IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

NATALIE DAWN BINGHAM, *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.

Civil Action No.: 2:25-cv-163-RMG

REPLY IN SUPPORT OF MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS

Henry Dargan McMaster, in his official capacity as Governor of the State of South Carolina; Alan Wilson, in his official capacity as Attorney General of the State of South Carolina; David Pascoe, in his official capacity as Solicitor for South Carolina's First Judicial Circuit; Bill Weeks, in his official capacity as Solicitor for South Carolina's Second Judicial Circuit; Mike Burch, in his official capacity as Solicitor for South Carolina's Fourth Judicial Circuit; Randy E. Newman, Jr., in his official capacity as South Carolina's Sixth Judicial Circuit; Barry Barnette, in his official capacity as Solicitor for South Carolina's Seventh Judicial Circuit; David Stumbo, in his official capacity as Solicitor for South Carolina's Eighth Judicial Circuit; Micah Black, in his official capacity as Solicitor for South Carolina's Tenth Judicial Circuit; Rick Hubbard, in his official capacity as Solicitor for South Carolina's Eleventh Judicial Circuit; Edgar L. Clements, III, in his official capacity as Solicitor for South Carolina's Twelfth Judicial Circuit; Cindy Crick,

in her official capacity as Solicitor for South Carolina's Thirteenth Judicial Circuit; Jimmy Arthur Richardson, II, in his official capacity as Solicitor for South Carolina's Fifteenth Judicial Circuit; and Kevin S. Brackett, in his official capacity as Solicitor for South Carolina's Sixteenth Judicial Circuit, submit this Reply in Support of their Motion for Partial Judgment on the Pleadings (ECF No. 105).

REPLY

Plaintiffs' vagueness claim focuses on two phrases in the maternal health exception that they claim not to understand: "serious risk" and "substantial and irreversible impairment of a major bodily function." ECF No. 10, ¶ 106. So Defendants moved for partial judgment on the pleadings because these phrases have been staples of maternal health exceptions across the country for three decades after *Casey*.

In response, Plaintiffs don't dispute that these terms have been typical for maternal health exceptions since *Casey*. Instead, they shift the theory of their vagueness claim. Rather than explain how the terms they challenged supposedly can't be understood, they now harp on the objective standard in the 2023 Act's exception. They can't do that. Plaintiffs are "bound by the allegations contained in [their amended] complaint and cannot, through the use of motion briefs, amend the complaint"—yet again. *Zachair, Ltd. v. Driggs*, 965 F. Supp. 741, 748 n.4 (D. Md. 1997). This case is therefore only about whether "serious risk" and "substantial and irreversible impairment of a major bodily function" are incomprehensible terms.

But even if Plaintiffs could shift their theory, they still lose. The *Casey* Court could not have passed on the constitutionality of Pennsylvania's exception if that language wasn't "sufficient[ly] definite[]" to be understood. *Sackett v. Env't Prot. Agency*, 598 U.S. 651, 680 (2023). And in any event, the Supreme Court "defer[red]" to the Third Circuit's construction of

that exception, which had expressly rejected a vagueness argument in interpreting the statute. *Planned Parenthood of Se. Pennsylvania v. Casey*, 505 U.S. 833, 880 (1992). Nor do Plaintiffs gain traction by citing pre-*Dobbs* abortion cases because the Supreme Court has "never held that, in the abortion context, a scienter requirement is mandated by the Constitution." *Voinovich v. Women's Med. Pro. Corp.*, 523 U.S. 1036, 1038 (1998) (Thomas, J., dissenting from the denial of cert). And criminal law generally does not prohibit objective standards as a measure of conduct.

Confirming that the 2023 Act's maternal health exception can be understood is one thing that Plaintiffs *never* rebut in their response: The 2016 Pain-Capable Unborn Child Protection Act's exception that governed Plaintiffs' conduct for almost a decade before they brought this lawsuit also used the same two phrases and imposed an objective standard. Plaintiffs don't explain—presumably because they can't—how they could have practiced under the 2016 law (which also included criminal penalties) but now they can't practice under the 2023 Act.

Plaintiffs do not say as much, but it's clear what the difference in the 2016 and 2023 laws are: when unborn life is protected. The Pain-Capable Unborn Child Protection Act protected unborn life only from 20 weeks. The 2023 Act, on the other hand, protects it from about six weeks. This difference, however, has nothing do with the maternal health exception. The decision when to start protecting unborn life belongs to "the people's elected representatives." *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 232 (2022). Just as Plaintiffs could understand the exception in the 2016 law (after all, they didn't sue about it), they can understand the exception in the 2023 Act. So the Court should grant the Rule 12(c) Motion.

I. Plaintiffs' claim is about two terms, not the objective standard.

Plaintiffs are quick to note that Pennsylvania's exception was subjective, *see* ECF No. 107,

at 10–11,[*] but that doesn't go to the vagueness claim they pleaded. Nowhere in the Amended Complaint do Plaintiffs ever mention the maternal health exception's objective standard. Instead, their sole focus has been on "serious risk" and "substantial and irreversible impairment of a major bodily function."

This isn't semantics. The complaint is how a plaintiff "give[s] the defendant fair notice of what the claim is and the grounds upon which it rests." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal alteration omitted). Plaintiffs told Defendants that "'serious risk' does not address how likely the 'impairment' must be" for the exception to apply, ECF No. 10, ¶ 112, and that "substantial and irreversible impairment of a major bodily function" "has no inherent meaning in medicine," *id.* ¶ 115. They said nothing about the objective standard that the exception included. That objective standard thus cannot be why the Court finds the 2023 maternal health exception vague because that's not the claim that Plaintiffs—"the master[s] of the complaint"—brought. *Caterpillar Inc. v. Williams*, 482 U.S. 386, 398–99 (1987).

To come at this point from another angle, it's not as if Plaintiffs say in their Amended Complaint that it's sometimes hard to tell if a pregnant woman's condition qualifies for the exception (which they understand) but that they fear prosecution despite making a good faith effort to comply. No, Plaintiffs are claiming they have no idea what the maternal health exception means. That's a fundamentally different claim. If Plaintiffs don't know what these terms mean, there's no way a subjective standard can save it because Plaintiffs still won't know what the standard is with which they must try to comply.

[*] Page numbers are to the ECF-generated number at the top of each page.

II. The terms that Plaintiffs challenge cannot be vague post-*Casey*.

A. It's clear that the *Casey* Court understood the terms.

1. As one attempt to elude Defendants' argument, Plaintiffs insist that *Casey* lacked a vagueness analysis. *See* ECF No. 107, at 14–17. But that wasn't Defendants' point. Defendants' point was that the only way that the Supreme Court could have determined that Pennsylvania's exception didn't unduly burden obtaining an abortion was if the Court concluded that the exception imposed a comprehensible standard. How else could the Court have determined whether the exception passed constitutional muster?

But Plaintiffs' argument about *Casey* lacking a vagueness analysis only gets worse as they go on. They try to discount the Supreme Court's conclusion that the exception was constitutional by noting that the Court had simply "credited the Court of Appeals' conclusion" about the meaning of the exception. ECF No. 107, at 14. That the Supreme Court did so is a problem, not a plus, for Plaintiffs. The Third Circuit interpreted both "serious risk" and "substantial and irreversible impairment of a major bodily function," accepting Pennsylvania's interpretation and rejecting the abortion providers'. *Planned Parenthood of Se. Pennsylvania v. Casey*, 947 F.2d 682, 700–02 (3d Cir. 1991) (cited at *Casey*, 505 U.S. at 880). This was an exercise "of statutory interpretation." *Id.* at 700. And although that court held that the good-faith standard helped, that standard wasn't necessary to uphold the exception because, "apart from the 'good faith clinical judgment' language," the terms of the exception covered "what are commonly perceived to be medical emergencies." *Id.* at 702. So the Third Circuit rejected a vagueness argument about these terms and interpreted what those terms meant when it came to specific conditions that those plaintiffs raised. The Supreme Court then accepted the Third Circuit's interpterion. There's no way then to say that Pennsylvania's terms are unconstitutionally vague or can't be understood today.

Nor does it matter that Pennsylvania's law "allowed abortion up to viability" while South Carolina protects unborn life from about six weeks. ECF No. 107, at 13. The language of the exceptions is the same, and that language is the focus of Plaintiffs' vagueness claim.

2. Plaintiffs' attempt to muddy the language with their preeclampsia example fails. They point out that the Supreme Court interpreted Pennsylvania's exception to cover preeclampsia, while the 2023 Act's presumed conditions include "severe preeclampsia." ECF No. 107, at 14. Two rebuttals dispose of this. First, severe preeclampsia is "presumed" to meet the exception. S.C. Code Ann. § 44-41-640(C)(2). But that does not mean that a particular pregnant woman's case of preeclampsia couldn't meet the exception, if the threat to her health were serious enough.

And second, Plaintiffs' line-drawing dilemma isn't as dire as they suggest. Medical experts routinely distinguish preeclampsia and severe preeclampsia, which can include blood pressure greater than 160/110, decreased liver or kidney function, fluid in the lungs, and low blood platelet levels. *See, e.g.*, National Institute of Health, National Library of Medicine, *Preeclampsia*, https://tinyurl.com/4dz7rhta (Feb. 25, 2024) (discussing how to identify "preeclampsia with and without severe features"); Clevland Clinic, *Preeclampsia*, https://tinyurl.com/y5vm222j (last visited Sept. 7, 2025) (contrasting conditions of severe preeclampsia with conditions of preeclampsia); ObG Project, *Diagnosis Preeclampsia—Key Definitions and ACOG Guidelines*, https://tinyurl.com/2hcx7n62 (last visited Sept. 7, 2025) (detailing lab results that are sufficient to diagnosis severe preeclampsia); American Family Physician, *Diagnosis and Management of Preeclampsia*, Table 1, https://tinyurl.com/kkuhptn7 (last visited Sept. 7, 2025) (providing a table with "diagnostic criteria" for "preeclampsia" and "severe preeclampsia"). In other words, determining when preeclampsia is "severe" is something doctors already are doing.

3. Plaintiffs also seek to avoid the impact of the Supreme Court's understanding of the

terms in Pennsylvania's exception by saying that somehow the Court's understanding to evaluate the constitutionality of that exception is different from physicians' understanding to determine whether a pregnant woman's condition satisfies the exception. ECF No. 107, at 15. That makes no sense. Everyone is reading the same words.

To be sure, that doesn't mean that applying the exception will always be easy. Plaintiffs give an example of the gray area when "a pregnancy is rapidly exacerbating a specific patient's kidney disease." *Id.* But this highlights why Plaintiffs are wrong to pursue a facial challenge (particularly when the exception allows physicians to use their "reasonable medical judgment," S.C. Code Ann. § 44-41-610(9); *see infra* Part III.A. (discussing the objective standard)). It is a "basic mistake" to hold a statute "vague" because "close cases can be envisioned." *United States v. Williams*, 553 U.S. 285, 305 (2008). "Close cases," after all, "can be imagined under virtually any statute." *Id.* at 306. For a facial vagueness challenge, a plaintiff must prove that a statute lacks a "plainly legitimate sweep." *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449 (2008). And have no doubt, that's still the standard for these cases post-*Johnson v. United States*, 576 U.S. 591 (2015), as circuit courts continue applying it in facial vagueness cases, *e.g.*, *Fabrizius v. Dep't of Agric.*, 129 F.4th 1226, 1238 (10th Cir. 2025); *Thayer v. City of Chicago, Ill.*, 110 F.4th 1040, 1042 (7th Cir. 2024); *Diamond S.J. Enter., Inc. v. City of San Jose*, 100 F.4th 1059, 1068 (9th Cir. 2024).

When it comes to whether the exception has a plainly legitimate sweep, it's hard to see therefore how Plaintiffs can claim that "Defendants never identify what these activities [that fall within maternal health exception] are." ECF No. 107, at 22. The 2023 Act identifies 11 situations that fall within the exception. *See* S.C. Code Ann. § 44-41-640(C)(2). Plaintiffs are the ones making up hypotheticals. That's not how facial challenges work. *See Hill v. Colorado*, 530 U.S.

703, 733 (2000) (a plaintiff cannot "speculat[e] about possible vagueness in hypothetical situations not before the Court" to "support a facial attack on a statute when it is surely valid in the vast majority of its intended applications" (cleaned up)). So if Plaintiffs have "apprehension" about a "particular patient," they can bring that case when (or if) it arises. ECF No. 107, at 7.

B. The frequent, consistent use of these terms post-*Casey* dooms Plaintiffs' argument.

Since *Casey*, many States and Congress have employed the language from Pennsylvania's exception. This repeated use confirms that the terms Plaintiffs challenge can be understood.

1. Plaintiffs are eager to try to distinguish the statutes in other States. *See* ECF Nos. 107, at 17–19; 107-1; 107-2. And so there are some differences. But Defendants already acknowledged as much. *See* ECF No. 105, at 10–11. Those differences don't matter. Plaintiffs' claim here is that "serious risk" and "substantial and irreversible impairment of a major bodily function" are unconstitutionally vague. If those phrases are vague, it's incredible to think more than half the Union drafted, adopted, and functioned under incomprehensible terms for the past three decades.

Put another way, how does making an exception turn solelyon a physician's "good faith clinical judgment" make those terms more understandable, if they lack "inherent meaning"? ECF No. 10, ¶ 115. It doesn't. It just means that physicians might not fear prosecution as much. But there's no reason a doctor should fear having to be reasonable as the 2023 Act requires. *Cf. Md. Shall Issue, Inc. v. Hogan*, 971 F.3d 199, 218 (4th Cir. 2020) (no standing on facial vagueness claim when a plaintiff lacks a "credible threat of prosecution"). After all, Plaintiffs never point to a single prosecution in South Carolina under the 2016 Pain-Capable Unborn Child Act, which criminalized illegal abortions and used the same terms that Plaintiffs challenge and imposed an objective standard in its maternal health exception. *Cf.* Part IV (discussing Plaintiffs' inability to distinguish the 2016 Act). This lack of prosecution under essentially the same exception should

dispel any reasonable worries now. Nor should the State be required to grant *carte blanche* to give doctors the right to provide whatever treatment they think is best. *Cf. United States v. Skrmetti*, 145 S. Ct. 1816, 1837 (2025) (States can prohibit certain treatments for gender dysphoria in minors).

Plaintiffs do no better by noting that Defendants already cited a few other state laws in their Motion to Dismiss. *See* ECF No. 70, at 16–17. That argument didn't tie back to *Casey*. Instead, it pointed back to *United States v. Vuitch*, 402 U.S. 62 (1971). Defendants' argument here is that many States began using this language because the Court understood the terms in *Casey*. So Plaintiffs can't dismiss this argument so easily.

2. Plaintiffs fare no better with their attempts to distinguish EMTALA. *See* ECF No. 107, at 19–20. They start by insisting that EMTALA is more detailed than the 2023 Act. Though EMTALA may use more words, it still turns on the meaning of "serious" jeopardy, impairment, or dysfunction. 42 U.S.C. § 1395dd(e)(1)(A)(i)–(iii). That leaves Plaintiffs with only EMTALA's use of "the health of the individual," "bodily functions," and "any bodily organ or part" as having to do constitutionally significant work of clearing the vagueness threshold. *Id.* In other words, for Plaintiffs, "substantial, "irreversible," or "major" in the 2023 Act's exception is the constitutional flaw. That's a stretch, to say the least.

It's not "hard to square" Defendants' arguments with *Moyle v. United States*, 603 U.S. 324 (2024). ECF No. 107, at 20. The Idaho law there didn't use "serious risk" or "substantial and irreversible impairment of a major bodily function." Instead, it prohibited all abortions that were not "necessary to prevent the death of the pregnant woman." Idaho Code Ann. § 18-622(2)(a)(i) (quoted by *Moyle*, 603 U.S. at 328 (Kagan, J., concurring)). That's plainly a different standard than EMTALA. Plaintiffs' *Moyle* argument is therefore what's "hard to square."

III. The maternal health exception does not have to have a solely subjective standard.

Even if Plaintiffs had pleaded a claim based on the exception's objective standard, they would still lose. They rely heavily on pre-*Dobbs* Supreme Court cases that either didn't require a subjective standard or on lower court cases that misread Supreme Court precedent (and that are no longer good law), and they ignore the fact that criminal laws can have objective standards. The Court need not rewrite the exception via Plaintiffs' alternative request for relief in the Amended Complaint to change the exception to a solely subjective standard.

A. Pre-*Dobbs* cases don't help Plaintiffs.

Plaintiffs are quick to cite pre-*Dobbs* cases for the notion that the Constitution somehow mandates South Carolina's law be wholly subjective. *See* ECF No. 107, at 11–12. But that's wrong. The Supreme Court "ha[s] never held that, in the abortion context, a scienter requirement is mandated by the Constitution." *Voinovich*, 523 U.S. at 1038 (Thomas, J., dissenting from the denial of cert).

Even *Roe* and *Casey* make clear that States can impose objective standards. *Roe* held, and then *Casey* "reaffirm[ed]," that after viability, a State may "regulate, and even proscribe, abortion except where it is necessary, in *appropriate medical judgment*, for the preservation of the life or health of the mother." *Casey*, 505 U.S. at 879 (emphasis added) (quoting *Roe v. Wade,* 410 U.S. 113, 165 (1973)). Nothing in those decisions mandated subjective standards. In fact, the Court, even while wrongly recognizing a federal constitutional right to abortion, acknowledged that States may impose objective limits on it.

Despite their heavy reliance on *Colautti v. Franklin*, 439 U.S. 379 (1979), *see* ECF No. 107, at 10–11, Plaintiffs don't mention the question that the Court did not decide there. The Court did "not . . . decide whether, under a properly drafted statute, a finding of bad faith or some other

type of scienter would be required before a physician could be held criminally responsible for an erroneous determination of viability." *Id.* at 396. A State simply "must allow the attending physician the room he needs to make his best medical judgment." *Id.* (internal quotation mark omitted). The Pennsylvania law in *Colautti* was unclear in whether it imposed a purely subjective or a mixed objective and subjective standard, and, according to the Court, it "subject[ed] the physician to potential criminal liability without regard to fault." *Id.* at 394. And "[t]he perils of strict criminal liability" under that law were "particularly acute . . . because of the uncertainty of the viability determination itself," which the Pennsylvania law appeared to treat as an either-or, black-or-white decision. *Id.* at 395.

The 2023 Act, by contrast, requires a physician to have acted unreasonably before the physician might face any liability. Plaintiffs oversell the supposed threat of the 2023 Act's objective requirement. They drop a footnote with the definition of "reasonable medical judgment," ECF No. 107, at 10 n.2, but they ignore what that standard means. What Plaintiffs suggest is that the objective standard means that, in every case, there is one—and only one—correct answer. But this isn't a math problem, where if you have the case of *2+2* and get anything other than *4*, you're wrong. To the contrary, "reasonable" recognizes that there may be cases in which physicians disagree. As the Seventh Circuit observed, "that one physician would choose to perform the emergency abortion under those circumstances while others would not, does not necessarily mean the former physician is acting unreasonably." *Karlin v. Foust*, 188 F.3d 446, 464 (7th Cir. 1999). Indeed, South Carolina law has long recognized a range of reasonableness in professional decisionmaking. *See, e.g.*, *Seabrook Island Prop. Owners Ass'n v. S.C. Pub. Serv. Comm'n*, 303 S.C. 493, 499, 401 S.E.2d 672, 675 (1991) (setting utility rates); *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (representation of criminal defendants); *Green v. Lilliewood*, 272 S.C.

186, 191, 249 S.E.2d 910, 913 (1978) (standard of care in medicine); *Witherspoon v. Grand Int'l Bhd. of Locomotive Eng'rs*, 260 S.C. 117, 127, 194 S.E.2d 399, 403 (1973) (union bargaining agents).

Any uncertainty is therefore accounted for not only by this range of reasonableness but also "by the requirement of proof beyond a reasonable doubt." *Williams*, 553 U.S. at 306. A physician may (and should) use her "best medical judgment" in every case. *Colautti*, 439 U.S. at 396. Her judgment must simply be reasonable. *Cf.* S.C. Code An. § 40-47-114 (doctors must be competent). And if her best judgment isn't reasonable, then perhaps she shouldn't be a doctor at all. But there's no "trap" for physicians based on some all-or-nothing, definitely-right-or-definitely-wrong decision. *Colautti*, 439 U.S. at 395.

Lower court cases that have required subjective standards suffer from "abortion distortion[]," *SisterSong Women of Color Reprod. Just. Collective v. Governor of Georgia*, 40 F.4th 1320, 1328 (11th Cir. 2022)—examples of doctrine being contorted because of the law being challenged. Take the Sixth Circuit's decision in *Women's Medical Professional Corp. v. Voinovich*, 130 F.3d 187 (6th Cir. 1997). *See* ECF No. 107, at 11–12. For starters, "this area of the law" was hotly contested as a constitutional matter at that time. 130 F.3d at 205. The court worried, for instance, about any "chilling effect" that "would create an undue burden." *Id.* But now, the Supreme Court has "heed[ed] the Constitution and return[ed] the issue of abortion to the people's elected representatives." *Dobbs*, 597 U.S. at 232. There's no more special abortion jurisprudence that puts a thumb on the scale for allowing doctors to abort unborn children.

Plus, the Sixth Circuit's analysis is nothing more than veiled criticism of objective standards in the law. That court said that "physicians cannot know the standard under which their conduct will ultimately be judged," 130 F.3d at 205, but that same statement could be made

whenever a jury must determine whether a defendant acted reasonably. When the State has expressed its "compelling interest from the outset of a woman's pregnancy in protecting . . . the life of the unborn child," 2023 Act, § 1(3), ensuring an objective standard makes sense. Otherwise, some pro-choice physicians might *really* believe that an abortion was appropriate for a pregnant woman, but all fair-minded doctors wouldn't take that position. The State must be able to ensure that certain physicians don't have a backdoor to undermine the State's policy goals. And the Constitution does not mandate that the State outsource the protection of life to physicians' purely subjective judgments. As a case Plaintiffs cited observed, the "passions that swirl around abortion rights" can result in "cloud[ed] . . . judgments." *Planned Parenthood of Wisconsin, Inc. v. Van Hollen*, 738 F.3d 786, 798–99 (7th Cir. 2013) (cited at ECF No. 107, at 12). Or as Justice Thomas once noted, an exception shouldn't effectively allow "unfettered abortion on demand." *Stenberg v. Carhart*, 530 U.S. 914, 1012 (2000) (Thomas, J., dissenting).

More useful than the cases that Plaintiffs cite is the Texas Supreme Court's recent explanation of that State's maternal health exception (which uses "serious risk" and "substantial impairment of a major bodily function," Tex. Health & Safety Code § 170A.002(b)(2)). That court held that "[t]he law leaves *to physicians*—not judges—both the discretion and the responsibility to exercise their reasonable medical judgment, given the unique facts and circumstances of each patient." *In re State*, 682 S.W.3d 890, 893 (Tex. 2023). Still, the law "requires more than a doctor's mere subjective belief." *Id.* It requires that "medical facts support the need for an abortion," and any evaluation of whether an abortion was proper looks at those facts, rather than a doctor's intent. *State v. Zurawski*, 690 S.W.3d 644, 663–64 (Tex. 2024) (also discussing Tex. Health & Safety Code § 170A.002(b)(2)).

B. Criminal laws can have objective standards.

Of course, having objective standards in criminal laws is not a problem. As the Supreme Court held long ago, "[t]he mere fact that a penal statute is so framed as to require a jury upon occasion to determine a question of reasonableness is not sufficient to make it too vague to afford a practical guide to permissible conduct." *United States v. Ragen*, 314 U.S. 513, 523 (1942). That's no surprise, given that States may also "create strict criminal liabilities by defining criminal offenses without any element of scienter." *Smith v. California*, 361 U.S. 147, 150 (1959).

Examples of reasonableness in criminal law abound. As the S.C. Supreme Court recently observed, "the objective 'reasonable' test is used in many areas of the law as an appropriate determinant of liability and thus a guide to conduct." *Whitehurst v. Town of Sullivan's Island*, __ S.C. __, __ S.E.2d __, No. 2023-001928, 2025 WL 1947815, at *6 (S.C. July 16, 2025) (cleaned up). For instance, many States criminalize when a driver follows another car "more closely than is reasonable," and these "ubiquitous" laws have been uniformly upheld against constitutional challenges. *United States v. Hunter*, 663 F.3d 1136, 1142 (10th Cir. 2011). And stand-your-ground laws hinge criminal liability on whether a person "reasonably believed" deadly force was necessary. S.C. Code Ann. § 16-11-440(C).

IV. Plaintiffs have no answer for the past decade of abortion regulation in South Carolina.

Plaintiffs' attempt to deal with the 2016 Pain-Capable Unborn Child Act is exceptionally weak and confirms that the 2023 Act's maternal health exception can be understood. For one, they say that abortion was "not broadly criminalized" then. ECF No. 107, at 21. They are wrong. The 2016 statute made an illegal abortion subject to three years in prison and, for a third or subsequent offense, even imposed a mandatory minimum of 60 days in prison. *See* 2016 S.C. Acts No. 183, § 1 (codified at S.C. Code Ann. § 44-41-470).

For another, Plaintiffs rely on abortion cases that were all premised on protecting a federal constitutional right to abortion. *See* ECF No. 107, at 21. *Colautti*, for instance, assumed such a right. *See* 439 U.S. at 386–89 (discussing federal constitutional abortion cases). Post-*Dobbs*, there's no such right. 597 U.S. at 232. Now, States may regulate abortion, just as they regulate all aspects of medical practice. *Gonzales v. Carhart*, 550 U.S. 124, 157 (2007) (States play "a significant role . . . in regulating the medical profession"); *see also Dantzler v. Callison*, 230 S.C. 75, 94–95, 94 S.E.2d 177, 188 (1956).

And finally, Plaintiffs don't even acknowledge that the 2016 Act employed the same two phrases they challenge here (like the majority of States used post-*Casey*), as well as an objective "reasonable medical judgment" standard. For years, Plaintiffs have practiced medicine under that law without ever challenging it. The only reasonable conclusion is that they could understand it—just as they can understand the 2023 Act's maternal health exception. If not, then if the Court were to grant Plaintiffs the relief they seek here, then presumably the Court would also have to grant the next plaintiff judgment in a challenge to the 2016 Act, despite no one ever before claiming that the 2016 Act was vague. *See* 2023 Act, § 13 (repealing the 2016 Act but reenacting it if the 2023 Act is enjoined in any way).

CONCLUSION

The Court should grant the Motion for Partial Judgment on the Pleadings.

Respectfully submitted,

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