LEAGUE OF WOMEN VOTERS® OF SOUTH CAROLINA

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TESTIMONY TO THE SC SENATE MEDICAL AFFAIRS COMMITTEE: S. 1327, 1373, AND S. 1348.

August 17, 2022

Because we believe the Senate to be a careful deliberative body, our written testimony offers detailed documented comments on our position in hopes that you will consider our concerns and reject S. 1327 and S. 1373. We support, instead, codification of the rights embodied in the Roe decision, as in S. 1348.

The League of Women Voters of South Carolina opposes S. 1327 and S. 1373, government mandates that would force birth on those unwilling to carry a pregnancy to term. This would deprive many citizens of religious freedom, due process, privacy, and basic moral agency in a decision that is personally, medically, spiritually, and economically complex. The League rejects the entire enterprise on which this committee has embarked and which the General Assembly endorsed in an earlier form in the "heartbeat" bill that is now in place. These bans are not just violations of our individual rights, but cruel.

MORAL PRINCIPLES AND CONSTITUTIONAL RIGHTS

Our laws must be grounded in principles widely shared in our society, acceptable to persons of diverse faiths or of no faith at all. S. 1327 and S 1373 are very far from that ideal, establishing in law mandates based on the beliefs of several specific religious groups. In contrast, a recent poll of South Carolinians showed that 69% of us believe the decision to have an abortion should be between a woman and her doctor. 91% believe that doctors should be able to help patients suffering pregnancy complications without fear of legal reprisal.[1] Polls like this one have been ignored by anti-abortion activists, shrugged off as somehow distorted. Voters in Kansas have recently shown that this is not the case. The voters in that conservative state decisively rejected abortion bans. Like the people of Kansas, the majority of South Carolinians do not accept ceding one of the most important decisions in their lives to the state.

The demand that the state be allowed to control and alter the course of our lives is supposedly justified by the claim that fertilized eggs, embryos, and pre-viability fetuses are "persons" entitled to the same legal protection as those of us who could become pregnant. This conclusion is reached only through specific religious beliefs, not through observable facts or science.[2] This has never been a generally accepted belief in our society. In the Dobbs decision,

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[1] Planned Parenthood Action Fund, "New Poll Shows Strong Support for Abortion Rights in South Carolina as State Lawmakers Reconvene to Consider Total Ban." July 7, 2022.

[2] Contrary to claims by some abortion opponents, the underlying premises of defining fertilization or conception as the time when "personhood" and full legal protection are achieved are not scientific and secular but cultural and religious. Science tells us that life has been created in a never-ending cycle for approximately the past 3.7 billion years. Yes, an embryo is alive – so is an isolated sperm. Science does not assign moral meaning to any part of that cycle, instead recognizing that interrupting the cycle at any point by any means (for example, male masturbation or celibacy) has the same result, ending the process. The joining of ovum and sperm is only one step in a reproductive process that was shaped much earlier by formation of ova in the ovaries of female fetuses and

Justice Alito falsely claimed that bans reflect the traditional historical understanding of pregnancy and abortion in our nation. The American Historical Association and the American Organization of Historians have joined together to object to Alito's mischaracterization.[3] These organizations filed an amicus brief that provided well-documented factual history. That truthful history does not support Alito's preferred vision of America's past, or future.

It is not surprising that the American people, and specifically the people of South Carolina, reject these extreme bans. Many South Carolinians are people of faith whose religion does not support birth forced by government coercion.[4] Extreme bans conflict with the teachings of major Christian denominations (such as the Methodist, Lutheran, Episcopalian, Church of Christ, and Presbyterian USA churches) and of Conservative and Reform Judaism.[5] This is not because they encourage abortion. It is because they take seriously the complexity of the decisions that must be made as well as the core theological issue of moral agency.

There is no question that mandating compliance with specific religious understandings violates the clear intention of the founders who wrote our Constitution.[6] For example, from James Madison in 1785 said that: "The Religion then of every man must be left to the conviction and conscience of every man: and it is the right of every man to exercise it as these may dictate." The South Carolina Constitution, like the U. S. Constitution, prohibits religious

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continued through the long very complex process of forming a human from the DNA coding in that ovum and sperm. Absent specific religious belief, Americans do not recognize pre-viability fetuses as persons.

[3] "The American Historical Association and the Organization of American Historians have jointly issued a statement expressing dismay that the US Supreme Court "declined to take seriously the historical claims of our [amicus curiae] brief" in its Dobbs v. Jackson Women's Health Organization decision. "Instead, the court adopted a flawed interpretation of abortion criminalization that has been pressed by anti-abortion advocates for more than thirty years. … The court's decision erodes fundamental rights and has the potential to exacerbate historic injustices and deepen inequalities in our country." "History, the Supreme Court, and Dobbs v. Jackson: Joint Statement from the AHA and the OAH (July 2022). https://www.historians.org/news-and-advocacy/aha-advocacy/history-the-supreme-court-and-dobbs-v-jackson-joint-statement-from-the-aha-and-the-oah-(july-2022)

[4] Religious organizations joined together to oppose the overturning of Roe and the enactment of bans in "Brief of Amici Curiae, Catholics for Choice, National Council of Jewish Women, Religious Coalition for Reproductive Choice, Muslim Advocates, Presbyterians Affirming Reproductive Options, Jewish Women International, Auburn Theological Seminary, Muslims for Progressive Values, African American Ministers in Action, and 45 Other Faith Based Organizations, in Support of Respondents," Dobbs v. Jackson Women's Health, No. 19-1392 in the Supreme Court of the United Choice. Following the Dobbs decision, both the Presbyterian (USA) and Episcopal churches have issued very strong statements of opposition, affirming the right of religious liberty of their members.

[5] For example, see the Presbyterian (USA) statement at https://www.pc-biz.org/#/search/3001108. Also, see the Episcopal Church statement at https://anglican.ink/2022/07/11/tec-bishops-split-over-abortion-votes-rejecting-condemnation-of-crisis-pregnancy-centers-but-backing-abortion-on-demand/. For a South Carolina perspective, see this statement from 37 South Carolina clergy: Alston Lippert and Ginger Barfield, "Commentary: Why 37 SC Clergy Believe Abortion Should Remain Legal," The Post and Courier, Aug 4, 2022, https://www.postandcourier.com/opinion/commentary/commentary-why-37-sc-clergy-believe-abortion-should-remain-legal/article_77f6ad9e-12c1-11ed-846f-07db9e7a297e.html.

[6] Matthew Archbold, "7 Religious Liberty Quotes from Our Founding Fathers You Should Know," National Catholic Register, July 26, 2016, https://www.ncregister.com/blog/7-religious-liberty-quotes-from-our-founding-fathers-you-should-know.

establishment.[7] Extreme abortion bans such as those before this committee, written to conform to the wishes of evangelical Christian and Roman Catholic churches, are religious establishment.

In addition, there are other constitutionally guaranteed liberties lost in these bans. There is no equal protection under the law when the rights of women to bodily autonomy are singled out for violation while the importance of consent is stressed in our legal framework for organ donation, even though donation is essential to save the lives of living breathing persons.[8] The same churches that that demand abortion bans recognize the fundamental importance of the right to our own bodies in that context.[9] Bans are also contrary to an explicit right to privacy in the South Carolina Constitution.[10] The prohibition of communications about abortion in S.1373 represent an additional serious erosion of constitutionally guaranteed free speech rights. South Carolina's legislators like to present themselves as guardians of liberties, but these bans are extreme violations of the liberties not just of those who are or could be pregnant but of their families and loved ones.

PRACTICAL CONSEQUENCES

There are very practical consequences for these violations of our freedom. All who can or do experience pregnancy depend on our ability to control our reproductive health to shape the course of our lives. Our reproductive choices impact our physical and psychological well-being, including the foods we eat, our financial resources, and our capacity to gain and maintain employment.[11] These extreme abortion bans will have devastating effects for women, especially women of color.[12]

Black women and other underserved communities already experience unfair barriers and limited access to adequate health care services. The United States has the highest maternal mortality rate of any developed nation, 17.5 deaths

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[7] *South Carolina Constitution, Article 1: Declaration of Rights, SECTION 2. Religious freedom; freedom of speech; right of assembly and petition. (1970 (56) 2684; 1971 (57) 315.) See Appendix 2 for full text.*

[8] Arthur L. Caplan, "Finding a Solution to the Organ Shortage," CMAJ, Vol. 188(16); Nov 1, 2016. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5088084/

[9] There is no underlying universal defense of "life" in the theology of the denominations seeking legislation to restrict abortion. They demand (and our laws provide) full bodily autonomy for donors in the case of organ donation to save the lives of living breathing persons, as illustrated by Pope Benedict XVI in "A Gift for Life. Considerations on Organ Donation." He affirmed that for organ donation to be morally acceptable there must be free, informed consent from the donor, without coercion. In contrast, religious demands for mandatory abortion restriction arise from defining women in terms of their reproductive function, lacking the authority of men in the home, church, and society.

[10] *South Carolina Constitution, Article 1: Declaration of Rights, SECTION 10. Searches and seizures; invasions of privacy. (1970 (56) 2684; 1971 (57) 315.) See Appendix 2 for full text.*

[11] We are aware that for some ban supporters this is precisely the point. Note, for example the "Go Back to the Kitchen" poster carried by a recent State House lobby protestor.

[12] Cody Mell-Klein, "Overturning Roe v. Wade Will Put Even More of an Economic Burden on Women, Northeastern Economist Says," News@Northeastern, https://news.northeastern.edu/2022/06/27/roe-v-wade-economic-impact-women/

per 100,000 births.[13] However, these deaths are not evenly distributed among the people of our nation. Black women are three times more likely to die from pregnancy-related causes than White women.[14] South Carolina's overall maternal mortality rate in 2020 was 27.9 deaths per 100,000 births.[15] During the period 2015-2019, the overall death rate in South Carolina was 26.2 per 100,000 live births, composed of a White rate of 18.0 deaths and a Black death rate of 42.3 per 100,000 live births.[16] All of this should be considered in the context of the results of a 2012 study that showed that the risk of death in childbirth is approximately 14 times higher than that associated with abortion.[17] Prohibiting abortion has been estimated to produce a 12% increase in Black maternal mortality in the first year and a 33% increase in subsequent years.[18]

The CDC cites varying quality of healthcare, underlying chronic conditions, structural racism, and implicit bias as contributors to these figures. Closing the healthcare coverage gap in South Carolina would greatly improve both the overall and Black mortality figures,[19] but this General Assembly has shown little interest in doing so. Forcing birth is its priority; ensuring healthy mothers and children is not. Legislators have just proudly agreed to return a billion dollars to taxpayers. A fraction of that could have mitigated the horror that is maternal death, and especially Black maternal death, in South Carolina.

And what of the lives of the children born of unwanted pregnancies? South Carolina recently has been rated 49th among the states as a desirable and healthy place to have a baby.[20] Forcing births in this environment is indeed cruel. A study comparing outcomes of children born to a mother after denial of abortion to children born after abortion of a previous pregnancy found that denial of abortion was associated with poorer maternal bonding and

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[13] World Population Review, Maternal Mortality Rate by State 2022, https://worldpopulationreview.com/state-rankings/maternal-mortality-rate-by-state,

[14] United States Center for Disease Control and Prevention (CDC), "Health Equity: Working Together to Reduce Black Maternal Mortality," April 6, 2022, https://www.cdc.gov/healthequity/features/maternal-mortality/index.html.

[15] Donna L. Hoyert, Ph.D., Division of Vital Statistics, United States Center for Disease Control and Prevention (CDC), "Health E-Stats: Maternal Mortality Rates in the United States, 2020." https://www.cdc.gov/nchs/data/hestat/maternal-mortality/2020/maternal-mortality-rates-2020.htm.

[16] South Carolina Department of Health and Environmental Control (SCDHEC), South Carolina Maternal Mortality Rate by Race, 2015-2019. https://scdhec.gov/sites/default/files/media/document/2021SCMMMRCLegislativeBrief.pdf.

[17] Raymond EG, Grimes DA. The comparative safety of legal induced abortion and childbirth in the United States. Obstet Gynecol. 2012 Feb;119(2 Pt 1):215-9. doi: 10.1097/AOG.0b013e31823fe923. PMID: 22270271. https://pubmed.ncbi.nlm.nih.gov/22270271/

[18] Amanda Jean Stevenson; The Pregnancy-Related Mortality Impact of a Total Abortion Ban in the United States: A Research Note on Increased Deaths Due to Remaining Pregnant. Demography 1 December 2021; 58 (6): 2019–2028. doi: https://doi.org/10.1215/00703370-9585908.

[19] Judith Solomon, "Closing the Coverage Gap Would Improve Black Maternal health," Center on Budget and Policy Priorities, July 27, 2021. https://www.cbpp.org/research/health/closing-the-coverage-gap-would-improve-black-maternal-health

[20] Adam MlcCann, "2022's Best &Worst States to Have a Baby," WalletHub, 8 Aug 2022, https://wallethub.com/edu/best-and-worst-states-to-have-a-baby/6513?fbclid=IwAR2Xtd5AhAOsrVX_nxjGyuaxOpgNQ_OpuVl0ymI8aAS-lM6dXip_XDQ8Kzc.

greater poverty.[21] As another study noted, "When a poor pregnant woman decides to keep her unplanned pregnancy, the odds are great that both she and her child will face a lifetime of poverty and ill health."[22] In spite of this, advocates for rigid abortion prohibitions have not been vocal about the need for the state of South Carolina to address the many ways that poverty could be reduced and the lives of children and their families improved in this state. Clearly charity, including church-based charity, is woefully inadequate to the existing need.

However, it is not just people in poverty who will experience economic issues because of these bans. Persons who don't wish to have their lives dictated by the state won't come here for education or employment. Businesses will be reluctant to come here or expand here because they anticipate difficulties for employees. Indiana is already experiencing the consequences of their ban through loss of corporate investment and jobs.

SUMMARY

No additional abortion restrictions should be enacted in South Carolina law. Instead, the "heartbeat" ban should be repealed, new bans should be rejected, and South Carolina's laws should offer the protections that Roe v. Wade gave to our nation's women before the recent SCOTUS decision in Dobbs v. Jackson Women's Health. The Dobbs decision was grounded not in the rule of law but in extremist sectarian theology and nostalgia for a past that was brutal for many in our nation. South Carolina should not build upon that immoral and cruel foundation to exert authoritarian control over the lives of half of its people.

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[21] Foster DG, Biggs MA, Raifman S, Gipson J, Kimport K, Rocca CH. Comparison of Health, Development, Maternal Bonding, and Poverty Among Children Born After Denial of Abortion vs After Pregnancies Subsequent to an Abortion. JAMA Pediatr. 2018;172(11):1053–1060. doi:10.1001/jamapediatrics.2018.1785. https://jamanetwork.com/journals/jamapediatrics/article-abstract/2698454.

[22] Oberman, M. (2018). Motherhood, Abortion, and the Medicalization of Poverty. Journal of Law, Medicine & Ethics, 46(3), 665-671. doi:10.1177/1073110518804221. https://www.cambridge.org/core/journals/journal-of-law-medicine-and-ethics/article/motherhood-abortion-and-the-medicalization-of-poverty/902E47A23765E068D0D4BE224D892CBB.