

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

RACHEL WELTY, et al.,)
)
 Plaintiffs,)
) Case No. 3:24-cv-00768
 v.)
)
 BRYANT C. DUNAWAY, et al.,)
)
 Defendants.)

DEFENDANTS' ANSWER AND DEFENSES TO PLAINTIFFS' COMPLAINT

Defendants Bryant C. Dunaway, Jason Lawson, Jennings H. Jones, Robert J. Carter, Ray Whitley, Robert J. Nash, Glenn Funk, Stacey Edmonson, Brent Cooper, Ray Crouch, and Hans Schwendimann, all in their official capacities as District Attorneys General (collectively “Defendants”), by and through the Office of the Tennessee Attorney General, answer Plaintiffs’ Complaint against them, as follows:

I. INTRODUCTION

1. Defendants submit that Public Chapter No. 1032 says what it says. The remaining allegations contained in Paragraph 1 constitute legal conclusions to which no response is required.
2. Defendants submit that Public Chapter No. 1032 says what it says. The remaining allegations contained in Paragraph 2 constitute legal conclusions to which no response is required.
3. Defendants submit that Public Chapter No. 1032 says what it says. The remaining allegations contained in Paragraph 3 constitute legal conclusions to which no response is required.
4. Defendants admit that Public Chapter No. 1032 does not contain a definition of the word “recruits” and that the term “recruits” is susceptible to various possible meanings in the abstract, but Defendants deny that the term “recruits” is vague or ambiguous in the context of Public Chapter

No. 1032. Defendants further admit that they did not respond to a June 6, 2024 letter sent by Plaintiff Welty's counsel requesting that each of them provide their office's respective view of what "recruits" means under Public Chapter No. 1032. The remaining allegations contained in Paragraph 4 are denied.

5. The allegations contained in Paragraph 5 constitute legal conclusions to which no response is required.

6. Defendants deny that Plaintiffs are entitled to the relief sought or any relief whatsoever. The remaining allegations contained in Paragraph 6 are denied.

II. PARTIES

7. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 7.

8. It is admitted that Plaintiff Behn is an elected member of the Tennessee House of Representatives. Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 8.

9. Defendants submit that Tenn. Code Ann. § 8-7-103(1) says what it says. The remaining allegations contained in Paragraph 9 are admitted.

III. JURISDICTION AND VENUE

10. Defendants deny that this Court has jurisdiction, as Plaintiffs lack standing and Defendants have sovereign immunity from Plaintiffs' claims against them.

11. Defendants admit that one or more of them reside in this judicial district. Defendants deny that they have violated Plaintiffs' constitutional rights. Plaintiffs' remaining allegations in Paragraph 11 constitute legal conclusions to which no response is required.

IV. FACTUAL ALLEGATIONS

A. Plaintiff Rachel Welty

12. Defendants are without knowledge or information sufficient to form a belief as to the

truth of the allegations contained in Paragraph 12.

13. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 13.

14. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 14.

15. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 15.

16. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 16.

17. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 17.

18. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 18.

19. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 19.

20. Defendants admit that Plaintiff Welty is an attorney licensed in Tennessee. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 20.

21. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 21.

22. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 22.

23. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 23.

24. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 24.

25. Defendants admit that Plaintiff Welty's counsel sent a letter dated June 6, 2024, addressed to each of them regarding Public Chapter No. 1032 and that the letter says what it says. The remaining allegations contained in Paragraph 25 are denied.

26. Defendants admit that Plaintiff Welty's counsel sent a letter dated June 6, 2024, addressed to each of them regarding Public Chapter No. 1032 and that the letter says what it says. The remaining allegations contained in Paragraph 26 are denied.

27. Defendants admit that Plaintiff Welty's counsel sent a letter dated June 6, 2024, addressed to each of them regarding Public Chapter No. 1032 and that the letter says what it says. The remaining allegations contained in Paragraph 27 are denied.

28. Admitted.

29. Defendants admit that Plaintiff Welty's counsel sent a letter dated June 6, 2024, addressed to each of them regarding Public Chapter No. 1032 and that the letter says what it says. The remaining allegations contained in Paragraph 29 are denied.

30. Defendants admit that Plaintiff Welty's counsel sent a letter dated June 6, 2024, addressed to each of them regarding Public Chapter No. 1032 and that the letter says what it says. The remaining allegations contained in Paragraph 30 are denied.

31. Defendants admit only that they did not respond to the June 6, 2024 letter sent by Plaintiff Welty's counsel regarding Public Chapter No. 1032. The remaining allegations contained in Paragraph 31 are denied.

32. Defendants submit that Public Chapter No. 1032 says what it says. The remaining allegations contained in Paragraph 32 constitute legal conclusions to which no response is required.

33. Denied.

34. Denied.

35. Denied.

B. Plaintiff Aftyn Behn

36. Admitted.

37. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 37.

38. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 38.

39. Defendants submit that the legislative history for Senate Bill 1971, which ultimately became Public Chapter No. 1032, says what it says. To the extent the allegations contained in Paragraph 39 mischaracterize the same, they are denied.

40. Defendants submit that the legislative history for Senate Bill 1971, which ultimately became Public Chapter No. 1032, says what it says. To the extent the allegations contained in Paragraph 40 mischaracterize the same, they are denied.

41. Defendants submit that the legislative history for Senate Bill 1971, which ultimately became Public Chapter No. 1032, says what it says. To the extent the allegations contained in Paragraph 41 mischaracterize the same, they are denied.

42. Defendants are without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 42 regarding Plaintiff Behn's desire to "continue her advocacy for young people who need legal abortion care." Defendants deny that Plaintiff Behn has plausibly stated a credible threat of prosecution against her under Public Chapter No. 1032, and the remaining allegations contained in Paragraph 42 are denied.

43. Denied.

44. Denied.

45. The legal conclusions contained in Paragraph 45 require no response. The remaining allegations contained in Paragraph 45 are denied.

46. Denied.

V. CAUSES OF ACTION

Claim #1: 42 U.S.C. § 1983—Violation of the Fourteenth Amendment (Unconstitutional Vagueness)

47. Defendants incorporate their responses to Paragraphs 1 through 46 of Plaintiffs' Complaint as if fully set forth herein.

48. The allegations contained in Paragraph 48 constitute legal conclusions to which no response is required.

49. The allegations contained in Paragraph 49 constitute legal conclusions to which no response is required.

50. Defendants admit that Public Chapter No. 1032 does not contain a definition of the word "recruits" but deny that the term "recruits" is vague or ambiguous in the context of Public Chapter No. 1032.

51. Defendants admit that the term "recruits" is susceptible to various possible meanings in the abstract but deny that the term "recruits" is vague or ambiguous in the context of Public Chapter No. 1032.

52. The allegations contained in Paragraph 52 constitute legal conclusions to which no response is required.

53. Defendants admit only that they did not respond to a June 6, 2024 letter sent by Plaintiff Welty's counsel requesting that each of them provide their office's respective view of what "recruits" means under Public Chapter No. 1032. Otherwise, denied as stated.

54. Denied.

55. Denied.

56. Denied.

57. Denied.

Claim #2: 42 U.S.C. § 1983—Violation of the First and Fourteenth Amendments
(Content- and Viewpoint-Based Speech Discrimination)

58. Defendants incorporate their responses to Paragraphs 1 through 57 of Plaintiffs' Complaint as if fully set forth herein.

59. The allegations contained in Paragraph 59 constitute legal conclusions to which no response is required.

60. The allegations contained in Paragraph 60 constitute legal conclusions to which no response is required.

61. The allegations contained in Paragraph 61 constitute legal conclusions to which no response is required.

62. Defendants submit that Public Chapter No. 1032 says what it says. The remaining allegations contained in Paragraph 62 constitute legal conclusions to which no response is required.

63. Defendants submit that the legislative history for the bill that ultimately became Public Chapter No. 1032 says what it says. Otherwise, the allegations contained in Paragraph 63 are denied.

64. The allegations contained in Paragraph 64 constitute legal conclusions to which no response is required.

65. The allegations contained in Paragraph 65 constitute legal conclusions to which no response is required.

66. The allegations contained in Paragraph 66 constitute legal conclusions to which no response is required.

67. Denied.

68. Denied.

69. Denied.

70. Denied.

71. Denied.

72. Denied.

73. Denied.

Claim #3: 42 U.S.C. § 1983—Violation of the First and Fourteenth Amendments
(Unconstitutional Overbreadth)

74. Defendants incorporate their responses to Paragraphs 1 through 73 of Plaintiffs' Complaint as if fully set forth herein.

75. The allegations contained in Paragraph 75 constitute legal conclusions to which no response is required.

76. Defendants submit that Public Chapter No. 1032 says what it says. The remaining allegations contained in Paragraph 76 constitute legal conclusions to which no response is required.

77. The allegations contained in Paragraph 77 constitute legal conclusions to which no response is required.

78. The allegations contained in Paragraph 78 constitute legal conclusions to which no response is required.

79. Denied.

80. Denied.

81. Denied.

82. Denied.

83. Denied.

84. The statements contained in Paragraph 84 do not require a response. To the extent a response is required, Defendants incorporate their responses to Paragraphs 1 through 83 of Plaintiff's Complaint as if fully set forth herein.

VI. PRAYER FOR RELIEF

Defendants deny that Plaintiffs are entitled to any of the relief sought in the section of the Complaint titled “Prayer for Relief” and deny that Plaintiffs are entitled to any relief whatsoever in this case. At a minimum, this Court cannot issue any relief that extends beyond the parties to this suit.

GENERAL DENIAL

To the extent any of the allegations contained in Plaintiffs’ Complaint have not been admitted, denied, or otherwise addressed above, they are hereby denied.

DEFENSES

1. This Court lacks jurisdiction over Plaintiffs’ Complaint because Defendants have sovereign immunity from each of Plaintiffs’ claims against them.

2. This Court also lacks jurisdiction because Plaintiffs do not have standing to maintain the claims asserted against these Defendants.

3. Plaintiffs’ Complaint fails to state a claim upon which relief can be granted under either the First or Fourteenth Amendments.

4. The Underage Abortion Trafficking Act, Tenn. Code Ann. § 39-15-220, including the “recruit[ment]” provision challenged by Plaintiffs’ Complaint, does not violate Plaintiffs’ rights under the First or Fourteenth Amendments.

5. Plaintiffs’ claims should be dismissed pursuant to doctrine of abstention. Alternatively, any question regarding the appropriate meaning of the term “recruits” in the context of Public Chapter No. 1032 should be certified to the Tennessee Supreme Court.

6. Defendants reserve their right to amend this Answer as provided by the Federal Rules of Civil Procedure in order to assert additional affirmative defenses or averments that might become relevant as facts are discovered.

WHEREFORE, PREMISES CONSIDERED, Defendants Bryant C. Dunaway, Jason Lawson, Jennings H. Jones, Robert J. Carter, Ray Whitley, Robert J. Nash, Glenn Funk, Stacey Edmonson, Brent Cooper, Ray Crouch, and Hans Schwendimann request that the Court grant judgment in their favor as to each of Plaintiffs' claims against them, together with costs, expenses, and any other such relief to which they may be entitled.

Dated: November 4, 2024.

Respectfully submitted,

/s/ Steven J. Griffin

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CERTIFICATE OF SERVICE

I hereby certify that on November 4, 2024, a copy of the foregoing document was filed using the Court's electronic court-filing system, which sent notice of filing to the following counsel of record:

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