

No. 23-1275

In the Supreme Court of the United States

EUNICE MEDINA, INTERIM DIRECTOR, SOUTH CAROLINA
DEPARTMENT OF HEALTH AND HUMAN SERVICES,
Petitioner,

v.

PLANNED PARENTHOOD SOUTH ATLANTIC, ET AL.,
Respondents.

*ON WRIT OF CERTIORARI TO THE
U.S. COURT OF APPEALS FOR THE FOURTH CIRCUIT*

**BRIEF FOR AMERICAN ASSOCIATION OF
PRO-LIFE OBSTETRICIANS AND
GYNECOLOGISTS, CHARLOTTE LOZIER
INSTITUTE, AND ETHICS & RELIGIOUS
LIBERTY COMMISSION AS *AMICI CURIAE*
IN SUPPORT OF PETITIONER**

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INTEREST OF *AMICI CURIAE*

Amici have a strong interest in ensuring that States are not compelled to undermine their protections of mothers and preborn children by funding organizations that target those vulnerable groups.*

American Association of Pro-Life Obstetricians and Gynecologists (AAPLOG) is a nonprofit professional medical organization with over 7,000 medical professional members and associates who are experts in reproductive healthcare. AAPLOG strives to ensure pregnant women receive quality care and are informed of induced abortion's potential long-term consequences on their health. AAPLOG offers medical professionals and the public a better understanding of abortion-related health risks, including depression, substance abuse, suicide, subsequent preterm birth, and placenta previa. AAPLOG is committed to educating abortion-vulnerable patients, the general public, lawmakers, pregnancy care center counselors, and other medical professionals regarding the medical and psychological risks associated with induced abortion.

Charlotte Lozier Institute (CLI) is a nonprofit research and education organization committed to bringing modern science to bear on life-related policy and legal decision-making. CLI believes the legal

* Under Rule 37.6, no counsel for a party authored this brief in whole or in part, and no person other than *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

landscape governing abortion should be informed by the most current medical and scientific knowledge on human development.

The Ethics and Religious Liberty Commission (ERLC) is the moral concerns and public policy entity of the Southern Baptist Convention (SBC), the nation's largest Protestant denomination, with nearly 13 million members in more than 45,000 churches and congregations. The ERLC is charged by the SBC with addressing public policy affecting such issues as religious liberty, marriage and family, the sanctity of human life, and ethics. The ERLC affirms that women and their preborn children are made in the image of God and must be protected from harm. Thus, the ERLC has an interest in ensuring that the government protects the lives and wellbeing of women and preborn children.

SUMMARY OF THE ARGUMENT

Like many States, South Carolina has expressed “a compelling interest from the outset of a woman’s pregnancy in protecting the health of the woman and the life of the unborn child.” Act No. 70, 2023 S.C. Acts § 1(3). One way it has pursued that interest is by preventing taxpayer funds from subsidizing abortions. See, *e.g.*, S.C. Code Ann. § 43-5-1185. South Carolina’s Governor further determined that none of the State’s Medicaid funds should be used to support abortion clinics, recognizing that “abortion providers may be subsidized by State or local funds intended for other women’s health or family planning services.” S.C. Exec. Order No. 2017-15 (Aug. 24, 2017).

Abortion providers like Planned Parenthood—the State’s largest—thus had the option between forgoing Medicaid funds or stopping abortions. Unsurprisingly, Planned Parenthood sued. And the court below adopted Planned Parenthood’s gloss on its abortion-focused services, declaring that “this case is not about abortion.” *Planned Parenthood S. Atl. v. Kerr*, 27 F.4th 945, 948 (CA4 2022). Even more implausibly, the court believed that removing Planned Parenthood from Medicaid would preclude women from “access[ing] prenatal care that would both assist the mother and help bring healthy babies into this world.” *Id.* at 959.

But Planned Parenthood’s overriding goal is to *prevent* “healthy babies” from coming “into this world,” *id.*, through induced abortion. The Fourth Circuit’s confusion is perhaps excusable—Planned Parenthood downplays its nearly singular focus on abortion when convenient. But its own reports and its history belie

any narrative that Planned Parenthood is a provider of essential women's health services.

Planned Parenthood is responsible for more than a third of all induced abortions performed in the United States each year. A large percentage of its revenue comes from offering abortions. Even as its abortion numbers have risen year after year, the medical services it offers have sharply declined—as have its adoption referrals. Planned Parenthood's South Carolina locations offer almost no prenatal care for mothers who choose to continue their pregnancies.

This is nothing new. Planned Parenthood has led the abortion industry from the beginning. It is responsible for the deaths of millions of the preborn children that South Carolina seeks to protect.

South Carolina women have hundreds of other options for care, especially in the two large cities where Planned Parenthood's clinics are located. And those clinics have refused to stop providing induced abortions, even though doing so would permit them to receive Medicaid funds. This “all or nothing” approach demonstrates Planned Parenthood's priorities.

Last, it is impossible to draw a firewall between funds used for induced abortion and those used for Planned Parenthood's medical services. Any Medicaid funds that Planned Parenthood receives can be used for its operating expenses, freeing up other funds for abortion procedures and advocacy—including challenging South Carolina's abortion laws. South Carolina may choose not to expend its funds to support Planned Parenthood's abortion mission—and its concomitant destruction of prenatal life.

ARGUMENT

I. Planned Parenthood is primarily an abortion provider.

Planned Parenthood exists to promote induced abortion, which has the sole intent of ending the life of a prenatal human being, and to make abortion procedures as widespread as possible. Planned Parenthood often attempts to distract from this goal with misleading statistics, inadequate reporting, and equivocal language. The truth is that Planned Parenthood is an abortion provider—all other functions are tangential to that primary purpose. Planned Parenthood performs anywhere from one- to two-thirds of all abortions in the United States each year while offering an increasingly small number of other services. And it offers little to no care for women who choose to continue their pregnancies—contrary to the Fourth Circuit’s misunderstanding below.

A. Planned Parenthood is the leading provider of abortions in the United States.

Planned Parenthood represents itself as a medical provider that offers a wide range of healthcare services, including “well-woman exams; contraception . . . and contraceptive counseling; hormonal counseling; screening for breast cancer; screening and treatment for cervical cancer; screening and treatment for sexually transmitted infections . . . ; pregnancy testing and counseling; physical exams; and screening for conditions such as diabetes, depression, anemia, cholesterol, thyroid disorders and high blood pressure.” J.A. 19–20 (Decl. of Jenny Black ¶ 5). When controversy arises, Planned Parenthood

highlights these other services it purportedly provides and downplays its focus on abortion. See, e.g., Josh Dawsey, *Planned Parenthood to Unleash Campaign Against Trump*, Politico (Mar. 14, 2017, 9:31 PM), <https://perma.cc/6QGW-CTTQ> (“[Planned Parenthood’s executive vice president] said about 10% of the organization’s work focused on cancer patients, while about 3% involves abortion, and that the organization wants to re-frame the debate.”).

But its own numbers tell the real story. In 2023, Planned Parenthood performed 392,715 abortions, 38% of all abortions in the United States.¹ While it claims that abortions made up only 4% of its total services, see Annual Report 2022–2023, *supra* note 1, at 23, that statistic is misleading. Planned Parenthood’s reports “treat[] each service—pregnancy test, STD test, abortion, birth control—equally” even though there are huge differences in “how much they cost or how extensive the service or procedure is.”² So if a woman visits Planned Parenthood for an abortion, each of the ancillary services she receives (certainly a pregnancy test, likely birth control, possibly an STD

¹ See Planned Parenthood, Annual Report 2022–2023, at 7, <https://perma.cc/8KNW-6N2Y>; Isaac Maddow-Zimet & Candace Gibson, *Despite Bans, Number of Abortions in the United States Increased in 2023*, Guttmacher Inst. (May 10, 2024), <https://perma.cc/D2DH-JK5E> (documenting 1,037,000 abortions performed in the U.S. in 2023).

² Michelle Ye Hee Lee, *For Planned Parenthood Abortion Stats, ‘3 Percent’ and ‘94 Percent’ Are Both Misleading*, Wash. Post (Aug. 12, 2015, 3:00 AM), <https://perma.cc/53B9-E9RR>.

test³) is counted individually, even though the sole reason for the woman’s visit was to get an abortion. This sort of statistical gerrymandering is meant to obscure Planned Parenthood’s abortion focus.

Abortions also account for a significant percentage of Planned Parenthood’s revenue. The average cost of a chemical abortion is \$580, and surgical abortions average up to \$2,000.⁴ Even by a conservative estimate, then, abortions accounted for at least 10% of Planned Parenthood’s total revenue in 2022–23 and at least 21% of its health services and government revenue.⁵ As far back as 2007, when Planned Parenthood similarly reported that only 3% of its services were abortions, calculations suggested that “abortion accounted for at least one-third, probably more,” of Planned Parenthood’s clinic income.⁶ As one commentator has analogized, “Major League Baseball teams could say that they sell about 20 million hot

³ See, e.g., *Cost of Medical Services*, Planned Parenthood of S., E., & N. Fla., <https://perma.cc/FC8W-GCW5> (detailing that an abortion visit includes “pregnancy test, medications to help you relax during the in clinic procedure, ultrasound, . . . gonorrhea and chlamydia testing if indicated,” and “the option to receive three months of birth control”).

⁴ *How Much Does an Abortion Cost?*, Planned Parenthood, <https://perma.cc/N6QU-V7LE>.

⁵ See Annual Report 2022–2023, *supra* note 1, at 24 (providing the number of abortions); *id.* at 27 (reporting revenue).

⁶ Charlotte Allen, *Planned Parenthood’s Unseemly Empire*, Wash. Exam’r (Oct. 22, 2007, 4:00 AM), <https://www.washingtonexaminer.com/magazine/1320445/planned-parenthoods-unseemly-empire/>.

dogs and play 2,430 games in a season, so baseball is only .012 percent of what they do.”⁷

Planned Parenthood’s abortion numbers are only increasing. Planned Parenthood saw 80,000 fewer patients in 2022–23 than in 2021–22, but it committed 18,560 more abortions. Compare Annual Report 2022–2023, *supra* note 1, at 7, with Planned Parenthood, Annual Report 2021–2022, at 11, <https://perma.cc/85YV-C53N>. In fact, the number of abortions Planned Parenthood provides has risen 20% over the past ten years. Charlotte Lozier Inst., *Fact Sheet: Planned Parenthood’s 2022–23 Annual Report 1* (Apr. 17, 2024), <https://perma.cc/WVL6-4U56> (hereinafter “CLI Fact Sheet”).

At the same time, the number of other services Planned Parenthood provides has fallen sharply. In 2023, it offered 60,000 fewer pap smear tests and breast exams and almost 100,000 fewer birth control services than the previous year. Compare Annual Report 2022–2023, *supra* note 1, at 7, 24, with Annual Report 2021–2022, *supra*, at 11, 29. And this is simply the continuation of an ongoing trend: over the past nearly fifteen years, Planned Parenthood’s cancer screening and preventative services have dropped by 71%, prenatal services by 80%, and contraceptive services by 39%. CLI Fact Sheet, *supra*, at 2. But the number of abortions has increased. Compare Annual Report 2022–2023, *supra* note 1, at 7, with Planned Parenthood, Annual Report 2009–2010, at 5,

⁷ Rich Lowry, *Planned Parenthood’s Pathetic ‘3 Percent’ Lie*, N.Y. Post (Aug. 3, 2015, 8:08 PM), <https://perma.cc/B4BS-8T8P>.

<https://perma.cc/5VSS-M4V5> (showing 329,445 abortions provided in 2010).

Planned Parenthood doesn't just overstate its other services, it oversells them too. Take mammograms for example. For years, Planned Parenthood leadership and supporters claimed that “women ha[d] ‘access’ to mammograms through Planned Parenthood,” although what it really offered were *referrals*. Michelle Ye Hee Lee, *The Repeated, Misleading Claim that Planned Parenthood ‘Provides’ Mammograms*, Wash. Post (Oct. 2, 2015, 3:00 AM), <https://perma.cc/JVJ6-A8E9>. But even these services are declining. Columbia's Planned Parenthood used to offer mammogram *referrals*.⁸ Now it apparently does not even offer those referrals—but it continues to prominently advertise abortion services and financial assistance for abortion.⁹

Relatedly, while Planned Parenthood boasts having offered over nine million services in 2022–23, this case demonstrates just how limited those “services” are. Ms. Edwards faces several serious health concerns, including Type 1 diabetes with complications, partial blindness, and nerve damage. J.A. 29 (Decl. of Julie Edwards ¶ 2). But the only care Planned Parenthood offered her was birth control and advice to seek care for her elevated blood pressure

⁸ *Primary Care in Columbia, SC*, Planned Parenthood <https://tinyurl.com/4b3xuzbt> (services as of May 27, 2022).

⁹ *Columbia Health Center of Columbia, SC*, Planned Parenthood, <https://tinyurl.com/shfk62nn> (last visited Jan. 28, 2025).

elsewhere. *Planned Parenthood S. Atl. v. Baker*, 941 F.3d 687, 692 (CA4 2019).

It would be surprising if Planned Parenthood were willing to forgo Medicaid funding to preserve just 4% of its business. But as the numbers show, abortion is central to Planned Parenthood, the nation’s leading abortion provider.

B. Planned Parenthood does not care for pregnant mothers who choose to continue their pregnancies.

While Planned Parenthood professes to provide “reliable education and information that allows people to make informed health decisions,”¹⁰ it actually supports only one decision: the choice *not* to pursue or continue pregnancy. Of the pregnancy resolution services Planned Parenthood provided in 2022–23, 97% were abortions; the remaining 3% were prenatal services, miscarriage care, and adoption referrals. See Annual Report 2022–2023, *supra* note 1, at 24 (reporting 392,715 abortions, 6,316 prenatal services, 3,604 instances of miscarriage care, and 1,721 adoption referrals).

Even in South Carolina, where abortions generally may no longer be performed “after the detection of a fetal heartbeat,” *Planned Parenthood S. Atl. v. State*, 892 S.E.2d 121, 126 (S.C. 2023), Planned Parenthood’s pregnancy care services are meager. The sole prenatal and postpartum services the South Carolina locations

¹⁰ *Who We Are*, Planned Parenthood, <https://perma.cc/GM5B-3E4P>.

advertise are pregnancy tests and miscarriage care.¹¹ If a woman wishes to continue her pregnancy—or to become pregnant in the first place—she must find a different provider.¹² For women who wish to terminate their pregnancies, however, Planned Parenthood provides services *and* offers discounts on medical bills.¹³ No other services are discounted.

Nor does Planned Parenthood care for—or about—babies. In the past four years, Planned Parenthood adoption referrals fell almost 60% from an already meager 4,279 referrals. Compare Annual Report 2022–2023, *supra* note 1, at 24, with Planned Parenthood, Annual Report 2018–2019, at 24, <https://perma.cc/8KRY-86EH>. For *every* adoption referral in 2022–23, Planned Parenthood aborted 228 babies. See Annual Report 2022–2023, *supra* note 1, at 24.

C. Planned Parenthood’s own media demonstrates its focus on abortion.

No one who is familiar with Planned Parenthood’s cultural presence would be surprised by these

¹¹ See *Prenatal and Postpartum Services in Columbia, SC*, Planned Parenthood, <https://perma.cc/H7J8-KK6J>; *Prenatal and Postpartum Services in Charleston, SC*, Planned Parenthood, <https://perma.cc/TQY4-XDDT>.

¹² *Pregnancy Testing and Planning in Columbia, SC*, Planned Parenthood, <https://perma.cc/YVH6-ZAH5>; *Pregnancy Testing and Planning in Charleston, SC*, Planned Parenthood, <https://perma.cc/AC5U-H5A6> (noting that prenatal care and adoption services are referred out).

¹³ *Abortion in Columbia, SC*, Planned Parenthood, <https://perma.cc/C4Z9-75A5>.

statistics. Its most recent annual report is replete with references to abortion, while other health services are scarcely mentioned. The report touts the organization's efforts to further access to and information about abortion services. Consider the following:

- Planned Parenthood “mov[ed] mountains” to “find[] [abortion] appointments in other states and the resources to get . . . there” for patients in states with abortion regulations. Annual Report 2022–2023, *supra* note 1, at 9.
- Planned Parenthood assisted with abortion-related travel costs for more than 15,000 women and helped cover the costs of abortions for more than 50,000. *Id.* at 10.
- Planned Parenthood “used online search ads to make sure” patients were directed to abortion services rather than “crisis pregnancy centers and anti-abortion rights sources.” *Id.* at 11.
- Planned Parenthood provided grants to its affiliates to “scale up existing abortion education work.” *Id.* at 15.
- Planned Parenthood is involved in “approximately 30 open [legal] cases challenging restrictive [abortion] policies in 16 states, as well as federal policies put in place by the previous [Trump] administration.” *Id.* at 19.
- Planned Parenthood “launched a national campaign” encouraging women to share their abortion stories. *Id.* at 20.

The organization's priorities are clear: In a thirty-two-page report, the word "abortion" appears 34 times. "Pregnancy" appears only twice, once when speaking of steering women *away* from resources that would help them continue their pregnancies. And the words "mother," "mom," and "baby"? Not a single instance. *Id.*

Planned Parenthood's other media shows the same focus. Its YouTube channel, for instance, includes at least sixty videos about abortion, but only nine addressing breast health or *any other* female health topics.¹⁴ Planned Parenthood South Atlantic, the affiliate involved in this case, makes no bones of its core purpose: the top of its home page reads, "Abortion is available in South Carolina through about 6 weeks of pregnancy, with limited exceptions. If you think you might be pregnant *or* need an abortion please go to abortionfinder.org to find the closest provider."¹⁵ The homepage does not mention any other kind of healthcare.¹⁶ And the two South Carolina locations' website headers proclaim a similar message—"South Carolina's 6 week abortion ban is now in effect. Our doors are open. We will not stop fighting."¹⁷

¹⁴ Planned Parenthood (@plannedparenthood), YouTube, <https://perma.cc/PT52-ZX6D>.

¹⁵ *Our Doors Are Open*, Planned Parenthood S. Atl., <https://perma.cc/D345-38TP> (emphasis added).

¹⁶ *Id.*

¹⁷ See, e.g., *Charleston Health Center of Charleston, SC*, Planned Parenthood, <https://perma.cc/5YM4-9JUU>.

D. Planned Parenthood has *always* been focused on stopping, not nurturing, pregnancies.

Planned Parenthood began in the early 1900s as a birth control advocacy organization.¹⁸ Its founder, Margaret Sanger, had earlier founded the first American birth control clinic in 1916. Dorothy Wardell, *Margaret Sanger: Birth Control's Successful Revolutionary*, 70 *Am. J. Pub. Health* 736, 740 (1980). “Sanger believed that birth control was an important part of the solution to . . . societal ills” like “the contributing of morons, feeble-minded, insane and various criminal types to the already tremendous social burden constituted by these unfit”—unfit meaning “the majority of wage workers.” *Box v. Planned Parenthood of Ind. & Ky., Inc.*, 587 U.S. 490, 503 (2019) (Thomas, J., concurring) (quoting Margaret Sanger, *Birth Control and Racial Betterment*, *Birth Control Rev.*, Feb. 1919, at 12).

While Sanger’s advocacy focused on stopping pregnancies before they began, Planned Parenthood quickly adopted abortion as its *cause célèbre*. In 1970, it began offering abortions when New York legalized the practice and, by the end of the decade, became active in the legal battle for abortion. V. Kasturi Rangan & Elaine V. Backman, *Planned Parenthood Federation of America*, *Harv. Bus. Sch. Case Study* No. 9-598-001 (1997; revised 2002) at 10. “Today . . . Planned Parenthood promotes both birth control and

¹⁸ *Our History*, Planned Parenthood, <https://perma.cc/9GJU-UZ9K>.

abortion as ‘reproductive health services’ that can be used for family planning.” *Box*, 587 U.S. at 507 (Thomas, J., concurring).

When convenient, Planned Parenthood has attempted to distance itself from this central aim. In 2014, the organization reported that abortions accounted for only 3% of its services the prior year, even though one in eight patients had received an abortion. Planned Parenthood, Annual Report 2013–2014, at 17–18, <https://perma.cc/ZEK4-LGB8>. The 3% statistic has often been parroted as a response to critiques of Planned Parenthood.¹⁹

But anyone who took a closer look realized this claim was “misleading”²⁰ (said the *Washington Post*) and “meaningless”²¹ (said *Slate*). Again, that same year, one in eight patients had received an abortion, and 94% of its pregnancy resolution services were abortions. Annual Report 2013–2014, *supra*, at 2, 18. In fact, for over twenty years, Planned Parenthood has consistently provided at least 30%—and sometimes, *more than 60%*—of all CDC-reported abortions

¹⁹ See, e.g., Amanda Marcotte, *Nope, Abortion Is Not Planned Parenthood’s “Central Purpose,”* Slate (May 6, 2013, 5:18 PM), <https://perma.cc/V9M8-9QKD>.

²⁰ Lee, *For Planned Parenthood*, *supra* note 2 (factchecker giving the claim “[t]hree Pinocchios”).

²¹ Rachael Larimore, *The Most Meaningless Abortion Statistic Ever*, Slate (May 7, 2013, 4:30 PM), <https://perma.cc/7VEG-3MK9>.

performed in the United States.²² At the same time, its market share of other services has been miniscule: 0.93% of U.S. pap smear tests and 1.8% of clinical breast exams in years with reporting data.²³

When some affiliate clinics wished to focus on other aspects of women’s health, Planned Parenthood doubled down, mandating that “all affiliates must offer on-site abortions.”²⁴ This dedication to abortion

²² Compare, e.g., Planned Parenthood, Annual Report 2004–2005, at 5, <https://perma.cc/UT4W-7MSL>, with Lilo T. Strauss et al., *Abortion Surveillance—United States, 2004*, CDC (Nov. 23, 2007), <https://perma.cc/X9G9-KHFY> (30% of U.S. abortions); Annual Report 2009–2010, *supra*, at 5, with Karen Pazol et al., *Abortion Surveillance—United States, 2009*, CDC (Nov. 23, 2012), <https://perma.cc/8Z3H-97Z4> (42% of U.S. abortions); Planned Parenthood, Annual Report 2014–2015, at 30, <https://perma.cc/5BYA-3UN5>, with Tara C. Jatlaoui et al., *Abortion Surveillance—United States, 2014*, CDC (Nov. 24, 2017), <https://perma.cc/K3A8-X3TT> (50% of U.S. abortions); Planned Parenthood, Annual Report 2020–2021, at 27, <https://perma.cc/7EQB-7SHB>, with Katherine Kortsmit et al., *Abortion Surveillance—United States, 2020*, CDC (Nov. 25, 2022), <https://perma.cc/AUW8-A9H3> (62% of U.S. abortions). Using Guttmacher Institute reporting rather than the CDC’s suggests that Planned Parenthood has provided about one quarter to more than one third of all abortions performed in the United States. James Studnicki & John W. Fisher, *Planned Parenthood: Supply Induced Demand for Abortion in the US*, 8 *Open J. of Preventive Med.* 142, 144 (2018), <https://perma.cc/M2TF-LK7Z>.

²³ *The 3% Myth*, Live Action, <https://perma.cc/HVN5-J5XQ> (using data from the CDC, the U.S. Census Bureau, and the MammaCare Foundation).

²⁴ M. Alex Johnson, *Abortion Mandate Costs Planned Parenthood a Few Affiliates*, NBC News (Dec. 6, 2012, 8:29 AM), <https://perma.cc/7TGG-HFBV>.

adds up: since *Roe v. Wade* was decided in 1973, Planned Parenthood has performed at least 9.7 million abortions.²⁵

E. Women have better options for care.

Planned Parenthood South Atlantic has claimed that the decision to terminate its participation in Medicaid “exacerbated the shortage of providers willing to serve Medicaid patients, and made it more difficult for patients to obtain care in underserved areas.” Resp. Br. for Appellees 7, *Planned Parenthood S. Atl. v. Kerr*, 27 F.4th 945, No. 21-1043, Dkt. 25 (CA4 May 28, 2021).

This claim belies reality. As of July 2022, Planned Parenthood operated two centers in South Carolina while there were 140 pregnancy centers and federally qualified health clinics in the state (not including private health providers accepting Medicaid).²⁶ In Charleston and Richland counties alone—the locations of Planned Parenthood’s two South Carolina centers—there are 133 medical clinics that accept Medicaid.²⁷ Though Planned Parenthood’s two centers claim to “serve hundreds of Medicaid patients each year,” BIO 3, South Carolina pregnancy centers alone served nearly 14,000 individuals in 2022.²⁸

²⁵ This number is based on Planned Parenthood’s annual reports from 1973 through 2023.

²⁶ *Women Have Real Choices*, Charlotte Lozier Inst., <https://perma.cc/8QFG-RJ47>.

²⁷ See *Healthy Connections Medicaid: Search for Providers*, S.C. Dep’t Health & Hum. Servs., <https://perma.cc/EK8F-YCEP>.

²⁸ *Pregnancy Center State Impact Report: 2022 Data*, at 1, Charlotte Lozier Inst. (2024), <https://perma.cc/BG2J-X6S6>.

Not only do many pregnancy care centers provide medical care, they also provide tangible help to expectant and new mothers. According to a study of 2022 data, 2,454 pregnancy centers nationwide offered material assistance to new parents.²⁹ This came most often in the form of diapers: 3,590,911 packs.³⁰ It also came in the form of 1,216,438 packs of wipes, 4,256,274 baby clothing outfits, 43,192 new car seats, and 30,188 strollers.³¹ All this material help would have otherwise cost upwards of \$78 million.³² Adding the value of all the other pregnancy assistance, counseling and outreach services, and public health services provided by pregnancy centers easily pushes that figure over \$367 million.³³ Moreover, in 2022, education was offered at over 87% of pregnancy centers nationwide, covering both prenatal and parenting programming.³⁴ In 2022, these programs were attended by 409,409 individuals, with an estimated value of over \$76 million.³⁵

Across the nation, there are more than four times as many pregnancy centers as there are Planned Parenthood facilities.³⁶ And in 2019, federally

²⁹ *Pregnancy Centers Offer Hope for a New Generation*, at 20, Charlotte Lozier Inst. (2024), <https://perma.cc/X6QT-GQB5>.

³⁰ *Id.* at 19.

³¹ *Id.*

³² *Id.* at 28.

³³ *Id.* at 18.

³⁴ *Id.* at 29.

³⁵ *Id.* at 19.

³⁶ *Fact Sheet: Pro-Life Pregnancy Centers Deliver Real-World Results*, Charlotte Lozier Inst. (Jan. 6, 2023), <https://perma.cc/R387-A4C2>.

qualified health clinics that do not perform abortions saw over fourteen million patients with Medicaid, “nearly 6 times the total number of *all* Planned Parenthood clients.”³⁷ Planned Parenthood is not needed to provide actual medical care—or other prenatal and postnatal support—to women.

II. Money paid to Planned Parenthood is fungible, and States have an interest in defunding abortion services.

While the Medicaid programs of many States, including South Carolina, “do[] not cover abortions, except under limited circumstances required by federal law,” *Planned Parenthood S. Atl. v. Baker*, 487 F. Supp. 3d 443, 444–45 (D.S.C. 2020), *any* money paid to Planned Parenthood or one of its affiliates supports its central mission of performing and advocating for abortions.

The Court has recognized that States have a “legitimate interest[]” in “respect for and preservation of prenatal life at all stages of development.” *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 301 (2022); cf. *Roe v. Wade*, 410 U.S. 113, 162 (1973) (recognizing an “important and legitimate interest in protecting the potentiality of human life”). States may “impose tight restrictions [on abortion] based on [voters] belief that abortion destroys an ‘unborn human being.’” *Dobbs*, 597 U.S. at 256 (citation omitted).

³⁷ *Fact Sheet: Planned Parenthood Facilities Outnumbered 14 to 1*, Charlotte Lozier Inst. (July 11, 2022), <https://perma.cc/4K5E-84L3>.

States also have a “legitimate interest[]” in “the protection of maternal health and safety.” *Id.* at 301; see Act No. 70, 2023 S.C. Acts § 1(3) (expressing “a compelling interest . . . in protecting the health of [pregnant] wom[e]n”). The medical evidence shows that abortion has many negative health consequences for the mother. See, e.g., David C. Reardon & John M. Thorp, *Pregnancy Associated Death in Record Linkage Studies Relative to Delivery, Termination of Pregnancy, and Natural Losses*, 5 SAGE Open Med., at 1 (2017) (“11 studies from three countries reported mortality rates associated with termination of pregnancy, miscarriage or failed pregnancy. Within a year of their pregnancy outcomes, women experiencing a pregnancy loss are over twice as likely to die compared to women giving birth.”); Gabriele Saccone et al., *Prior Uterine Evacuation of Pregnancy as Independent Risk Factor for Preterm Birth and Metaanalysis*, 214 Am. J. Obstet. & Gyn. 572, 572 (2016) (finding that women who had a previous surgical abortion had a “significantly higher risk” of preterm birth); Am. Ass’n of Pro-life Obstet. & Gyn., 5 Practice Guideline, *The Association between Surgical Abortion and Preterm Birth: An Overview* (2021); Breast Cancer Prevention Institute, *Epidemiological Studies: Induced Abortion and Breast Cancer Risk* (Apr. 2020) (listing studies finding an association between induced abortion and breast cancer); Donald Paul Sullins, *Abortion, Substance Abuse and Mental Health in Early Adulthood: Thirteen-year Longitudinal Evidence from the United States*, 4 SAGE Open Med., at 1 (2016) (finding that induced abortion is associated with a 45% increased risk of a mental-health disorder).

States should be allowed to pursue their interests in protecting both women and prenatal life by choosing not to fund abortions, either directly or indirectly. Planned Parenthood is not struggling financially. In 2023, it reported a surplus of \$178.6 million. Annual Report 2022–2023, *supra* note 1, at 27–28. And 34% of its revenue—\$699.3 million—came from government health services reimbursements and grants. *Id.* at 26–27. During that same time, Planned Parenthood spent \$46 million on public policy, \$77 million on advocacy, and \$124 million on fundraising. *Id.* at 28.

The goal of those efforts is quite clear: “moving mountains” to make sure patients can get abortions whenever they want, no matter where they live. *Id.* at 9, 19. The organization’s advocacy endeavors are focused on “blocking [abortion] restrictions,” including an initially successful challenge of South Carolina’s own law. *Id.* at 19; see *Planned Parenthood S. Atl. v. State*, 882 S.E.2d 770, 774 (S.C. 2023) (finding South Carolina’s 2021 Fetal Heartbeat and Protection from Abortion Act unconstitutional under the South Carolina Constitution). Planned Parenthood has also challenged many other states’ laws. See, e.g., *Planned Parenthood Sw. & Cent. Fl. v. State*, 384 So.3d 67 (Fla. 2024); *Planned Parenthood Ass’n Utah v. State*, 554 P.3d 998 (Utah 2024); *Planned Parenthood Ariz., Inc. v. Mayes*, 545 P.3d 892 (Ariz. 2024).

Planned Parenthood South Atlantic has contended that “Medicaid does not pay for [the abortions it provides] except in the very limited circumstances required by federal law.” BIO 3–4. But “[m]oney is fungible.” *Holder v. Humanitarian L. Project*, 561 U.S.

1, 37 (2010) (finding it was logical for Congress to conclude that the money a group obtained for certain legitimate purposes “could be redirected to fund[]” other activities). “[E]very dollar in taxpayer funding allows Planned Parenthood to use its other funds to finance abortion.”³⁸ Many costs paid by Medicare and Medicaid, “such as managerial wages, clerical wages, . . . non-personnel office expenses, [and] professional liability insurance,” cannot “be directly allocable to specific procedures.”³⁹

In other words, Planned Parenthood is not just reimbursed for specific services; taxpayer funds also subsidize its general overhead costs. When Medicare or Medicaid finances those expenses, Planned Parenthood can use its other revenue streams to subsidize abortion procedures and advocacy. And Planned Parenthood has used accounting tricks to maximize how much taxpayer money for purportedly “overhead costs” it can use to “implicitly cross-subsidize abortion services.”⁴⁰ One estimate of “the magnitude of taxpayer subsidies” found that “it is as if taxpayers pay the full cost of 250,000 abortions a year, with about 70,000 financed by federal taxpayers and 180,000 financed by state taxpayers.”⁴¹

³⁸ *Planned Parenthood’s Harvest*, Wall St. J. (July 29, 2015, 7:19 PM), <https://www.wsj.com/articles/planned-parenthoods-harvest-1438211973>.

³⁹ Chris Conover, *Are American Taxpayers Paying for Abortion?*, Forbes (Oct. 2, 2015, 2:22 PM), <https://perma.cc/T4S8-8BK6>.

⁴⁰ *Id.*

⁴¹ *Id.*

States should not be required to undermine their interest in protecting prenatal life by funding an organization that exists to destroy it. Nor should they be compelled to bankroll efforts to squash their own laws. As Governor McMaster declared, “the payment of taxpayer funds to abortion clinics, *for any purpose*, results in the subsidy of abortion and the denial of the right to life.” S.C. Exec. Order No. 2018-21 (July 13, 2018) (emphasis added). States like South Carolina should have the right to decline to use their funds for that outcome.

CONCLUSION

The Court should reverse the judgment below.

Respectfully submitted,

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