" of conduct. *Id.* at 744; *Cooper*, 842 F.3d at 838, 842–44 (holding that ban on registered sex offenders "at

any place where minors gather for regularly scheduled educational, recreational, or social programs" specified no standard of conduct and was thus unconstitutionally vague) (internal citation omitted). Defendants also persist in mistakenly relying on the non-exhaustive list of eleven conditions "presumed" to satisfy the Health Exception. *See* Mot. to Dismiss (ECF No. 70) at 13–14 (quoting S.C. Code Ann. § 44-41-640(C)(2)). The fact remains that the complex and often unpredictable field of medicine is not one of the "circumstances" where "[t]he existence of clear examples of conduct covered by a law . . . insulate the law against an accusation of vagueness." *URI Student Senate v. Town of Narragansett*, 631 F.3d 1, 14 (1st Cir. 2011) (explaining that statutory examples "*may*, in certain circumstances" help create clarity (emphasis added)). The eleven conditions fail to provide any notice of how the Health Exception applies to the countless other medical afflictions that sometimes unexpectedly arise during pregnancy. *See Moyle*, 603 U.S. at 328 (Kagan, J., concurring) (describing many serious health conditions that arise "as a matter of medical reality" during pregnancy).

CONCLUSION

This Court should deny the Defendants' Motion for Partial Judgment on the Pleadings.

Dated: September 5, 2025

Respectfully submitted,

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EXHIBIT A

Medical Emergency Exceptions to Various Abortion Restrictions

Exception	Language	Distinguishing Factors
Ala. Code § 26-23A-3(5), Informational requirements for abortion	(5) Medical emergency. That condition which, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or in which a delay will create serious risk of substantial and irreversible impairment of a major bodily function.	"good faith clinical judgment"
Alaska Stat. Ann. 18.16.060(d)(2), Informational requirements for abortion	In this subsection, "medical emergency" means a condition that, on the basis of a physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman that . . . (2) a delay in providing an abortion will create serious risk of substantial and irreversible impairment of a major bodily function of the woman.	"good faith clinical judgment"
Ariz. Rev. Stat. Ann. § 36-2151(9), Various abortion restrictions	9. "Medical emergency" means a condition that, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function.	"good faith clinical judgment"
Ariz. Rev. Stat. Ann. § 36-2152(H)(2), Parental consent for abortion	H. Parental consent or judicial authorization is not required under this section if either: . . . . 2. The attending physician certifies in the pregnant minor's medical record that, on the basis of the physician's good faith clinical judgment, the pregnant minor has a condition that so complicates her medical condition as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of major bodily function.	"good faith clinical judgment"
Ariz. Rev. Stat. Ann. § 36-2152(F) (1996), Parental consent for abortion	F. Parental consent or judicial authorization is not required under this section if the attending physician certifies in the pregnant minor's medical record that, on the basis of the physician's good faith clinical judgment, the pregnant minor has a condition that so complicates her medical condition as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of major bodily function and there is insufficient time to obtain the required parental consent or judicial authorization.	"good faith clinical judgment" Plaintiffs argued that the medical emergency exception was vague, but the court did not reach the issue because it held that the parental consent requirement was unconstitutional. *Planned Parenthood of S. Ariz. & its Corp. Chapter, Ariz. Women's Clinic, Inc. v. Neely*, 942 F. Supp. 1578, 1583 (D. Ariz.

Exception	Language	Distinguishing Factors
		1996), *rev'd on other grounds*, 130 F.3d 400 (9th Cir. 1997).
Ark. Code Ann. § 20-16-602(b)(3)(A)(ii), Informational requirements for abortion	(i) The death of the pregnant woman; or (ii) Serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions.	No criminal penalties Apart from the medical emergency exception, statute also includes a health exception that does not limit the physician to the exercise of reasonable medical judgment: (1)(A) "Abortion" means the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of a woman, with knowledge that the termination by any of those means will with reasonable likelihood cause the death of the unborn child. (B) An act under subdivision (b)(1)(A) of this section is not an abortion if the act is performed with the intent to: (i) Save the life or preserve the health of the unborn child or the pregnant woman;
Colo. Rev. Stat. Ann. § 13-22-703(5), Parental notice for abortion	(5) "Medical emergency" means a condition that, on the basis of the physician's good-faith clinical judgment, so complicates the medical condition of a pregnant minor as to necessitate a medical procedure necessary to prevent the pregnant minor's death or for which a delay will create a serious risk of substantial and irreversible impairment of a major bodily function.	"good-faith clinical judgment" No criminal penalties Abortion restriction challenged on bases other than vagueness, potentially making any vagueness in the exception moot. *See Cohen v. Polis*, No. 2025CV32424 (July 8, 2025).
Del. Code Ann. tit. 24, § 1782(5), Parental notice for abortion for minors under sixteen	(5) "Medical emergency" means that condition which, on the basis of the physician or other medically authorized person's good faith clinical judgment, so complicates the medical condition of the pregnant minor as to necessitate the immediate abortion of her pregnancy to avert her death or for which delay will create serious risk of substantial and irreversible impairment of a major bodily function.	"good faith clinical judgment"

Exception	Language	Distinguishing Factors
Fla. Stat. Ann. § 390.01114(2)(d), Parental consent and notice for abortion	"Medical emergency": a condition that, on the basis of a physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate termination of her pregnancy to avert her death, or for which a delay in the termination of her pregnancy will create serious risk of substantial and irreversible impairment of a major bodily function	"good faith clinical judgment"
Idaho H.B. 351, § 2 (2005)	(7) "Medical emergency" means a condition which, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function.	"good faith clinical judgment"
1995 Ind. Legis. Serv. P.L. 187, § 2, Waiting period and informational requirements for abortion	As defined in Public Law 187, a "medical emergency" means a condition that, on the basis of the attending physician's good faith clinical judgment, complicates the medical condition of a pregnant woman so that it necessitates the immediate termination of her pregnancy to avert her death or for which a delay would create serious risk of substantial and irreversible impairment of a major bodily function. *A Woman's Choice E. Side Women's Clinic v. Newman*, 904 F. Supp. 1434, 1441 (S.D. Ind. 1995).	"good faith clinical judgment" The court acknowledged that the medical emergency exception may fail to provide fair notice to physicians. *Id.* at 1473 ("[A]s defendants have requested, the court will certify the state law issues of statutory interpretation for decision by the Supreme Court of Indiana before this court makes a final decision on the constitutional issues in this case . . . . [T]he Indiana courts might reasonably consider the plight of the physician—facing severe legal and professional sanction if she errs in one direction and avoidable harm to her patient if she errs in the other—in deciding how to construe the language of the statute.").
Ind. Code § 16-18-2-223.5, Various abortion restrictions	Sec. 223.5. "Medical emergency", for purposes of IC 16-34, means a condition that, on the basis of the attending physician's good faith clinical judgment, complicates the medical condition of a pregnant woman so that it necessitates the immediate termination of her pregnancy to avert her death or for which a delay would create serious risk of substantial and irreversible impairment of a major bodily function.	"good faith clinical judgment"

Exception	Language	Distinguishing Factors
Iowa Code Ann. § 146A.1(6)(a), Various abortion restrictions	6. As used in this section: a. "Medical emergency" means a situation in which an abortion is performed to preserve the life of the pregnant woman whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy, but not including psychological conditions, emotional conditions, familial conditions, or the woman's age; or when continuation of the pregnancy will create a serious risk of substantial and irreversible impairment of a major bodily function of the pregnant woman.	Does not limit the physician to the exercise of reasonable medical judgment No criminal penalties
Kan. Stat. Ann. § 65-6701(g), Various abortion restrictions	(g) "Medical emergency" means a condition that, in reasonable medical judgment, so complicates the medical condition of the pregnant woman as to necessitate the immediate abortion of such woman's pregnancy to avert the death of the woman or for which a delay necessary to comply with the applicable statutory requirements will create serious risk of substantial and irreversible physical impairment of a major bodily function.	Some of the abortion restrictions challenged on bases other than vagueness, potentially making any vagueness in the exception moot. *See Hodes & Nauser, MDs, P.A. v. Kobach*, 551 P.3d 37 (Kan. 2024).
Mich. Comp. Laws Ann. § 722.902(b), Parental notice for abortion	(b) "Medical emergency" means that condition which, on the basis of a physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate an immediate abortion of that woman's pregnancy to avert her death, or for which a delay in performing an abortion will create serious risk of substantial and irreversible impairment of a major bodily function.	"good faith clinical judgment"
1991 Miss. Laws Ch. 439, § 1 (H.B. 982), Waiting period and informational requirements for abortion	(b) "Medical emergency" means that condition which, on the basis of the physician's best clinical judgment, so complicates a pregnancy as to necessitate an immediate abortion to avert the death of the mother or for which a twenty-four-hour delay will create grave peril of immediate and irreversible loss of major bodily function.	"best clinical judgment" *See Barnes v. Moore*, 970 F.2d 12, 15 (5th Cir. 1992) ("Nevertheless, the Mississippi Act allows physicians to rely on their 'best clinical judgment', § 41–41–31(b); and they are subject to criminal penalties only if they 'purposefully, knowingly, or recklessly' violate the Act, § 41–41–39.").
Mo. Ann. Stat. § 188.030(1)	1. Except in the case of a medical emergency, no abortion of a viable unborn child shall be performed or induced unless the abortion is necessary to preserve the life of the pregnant woman whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the	Does not limit the physician to the exercise of reasonable medical judgment Includes clarifying language that is missing from the Health

Exception	Language	Distinguishing Factors
	pregnancy itself, or when continuation of the pregnancy will create a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman. For purposes of this section, "major bodily function" includes, but is not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.	Exception to South Carolina's Abortion Ban
Mont. Code Ann. § 50-20-303(1), Informational requirements for abortion	(1) "Medical emergency" means a condition that, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of the woman's pregnancy to avert the woman's death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function.	"good faith clinical judgment" No criminal penalties
N.H. Rev. Stat. Ann. § 329:44(III), Various abortion restrictions	III. For the purposes of this subdivision only, "medical emergency" means a condition in which an abortion is necessary to preserve the life of the pregnant woman whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself, or when continuation of the pregnancy will create a serious risk of substantial and irreversible impairment of a major bodily function, as defined in RSA 329:43, V, of the pregnant woman.	Does not limit the physician to the exercise of reasonable medical judgment
N.C. Gen. Stat. Ann. § 90-21.86, Various abortion restrictions	When a medical emergency compels the performance of an abortion, the physician shall inform the woman, before the abortion if possible, of the medical indications supporting the physician's judgment that an abortion is necessary to avert her death or that a 72-hour delay will create a serious risk of substantial and irreversible impairment of a major bodily function, not including psychological or emotional conditions. As soon as feasible, the physician shall document in writing the medical indications upon which the physician relied and shall cause the original of the writing to be maintained in the woman's medical records and a copy given to her.	"physician's judgment" No criminal penalties
N.D. Cent. Code Ann. § 14-02.1-02(10), Various abortion restrictions	10. "Medical emergency" means a condition that, in reasonable medical judgment, so complicates the medical condition of the pregnant woman that it necessitates an immediate abortion to prevent her death or a serious health risk. 14. "Serious health risk" means a condition that, in reasonable medical judgment, complicates the medical condition of the pregnant woman so that it	

Exception	Language	Distinguishing Factors
	necessitates an abortion to prevent substantial physical impairment of a major bodily function, not including any psychological or emotional condition.	
1991 North Dakota Laws Ch. 141, § 2 (H.B. 1579), Waiting period and informational requirements for abortion	"Medical emergency'' means that condition which, on the basis of the physician's best clinical judgment, so complicates a pregnancy as to necessitate an immediate abortion to avert the death of the mother or for which a twenty-four hour delay will create grave peril of immediate and irreversible loss of major bodily function.	"best clinical judgment" *Fargo Women's Health Org. v. Schafer*, 18 F.3d 526, 534 (8th Cir. 1994) (holding that medical emergency exception was not unconstitutionally vague because, "[l]ike the Pennsylvania Act found constitutional in *Casey*, which allows the physician to rely on his or her 'good faith clinical judgment,' the North Dakota Act allows the physician to rely on his or her 'best clinical judgment' in determining whether a condition constitutes a medical emergency").
Ohio Rev. Code Ann. § 2919.16(F), Various abortion restrictions	(F) "Medical emergency" means a condition that in the physician's good faith medical judgment, based upon the facts known to the physician at that time, so complicates the woman's pregnancy as to necessitate the immediate performance or inducement of an abortion in order to prevent the death of the pregnant woman or to avoid a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman that delay in the performance or inducement of the abortion would create. (K) "Serious risk of the substantial and irreversible impairment of a major bodily function" means any medically diagnosed condition that so complicates the pregnancy of the woman as to directly or indirectly cause the substantial and irreversible impairment of a major bodily function. A medically diagnosed condition that constitutes a "serious risk of the substantial and irreversible impairment of a major bodily function" includes pre-eclampsia, inevitable abortion, and premature rupture of the membranes, may include, but is not limited to, diabetes and multiple sclerosis, and does not include a condition related to the woman's mental health.	"Good faith medical judgment" Includes clarifying language that is missing from the Health Exception to South Carolina's Abortion Ban Some abortion restrictions challenged on bases other than vagueness, potentially making any vagueness in the exception moot. *See Planned Parenthood Sw. Ohio Region et al. v. Ohio Dep't of Health et al.*, No. A 2203203 (Ohio Ct. Com. Pl. Hamilton Cnty., Aug. 29, 2024).
2005 Okla. Sess. Law Serv. Ch. 200, § 6	4. "Medical emergency" means any condition which, on the basis of the physician's good-faith clinical judgment, so complicates the medical condition of a	"good-faith clinical judgment"

Exception	Language	Distinguishing Factors
(H.B. 1686), Various abortion restrictions	pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function	
S.D. Codified Laws § 34-23A-1(5)	(5) "Medical emergency," any condition which, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function;	"good faith clinical judgment" Superseded by an abortion ban limited to preserving the pregnant woman's life versus health. *See* S.D. Codified Laws § 22-17-5.1.
S.D. Codified Laws § 34-23A-7(1) (1994 rev.), Parental notice for abortion	No notice is required under this section if: (1) The attending physician certifies in the pregnant minor's medical record that, on the basis of the physician's good faith clinical judgment, a medical emergency exists that so complicates the medical condition of a pregnant female as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create a serious risk of substantial and irreversible impairment of a major bodily function and there is insufficient time to provide the required notice;	"good faith clinical judgment"
Tenn. Code Ann. § 39-15-202(f)(1), Informational requirements for abortion	(f)(1) For purposes of subsections (a), (b), (c), (d), and (e), a medical emergency is a condition that, on the basis of the physician's good faith medical judgment, so complicates a medical condition of a pregnant woman as to necessitate an immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of major bodily function.	"good faith medical judgment"
Utah Code Ann. § 76–7–301(2) (1993), Waiting period and informational requirements for abortion	"Medical emergency": that condition which, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death, or for which a delay will create serious risk of substantial and irreversible impairment of major bodily function.	"good faith clinical judgment" A physician is not guilty of violating this section, for failure to furnish the information described in Subsection (1), if he can demonstrate by a preponderance of the evidence that he reasonably believed that furnishing the information would have resulted in a severely adverse effect on the physical or mental health of the patient. Utah Code Ann. § 76–7–305(4) (1993). No criminal penalties

Exception	Language	Distinguishing Factors
Va. Code Ann. § 16.1-241, Parental consent for abortion	"Medical emergency" means any condition which, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of the pregnant minor as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create a serious risk of substantial and irreversible impairment of a major bodily function.	"good faith clinical judgment"
W. Va. Code Ann. § 16-2I-1, Informational requirements for abortion	"Medical emergency" means any condition which, in the reasonable medical judgment of the patient's physician, so complicates the medical condition of a pregnant female as to necessitate the immediate termination of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions. No condition shall be deemed a medical emergency if based on a claim or diagnosis that the female will engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function.	No criminal penalties
Wis. Stat. Ann. § 253.10(2)(d), Informational requirements for abortion	(d) "Medical emergency" means a condition, in a physician's reasonable medical judgment, that so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a 24-hour delay in performance or inducement of an abortion will create serious risk of substantial and irreversible impairment of one or more of the woman's major bodily functions.	No criminal penalties *See Karlin v. Faust*, 188 F.3d 446, 459, n.9 (7th Cir. 1999) (noting that plaintiffs' vagueness arguments concerning "serious risk of substantial and irreversible impairment of one or more of the woman's major bodily functions" were no longer "legally significant" because the district court had construed the language to mean "a significant threat to a woman's health").

EXHIBIT B

Medical Emergency Exceptions to Pre-Viability Abortion Bans

Exception	Language	Distinguishing Factors
Ala. Code § 26-22-2(6)	(6) MEDICAL EMERGENCY. The condition, which, on the basis of the physician's good-faith clinical judgment, so complicates a pregnancy as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function.	"good-faith clinical judgment"
Ark. Code Ann. § 20-16-1302(6)(A)	(6) "Medical emergency" means a condition in which an abortion is necessary: (A) To preserve the life of the pregnant woman whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself, or when continuation of the pregnancy will create a serious risk of substantial and irreversible impairment of a major bodily function of the pregnant woman;	Does not limit the physician to the exercise of reasonable medical judgment Superseded by an abortion ban limited to preserving the pregnant woman's life versus health. *See* Ark. Code Ann. §§ 5-61-301 to –304.
Fla. Stat. Ann. § 390.0111(1)(a)	(a) Two physicians certify in writing that, in reasonable medical judgment, the termination of the pregnancy is necessary to save the pregnant woman's life or avert a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman other than a psychological condition.	
Ga. Code Ann. § 16-12-141(a)(3)	(b) No abortion is authorized or shall be performed if an unborn child has been determined in accordance with Code Section 31-9B-2 to have a detectable human heartbeat except when: (1) A physician determines, in reasonable medical judgment, that a medical emergency exists; (3) "Medical emergency" means a condition in which an abortion is necessary in order to prevent the death of the pregnant woman or the substantial and irreversible physical impairment of a major bodily function of the pregnant woman.	Abortion ban challenged on bases other than vagueness, potentially making any vagueness in the exception moot. *State v. SisterSong of Women of Color Reprod. Just. Collective*, 894 S.E.2d 1 (2023).

Exception	Language	Distinguishing Factors
Miss. Code Ann. § 41-41-191(3)(j)[1]	(j) "Medical emergency" means a condition in which, on the basis of the physician's good faith clinical judgment, an abortion is necessary to preserve the life of a pregnant woman whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition arising from the pregnancy itself, or when the continuation of the pregnancy will create a serious risk of substantial and irreversible impairment of a major bodily function.	"good faith clinical judgment"
Miss. Code Ann. § 41-41-405(j)	(j) "Medical emergency" means a condition in which, on the basis of the physician's good-faith clinical judgment, an abortion is necessary to preserve the life of a pregnant woman whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition arising from the pregnancy itself, or when the continuation of the pregnancy will create a serious risk of substantial and irreversible impairment of a major bodily function.	"good-faith clinical judgment"
Neb. Rev. Stat. Ann. § 71-6914(3)(a)	(3)(a) Medical emergency means any condition which, in reasonable medical judgment, so complicates the medical condition of the pregnant woman as to necessitate the termination of her pregnancy to avert her death or for which a delay in terminating her pregnancy will create a serious risk of substantial and irreversible physical impairment of a major bodily function.	No criminal penalties Abortion ban challenged on bases other than vagueness, potentially making any vagueness in the exception moot. *See Planned Parenthood of the Heartland, Inc. v. Hilgers*, No. CI 23-1820 (Neb. Dist. Ct. Aug. 11, 2023).
Okla. Stat. Ann. tit. 63, § 1-731.3(A)	A. No person shall perform or induce an abortion upon a pregnant woman after such time as her unborn child has been determined to have a detectable heartbeat except if, in	Superseded by an abortion ban limited to preserving the pregnant woman's life versus health. *See* 2021

[1] If anything, the American College of Obstetricians and Gynecologists' ("ACOG's") amicus brief in *Dobbs* illustrates uncertainty about how the medical emergency exception would be applied. *See, e.g.*, ACOG Amicus Br. 23–25, *Dobbs v. Jackson Women's Health Org.*, No. 19-1392 (U.S. Sept. 20, 2021) ("There are a significant number of serious medical conditions that *may not qualify* as a "medical emergency" under the Ban's narrow definition but would nevertheless jeopardize a patient's health.") (emphasis added).

Exception	Language	Distinguishing Factors
	reasonable medical judgment, she has a condition that so complicates her medical condition that it necessitates the abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function	Okla. Sess. Law Serv. Ch. 308. John M. O'Connor, Op. Att'y. Gen. (Jun. 24, 2022).
Tex. Health & Safety Code Ann. § 170A.002(b)(2)	(a) A person may not knowingly perform, induce, or attempt an abortion. (b) It is an exception to the application of Subsection (a) that : (1) the person performing, inducing, or attempting the abortion is a licensed physician; and (2) in the exercise of reasonable medical judgment, the pregnant female on whom the abortion is performed, induced, or attempted has a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that places the female at risk of death or poses a serious risk of substantial impairment of a major bodily function unless the abortion is performed or induced. (c-1) For purposes of Subsection (b)(2), if a pregnant woman has a life-threatening physical condition described by Subsection (b)(2), a physician may address a risk described by Subsection (b)(2) before the pregnant female suffers any effects of the risk. Subsection (b)(2) does not require that, before the physician may act: (1) a risk described by Subsection (b)(2) be imminent; (2) the pregnant female first suffer physical impairment; or (3) the physical condition has caused damage to the pregnant female.	Includes clarifying language missing from the Health Exception to South Carolina's Abortion Ban
Utah Code Ann. § 76-7-302(2)(b)(i)(B)	(b) the unborn child has reached 18 weeks gestational age, and: (i) the abortion is necessary to avert: (A) the death of the woman on whom the abortion is performed; or (B) a serious physical risk of substantial impairment of a major bodily function of the woman on whom the abortion is performed; or	Does not limit the physician to the exercise of reasonable medical judgment