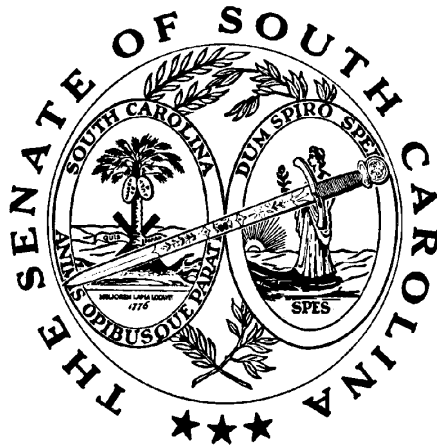


NO. 32

JOURNAL
OF THE
SENATE
OF THE
STATE OF SOUTH CAROLINA



REGULAR SESSION BEGINNING TUESDAY, JANUARY 10, 2023

FRIDAY, MARCH 3, 2023

Friday, March 3, 2023
(Local Session)

~~Indicates Matter Stricken~~

Indicates New Matter

The Senate assembled at 11:00 A.M., the hour to which it stood adjourned, and was called to order by the ACTING PRESIDENT, Senator SETZLER.

ADDENDUM TO THE JOURNAL

The following remarks by Senator STEPHENS were ordered printed in the Journal of February 8, 2023:

Remarks by Senator STEPHENS

Good afternoon, thank you Mr. PRESIDENT. Ladies and gentlemen, I stand before you this afternoon to voice my opinion on what we will be debating probably for the next few days. I believe in the oath that I took some two years ago, to defend the Constitution of this State and the United States, and I said, "I do." That meant a lot to me as well as for the individuals that entrusted me to be here in Columbia to voice their concerns. I've learned from a great mentor, that people will forget what you did for them, but they will never forget how you treated them.

Now, the recent decision *Roe v. Wade* was overturned by the United States Supreme Court practically placed the decisions of abortion in the hands of the states. The states are there now, to practically craft laws, and laws that are not unconstitutional. We are in a state of emergency ladies and gentlemen. I believe wholeheartedly that the views and concerns of women in this State are not taken seriously. I believe here in this Body it appears that contentious debates and decisions are becoming too intense, as well as leaning towards one group or one set of individuals. Now ladies and gentlemen, laws that deny access to abortion, whatever the stated objectives, have discriminatory tendencies for both undermining woman's capacity to make responsible decisions about their lives. Yes, indeed government may find the potential consequences of allowing women to make such decisions threatening in some consequences.

Ladies and gentlemen, this is 2023, and in many instances, we fail to recognize the right of women as being equal. It's been noted from generation to generation, recognizing a woman's sexual and reproductive autonomy contradicts with the social norm. Now, that renders women subordinate in some cultures to men in their families and communities.

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My colleagues, it's not surprising that unwillingness to allow women to make decisions about their own bodies often coincide with their tendencies to deny women's decision making roles in their lives and especially in the political arena -- economically, and socially. A woman has a right to make decisions regarding her own body. Now, support for this right is found in several human rights instruments which assures freedom in decision making -- that private matters really matter. Such provisions include protection of the right of physical integrity, the right to decide freely and responsively, a number and spacing of one's children and the right to privacy. Banning abortion care will not stop abortions -- but it will stop safe, legal abortions. Truly, we are in a state of emergency for women's health.

Thank you, Mr. PRESIDENT, thank you Senator FANNING. Barriers to reproductive care will only work if health outcomes exacerbate disparities and inequities in women's health. Fighting to make sure women have access to reproductive health care is now more important than ever. So, I beg you, I appeal to you, to respect the rights and privacy of women here in South Carolina, and in this Nation.

ADDENDUM TO THE JOURNAL

The following remarks by Senator GARRETT were ordered printed in the Journal of January 25, 2023:

Remarks by Senator GARRETT

I wish I could hear some wa wa wa, a little baby crying. The United States Supreme Court came down and told us that we needed to balance the rights of an unborn child, and his or her right to life as against a woman's right of choice. Of course, the United States Supreme Court found that there was no such right, and then sent it back to the states to determine whether or not there was this right of privacy. What did it mean in the State of South Carolina? All this question of judicial activism -- one must read to know that we have rampant judicial activism in this State. It's only one opinion in this matter. So much so, that there were questions of what can the Legislator do, what can our Legislature do, when a Supreme Court Justice goes rogue? What do I mean by going rogue? By saying the Legislature didn't know what it was doing, the Legislature passed an act that was arbitrary. Many usually use the word capricious, they didn't. They just said it was arbitrary. The passage of law that we worked on for many years. We passed Fetal Heartbeat way

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before the Dobbs decision. So, we didn't know what the United States Supreme Court was going to do with Dobbs; we had no idea. The United States Supreme Court passes upon laws in the sense of upholds and then sends them down to the states or they reject laws and tell the states that you no longer have to follow that. South Carolina in reliance upon those passed laws consistent with the federal law which has now been declared improper. The United States Supreme Court in Dobbs said there is no constitutional right to an abortion. It went through many pages of analysis and then we got this decision. There are some opinions based on Roe v. Wade that thought we had no absolute right to abortion. They automatically said well, obviously that decision is going to be unconstitutional. But guess what? That law was passed prior to the Dobbs decision, so what do we do? We go ahead and go forward. We allow that case to be heard because it already enjoined us. Many people knew that they were going to enjoin us just like they did in Dobbs. The Supreme Court enforced it because the United States Supreme Court said there is no right to kill babies. When you do the balance, there is no right to kill babies. When we are faced with this, this creates the necessary discussion. I'm sorry we are even having this discussion. I love the South Carolina Supreme Court. I love this institution they call the Senate. I love the institution called the House of Representatives. I even like our Governor. We passed the Fetal Heartbeat Bill after many years. There were twenty plus years Senator GROOMS worked on that. The Legislature has the plenary power to make decisions in this case. I want you all to go through that one hundred fifty pages and show me where there was some analysis of the balance of the rights of a woman to have a choice and the balance of rights of the unborn child. You won't find it. So, we did exactly what the United States Supreme Court told us not to do. We allowed jurists in this case, one jurist in particular, to make what I call a super Legislator. One of the Justices, Kitteridge called him out for this. If you have somebody that is a super Legislator who is dividing the separation of power and crossing the lane, one Senator referred to it as crabs in a pot. Those crabs are trying to crawl out and others are pulling them back in. Well, I hate to tell you all this, but we had a Justice that got completely out of the pot and went on down the road. Until we reel him in, we have problems.

I want to talk a little bit about judicial reform. What right do we have as Legislators to control somebody that gets out of the pot, so to speak, or gets out of their lane? I looked at the Constitution, and I couldn't find anything of any substance, so the only thing we really can do, is in our

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appointment process. That process must be done in such a way that we are comfortable. There are many ways to do that, but I was more interested in not necessarily the appointive side of it but what happens if one goes rogue, what do you do? We need to be able to determine the ideology of a Judge before they come on the bench. I believe that the best Judge is a moderate, in the middle, not one way or the other, but could be swayed one way or the other without any preconceived notions. South Carolina Constitution Judicial Department Article V, Section 16 provides disqualification of Judges, Justices and temporary appointments. It says that the General Assembly shall specify the grounds for disqualification, of justices and judges to sit on certain cases. It also says the General Assembly shall also provide for the temporary appointment of men who are learned in the law. This is a set of special Justices and Judges when the necessity for an appointment shall arise. Should we not reflect when our own Justice of the Supreme Court calls out a fellow Justice for going off the reservation, should we not have some method that the General Assembly can call them into question? Or at least bring them before to have some discussion about getting outside the lanes? The United States Supreme Court advises there is no federal right to an abortion. Article III, Section 1 of the United States Constitution establishes that the Supreme Court is the Supreme Court. All Legislators, and all State Supreme Courts must follow their rules as they find them. Article I, Section 8 of the South Carolina Constitution is the separation of powers. It provides the government of this State, the legislative, executive, and judicial powers of the government shall forever be separate and distinct from each other. No person or persons exercising the functions of one of the said departments shall assume or discharge the duties of the other. We have a case where the United States Supreme Court sent it back to the State Legislature, but before the State Legislature had a chance to rule on it, or even debate it, then our Supreme Court looked at our law and decided what our rights of privacy were. If you go and look at this analysis it is frightening. It is absolutely frightening what a Justice alone, one person, can do in an opinion -- for instance privacy. The word privacy in this opinion got morphed into meaning many more things than just privacy. What do I mean? It goes to the point of saying that the right of privacy is not just the right of privacy; it is a clear right of privacy. Show me in the Constitution where it says it was a clear right of privacy or what that means, and did the Legislature discuss it? It then, took the right of privacy further, and went to the point of saying that privacy right and privacy interest are processes of

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deliberation. I don't see that in the Constitution. Although I think it is a good thing, I don't think there's anything in our Constitution saying that before a woman can exercise a right of privacy, she has to have a right of prayer, a discussion with her husband, a discussion with her boyfriend, a discussion with her minister, a discussion with a professional counselor, a discussion with her doctor, other loved ones or friends, she might turn to guidance and advice in making informed consent about whether to continue the pregnancy, and whether to end the life of the child. I would rather they ask whether to allow the child to live. Again, I saw no balancing in that analysis of the child whatsoever. If you are a strict constructionist and you read the Constitution you're supposed to stay within the bounds of the Constitution. At the end of this thing, it was said that the privacy right includes informed consent along with a private choice, and I looked in the Constitution and I still can't find those words. I've been looking at it, I've read it three times, I am trying to find it and it's not there. When he gets through with that, this Justice goes on, and then said if we the Legislature found certain facts, that we would have had to enforce them. We didn't even consider what facts he had in his head that he thought that the Legislature should have thought about, and then responded to. Senator McELVEEN got up and made the point maybe a woman doesn't have enough time between the learning of her pregnancy and of the decision to make an informed choice.

Senator McELVEEN said it, then Senator MATTHEWS said it. If we had a discussion about it, I hate to tell you, but we've already ruled on that subject. That topic was discussed by this Body. If we made the decision after discussion of that topic, then the plenary power of this Legislature is superior to anything or any interpretation that our State Supreme Court may try to do. It was said that our actions were arbitrary. Maybe you're okay with that, maybe some of you are okay with our Supreme Court telling us that our actions are arbitrary. I'm not, our actions were thought out and thought through. They may disagree with our position, but our position was stated. It was in the Heartbeat Bill, and in the Heartbeat Bill there are certain responsibilities. From the time you're pregnant, until the time you are expecting, until the time we hear the fetal heartbeat a woman has the right to have an abortion. That's what the law allows for. If she decides to have unprotected sex, there is the morning after pill. Whose responsibility is it -- in a balancing? Why wouldn't the Court have looked at that and said well there's four weeks potential, six weeks potential that they could have known that they were pregnant and then made the decision before the fetal heartbeat. That was

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a decision this Legislature made. We said six weeks, and the Supreme Court interpreted it to mean four weeks. It doesn't matter, we've set a time that we as the Legislature felt was proper. Now, many of you know I disagree with that. Personally, I think it goes back to conception. This Body, unrelated to my opinion, made that decision after many years of hard work. So, for it to be said that our work was arbitrary concerns me. I go back to Justice Kitteridge; he is talking about the United States Supreme Court but he's talking about the Supreme Courts as a whole. The Supreme Court cautioned restraint in the recognition of unexpressed rights being fundamental in a constitutional sense. Now, we are using the word privacy. Once a claimed right is deemed a constitutional right, society, through its citizens, loses the ability to debate the issue and effect change to the democratic legislative process. Every one of the Justices said that there's no constitutional right to an abortion in South Carolina. This was a consequence of the Roe decision as for half a century. Only the opinion of the Judges mattered in defining the scope to the right of an abortion. Sixty-three million children died. Ladies and gentlemen, maybe there wasn't much crime, but there were sixty-three million children killed. So, the people here in South Carolina have a right to discuss this issue after Dobbs. It said excluding the people and leaving important policy issues in the hands of only Judges is anathema to the design of our constitutional republic and the democratic process. It is for this reason cases have cautioned that courts are to exercise the utmost care whenever we are asked to break new ground in this field. How many times in the Dobbs decision did it say, in every case, abortion is different? Why is abortion different? Because it also involves the balancing of an unborn child which I did not see in this analysis. The liberty protected by the due process clause can be subtly transformed into the policy preference from a member of the judiciary. It is important that our Supreme Court told us we had to be careful about this, and if we weren't careful about this, we could have a problem. I thank my colleague through his years of experience, and I thank you all for listening for my ramblings. As a practicing lawyer for forty years and an advocate for children I make no apologies for making these statements here today. It is imperative that we choose Justices that understand the constitutional right to life as a fundamental right. It is imperative that we have Justices who know what the opinion is and are capable of doing a balancing test. None of them did a balancing test, and a strict constructionist Mr. Kitteridge as well as Justice James did not. It was necessary because the claim on its face was unconstitutional. Again, if

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the General Assembly decides to give people nineteen weeks or two trimesters, if this Body decides that then that's the law of the case. The Supreme Court does not need to do a whole lot of background work once that decision is made but, that is not what we did here. The offending Justice of the Court must defer to the legislative judgement unless a legislative judgment is unlawful per se. He found the reasoning was unreasonable. Having said that, somehow the right of privacy in our State Supreme Court got morphed into a lot more than was set forth in our Constitution. We need strict constructionists; we don't need people making law especially justices of the Supreme Court. Any questions?

ADDENDUM TO THE JOURNAL

The following remarks by Senator GARRETT were ordered printed in the Journal of February 22, 2023:

Remarks by Senator GARRETT

Thank you all. You know, this fentanyl is a very dangerous drug. It is killing many of our children and it is a national problem. It is not just a South Carolina problem. I would love for South Carolina to be able to put a band around us and keep all of it out of South Carolina. We can't do that, so in my estimation we have to be thinking in terms of national policy as well as South Carolina policy. We can't do this alone, so our policies need to be consistent with the national policies. We all need to be working together state, federal, and local government. We need to support law enforcement. When somebody loses a child to drugs, they don't really care whether or not it had four grains, or eight grains, or two grains, or any grains. When you lose a child to this, all you know is that someone sold it to them. That is what you know and understand. Often, as was testified at that meeting, many of those people actually knew who it was that sold them that drug and they are not being prosecuted. So nowadays, what we have is a situation where the dealers are smarter. They are now putting their drugs into every other drug. For instance, they lace marijuana with this drug, fentanyl, and kill you just the same as whether or not they gave you straight fentanyl. It is a problem for all of us. We've got a good federal and state law that deals with a combination of all of these drugs. It is in our Section, 16-3-80, and it also deals with the issue that was before us earlier. This amendment draws in all federal law and our state law or state law into our federal law, and it uses all of this power. Oftentimes, we don't have the money or expertise in South

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Carolina -- oftentimes to do this work that needs to be done, to the interdiction. Oftentimes a lot of this stuff coming in is not coming in just from South Carolina. It is coming in from Florida. It is coming in from Atlanta. It is coming in from Nashville. It is coming in from Charlotte. All of this is coming in. It comes in and goes out, before we even know who has delivered it. Unless we work the system that is already in place, the South Carolina system is consistent with the federal system. This amendment says that all illegal drugs, if they kill your child, should warrant the penalty of thirty years. So that's what the amendment does. Thank you.

ADDENDUM TO THE JOURNAL

The following remarks by Senator SHEALY were ordered printed in the Journal of February 9, 2023:

Remarks by Senator SHEALY

Senator, did you know that I am really sad and I'm embarrassed about a lot of things that have happened in this Chamber. In the last year, we probably spent the last three to four years, talking about the same subject. We get stuck on a subject and we just don't know how to get off of it. I love you Senator FANNING, but we get stuck here and you talk a lot, and I love it, but I get tired of it. We have talked about abortion, or what we want to call right to life, or personhood, or whatever the new name of it is this year. We call it something different every year, but, did you know, we are the South Carolina Senate and we have a huge Republican majority, did you know that? We should be able to get something passed, did you know, or not get something passed. But we have spent the last four years going over and over and over the same thing. What are we doing? I think in this Republican creed it says something about don't cower before any master, save my God. Well, it seems to me like we're cowering before the House of Representatives quite often, right? I mean, there is one or five or twenty-seven House members that the Republican -- the real Republican -- Caucus is cowering to. We're not listening to our constituents, we're not listening to anybody else, but we're listening to the Freedom Caucus. We just listen to what they tell us because that's what we're supposed to do. But I've been told that I'm not a real Republican and I don't understand the Republican creed. Did you know that I had somebody ask me the other day if I needed them to send

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me a copy of the Republican creed? And, did you know, I'm tired of being insulted and saying I'm not pro-life.

I don't like to have another fellow Senator stand up here and tell me or tell this Body, call out other Senators' names and say, this is a pro-life Senator, this is a pro-life Senator, and this is a pro-life Senator. There is not a woman in here that's a pro-life Senator because I never hear my name called out. And I probably work harder for children and pro-life issues for born children than anybody else in here. I raised \$50,000 last night to help children and I'm going to get more because she just told me I would, so I'll be waiting for your check. But I'm going to tell you, just because they don't think we are pro-life doesn't mean we are not pro-life, because we are. But I've heard some Senators around here standing in the hall and saying you know when we stop abortions this year, did you know, when we stop every abortion this year, we're going to have more babies to put up for adoption. So I'm going to write an adoption Bill, so we will have more babies to adopt. We're going to have more babies to adopt. I said we have plenty of children to adopt. I know this because I work with DSS, and I work with DJJ, and I work with DDSN, and I work with all of these agencies. If they worked with them, then they would know this, did you know? They put these 5,774 children out there that are waiting to be adopted. Well, they're not babies. Nobody wants to adopt them. They're disposable. Don't worry about them. We just want babies, so we want all of these women, you know, to have babies. We want them to have more babies, so we can adopt them out. We don't want to get on that because I thought about wearing teal all week. You all could wear, you all that are of childbearing age, could wear garnet. I'm not of childbearing age. I just don't understand what the objective is here, when we've got so many children already in the State of South Carolina that are up for adoption, and they don't want to adopt these children, they just want babies. They want women to have babies, that can't have babies, that don't want or don't need to have babies, or there is some reason that women don't just get pregnant to have abortions. In fact, most people that get pregnant really want to have a baby. Since I was thirty-something I had to have a hysterectomy because of issues with cancer and those types of things. People do not just get pregnant, you know. So, I just want to know, all of those people that are working on these adoption Bills, there are 5,000 children out there that need a home. How about call DSS tomorrow and see if you can take one of these children home with you. Thank you, Senator.

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ADJOURNMENT

At 11:06 A.M., on motion of Senator SCOTT, the Senate adjourned to meet next Tuesday, March 7, 2023, at 12:00 P.M.

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