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 GRANTING PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

I. INTRODUCTION

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), filed an amended complaint for declaratory and injunctive relief against Alan Wilson, in his official capacity as Attorney General of South Carolina (AG Wilson); Edward Simmer, in his official capacity as Director of the South Carolina Department of Health and Environmental Control (DHEC); Anne G. Cook, in her official capacity as President of the South Carolina Board of Medical Examiners (SCBME); Stephen I. Schabel, in his official capacity as Vice President of the SCBME; Ronald Januchowski, in his official capacity as Secretary of the SCBME; Jim C. Chow, in his official capacity as a Member of the SCBME; George S. Dilts, in his official capacity

as a Member of the SCBME; Dion Franga, in his official capacity as a Member of the SCBME; Richard Howell, in his official capacity as a Member of the SCBME; Theresa Mills-Floyd, in her official capacity as a Member of the SCBME; Jeffrey A. Walsh, in his official capacity as a Member of the SCBME; Christopher C. Wright, in his official capacity as a Member of the SCBME; Scarlett A. Wilson, in her official capacity as Solicitor for South Carolina's 9th Judicial Circuit (Solicitor Wilson); Byron E. Gipson, in his official capacity as Solicitor for South Carolina's 5th Judicial Circuit (Gipson); and William Walter Wilkins, III, in his official capacity as Solicitor for South Carolina's 13th Judicial Circuit (Wilkins) (collectively, Defendants).

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 have 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. Having carefully considered the motion, the responses, the replies, the oral argument, the record, and the relevant law, the Court is of the opinion the motion should be granted.

II. FACTUAL AND PROCEDURAL HISTORY

A. Factual History

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

Governor McMaster signed the Act into law on February 18, 2021. Several hours prior to Governor McMaster signing the Act into law, Plaintiffs filed their complaint and a motion for a temporary restraining order (TRO) and preliminary injunction (Pls.' Mot.). On the following day, AG Wilson, Wilkins, and Solicitor Wilson filed their response, DHEC filed a response adopting AG Wilson, Wilkins, and Solicitor Wilson's response, and the SCBME defendants filed their response.

The Court held a hearing on Plaintiffs' motion for a TRO, after which it granted the motion. Gipson and the SCBME defendants entered into separate stipulations with Plaintiffs whereby they "agree[d] not to investigate or prosecute based on [the Act] until such time as a final, non-appealable judgment has been issued in this matter[,]" Gipson Stipulation at 1; SCBME Stipulation at 2, and Plaintiffs agreed to withdraw their requests for injunctive relief as to them. Solicitor Wilson, in an effort to minimize legal costs and efforts, declined to file further briefing on Plaintiffs' request for injunctive relief.

Defendants AG Wilson and Wilkins filed a supplemental response (Suppl. Return of AG Wilson and Wilkins), and Governor Henry McMaster, in his official capacity as Governor of the State of South Carolina, (Governor McMaster) filed a motion to dissolve the TRO (McMaster Br.). The Court subsequently extended the TRO for another fourteen days.

Plaintiffs filed their reply to AG Wilson and Wilkins's supplemental response (Pls.' Reply in Supp. Mot. for Prelim. Inj.) and the Court then held a hearing on Plaintiffs' motion for a preliminary injunction. Thereafter, the Court allowed Governor McMaster and South Carolina House of Representatives Speaker James H. Lucas, in his official capacity as Speaker of the South Carolina House of Representatives, to permissibly intervene in this action pursuant to Fed. R. Civ. P. 24(b)(1)(B). As to Plaintiffs' request for injunctive relief, Speaker Lucas failed to file any briefing.

Plaintiffs filed their response to Governor McMaster's motion (Pls.' Suppl. Reply) and also filed an amended complaint that includes allegations based on Governor McMaster's signing of the Act and the law's current effect. Governor McMaster subsequently replied (McMaster Reply).

The Court, having been fully briefed on the relevant issues, will now adjudicate Plaintiffs' motion for a preliminary injunction.

III. STANDARD OF REVIEW

"[P]reliminary injunctions are intended to meet exigent circumstances[.]" *Ideal Toy Corp. v. Plawner Toy Mfg. Corp.*, 685 F.2d 78, 84 (3d Cir. 1982). They are "an extraordinary remedy never awarded as of right." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). "[T]he party seeking [a preliminary injunction] must prove [its] own case and adduce the requisite proof, by a preponderance of the evidence, of the conditions and circumstances upon which [it] bases the right to and necessity for injunctive relief." *Citizens Concerned for Separation of Church & State v. City of Denver*, 628 F.2d 1289, 1299 (10th Cir. 1980).

A preliminary injunction should issue only when the plaintiff can "[1] establish that [it is] likely to succeed on the merits, [2] that [it is] likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in [its] favor, and [4] that [injunctive relief] is in the public interest." *Winter*, 555 U.S. at 20. The burden is on the party seeking injunctive relief to show it is entitled to the relief, not the burden of the other party to show the movant is not entitled. *Granny Goose Foods, Inc. v. Bhd. of Teamsters*, 415 U.S. 423, 443 (1974).

"[A]ll four requirements must be satisfied." *Real Truth About Obama, Inc. v. Fed. Election Comm'n*, 575 F.3d 342, 346 (4th Cir. 2009). Thus, even a strong showing of likely success on the merits cannot compensate for failure to show likely injury. *Winter*, 555 U.S. at 21–22. And, irreparable injury alone is insufficient to support equitable relief. *See id.* at 23 (holding irreparable injury was likely to occur, but holding injunctive relief was improper because of the burden on the government and the impact on public interest). In other words, "[a] preliminary injunction shall be granted only if the moving party clearly establishes entitlement." *Di Biase v. SPX Corp.*, 872 F.3d 224, 230 (4th Cir. 2017).

"Given [the] limited purpose [of a preliminary injunction], and given the haste that is often necessary . . . , [they are] customarily granted on the basis of procedures that are less formal and evidence that is less complete than in a trial on the merits." *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981). "Because [the] proceedings are informal ones designed to prevent irreparable harm before a later trial governed by the full rigor of usual evidentiary standards, district courts may look to, and indeed in appropriate circumstances rely on, hearsay or other inadmissible evidence when deciding whether a preliminary injunction is warranted." *G.G. ex rel. Grimm v. Gloucester Cty. Sch. Bd.*, 822 F.3d 709, 725–26 (4th Cir. 2016), *vacated and remanded on other grounds*, 137 S. Ct. 1239 (2017).

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