IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

PLANNED PARENTHOOD SOUTH ATLANTIC *et al.*, Plaintiffs,	§	
vs.	§	Civil Action No.: 3:21-00508-MGL
ALAN WILSON, *in his official capacity as Attorney General of South Carolina, et al.*, Defendants.	§	

MEMORANDUM OPINION AND ORDER DENYING INTERVENOR-DEFENDANT MCMASTER'S MOTION TO DISMISS

I. INTRODUCTION

Pending before the Court is Intervenor-Defendant Governor Henry McMaster's (Governor McMaster) motion to dismiss the amended complaint of Planned Parenthood South Atlantic (PPSAT), on behalf of itself, its patients, and its physicians and staff; Greenville Women's Clinic, on behalf of itself, its patients, and its physicians and staff; and Terry L. Buffkin, M.D., on behalf of himself and his patients (collectively, Plaintiffs). Having carefully considered the motion, the response, the reply, the record, and the relevant law, the Court is of the opinion the motion should be denied.

II. FACTUAL AND PROCEDURAL HISTORY

A. Factual History

In Plaintiff's amended complaint, pursuant to 42 U.S.C. § 1983, they challenge the constitutionality of the South Carolina Fetal Heartbeat and Protection from Abortion Act, S.1, R-2, Act. No 1 of 2021 (S.1 or the Act). Plaintiffs moved for a preliminary injunction to restrain Defendants, their employees, agents, successors, and all others acting in concert or participating with them, from enforcing the Act. The Act provides that "no person shall perform, induce, or attempt to perform or induce an abortion" where the "fetal heartbeat has been detected." S.1, § 3 (adding S.C. Code Ann. § 44-41-680(A)). It defines "fetal heartbeat" to include any "cardiac activity, or the steady and repetitive rhythmic contraction of the fetal heart, within the gestational sac." *Id.* (adding S.C. Code Ann. § 44-41-610(3)).

The Act also includes new mandatory ultrasound, mandatory disclosure, recordkeeping, reporting, and written notice requirements that are closely intertwined with the operation of the prohibition on abortion after detection of cardiac activity. *See, e.g.,* S.1 § 3 (adding S.C. Code Ann. §§ 44-41-630, -640, -650); *id.* § 4 (amending S.C. Code Ann. § 44-41-460(A)); *id.* § 5 (adding S.C. Code Ann. § 44-41-330(A)(1)(b)); *id.* § 6 (amending S.C. Code Ann. § 44-41-60).

B. Procedural History

As is relevant here, the Court, on March 19, 2021, granted Plaintiffs' motion for a preliminary injunction. Governor McMaster subsequently filed the instant motion, Plaintiffs responded, Governor McMaster replied, and Defendant-Intervenor South Carolina House of Representatives Speaker James H. Lucas, in his official capacity as Speaker of the South Carolina House of Representatives, filed a notice of joinder to Governor McMaster's motion to dismiss.

The Court, having been fully briefed on the relevant issues, will now adjudicate Governor McMaster's motion to dismiss.

III. STANDARD OF REVIEW

A. Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1)

"The plaintiff has the burden of proving that subject matter jurisdiction exists." *Evans v. B.F. Perkins Co., a Div. of Standex Intern. Corp.*, 166 F.3d 642, 647 (4th Cir. 1999). "When a defendant challenges subject matter jurisdiction pursuant to Rule 12(b)(1), 'the district court is to regard the pleadings as mere evidence on the issue, and may consider evidence outside the pleadings without converting the proceeding to one for summary judgment.'" *Id.* (quoting *Richmond, Fredericksburg & Potmac R. Co. v. United States*, 945 F.2d 765, 769 (4th Cir. 1991)). "The moving party should prevail only if the material jurisdictional facts are not in dispute and the moving party is entitled to prevail as a matter of law." *Richmond, Fredericksburg*, 945 F.2d at 768.

B. Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6)

A party may move to dismiss a complaint based on its "failure to state a claim upon which relief may be granted." Fed. R. Civ. P. 12(b)(6). "The purpose of a Rule 12(b)(6) motion is to test the sufficiency of a complaint." *Edwards v. City of Goldsboro*, 178 F.3d 231, 243 (4th Cir. 1999). To survive the motion, a complaint must have "enough facts to state a claim to relief that is plausible on its face," *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007), and contain more than "an unadorned, the-defendant-unlawfully-harmed-me accusation," *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

In considering a motion to dismiss, a plaintiff's well-pled allegations are taken as true, and the complaint and all reasonable inferences are liberally construed in the plaintiff's favor. *Mylan Labs., Inc. v. Matkari*, 7 F.3d 1130, 1134 (4th Cir. 1993). The Court may consider only the facts alleged in the complaint, which may include any documents either attached to or incorporated in the complaint, and matters of which the Court may take judicial notice. *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007).

Although the Court must accept the plaintiff's factual allegations as true, any conclusory allegations are unentitled to an assumption of truth, and even those allegations pled with factual support need be accepted only to the extent "they plausibly give rise to an entitlement to relief." *Iqbal*, 556 U.S. at 679. In sum, factual allegations must be enough to raise a right to relief above the speculative level, on the assumption all the allegations in the complaint are true, even if doubtful in fact. *Twombly*, 550 U.S. at 555.

IV. DISCUSSION AND ANALYSIS

A. Whether Plaintiffs have standing to bring this lawsuit on behalf of their patients

Governor McMaster argues "Plaintiffs do not have standing to assert the rights of unidentified women who might use their services." McMaster's Mot. at 9. In particular, Governor McMaster posits the Court, in its Order granting Plaintiffs' motion for a preliminary injunction, neglected to "address Plaintiffs' failure to allege the requisite facts for third party standing." *Id.* Governor McMaster contends "dismissal is warranted under either Rule 12(b)(1) or Rule 12(b)(6)." *Id.* at fn 2.

Plaintiffs, in their response, repeatedly cite to the Court's March 19, 2021, Order granting their motion for a preliminary injunction that concluded Plaintiffs have third-party standing to bring this lawsuit on behalf of their patients.

Governor McMaster, in his reply, reiterates his contention Plaintiffs fail to "show a close relationship with the women they seek to deprive of legal rights and remedies afforded by the Act . . . ." McMaster's Reply at 4.

The Court previously rejected Governor McMaster's argument Plaintiffs lack third-party standing to bring this lawsuit on behalf of their patients. *See* March 19, 2021, Order at 8 (quoting Pls.'s Mot. at 1) ("As with the plaintiffs in [*June Med. Servs., LLC v. Russo*, 140 S. Ct. 2103 (2020),] Plaintiffs here bring this action to assert the constitutional rights of their patients and to challenge a law that subjects Plaintiffs to 'felony criminal and other penalties for running afoul of' the Act" and "the Court concludes Plaintiffs have third-party standing to sue."). The Court's previous holdings apply here. *See United States v. Aramony*, 166 F.3d 655, 661 (4th Cir. 1999) ("[T]he doctrine of the law of the case posits that when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages of the same case."). Therefore, the Court concludes Plaintiffs have third-party standing to sue on behalf of their patients, and Governor McMaster's motion to dismiss the amended complaint under Rule 12(b)(1) for lack of subject matter jurisdiction is denied.

B. Whether Plaintiffs have standing to assert a claim under Section 1983 and to obtain declaratory relief under the Declaratory Judgment Act

Governor McMaster maintains Plaintiffs lack standing to assert a claim under Section 1983 and are unable to obtain declaratory relief under the Declaratory Judgment Act. The Court will address each argument in turn.

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