No. 23-1275

In The
Supreme Court of the United States

EUNICE MEDINA, in her official capacity as 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 United States Court of Appeals for the Fourth Circuit

BRIEF OF *AMICI CURIAE* 311 STATE LEGISLATORS IN SUPPORT OF PETITIONER

KRISTINE L. BROWN
Counsel of Record
8700 E. Jefferson Ave. #370953
Denver, CO 80237
(720) 285-9552
kristi@kristiburtonbrown.com

LEGAL PRINTERS LLC ● Washington, DC ● 202-747-2400 ● legalprinters.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Constitutional Provisions

Statutes & Regulations

Other Authorities

INTEREST OF *AMICI CURIAE*[1]

Amici are 311 State legislators representing 36 States. A complete list of *Amici* legislators is found in the Appendix to this brief. Every State represented by amici has entered into a Medicaid contract with the federal government based on the understanding that this contract is between their own State and the federal government – not third parties who wish to insert their own decision-making in place of the contracting parties'. *Amici* share the foundational belief that the authority to make decisions on Medicaid qualifications and exclusions belongs to the States. Each *Amici* proposes, evaluates, and votes on legislation in order to best represent the citizens of their own State and are responsible to their own constituents when they pass or reject policy, including Medicaid decisions. The work *Amici* engage in every day as they represent their own State will be affected by this Court's decision here.

SUMMARY OF ARGUMENT

Medicaid contracts, formed under the Spending Clause, are between two parties: the federal government and the State. Third parties – whether they are potential providers or patients – have no right to interfere with this contract by attempting to enter in and violate the sovereignty of the State. Obligations included in any contract formed under

---

[1] *Amici* state that no counsel for a party authored this brief in whole or in part, and no person other than the *amici* and its counsel made any monetary contribution intended to fund the preparation or submission of this brief.

the Medicaid Act must be clear, and States must knowingly agree to any provision.

The duty to serve constituents is on the State, and elected officials are politically accountable to these same constituents for any funding decisions they make. Since 1889, in *Dent v. West Virginia,* federal courts have deferred to the States on regulations and laws governing medical decisions, including qualifications and licensing decisions, absent unconstitutional actions by the State. State officials have the right to make Medicaid qualification and exclusion decisions, without third party interference.

Additionally, under *Dobbs v. Jackson,* where abortion is involved, decisions made by States that respect unborn life, promote a choice for life, or oppose an abortion provider have a "strong presumption of validity" and are only subject to the rational basis test. In South Carolina, Planned Parenthood has committed actions identifying it as a fraudulent provider with little respect for State law.

Thus, this Court should reverse the decision below and affirm that States may set their own policies regarding Medicaid qualification and exclusion decisions, and these decisions should not be diluted by the interference of third parties.

ARGUMENT

I. The Spending Clause creates a contractual relationship, where the States may only release their sovereign power voluntarily.

At the core of the Constitution's Spending Clause is a basic understanding: States retain their sovereign authority and may only give it up

knowingly and voluntarily. "Respecting this limitation is critical to ensuring that Spending Clause legislation does not undermine the status of the States as independent sovereigns in our federal system." *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 577 (2012). Congress may, within the scope of a contract formed under the Spending Clause, require that the States surrender specific authority to be a party to the contract, but States must then knowingly agree to do so by intentionally entering into the contract. This understanding treats both governments as the co-equal powers they are and upholds federalism. *See Murphy v. Nat'l Collegiate Athletic Ass'n*, 584 U.S. ___, ___ (2018) (slip op., at *1). Notably, "[t]he Constitution limited but did not abolish the sovereign powers of the States, which retained 'a residuary and inviolable sovereignty.'" *Id.* at ___ (slip op., at *14) (quoting The Federalist No. 39, p. 245 (C. Rossiter ed. 1961)); *See also* U.S. Const. amend. X. *Sebelius* reaffirmed the contractual relationship inherent in Spending Clause legislation, emphasizing that the federal government must provide a clear understanding of obligations to the States, or the States are not held to those obligations. 567 U.S. 519 (2012).

The Medicaid Act (42 U.S.C. § 1395 *et seq.*) does not require States to *also* surrender any authority to third-party interferers, whether they are potential providers or patients. Rather, the Medicaid Act requires the States to surrender specifically-detailed authority to the federal government only. When States agree to surrender any of their authority, such surrender is "strictly construed…in favor of the sovereign." *See, e.g., Sossamon v. Texas,* 563 U.S. 277, 285 (2011). Not only would a power grab from third

parties remove States' sovereign power, but it would also violate the express authority *Congress* has to set obligations in contracts under the Spending Clause. *See* Brief for 90 Members of Congress as *Amici Curiae* Supporting Petitioner, *Gee v. Planned Parenthood*, 586 U.S. 1057 (2018). In the Medicaid Act, Congress has directly given States the authority to exclude prospective Medicaid providers, and third parties have no right to challenge State decisions based on the third parties' preferences.

A. States need certainty as to the scope of their obligations in order to effectively enact State policy.

States enter the Medicaid funding contract with the federal government. Congress may require terms for the Medicaid contract through the proper legislative process, but that is outside the power of non-contracting parties whose wishes may change on a whim. The federal government and the States are the only two parties who make an agreement here; the only two responsible for understanding the scope of the obligations and fulfilling the obligations they consent to.

If a third party is allowed to insert themselves at any time they desire and act to change the scope of the obligations, the contract falls apart as a collective piece of nonsense rather than an agreement citizens can count on. A flexible scope of obligations eliminates the understanding between the States and the federal government and leaves the specifics beholden to any private party who challenges the obligations. While the scope of the current Medicaid obligations makes it clear that a State may not engage in discriminatory

or prohibited conduct, a State has latitude to make a rational basis decision that abortion facilities do not qualify as a provider, third party preferences aside.

B. Non-contracting parties may not dictate State policy under the Medicaid Act.

Non-contracting parties, including both potential Medicaid providers and those who want to receive services from their own preferred provider, may not speak into the contract and dictate State policy. States across the nation make hundreds of Medicaid disqualification decisions each year, and these decisions look different across the various States. This reality is within the intent of the Spending Clause, as States retain the authority to be different from other States and make decisions in line with the will and best interests of their own population.

The Medicaid Act has not granted any authority to third parties to impose conditions on the States. § 1396a(a)(23)(A) of the Medicaid Act does not grant a private right of action for potential providers or patients to challenge a State's decisions. Instead, one of the purposes of the Medicaid Act is to grant flexibility to States to determine the best way to serve their own vulnerable populations. The Medicaid Act is not a "free for all," wherein any patient or potential provider may assert its preferences in opposition to State policy. State policy is crafted by elected officials, who are entrusted by voters to determine how best to serve the *entire* population, not one particular individual whose desires violate State law or policy. Medicaid funds are not unlimited, and the federal government intended that each State determine how best to allocate the public funds in Medicaid.

Congress may attach conditions to federal funds, but only clearly and unambiguously with notice of the conditions. *See Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981) and *South Dakota v. Dole*, 483 U.S. 203, 207 (1987). Here, Congress has intentionally chosen *not* to force States to fund abortion facilities or patients who wish to go to them. If appropriately disfavored potential providers or their potential patients had the right to sue States over desired inclusion in Medicaid payments, Congress would be required to make this explicitly clear. "[I]f Congress intends to alter the 'usual constitutional balance between the States and the Federal Government,' it must make its intention to do so 'unmistakably clear in the language of the statute.'" *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 65 (1989) (describing this principle as an "ordinary rule of statutory construction"). Because an explicit grant of power has not been made to third parties by Congress in the Medicaid Act, States retain their authority to bar non-contracting parties from dictating State policy here.

In *Armstrong,* the Court ruled that private health care providers (like Planned Parenthood here) had no right to sue the State of Idaho to enforce Medicaid reimbursement rates. Only the federal government had the ability to enforce the Medicaid contract conditions on the States, and third party beneficiaries had no right to go to court to do so. *See Armstrong v. Exceptional Child Ctr, Inc.*, 575 U.S. 320 (2015). Generally, the ability for a third party to sue a State in court must be explicitly granted by Congress or consented to by the State. *See, e.g., Gonzaga University v. Doe,* 536 U.S. 273 (2002). Neither condition has been met here.

Because of this, multiple appellate and federal district courts have found that third party providers and patients may not drag the State into court to challenge the exclusion of a particular provider from the State's Medicaid agreement. The Ninth Circuit has accurately ruled that because a Congressional statute, not a regulation, must confer a right to a third party to sue over the Medicaid Act, providers may not bring claims for violations under 42 U.S.C. 1983. *See AlohaCare v. Haw. Dep't of Human Servs.*, 567 F. Supp. 2d 1238 (D. Haw. 2008), *aff'd*, 572 F.3d 740 (9th Cir. 2009). Specifically, the Ninth Circuit ruled that Congress lacked the intent in § 1396b(m) of the Medicaid Act to confer a clear, enforceable right to contract eligibility for providers. *See id*.

In *RX Pharmacies Plus, Inc., v. Weil*, 883 F. Supp. 549 (D. Colo. 1995), the plaintiffs were patients receiving Medicaid services. They sued Colorado, claiming that the State's limitation on their choice of pharmaceutical providers violated the freedom of choice provision in Medicaid. However, the Court found no such violation and stated that the patients could still obtain medications from other pharmacies which they could choose between. Additionally, the Court found that no extra waiver was required for the State to limit pharmacy services.

In *Molina Healthcare of Ind., Inc. v. Henderson*, No. 1:06-cv-1483-JDT-WTL, 2006 WL 3518269 (S.D. Ind. Dec. 4, 2006), MCO contracts were not renewed by Indiana, but the plaintiff but failed to show the state's choice to exclude the provider was a violation of the freedom of choice provisions. In *Medevac Midatlantic, LLC v. Keystone Mercy Health Plan*, 817 F. Supp. 2d 515 (E.D. Pa. 2011), the Court ruled that

the plaintiffs failed to state a claim under 42 U.S.C. 1983 based on the State denying payment to the provider. The Court determined that the provider was a third party, but not a beneficiary under the contract because the contract was between the Pennsylvania agency and the MCO. In *Yuchnitz v. PCA Health Plan of Tex., Inc.*, No. 3-99-00130, 2000 WL 12960 (Ct. App, Tex. Jan. 6, 2000), a "significant traditional provider of Medicaid services" was excluded as a provider by the State of Texas. Yet, the Court ruled against the provider, finding that the Medicaid contract did not intend the plaintiff to be a third-party beneficiary.

Third parties have no right to dictate State policy by insisting on Medicaid inclusion for unqualified providers.

II. Third-party interference removes necessary political accountability.

Political accountability is essential for the success of the American political system. Throughout America, citizens oppose the interference of special interests, heavily financed industries, and those close to politicians who seem to have purchased a seat at the table. Countless elected officials at the national and state levels receive heavy campaign contributions from the healthcare and pharmaceutical industries, among many others. While this is not a campaign finance case, it highlights one area where special interests are currently seeking to manufacture yet another seat at the table for themselves: in Medicaid contracts.

This particularly applies to Planned Parenthood, the Respondent. After *Dobbs v. Jackson*, 597 U.S. 215 (2022), the abortion industry and its many arms fell

out of favor in a number of States. Abortion was no longer a constitutional right, and States were no longer federally forced to protect access to this elective procedure. Of course, South Carolina's ban on Planned Parenthood as a Medicaid provider began prior to the *Dobbs* decision, but the current precedent in *Dobbs* changes the game. Now, states may fully choose to listen to their constituents on the issue of abortion and may freely choose to stand on the side of protecting unborn life in any law they pass – including a ban on Medicaid funding for any facility that extends abortion as an option. This Court has emphasized that authority remains with State policymakers to make policy decisions and that political accountability remains with elected State officials, as voters have the ability to hold them responsible for their decisions. *See, e.g.,Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519 (2012); *Printz v. United States*, 521 U.S. 898 (1997); *New York v. United States*, 505 U.S. 144 (1992). This responsibility does not rest with third party interferers who would prefer to set their own policy for the State and yet lack any accountability with constituents.

Dobbs made the option of excluding abortion facilities as Medicaid providers expressly clear (if it were not so before), and South Carolina has every right to enact the ban they began in 2018 under *Dobbs*. Political accountability for such a decision rests with the voters who reside in the state, not with an industry player who prefers payment. On the issue of Medicaid funding for abortion facilities – as with any other State decision on abortion – the State has the right to come down on the side of life, and voters may choose if they approve of that decision or not. Allowing the abortion giant, Planned Parenthood, to

insert itself in a Medicaid contract would make State legislators beholden to them and many other special interests, who would view this allowance as an invitation for them to come and do likewise. Instead, the say should lie with voters, who have the right and the ability to vote legislators and the Governor out of office if they do not agree with a Medicaid exclusion.

Extending a say to a potential third-party beneficiary (which we instead refer to as a third-party interferer) frustrates the intended contractual relationship between the federal government and the States. It introduces a nosy neighbor into a decision made by two equal partners who are both obligated to fulfill their commitments to each other, and who are both free to set the limits and requirements of their agreement without the interference of said neighbor. Worse than the nosy neighbor, Planned Parenthood here wishes to insist that South Carolina must include it in its agreement with the federal government on Medicaid funding. Planned Parenthood should be boxed out of court on this issue.

III. States have the right to determine qualifications for Medicaid providers.

Under the Medicaid Act, States have "considerable latitude in formulating the terms of their own medical assistance plans" along with "flexibility in designing plans that meet their individual needs." *Addis v. Whitburn*, 153 F.3d 836, 840 (7th Cir. 1998). These needs are understood to look different from State to State. Just as "[t]he licensing and regulation of physicians is a state function," so is the determination of whether particular providers are qualified to be Medicaid providers. *See, e.g., Pa. Med. Soc'y v. Marconis*, 942

F.2d 842, 847 (3d Cir. 1991). State funding is required for participation in the Medicaid program, and State funding is public funding, paid for by citizens of each State. Thus, it is incumbent on each State's elected officials to determine how citizens of that State desire to expend public funding in the service of healthcare. The States' right to exclude providers "was intended to permit a state to exclude an entity from its Medicaid program for *any* reason established by state law." *First Med. Health Plan, Inc. v. Vega-Ramos*, 479 F.3d 46, 53 (1st Cir. 2007).

The U.S. Department of Health and Human Services (HHS) issued a letter on January 19, 2018, clarifying States' ability to choose their own reasonable Medicaid provider qualification standards. An April 19, 2016, letter from HHS had purported to limit States' flexibility in creating qualification standards, attempting to force States to fund disfavored providers. However, HHS did not have the legal authority to do so, as Congress itself had not changed the States' obligations in the Medicaid Act. Thus, the 2018 letter rescinded the 2016 letter and made it clear that States were free to look to the Medicaid Act itself to determine the breadth of their rights and obligations. *See* U.S. Dep't of Health & Human Servs., Ctrs. for Medicare & Medicaid Servs., Letter SMD #18-003 to State Medicaid Director on Rescinding SMD #16-005 Clarifying "Free Choice of Provider" Requirement (Jan. 19, 2018), https://www.medicaid.gov/federal-policy-guidance/downloads/smd18003.pdf.

The Medicaid Act delegates no decision-making authority or ability to challenge State decisions to third parties. The 2018 letter clarified that the

authority to determine Medicaid provider qualifications is squarely within the realm of the State, unless expressly limited by Congress. "Nothing contained in [these regulations] should be construed to limit a State's own authority to exclude an individual or entity from Medicaid for any reason or period authorized by State law." 42 C.F.R. § 1002.3(b). It is incumbent on Congress, as the second co-equal sovereign in the Medicaid contract, to make express rules, rights, and obligations where they need to be made. Where Congress has not done so, States retain their authority to make their own individual decisions without third party interference from either federal agencies or potential providers or patients.

Apart from the Medicaid Act, there is a long history of the federal government deferring decisions on medical and healthcare standards, qualifications, and licensing to the States. Over a century ago, in *Dent v. West Virginia*, the Court affirmed the States' authority to regulate medical licensing for the purpose of protecting their constituents, writing: "The power of the state to provide for the general welfare of its people authorizes it to prescribe all such regulations as, in its judgment, will secure or tend to secure them against the consequences of ignorance and incapacity as well as of deception and fraud." 129 U.S. 114 (1889). *Barksy v. Board of Regents*, 347 U.S. 442 (1954), confirmed that a State's medical boards have broad discretion to regulate the medical profession in order to keep the public safe. *Gonzales v. Oregon,* 546 U.S. 243 (2006), found that the federal government may not override a State's medical regulations unless Congress has clearly given such authority, confirming yet again that the primary

authority over provider qualifications and medical standards belongs to the States.

While its central holding was overturned in *Dobbs*, the finding in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), that States have a legitimate interest in protecting health and safety through the regulation of medical providers and through determining sufficient qualifications and oversight still stands. Even in a case involving blood draws in DUI cases – a medical procedure – the Court once again declared that States retain their authority over health and safety regulations. *See Missouri v. McNeely,* 569 U.S. 141 (2013). Unless a compelling federal interest is clearly and unambiguously outlined by Congress in law, State law and policy controls medical regulations, including the qualification or exclusion of Medicaid providers. This falls in line with a long history of deference to States on healthcare decisions, provided they do not run afoul of the Constitution. Deference in this area of the law ensures public safety is locally informed, patients are protected from unqualified providers, and lawmakers are responsive to unique, community-specific health needs and concerns.

A. States have a duty to protect constituents.

One of the ways the Medicaid Act allows States to determine how to protect their constituents from unsavory or dangerous providers is through the provisions of 42 U.S.C. § 1396a(p)(3), which grants States the direct authority to exclude providers by never entering a participation agreement with them, choosing not to renew the agreement, or ending the agreement. Because the various States serve different populations with different healthcare needs, the

States have the ability and the duty to come to their own conclusions on provider exclusions.

The Medicaid Act further recognizes the States' duty to protect their own people by deferring to States' authority in the reasons behind any exclusion decision. § 1396a(p)(1) of the Medicaid Act sets out that any specific grounds for exclusion set out in the Act are "[i]n addition to any other authority" the States already have as a sovereign, contracting party. This same provision sets out that States may not use arbitrary or unreasonable authority to determine which providers are qualified, but as long as the decision meets the rational basis test, States have the right to choose. *See id*. The governing regulations repeats again that the authority in the Act to exclude for specific reasons is "[i]n addition to any other authority [the State] may have." 42 C.F.R. § 1002.3(a). Congress could not have been more clear in its explicit intention that States get to reasonably choose who qualifies as a provider under the Medicaid Act. This right owned by the States stems from their duty to protect their unique constituents.

While patients have the right to choose among qualified providers, the State has the right to determine which providers are qualified. Indeed, a patient "has no enforceable expectation of continued benefits to pay for care in an institution that has been determined to be unqualified." *O'Bannon v. Town Court Nursing Ctr.*, 447 U.S. 773, 785, 786 (1980). This Court continued, explaining that a patient's right to choose their own provider was "limited to a choice among institutions which have been determined by the Secretary to be 'qualified.'" *Id.* at 783 & n.13. This deference to the decisions made about which providers

are qualified and which are not extends to the States as well, as co-equal sovereigns.

B. States have a specific right to exclude the abortion industry from Medicaid funding.

South Carolina's policy excluding abortion facilities, including Planned Parenthood, as a Medicaid provider is expressly constitutional, and it easily passes the rational basis test. In 2018, Governor McMaster ordered the State's Department of Health and Human Services to deem abortion clinics unqualified to receive Medicaid funding. Planned Parenthood, the nation's largest abortion network and one of the Respondents here, was disqualified from Medicaid funding under this rule.

In *Dobbs v. Jackson*, this Court explained that when the Constitution is "properly understood" and the nation's history is considered, there is no right to abortion. 142 S.Ct. 2228, 2234 (2022). "The inescapable conclusion is that a right to abortion is not deeply rooted in the Nation's history and traditions," and, "We therefore hold that the Constitution does not confer a right to abortion." *Id.* at 2254, 2279. Justice Alito continued: "…abortion is fundamentally different…because it destroys what those decisions called 'fetal life' and what the law now before us describes as an 'unborn human being.'" *Id.* at 2243. Justice Kavanaugh wrote that even *Roe* had recognized "the State's 'important and legitimate interest' in protecting fetal life. 410 U.S., at 162." *Dobbs* at 2307.

This Court further clarified that when a State chooses to enact laws based on the State's desire to preserve human life, these laws are entitled to "a

strong presumption of validity." *Id.* at 2284. The South Carolina decision that Planned Parenthood is unqualified as a Medicaid provider is valid not only due to a constitutional understanding of contractual powers and rights under the Spending Clause, but also because this specific State decision is an abortion-related decision that is due a strong presumption of validity, and it also easily passes the rational basis test.

By insisting on itself as a required Medicaid provider, Planned Parenthood would require South Carolina to "regard a fetus as lacking even the most basic human right – to live." *Id.* at 2261. The abortion giant has historically run to court upon the passage of any new pro-life legislation with the purpose of prohibiting states from restricting abortion. Now, with the advent of *Dobbs*, it may not now use Medicaid funding as a backdoor to force States to pay for the abortions they are now allowed to ban or restrict. Even where Planned Parenthood or its patients seek to force States to fund non-abortion services only, it is clear that all money is fungible, and States must not be forced to dirty their hands with a provider they deem unsavory, unethical, and disrespectful to human life.

Here, Respondents ask this Court to substitute its judgment for the State's on Medicaid provider exclusion, and to open wide the door for any third party to petition a court to force the State to allow anyone and everyone into their contract, moral concerns aside. And yet:

> [C]ourts cannot "substitute their social and economic beliefs for the judgment of legislative bodies." *Ferguson*, 372 U. S., at

> 729–730; see also *Dandridge v. Williams*, 397 U.S. 471, 484–486 (1970); *United States v. Carolene Products Co.*, 304 U.S. 144, 152 (1938). That respect for a legislature's judgment applies even when the laws at issue concern matters of great social significance and moral substance. See, *e.g.,Board of Trustees of Univ. of Ala. v. Garrett*, 531 U.S. 356, 365–368 (2001) ("treatment of the disabled"); *Glucksberg*, 521 U. S., at 728 ("assisted suicide"); *San Antonio Independent School Dist. v. Rodriguez*, 411 U.S. 1, 32–35, 55 (1973) ("financing public education"). A law regulating abortion, like other health and welfare laws, is entitled to a "strong presumption of validity." *Heller v. Doe*, 509 U.S. 312, 319 (1993). It must be sustained if there is a rational basis on which the legislature could have thought that it would serve legitimate state interests. *Id.,* at 320; *FCC v. Beach Communications*, *Inc.*, 508 U.S. 307, 313 (1993); *New Orleans v. Dukes*, 427 U.S. 297, 303 (1976) (*per curiam*); *Williamson v. Lee Optical of Okla., Inc.*, 348 U.S. 483, 491 (1955). These legitimate interests include respect for and preservation of prenatal life at all stages of development, *Gonzales*, 550 U. S., at 157–158…the preservation of the integrity of the medical profession…. See *id.*, at 156–157; *Roe*, 410 U. S., at 150; cf. *Glucksberg*, 521 U. S., at 728–731 (identifying similar interests).

Dobbs at 2284.

In addition to the strong presumption of validity owed here to South Carolina and this Court's recognition that State legislators have a legitimate interest in protecting any class of person, including the unborn, the State also passes the rational basis test when basic reasons for excluding Planned Parenthood as a Medicaid provider are considered.

Planned Parenthood has two clinics in South Carolina: in Charleston and in Columbia. Both clinics claim to offer abortions up to six weeks and zero days after a woman's last period, and both clinics have an abortion page on their website. The Charleston clinic's abortion page mentions South Carolina's law: "Because of a law in South Carolina, abortion is banned at around 6 weeks of pregnancy and has some other restrictions on abortion access." *See* Planned Parenthood, Charleston Health Center, Abortion Requirements.[2] Notably, the Columbia clinic's abortion page does not mention the State law whatsoever. *See* Planned Parenthood, Columbia Health Center, Abortion.[3] A banner on both websites claims that, despite the law, they still have their doors open and are still fighting. There is a rational basis to believe that at least one of Planned Parenthood's clinics does not respect State law and that both oppose it. Taken together with Planned Parenthood's long history of violating State laws on

---

[2] Available at: https://www.plannedparenthood.org/health-center/south-carolina/charleston/29407/charleston-health-center-4288-90860/abortion#SC%20Requirements (last accessed Feb. 5, 2025).

[3] Available at: https://www.plannedparenthood.org/health-center/south-carolina/columbia/29204/columbia-health-center-2646-90860/abortion (last accessed Feb. 5, 2025).

abortion restrictions, South Carolina would have a rational basis to be concerned that Planned Parenthood may not follow State law while using Medicaid dollars. In nearby Missouri, "[i]n 2018, following at least a half-decade of health code violations," a Planned Parenthood facility "was shut down after staff admitted to having used moldy abortion equipment on women for months." Missouri Attorney General, Press Release, "Attorney General Bailey Files Suit Against Planned Parenthood for Trafficking Children Out-of-State to Obtain Abortions Without Parental Consent."[4] The Missouri clinic is merely the tip of the iceberg, as reports constantly expose Planned Parenthood clinics that go around or directly violate a variety of state and federal laws, specifically regarding reporting requirements and the treatment of minors. *See e.g.,* Carole Novielli, *Planned Parenthood has failed to follow the law, yet it gets hundreds of millions in federal funds,* Live Action News, (Jan. 14, 2025); Nancy Flanders, *Planned Parenthood breaks law, aborts baby without parental consent,*Live Action News, (March 8, 2018); Kristi Burton Brown, *Stop the spin: A step-by-step look at the four laws Planned Parenthood broke*, Live Action News, (July 24, 2015).

Moreover, in 2016, Planned Parenthood agreed to pay $1.5 million for "allegedly violating the Civil Monetary Penalties Law by submitting claims for Medicaid service not provided as claimed." These violations were in North Carolina, South Carolina, Virginia, and West Virginia. *See* U.S. Dep't of Health

---

[4] Available at: https://ago.mo.gov/attorney-general-bailey-files-suit-against-planned-parenthood-for-trafficking-children-out-of-state-to-obtain-abortions-without-parental-consent/.

& Human Servs., Office of the Inspector General, Enforcement Actions: "Planned Parenthood Health System Agreed to Pay $1.5 Million for Allegedly Violating the Civil Monetary Penalties Law by Submitting Claims for Medicaid Service Not Provided as Claimed," (June 24, 2016).[5] These facts could lead the State of South Carolina to conclude that Planned Parenthood discriminates against one class of persons, disrespects unborn life, has a history of committing fraud, and is known for violating a host of State laws around the nation.

South Carolina is entitled to exclude Planned Parenthood from Medicaid funding, and may do so, even for the sole reason that, as a State, it desires to promote life and oppose abortion and any facility that engages in it.

CONCLUSION

The petition should be granted, and the decision below reversed. The ability of the States to set their own policy regarding Medicaid qualification decisions and exclusions should not be diluted by the interference of third parties. As Justice Alito wrote, "Ordered liberty sets limits and defines the boundary between competing interests." *Dobbs* at 2236. Here, that ordered liberty sits squarely on the side of South Carolina.

---

[5] Available at: https://oig.hhs.gov/fraud/enforcement/planned-parenthood-health-system-agreed-to-pay-15-million-for-allegedly-violating-the-civil-monetary-penalties-law-by-submitting-claims-for-medicaid-service-not-provided-as-claimed/.

Respectfully submitted,

KRISTINE BROWN
8700 E. JEFFERSON AVE #370953
DENVER, CO 80237
(720) 285-9552
kristi@kristiburtonbrown.com

Counsel for Amici Curiae

FEBRUARY 10, 2025

Appendix Table of Contents

List of *Amici Curiae*

Alabama

Rep. Susan DuBose
Rep. Ernie Yarborough
Rep. Mack Butler
Rep. Bill Lamb
Rep. Ben Harrison
Rep. Mark Shirey
Rep. Mark Gidley
Rep. Brock Colvin

Alaska

Rep. Cathy Tilton
Rep. David Eastman
Rep. Delena Johnson
Rep. Jubilee Underwood
Rep. Jamie Allard
Rep. Kevin McCabe
Rep. Sarah Vance
Rep. Jamie del Fierro-Allard
Sen. Mike Shower

Arizona

Rep. James Taylor
Rep. Michael Wray
Rep. David Livingston
Rep. Selina Bliss
Sen. Shawnna Bolick
Sen. Vince Leach
Sen. Wendy Rogers
Rep. David Marshall
Rep. Selina Bliss
Rep. Justin Olson
Sen. Janae Shamp
Sen. Jake Hoffman
Sen. John Kavanagh

Arkansas

Rep. Cindy Crawford
Rep. Alyssa Brown
Rep. David Ray
Sen. Matt McKee
Rep. Mary Bentley
Rep. Howard M. Beaty, Jr.
Sen. Joshua Bryant

Colorado

Rep. Scott Bottoms
Rep. Jarvis Caldwell
Rep. Brandi Bradley
Rep. Max Brooks
Sen. Lisa Frizell
Sen. Cleave Simpson
Rep. Chris Richardson
Rep. Matt Soper
Sen. Larry Liston
Sen. Mark Baisley
Sen. Byron Pelton

Georgia

Rep. Charlice Byrd
Rep. Matthe Gambill
Sen. Rick Williams
Rep. Josh Bonner
Rep. Michael Cameron

Idaho

Rep. David Leavitt
Rep. Bruce Skaug
Rep. Clint Hostetler
Rep. Joe Alfieri
Rep. Jordan Redman
Rep. Kent A. Marmon
Rep. Wendy Horman
Sen. Carl Bjerke
Sen. Christy Zito
Rep. Lucas Cayler
Rep. Barbara Dee Ehardt
Rep. Faye Thompson
Rep. John Shirts
Rep. Judy Boyle
Rep. Steven Tanner
Sen. Benjamin Toews
Sen. Glenneda Zuiderveld

Indiana

Sen. Jeffrey Raatz
Sen. Liz Brown

Iowa

Rep. Charles Thomson
Rep. Helena Hayes
Rep. Craig Williams
Rep. Mark I. Thompson

Rep. Samantha Fett	Rep. Shannon Lundgren
Rep. Steven Holt	Sen. Dennis Guth
Sen. Jason Schultz	Sen. Jeff Taylor
Sen. Kevin Alons	Sen. Sandy Salmon

Kansas

Speaker Daniel Hawkins	Rep. Paul Waggoner
Rep. Bill Rhiley	Rep. Doug Blex
Rep. Steven K. Howe	Rep. Kristey Williams
Rep. Patrick Penn	Rep. Paul Waggoner
Sen. Renee Erickson	

Kentucky

Rep. John Hodgson	Rep. Richard White
Rep. Shane Baker	Rep. T.J. Roberts
Rep. David Hale	Rep. Deanna Frazier Gordon
Rep. Marianne Proctor	Rep. Nancy Tate
Rep. Timmy Truitt	Rep. Walker Thomas
Sen. Lindsey Tichenor	Sen. Robert M. Mills
Sen. Steve Rawlings	

Louisiana

Rep. Beryl Amedee	Rep. Charles Owen
Rep. Dodie Horton	Rep. Rodney Schamerhorn
Rep. Kathy Edmonston	Rep. Kellee Hennessy Dickerson
Rep. Julie Emerson	

Maine

Rep. Alicia Collins	Rep. Amay Arata

Rep. Jack Ducharme	Rep. Nathan Carlow
Rep. Reagan Paul	Sen. Stacey Guerin

Maryland

Delgate Lauren Arikan	Del. Brian Chisholm
Sen. Mary Beth Carozza	

Michigan

Rep. Gina Johnsen	Rep. Steve Carra
Rep. David Martin	Rep. Phil Green

Minnesota

Rep. Tom Dippel	Sen. Bill Lieske
Sen. Eric Lucero	Sen. Glenn Gruenhagen

Mississippi

Rep. Becky Currie	Rep. Beth Luther Waldo
Rep. Carolyn Crawford	Rep. Lester Carpenter
Rep. Celeste Hurst	Rep. Clay Mansell
Rep. Dan Eubanks	Rep. Dana Underwood McLean
Rep. Elliot Burch	Rep. Fred Shanks
Rep. Gene Newman	Rep. Jansen Owen
Rep. Jill Ford	Rep. Kevin Ford
Rep. Kimberly Remak	Rep. Lee Yancey
Rep. Mark Tullos	Rep. Noah Sanford
Rep. Price Wallace	Rep. Randy Boyd
Rep. Randy Rushing	Rep. Stacey Hobgood-Wilkes
Rep. Timmy Ladner	Rep. Tracy Arnold
Sen. Andy Berry	Sen. Angela Hill

Sen. Brian Rhodes	Sen. Joseph Fillingane
Sen. Kathy Chism	Sen. Tyler McCaughn

Missouri

Rep. Alex Riley	Rep. Ben Keathley
Rep. Bob Titus	Rep. Brad Pollitt
Rep. Brian Seitz	Rep. Hardy Billington
Rep. Holly Jones	Rep. Jeff Coleman
Rep. Justin Sparks	Rep. Mark Matthiesen
Rep. Mark Meirath	Rep. Mazzie Christensen
Rep. Ann Kelkey	Rep. Becky Laubinger
Rep. Ben Baker	Rep. Don Mayhew
Rep. Jim Kalberloh	Rep. John Simmons
Rep. Justin Sparks	Rep. Michael Davis
Sen. Adam Schnelting	Sen. Brad Hudson
Sen. Nick Schroer	Sen. Rick Brattin

Montana

Rep. Amy Regier	Rep. Braxton Mitchell
Rep. Fiona Nave	Rep. Courtenay Sprunger
Rep. Greg Kmetz	Rep. Greg Overstreet
Rep. Jerry Schillinger	Rep. Kerri Seekins-Crowe
Rep. Randyn Gregg	Rep. Terry Falk
Rep. Tom Millett	President Matt Regier
Sen. Barry Usher	Sen. Bob Phalen
Sen. John Fuller	Sen. Theresa Manzella
Sen. Tom McGillvray	

New Hampshire

Rep. Glenn Cordelli	Rep. Jim Kofalt
Rep. Larry Gagne	Rep. Pierre DuPont

New Mexico

Rep. Rebecca Dow
Sen. David Gallegos

North Carolina

Sen. Ted Alexander

North Dakota

Rep. Dan Ruby
Rep. Karen Anderson
Sen. Bob Paulson
Sen. Michelle Powers
Rep. Desiree Morton
Rep. Matthew Ruby
Sen. Mark Enget

Ohio

Rep. Adam Bird
Rep. Jennifer Gross
Rep. Gary Click
Rep. Levi Dean

Oklahoma

Rep. Chad Caldwell
Rep. Kevin West
Rep. Stacy Adams
Sen. Julie Daniels
Sen. Julie McIntosh
Sen. Randy Grellner
Sen. Shane Jett
Rep. Cody Maynard
Rep. Denise Crosswhite-Hader
Sen. David Bullard
Sen. Jerry Alvord
Sen. Micheal Bergstrom
Sen. Warren Dunlap Hamilton
Sen. Dana Prieto

Oregon

Rep. E. Werner Reschke
Sen. Diane Linthicum

Pennsylvania

Rep. Aaron Bernstine
Rep. Bryan Cutler
Rep. Chad Reichard
Rep. David Zimmerman
Rep. Joe Hamm
Rep. Kathy L. Rapp
Rep. Keith Greiner
Rep. Mark M. Gillen
Rep. Marla Brown
Rep. Mindy Fee
Rep. Russ Diamond
Rep. Stephanie Borowicz
Rep. Steve Mentzer
Rep. Tim Twardzik

South Dakota

Speaker Jon Hansen
Rep. John Hughes
Rep. Leslie Heinemann
Rep. Julie Auch
Rep. Phil Jensen

Tennessee

Rep. Chris Todd
Rep. Lee Reeves
Rep. Dennis Powers
Rep. Greg Martin
Rep. Jason Zachary
Rep. Jeremy Faison
Rep. Mark Cochran
Sen. Janice Bowling
Sen. Brent Taylor
Sen. Paul Rose

Texas

Rep. Brent Money
Rep. Briscoe Cain
Rep. Candy Noble
Rep. Cody Vasut
Rep. Keresa Richardson
Rep. Mark Dorazio
Rep. Cole Hefner
Rep. Helen Kerwin
Rep. Jeff Leach
Rep. Valoree Swanson
Rep. Wes Virdell

Utah

Sen. Heidi Balderree

Vermont

Rep. Greg Burtt

Washington

Sen. Judy Warnick

West Virginia

Del. Adam Burkhammer	Del. Chris Anders
Del. Jim Butler	Del. Elias Coop-Gonzalez
Del. Larry D. Kump	Del. Kathie Hess Crouse
Del. Rick Hillenbrand	Del. Margitta Mazzocchi
Del. Daniel Linville	Sen. Patricia Rucker
Sen. Chris Rose	Sen. Michael Azinger

Wisconsin

Rep. Scott Allen

Wyoming

Speaker Chip Neiman	Rep. Abby Angelos
Rep. Ann Lucas	Rep. Gary Brown
Rep. Jeremy Haroldson	Rep. Joel Guggenmos
Rep. John Bear	Rep. Ken Pendergraft
Rep. Marlene Brady	Rep. Martha Lawley
Rep. Nina Webber	Rep. Ocean Andrew
Rep. Pepper L. Ottman	Rep. Rachel Rodriguez-Williams

Rep. Scott Heiner	Rep. Scott Smith
Rep. Tomi Strock	Rep. Joe Webb
Sen. Darin Smith	