

No. 23-1275

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**In the Supreme Court of the United States**

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ROBERT M. KERR, DIRECTOR, SOUTH CAROLINA  
DEPARTMENT OF HEALTH AND HUMAN SERVICES,  
*Petitioner,*

v.

PLANNED PARENTHOOD SOUTH ATLANTIC, ET AL.,  
*Respondents.*

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

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**BRIEF FOR AMERICAN ASSOCIATION OF  
PRO-LIFE OBSTETRICIANS AND  
GYNECOLOGISTS AS *AMICUS CURIAE*  
IN SUPPORT OF PETITIONER**

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- Josh Dawsey, *Planned Parenthood to Unleash Campaign Against Trump*, Politico (Mar. 14, 2017, 9:31 PM), [www.politico.com/story/2017/03/planned-parenthood-trump-236060](http://www.politico.com/story/2017/03/planned-parenthood-trump-236060)..... 5
- Karen Pazol et al., *Abortion Surveillance—United States, 2009*, CDC (Nov. 23, 2012), <https://perma.cc/8Z3H-97Z4> ..... 14
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- M. Alex Johnson, *Abortion Mandate Costs Planned Parenthood a Few Affiliates*, NBC News (Dec. 6, 2012, 8:29 AM), <https://www.nbcnews.com/news/us-news/abortion-mandate-costs-planned-parenthood-few-affiliates-flna1c7463337>..... 14
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### **INTEREST OF *AMICUS CURIAE***

The American Association of Pro-Life Obstetricians and Gynecologists (AAPLOG) is a nonprofit 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 our medical colleagues regarding the medical and psychological risks associated with induced abortion.

AAPLOG has a strong interest in ensuring that States are not compelled to undermine their protections of women and preborn children by funding organizations that target those vulnerable groups.\*

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\* Under Rule 37.2, *amicus* provided timely notice of its intention to file this brief. Under Rule 37.6, no counsel for a party authored this brief in whole or in part, and no person other than *amicus curiae*, its members, or its counsel made a monetary contribution to its preparation or submission.

## 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 receiving Medicaid funds and stopping abortions. Unsurprisingly, Planned Parenthood sued. And the court below adopted its 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 prevent 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.

## REASONS FOR GRANTING THE WRIT

### 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 a vanishingly small number of other services. And it offers 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.” Decl. of Jenny Black ¶ 5, *Planned Parenthood S. Atl. v. Baker*, 326 F. Supp. 3d

39 (D.S.C. 2018) (No. 18-cv-02078), ECF No. 5-2. When controversy arises, Planned Parenthood highlights the other services it 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), [www.politico.com/story/2017/03/planned-parenthood-trump-236060](http://www.politico.com/story/2017/03/planned-parenthood-trump-236060) (“[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.”).<sup>1</sup>

But its own numbers tell the real story. Last year, Planned Parenthood performed 392,715 abortions, 38% of all abortions in the United States.<sup>2</sup> While it claims that abortions made up only 4% of its total services, see Annual Report 2022–2023, *supra* note 2, 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

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<sup>1</sup> For years, Planned Parenthood leadership and supporters also 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>.

<sup>2</sup> See Planned Parenthood, Annual Report 2022–2023 at 7; 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).

cost or how extensive the service or procedure is.”<sup>3</sup> 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 test<sup>4</sup>) is counted individually, even though the sole reason for the woman’s visit was to get an abortion.

And abortions account for a significant percentage of the organization’s revenue. The average cost of a chemical abortion is \$580, and surgical abortions average up to \$2,000.<sup>5</sup> This means even by a conservative estimate, 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.<sup>6</sup> 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

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<sup>3</sup> 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/S5GS-KGJG>.

<sup>4</sup> 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”).

<sup>5</sup> *How Much Does an Abortion Cost?*, Planned Parenthood, <https://perma.cc/N6QU-V7LE>.

<sup>6</sup> See Annual Report 2022–2023, *supra* note 2, at 24 (providing the number of abortions); *id.* at 27 (reporting revenue).

income.<sup>7</sup> As one commentator has analogized, “Major League Baseball teams could say that they sell about 20 million hot dogs and play 2,430 games in a season, so baseball is only .012 percent of what they do.”<sup>8</sup>

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 2, at 7, with Planned Parenthood, Annual Report 2021–2022, at 11. 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. 2024) (hereinafter “CLI Fact Sheet”).

At the same time, the number of other services it provides has fallen sharply. In 2023, it offered 60,000 fewer pap smear tests and breast exams and 50,000 fewer birth control services than the previous year. Compare Annual Report 2022–2023, *supra* note 2, at 7, with Annual Report 2021–2022, *supra*, at 11. And this is simply the continuation of an ongoing trend: over the past 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.

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<sup>7</sup> Charlotte Allen, *Planned Parenthood’s Unseemly Empire*, *Wash. Examiner* (Oct. 22, 2007, 4:00 AM), <https://www.washingtonexaminer.com/magazine/1320445/planned-parenthoods-unseemly-empire/>.

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



Compare Annual Report 2022–2023, *supra* note 2, at 7, with Planned Parenthood, Annual Report 2009–2010, at 5 (showing 329,445 abortions provided in 2010).

And while it 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. Decl. of Julie Edwards ¶ 2, *Baker*, 326 F. Supp. 3d 39 (No. 18-cv-02078), ECF No. 5-3. But the only care Planned Parenthood offered her was birth control and advice to seek care for her elevated blood pressure elsewhere. Resp. Br. for Appellees at 6, *Kerr*, 27 F.4th 945 (No. 21-1043).

**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,”<sup>9</sup> 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 2, at 24 (reporting 392,715 abortions, 6,316 prenatal services,

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<sup>9</sup> *Who We Are*, Planned Parenthood, <https://perma.cc/GM5B-3E4P>.

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 offer are pregnancy tests and miscarriage care.<sup>10</sup> If a woman wishes to continue her pregnancy—or to become pregnant in the first place—she must find a different provider.<sup>11</sup> For women who wish to terminate their pregnancies, however, Planned Parenthood provides services *and* offers discounts on medical bills.<sup>12</sup> 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 2, at 24, with Planned Parenthood, Annual Report 2018–2019, at 24. For *every* adoption referral in 2022–23, Planned

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<sup>10</sup> 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>.

<sup>11</sup> *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).

<sup>12</sup> *Abortion in Columbia, SC*, Planned Parenthood, <https://perma.cc/C4Z9-75A5>.

Parenthood aborted 228 babies. See Annual Report 2022–2023, *supra* note 2, 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 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 2, 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 services.” *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 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 thirty-two 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 betrays 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.<sup>13</sup> 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](http://abortionfinder.org) to find the closest provider.”<sup>14</sup> The homepage does not mention any other kind of healthcare.<sup>15</sup> And the two South Carolina locations’ website headers proclaim a similar

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<sup>13</sup> Planned Parenthood (@plannedparenthood), YouTube, <https://perma.cc/PT52-ZX6D>.

<sup>14</sup> *Our Doors Are Open*, Planned Parenthood S. Atl., <https://perma.cc/D345-38TP> (emphasis added).

<sup>15</sup> *Id.*

message—“South Carolina’s 6 week abortion ban is now in effect. Our doors are open. We will not stop fighting.”<sup>16</sup>

**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.<sup>17</sup> 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.*, 139 S. Ct. 1780, 1788 (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

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<sup>16</sup> See, e.g., *Charleston Health Center of Charleston, SC*, Planned Parenthood, <https://perma.cc/5YM4-9JUJ>.

<sup>17</sup> *Our History*, Planned Parenthood, <https://perma.cc/9GJU-UZ9K>.

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 abortion as ‘reproductive health services’ that can be used for family planning.” *Box*, 139 S. Ct. at 1790 (citation omitted).

When convenient to itself, 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. The 3% statistic has often been parroted as a response to critiques of Planned Parenthood.<sup>18</sup>

But anyone who took a closer look realized this claim was “misleading”<sup>19</sup> (said the *Washington Post*) and “meaningless”<sup>20</sup> (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,

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<sup>18</sup> 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>.

<sup>19</sup> Lee, *For Planned Parenthood*, *supra* note 3 (factchecker giving the claim “[t]hree Pinocchios”).

<sup>20</sup> Rachael Larimore, *The Most Meaningless Abortion Statistic Ever*, Slate (May 7, 2013, 4:30 PM), <https://perma.cc/7VEG-3MK9>.

more than 60%—of all reported abortions performed in the United States.<sup>21</sup> 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.<sup>22</sup>

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.”<sup>23</sup> This dedication to abortion adds up: since *Roe v. Wade* was decided in 1973, Planned Parenthood has performed at least 9.7 million abortions.<sup>24</sup>

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<sup>21</sup> Compare, e.g., Planned Parenthood, Annual Report 2004–2005, at 5, 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, 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, with Katherine Kortsmit et al., *Abortion Surveillance—United States, 2020*, CDC (Nov. 25, 2022), <https://perma.cc/AUW8-A9H3> (62% of U.S. abortions).

<sup>22</sup> *The 3% Myth*, Live Action, <https://perma.cc/HVN5-J5XQ> (using data from the CDC, the U.S. Census Bureau, and the MammaCare Foundation).

<sup>23</sup> M. Alex Johnson, *Abortion Mandate Costs Planned Parenthood a Few Affiliates*, NBC News (Dec. 6, 2012, 8:29 AM), <https://www.nbcnews.com/news/us-news/abortion-mandate-costs-planned-parenthood-few-affiliates-flna1c7463337>.

<sup>24</sup> This number is based on Planned Parenthood’s annual reports from 1973 through 2023.

### **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 at 7, *Kerr*, 27 F.4th 945 (No. 21-1043). But this claim blinks 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).<sup>25</sup> In Charleston and Richland counties alone—the locations of Planned Parenthood’s two South Carolina centers—there are 133 medical clinics that accept Medicaid.<sup>26</sup>

And the same is true in every state: there are more than four times as many pregnancy centers in the United States as there are Planned Parenthood facilities.<sup>27</sup> And in 2019, federally qualified health clinics saw over fourteen million patients with

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<sup>25</sup> *Women Have Real Choices*, Charlotte Lozier Inst., <https://perma.cc/8QFG-RJ47>.

<sup>26</sup> See *Healthy Connections Medicaid: Search for Providers*, S.C. Dep’t Health & Hum. Servs., <https://perma.cc/EK8F-YCEP>.

<sup>27</sup> *Fact Sheet: Pro-Life Pregnancy Centers Deliver Real-World Results*, Charlotte Lozier Inst. (Jan. 6, 2023), <https://perma.cc/R387-A4C2>.



Medicaid, “nearly 6 times the total number of *all* Planned Parenthood clients.”<sup>28</sup>

## **II. Money paid to Planned Parenthood is fungible, and South Carolina has an interest in defunding abortion services.**

While “South Carolina Medicaid does 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).

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 evidence shows that

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<sup>28</sup> *Fact Sheet: Planned Parenthood Facilities Outnumbered 14 to 1*, Charlotte Lozier Inst. (July 11, 2022), <https://perma.cc/4K5E-84L3>.

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., 2017, at 1 (“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. 1, 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 2, 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 South Atlantic has contended that “Medicaid does not pay for [the abortions it provides] except under very narrow circumstances required by federal law.” Resp. Br. for Appellees at 4–5, *Kerr*, 27 F.4th 945 (No. 21-1043). 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.”<sup>29</sup> Many costs paid by Medicare and Medicaid cannot “be directly allocable to specific procedures,” but support all of a clinic’s services, “such as managerial wages, clerical wages, . . . non-personnel office expenses, [and] professional liability insurance.”<sup>30</sup> When Medicare or Medicaid finances those expenses, Planned Parenthood can use its other revenue streams to subsidize abortion procedures and advocacy.

South Carolina should not be required to undermine its interest in protecting prenatal life by funding an organization that exists to destroy it. Nor should it be compelled to bankroll efforts to squash its 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). South Carolina may decline to use its funds for that outcome.

### CONCLUSION

The Court should grant the petition.

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

<sup>30</sup> Chris Conover, *Are American Taxpayers Paying for Abortion?*, Forbes (Oct. 2, 2015, 2:22 PM), <https://perma.cc/T4S8-8BK6>.

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