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# 8 REASONS TO FULLY REPEAL CON NOW

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PALMETTO  
PROMISE  
INSTITUTE

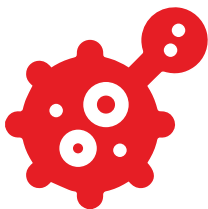
## 1. KILLED BY COMPETITORS: DEAD PROJECTS THREATEN SOUTH CAROLINA'S HEALTH.



SC is #8 in the US in increase in fatal **drug overdoses**. **But** 25% of Psychiatric & Substance Abuse CON applications were withdrawn. Competitors were involved with 35% of the applications.



**Heart Disease** is the leading cause of death in SC. **But** 23% of Cardiac-Related CON applications were withdrawn. Opponents were involved in 26%, which led to 39% receiving “requests for review.”



SC ranks 15th in **cancer** mortality rate. **But** 16% of Cancer CON applications were withdrawn, opponents were involved in 53%, attracting “requests for review” for 32% of them.



**Ambulatory Surgery Centers** (ASCs) specialize in **same-day** surgery at a **lower price**. **But** 38% of ASC applications were withdrawn. Opponents were involved with 46%, and 35% attracted a “request for review.”

## THE IMPACT OF SOUTH CAROLINA'S CERTIFICATE OF NEED (CON) PROGRAM

# 2. THE RESEARCH IS CONCLUSIVE

CON fails to achieve all of the reasons for its existence in the first place...



### DOES CON RESTRAIN **COST**?

No. Overwhelming number of studies confirm. Ten times as many studies find that CON is associated with **higher** costs than find it is associated with **lower** costs.



### DOES CON ENSURE **ADEQUATE SUPPLY**? ENSURE **RURAL ACCESS**? ENCOURAGE **ASCs, MRIs**?

No. Just **2** studies find that CON increases access to care while **33** find that it limits access.



### DOES CON ENSURE MORE **CHARITY CARE**?

No. Recent (2021) Johns Hopkins study is freshest evidence.



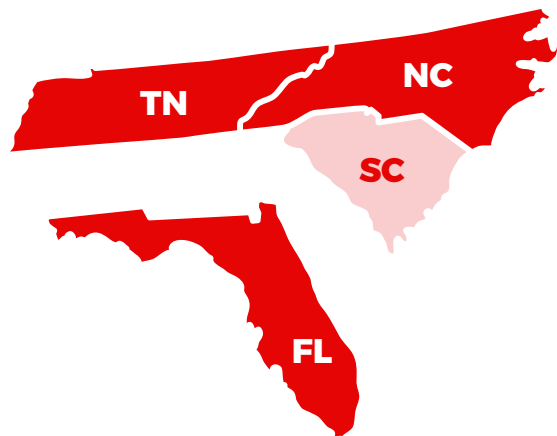
### DOES CON PROMOTE **HIGH QUALITY**?

No. Nearly **four** times as many studies find that CON undermines quality of care than find that it enhances the quality of care.

## THE IMPACT OF SOUTH CAROLINA'S CERTIFICATE OF NEED (CON) PROGRAM

### 3. ACTIONS OF SIMILARLY RURAL NEIGHBORING STATES

- Both led the nation in **closed rural hospitals** (2005-2020).
- Both passed first steps to **full repeal in 2021**.
- Like South Carolina, North Carolina and Tennessee are each **34% rural**.
- But the models are **Florida, Montana, and New Hampshire** which repealed most of CON. Since repeal, healthcare access in Florida is finally catching up. Florida's population rose 219% since 1970. Horry county since 1970: 402%



### 4. SOUTH CAROLINA RURAL AREAS WITH AND WITHOUT CON: THE CONTRAST

#### RURAL AREAS WITH CON: DESPAIR & HEALTHCARE DESERTS

4

Rural hospitals closed



17

Rural counties without a hospital or an ASC

0

Rural health projects in DHEC process



66.5% - 95.3%

Percentage of patients in rural counties *with* a hospital choosing to have procedures out of county

#### RURAL AREAS WITHOUT CON: HOPE FOR BETTER HEALTHCARE ACCESS

9

New rural hospitals (projected)



1

New rural ASCs (projected)

4

Rural hospitals remain designated as federal "Critical Access Hospitals" qualifying them for continued federal assistance including grants and more generous Medicaid reimbursements.

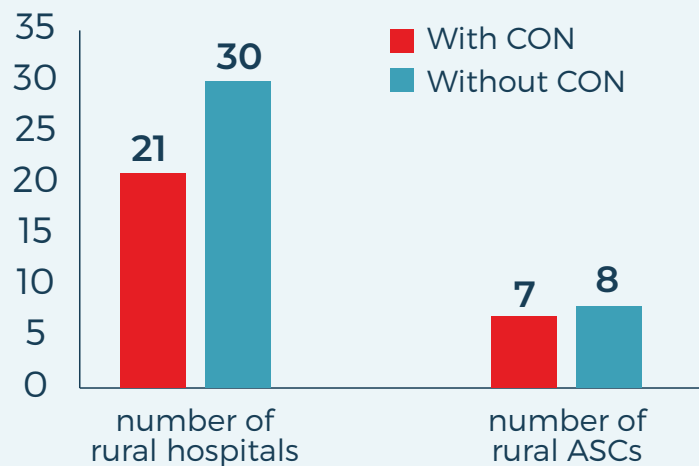


# THE IMPACT OF SOUTH CAROLINA'S CERTIFICATE OF NEED (CON) PROGRAM

## ACCURATELY MEASURING THE CON

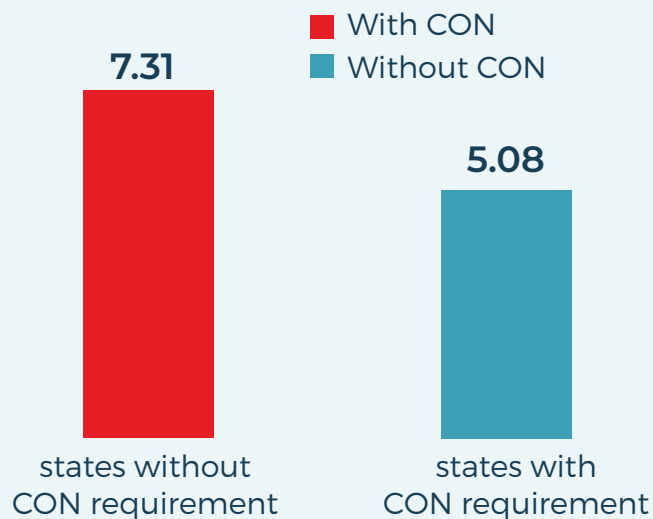
### RURAL EFFECT: CON VS NON-CON STATES

#### ESTIMATED DIFFERENCE IN ACCESS TO RURAL HEALTHCARE FACILITIES IN A SOUTH CAROLINA WITHOUT CON REGULATIONS



Sources: Mitchell et al., "Certificate-of-Need Laws: South Carolina State Profile," Stratmann and Koopman, "Entry Regulation and Rural Health Care."

#### AVERAGE RURAL HOSPITALS PER 100,000 RURAL RESIDENTS

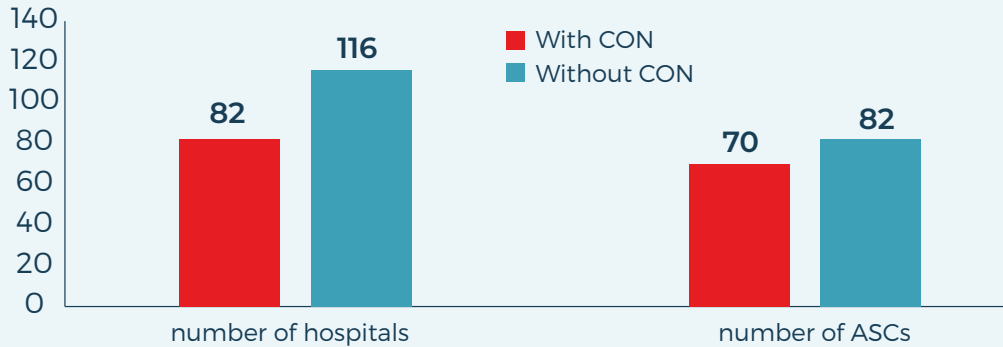


Sources: Mitchell et al., "Certificate-of-Need Laws: South Carolina State Profile," Mercatus Center at George Mason University, November 11, 2020; Stratmann and Koopman, "Entry Regulation and Rural Health Care."

## THE IMPACT OF SOUTH CAROLINA'S CERTIFICATE OF NEED (CON) PROGRAM

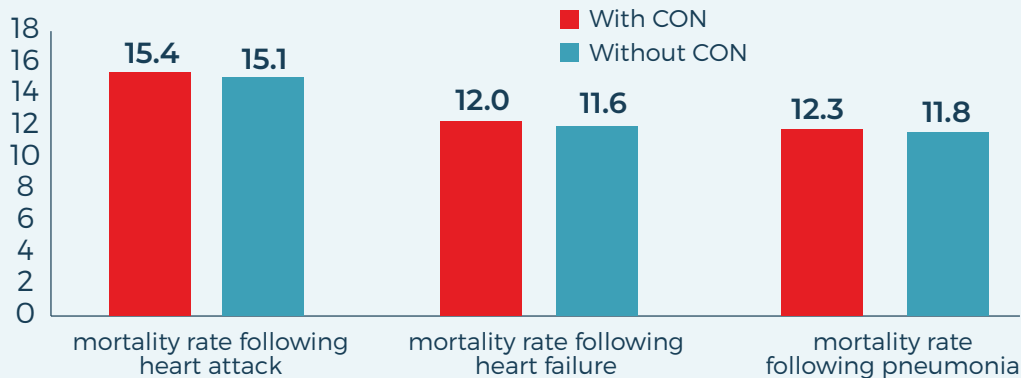
# 5. THE ONLY WAY TO MEASURE THE CON EFFECT: CON VS NON-CON STATES

### ESTIMATED DIFFERENCE IN ACCESS TO HEALTHCARE FACILITIES IN A SOUTH CAROLINA WITHOUT CON REGULATIONS



Sources: Mitchell et al., "Certificate-of-Need Laws: South Carolina State Profile," Mercatus Center at George Mason University, November 11, 2020; Stratmann and Koopman, "Entry Regulation and Rural Health Care."

### ESTIMATED DIFFERENCE IN MORTALITY RATES IN A SOUTH CAROLINA WITHOUT CON REGULATIONS (RESTRICTED SAMPLE, FOUR OR MORE CON LAWS)



Sources: Mitchell et al., "Certificate-of-Need Laws: South Carolina State Profile," Stratmann and Wille, "Certificate-of-Need Laws and Hospital Quality."

## 6. THE SC SENATE SUPPORTED CON FULL REPEAL

**31-9\***

SENATE ROLL CALL VOTES  
FOR FULL CON REPEAL

**35-6\*\***

\* Table partial repeal ("reform")  
\*\* Full repeal third reading

# THE IMPACT OF SOUTH CAROLINA'S CERTIFICATE OF NEED (CON) PROGRAM

## 7. CON PREVENTS EXPANSION OF HEALTHCARE IN HIGH POPULATION GROWTH AREAS: A REVIEW OF DHEC\* CON APPLICATIONS

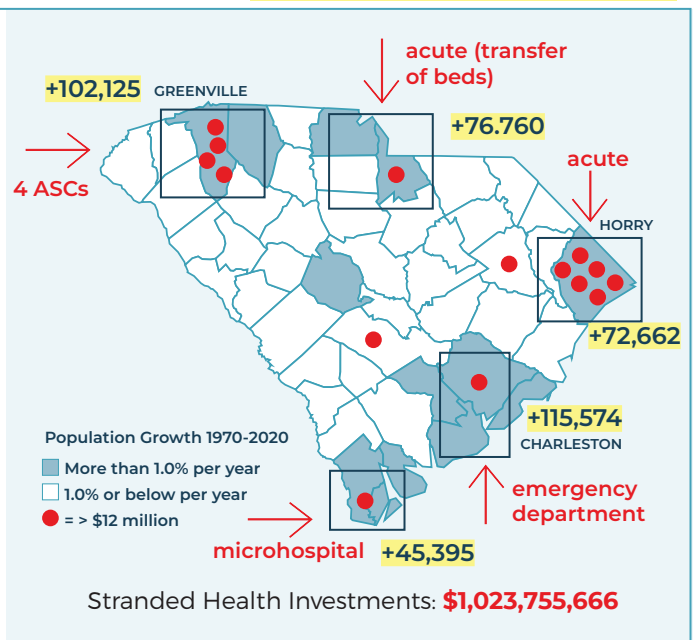
### CON & DELAYED PROJECTS: ONLY ENRICHING LAWYERS.

There are **28** healthcare facilities and programs dating to **2017** that are *delayed* due to appeals, mostly from competitors blocking each other's projects, even though DHEC has approved **26** of them. This totals over **\$1 Billion** in stranded health investments.

→ **No project is in a rural area\*\*.**

ASC = Ambulatory Surgery Center (not an acute or full hospital)

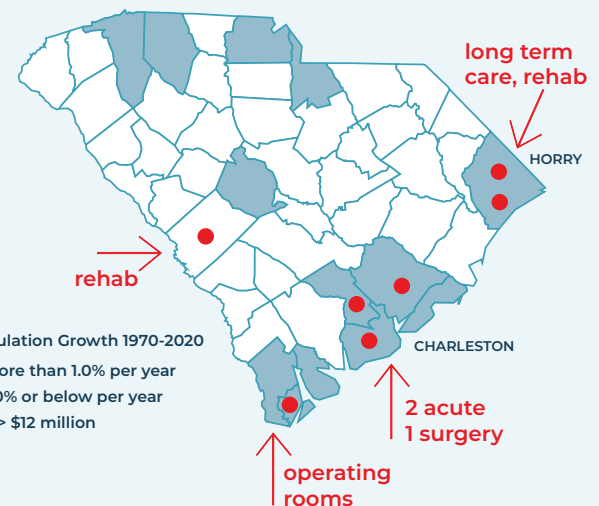
#### POPULATION GROWTH 2010-2021



### CON & NEW PROJECTS: CHASING AWAY INVESTMENT

The likelihood of an expensive challenge by a competitor is driving away investment. There are **34** new projects in the DHEC application process. Only **7** projects are >\$12 million, **3** are **Charleston/Tri-County** hospitals and **2** are **Horry**—areas that have had explosive population growth.

→ **No project is in a rural county.**



\* = SC Department of Health & Environmental Control

\*\*Two projects are in counties classified by some researchers as "rural": Lancaster and Orangeburg. But the specific locations are not rural.

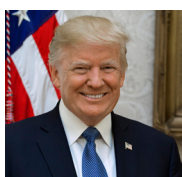
# THE IMPACT OF SOUTH CAROLINA'S CERTIFICATE OF NEED (CON) PROGRAM

## 8. PRESIDENTS OBAMA AND TRUMP AGREE ON THE NEED TO REPEAL CERTIFICATE OF NEED



*CON laws, when first enacted, had the laudable goals of reducing health care costs and improving access to care. However, after considerable experience, it is now apparent that CON laws can prevent the efficient functioning of health care markets in several ways that may undermine those goals. First, CON laws create barriers to entry and expansion, limit consumer choice, and stifle innovation. Second, incumbent firms seeking to thwart or delay entry or expansion by new or existing competitors may use CON laws to achieve that end. Third, as illustrated by the FTC's recent experience in the Phoebe Putney case, CON laws can deny consumers the benefit of an effective remedy following the consummation of an anticompetitive merger.*

—Joint Statement of the Federal Trade Commission and the Antitrust Division of the U.S. Department of Justice (Obama Administration), January 11, 2016.



*Three prominent members of the Trump administration called on individual states to eliminate Certificate of Need (CON) laws regarding the development of new healthcare facilities... Writing in a sweeping, nearly 120-page report on healthcare reform, the secretaries of the Health and Human Services, Treasury, and Labor department accused states of holding back innovation in healthcare with the laws.*

## SOURCES

**CON Despair.** Rural hospital closure statistics from University of North Carolina Chapel Hill Cecil G. Sheps Center for Health Services Research rural hospital closure website. Counties without a hospital source is SC Health Plan. Rural projects derived from DHEC raw data. The only projects in counties that are “nearly rural” on the Appeals list are Lancaster and Orangeburg. The only projects in counties that are “nearly rural” on the Proposed list are Darlington, Lancaster and Greenwood. Outmigration data source is Revenue & Fiscal Affairs Office for the 2020 fiscal year.

**CON Hope.** Projections are from Mitchell et al., “Certificate of Need Laws: South Carolina State Profile” and Stratmann & Koopman, “Entry Regulation & Rural Healthcare.”

**CON Research.** Eighteen studies cited in Mitchell, “South Carolina’s Certificate of Need Program” Lessons from Research,” Testimony to SC Senate Medical Affairs Committee, May 12, 2021. Additional studies focus specifically on investment, efficiency, expenditures, and per unit costs, prices and charges.

**CON in NC & TN:** Percentage rural from US Census. Reforms from National Council of State Legislatures (NCSL); decline in rural hospital ranking from University of North Carolina Chapel Hill Cecil G. Sheps Center for Health Services Research rural hospital closure website data.

**CON and DHEC Applications.** Author’s computations and coding of DHEC CON applications.

**CON vs Non-CON States.** Charts from Mitchell, et al., “Certificate of Need Laws: South Carolina State Profile”; Stratmann and Willie, “Certificate of Need Laws and Hospital Quality,”; Stratmann and Koopman, “Entry Regulation and Rural Health Care,” Stratman and Koopman, Entry Regulation and Rural Healthcare: Certificate of Need Laws, Ambulatory Surgery Centers, and Community Hospitals.”

**CON Repeal Roll Calls.** South Carolina Legislative Services Agency, Senate Vote History, Vote #482 S.290 Second Reading (January 19, 2022), Vote #492 S.290 Third Reading (January 25, 2022).

**Roll Call Votes.** Journal of the South Carolina Senate.