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September 9, 2019

South Carolina Senate Medical Affairs Committee  
Attention: Research Director  
P.O. Box 142  
412 Gressette Building  
Columbia, SC 29202

Dear Board of Health Members,

The National Women's Law Center ("Law Center"), based in Washington, D.C., is a nonpartisan, non-profit legal and advocacy organization dedicated to the advancement and protection of women's legal rights and opportunities. The Law Center is submitting comments in response to the Senate Medical Affairs Committee hearing on House Bill 3020. We urge the Senate Medical Affairs Committee to stop this harmful and blatantly unconstitutional bill.

I. House Bill 3020 is blatantly unconstitutional.

For over forty-five years, the U.S. Supreme Court has made it clear that the U.S. Constitution protects an individual's right to decide whether to have an abortion.<sup>1</sup> But despite that clear constitutional standard, numerous states – including Alabama, Georgia, Kentucky, Louisiana, Mississippi, Ohio, and Missouri – have moved to ban abortion well before viability. South Carolina now attempts to do the same.

House Bill 3020 would ban abortion as early as six weeks into pregnancy,<sup>2</sup> which is unequivocally before viability. Like the laws passed in Alabama, Georgia, Kentucky, Louisiana, Mississippi, Ohio, and Missouri, House Bill 3020 is unquestionably unconstitutional. It is a deliberate effort to overturn 46 years of established constitutional precedent, beginning with *Roe v. Wade*.<sup>3</sup> In *Roe*, the Supreme Court held that the Due Process Clause of the Fourteenth Amendment protects a woman's right to decide to have an abortion, and that the State cannot ban abortion prior to viability; and after viability, the State cannot ban abortion when it is necessary to preserve the life or health of the woman.<sup>4</sup>

The Supreme Court has repeatedly affirmed the central holding in *Roe v. Wade*. In *Planned Parenthood v. Casey*, the Court adopted an undue burden test to determine whether a law creates a substantial obstacle to accessing abortion, but still made clear that "a State may not prohibit any woman from making the ultimate decision to terminate her pregnancy before viability."<sup>5</sup> This has been repeatedly reaffirmed by the Supreme Court, including as recently as 2016 in *Whole Woman's Health v. Hellerstedt*.<sup>6</sup>

Because the constitutional standard is clear, courts have rejected State's efforts to ban abortion prior to viability. For example, courts have struck down a twelve week ban on abortion in Arkansas<sup>7</sup>, twenty week bans on abortion in Arizona and North Carolina,<sup>8</sup> and a fifteen week ban on abortion in

Mississippi.<sup>9</sup> Most recently, a federal court blocked an Arkansas law that would ban abortion at eighteen weeks.<sup>10</sup>

Similarly, attempts to ban abortion beginning at the detection of cardiac activity in North Dakota and Iowa have been invalidated.<sup>11</sup> No court has upheld any pre-viability abortion ban because such a ban is indisputably unconstitutional under precedent.

This year, seven states passed blatantly unconstitutional pre-viability bans on abortion. Six of those laws have already been challenged,<sup>12</sup> and four have already been blocked.<sup>13</sup> It is likely that House Bill 3020 would face the same fate, at South Carolinian taxpayers' expense.

## II. Abortion bans harm women and pregnant people.

Access to reproductive health care – including abortion – is vital to gender equity. And access to abortion is a key part of pregnant people's liberty, equality, and economic security. Everyone, no matter where they live or their financial means, deserves access to abortion when they need it.

House Bill 3020 is a clear attempt to eliminate legal abortion in South Carolina, a goal that would have drastic implications for South Carolinian pregnant people's economic security and opportunity by threatening financial well-being, job security, workforce participation, and educational attainment, and further entrenching existing inequalities.

If House Bill 3020 became law, women and pregnant people seeking abortion care would have to travel out of state to reach an abortion provider. The resulting travel and associated costs would make it difficult, and for many, impossible, to obtain an abortion. In addition to the direct costs, travel drives up the indirect costs of getting an abortion, as do other related expenses, such as child care, time off work, gas or other transportation expenses, and hotel costs.<sup>14</sup> Many women and pregnant people will be forced to delay the procedure while they save enough money for both the procedure and the additional expenses imposed by travel. Delays lead to more expensive, riskier procedures. While abortion is safe throughout pregnancy, the risks of medical complications increase with each week.<sup>15</sup> And the costs of abortion increase with each week,<sup>16</sup> catching people in a vicious cycle where they have to try and save more and more money.

All of the harms imposed by abortion restrictions – and that would be amplified by this bill – fall hardest on those who already face multiple barriers to care, such as women struggling to make ends meet, women of color, rural women, and women who already have children.<sup>17</sup> Women who have abortions are disproportionately poor,<sup>18</sup> and for these women, the additional costs impose a particularly heavy burden. And some pregnant people, like low-wage workers with inflexible schedules and little ability to absorb extra costs, will be put in an untenable position in which the price of obtaining an abortion is a financial crisis, further entrenching existing economic instability. Additionally, Black and Latina women are more likely to experience unintended pregnancy and live below the poverty line, due to racial, ethnic, gender, and economic healthcare inequalities. Moreover, Black, Latina, and Native women are substantially more likely to live below the federal poverty line as compared to white women. These women in particular would experience severe consequences of being denied care, and forcing them to carry a pregnancy to term or travel long distances to access care could mean falling deeper into poverty.

For those women unable to get an abortion as a result of restrictive abortion laws, having a child will have drastic consequences for their future opportunity and equality. As the U.S. Supreme Court has held, “The ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives.”<sup>19</sup> Forcing a woman to carry a pregnancy to term can have long-term negative consequences with respect to their economic security, workforce participation, and educational opportunities. A study comparing women who terminated a pregnancy to those who wanted but were unable to obtain an abortion found that one year later women denied an abortion were less likely to be employed in a full-time job and more likely to be living below the federal poverty line.<sup>20</sup> There was an increased likelihood that women didn’t have enough money to pay for basic family necessities like food, housing and transportation if they were denied an abortion. Women unable to terminate unwanted pregnancies were more likely to stay in contact with violent partners, putting them and their children at greater risk than if they had received the abortion.<sup>21</sup> Women forced to carry a pregnancy to term may also face diminished earnings, interference with their career advancement, disruption of their education, and fewer resources for children they already have.<sup>22</sup>

In conclusion, it is clear that House Bill 3020 is blatantly unconstitutional and would harm women and pregnant people. The Law Center urges the South Carolina Senate Medical Affairs Committee not to advance House Bill 3020.

Sincerely,

A handwritten signature in black ink, appearing to read 'H. Shumaker', written in a cursive style.

Heather Shumaker  
Senior Counsel for Reproductive Rights and Health  
National Women’s Law Center

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<sup>1</sup> See, e.g., *Roe v. Wade*, 410 U.S. 113, 153 (1973); see also *Planned Parenthood of Cent. Mo. v. Danforth*, 428 U.S. 52, 72–73 (1976); *City of Akron v. Akron Ctr. for Reprod. Health, Inc.*, 462 U.S. 416, 432–33 (1983); *Hodgson v. Minnesota*, 497 U.S. 417, 434 (1990); *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 878 (1992); *Whole Woman’s Health v. Hellerstedt*, 136 S. Ct. 2292, 2318 (2016).

<sup>2</sup> H.B. 3020, 2019 Gen. Assemb., Reg. Sess. (S.C. 2019)

<sup>3</sup> *Roe v. Wade*, 410 U.S. 113, 166 (1973).

<sup>4</sup> *Roe v. Wade*, 410 U.S. 113, 163–165 (1973).

<sup>5</sup> *Planned Parenthood v. Casey*, 505 U.S. 833, 879 (1992).

<sup>6</sup> *Whole Woman’s Health*, 136 S. Ct. 2292 (2016).

<sup>7</sup> *Edwards v. Beck*, 786 F.3d 1113, 1117–19 (8th Cir. 2015), cert. denied, 136 S. Ct. 895 (2016) (striking down a ban on abortion starting at twelve weeks).

<sup>8</sup> *Isaacson v. Horne*, 716 F.3d 1213, 1217, 1231 (9th Cir. 2013), cert. denied, 134 S. Ct. 905 (2014) (striking down ban on abortion starting at twenty weeks); *Bryant v. Woodall*, 363 F. Supp. 3d 611, 630–32 (M.D.N.C. 2019) (striking down a ban on abortions starting at twenty weeks).

<sup>9</sup> *Jackson Women’s Health Org. v. Currier*, 349 F. Supp. 3d 536, 537–38, 544–45 (S.D. Miss. 2018) (striking down a ban on abortions starting at fifteen weeks).

<sup>10</sup> *Little Rock Family Planning Serv. V. Rutledge*, No. 4:19-cv-00449-KGB (Aug. 6, 2019).

<sup>11</sup> See *MKB Mgmt. Corp. v. Stenehjem*, 795 F.3d 768, 772–73 (8th Cir. 2015), cert. denied, 136 S. Ct. 981 (2016). See Ruling on Motion for Summary Judgment, *Planned Parenthood of the Heartland, Inc. v. Reynolds ex rel. Iowa*, No. EQCE 83074 (D. Ct. Iowa Jan. 22, 2019).

<sup>12</sup> Lawsuits have been filed in Alabama, Georgia, Kentucky, Mississippi, Ohio, and Missouri.

<sup>13</sup> Courts have blocked the laws in Kentucky, Mississippi, Ohio, and Missouri. See Temporary Restraining Order at 2–3, *EMW Women’s Surgical Center v. Beshear*, No. 3:19-cv-178, Dkt. No. 15 (W.D. Ky. Mar. 14, 2019); Mem. of Conf. & Order at 2, *EMW Women’s Surgical Center v. Beshear*, No. 3:19-cv-17, Dkt. No. 32 (W.D. Ky. Mar. 27, 2019); *Jackson Women’s Health Org., v. Dobbs*, --- F. Supp. 3d ---, No. 3:18-cv-171-CWR-FKB, 2019 WL 2240532 (S.D. Miss. May 24, 2019) (Mississippi), appeal docketed, No. 19-60455 (5th Cir. June 24, 2019); *Preterm-Cleveland v. Yost*, No. 1:19-cv-00360, Dkt. No. 17 (S.D. Oh. July 3, 2019); *Reproductive Health Serv. of Planned Parenthood of the St. Louis Region v. Parson*, No. 2:19-cv-4155-HFS, Dkt. No. 50 (W.D. Mo. Aug. 27, 2019).

<sup>14</sup> See Brief of Amici Curiae Nat’l Women’s Law Ctr. et al. in Support of Petitioners at 16–18, *Woman’s Health v. Hellerstedt*, 136 S. Ct. 2292 (2016) (No. 15-274), <https://nwl.org/resources/45623-2/>.

<sup>15</sup> Linda A. Bartlett et al., *Risk Factors for Legal Induced Abortion-Related Mortality in the United States*, 103 *Obstetrics & Gynecology* 729, 731 (2004).

<sup>16</sup> Jenna Jerman & Rachel K. Jones, *Secondary Measures of Access to Abortion Services in the United States, 2011 and 2012*, 24 *Women’s Health Issues* e419, e421–22 (2014).

<sup>17</sup> See Brief of Amici Curiae Nat’l Women’s Law Ctr. *supra* note 14 at 12.

<sup>18</sup> Rachel K. Jones & Megan L. Kavanaugh, *Changes in Abortion Rates Between 2000 and 2008 and Lifetime Incidence of Abortion*, 117 *Obstetrics & Gynecology* 1358, 1362 (2011).

<sup>19</sup> *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 856 (1992).

<sup>20</sup> Women denied an abortion had almost four times greater odds of a household income below the federal poverty level and three times greater odds of being unemployed. *Turnaway Study*, BIXBY CENT. FOR GLOBAL REPROD. HEALTH <https://www.ansirh.org/research/turnaway-study>; Diana Greene Foster, *Presentation at the American Public Health Association Annual Meeting & Expo: Socioeconomic Consequences of Abortion Compared to Unwanted Birth* (Oct. 30, 2012), <https://apha.confex.com/apha/140am/webprogram/Paper263858.html>.

<sup>21</sup> See *id.*

<sup>22</sup> See Brief of Amici Curiae Nat’l Women’s Law Ctr. *supra* note 14 at 36–37.