

Judgment.

3. Welty distributes “handouts about abortion care [and] abortion pills” at “different places,” including at “fundraisers,” the State legislature, retail stores, and festivals where “anyone could pick up the handout.” Hearing Tr., Doc. 39-1, 14:10-12, 16:4-17:4, 18:5-7 (citing Doc. 2).

RESPONSE: Undisputed for purposes of Defendant’s Motion for Summary Judgment.

4. Welty does not know whether unemancipated minors are among those who pick up the handouts she distributes regarding abortion care and abortion pills. Hearing Tr., Doc. 39-1, 18:2-8.

RESPONSE: Disputed. *See* Doc. 35:2–8.

5. Welty “sometimes gets interviewed” and talks to “reporters” about abortion access. Hearing Tr., Doc. 39-1, 15:6-7, 19:2-3.

RESPONSE: Undisputed for purposes of Defendant’s Motion for Summary Judgment.

6. Welty gives “speeches” and participates in other “speaking engagements” regarding abortion, including “talks” about abortion drugs. Hearing Tr., Doc. 39-1, 15:7, 16:3-4, 18:23-19:2.

RESPONSE: Undisputed for purposes of Defendant’s Motion for Summary Judgment.

7. Welty leaves “little cards” with a list of web sites about abortion options in “different places,” like the “bathrooms of bars.” Hearing Tr., Doc. 39-1, 17:5-9 (citing Doc. 1-2, at PageID# 21).

RESPONSE: Undisputed for purposes of Defendant’s Motion for Summary Judgment.

8. Welty’s abortion-related advocacy includes participating in “marches.” Hearing Tr., Doc. 39-1, 19:1.

RESPONSE: Undisputed for purposes of Defendant’s Motion for Summary Judgment.

9. Welty posts on social media “[t]o provide information to Tennesseans about abortion care,” including information about abortion pills and where they are still available. Hearing Tr., Doc. 39-1, 19:8-18.

RESPONSE: Undisputed for purposes of Defendant’s Motion for Summary Judgment.

10. When Welty interacts with others about abortion, her “goal as an advocate is never to persuade someone. It is to give them options and then let them make their own decision.” Hearing Tr., Doc. 39-1, 24:16-18.

RESPONSE: Undisputed for purposes of Defendant’s Motion for Summary Judgment.

11. Representative Behn provides her political constituents and social-work clients information about available abortion services “so that they can make an informed decision.” Hearing Tr., Doc. 39-1, 39:17-40:5, 44:18-19.

RESPONSE: Undisputed for purposes of Defendant’s Motion for Summary Judgment.

12. Representative Behn participates in “Days on the Hill” at the State legislature, though she has no interaction with “young people” at those events “on an individual basis.” Hearing Tr., Doc. 39-1, 40:13-19.

RESPONSE: Disputed. *See* Doc. 35:11–19.

13. Representative Behn posts on social media and uses infographics “to demystify legislation and provide information” about abortion, including with respect to the Act challenged in this suit. Hearing Tr., Doc. 39-1, 41:4-9, 47:3-49:7 (citing Doc. 1-5).

RESPONSE: Undisputed for purposes of Defendant’s Motion for Summary Judgment.

14. Representative Behn makes literature available in her office “about our abortion fund, the services that they provide, and information as to how to contact the nearest abortion provider outside the State of Tennessee.” Hearing Tr., Doc. 39-1, 41:10-19 (citing Doc. 1-2).

RESPONSE: Undisputed for purposes of Defendant’s Motion for Summary Judgment.

15. Representative Behn leaves “stickers in places where there are minors” who might see them. Hearing Tr., Doc. 39-1, 54:4-12.

RESPONSE: Undisputed for purposes of Defendant’s Motion for Summary Judgment.

16. When Representative Behn communicates with a pregnant minor, her goal is to “provide her information about abortion so that she can make her own decision” and not to “persuade her to get an abortion.” Hearing Tr., Doc. 39-1, 56:1-5.

RESPONSE: Undisputed for purposes of Defendant’s Motion for Summary Judgment.

17. The Act’s “recruiting” provision has never been enforced against Welty or Representative Behn, nor have they presented evidence of that provision being enforced against anyone else. Hearing Tr., Doc. 39-1, 25:5-16, 56:22-25.

RESPONSE: Undisputed for purposes of Defendant’s Motion for Summary Judgment.

18. Neither Welty nor Representative Behn have ever received any “warning letters” from Defendants regarding potential enforcement of the Act against them. Hearing Tr., Doc. 39-1, 25:18-22, 56:22-57:23.

RESPONSE: It is undisputed that neither Plaintiff has received warning *letters*. The Plaintiffs do dispute any implication that they have not received *warnings*. *See, e.g.*, Doc. 70 at 28 ¶ 104 (“[t]he Defendants have maintained that ‘even if the Act could be read to cover the sort of speech Plaintiffs allegedly intend to engage in, it would still pass constitutional muster[.]’”); Doc. 26 at 6 (arguing that “recruit means to persuade”); *id.* at 11 (“convinc[ing]” a minor to get an abortion out of state is recruitment); *id.* at 14 (same); Doc. 22 at 16 (“reaching out to and convincing a minor” to get an abortion out of state is recruitment); *id.* at 11–12 (“successful persuasion” is recruitment); Doc. 26 at 11 (“any speech the Act does cover can be constitutionally prohibited.”); Doc. 69 at 17 (“Of course, if someone were to intentionally target and induce a minor to be transported out of state without parental consent for the purpose of obtaining an elective abortion, liability might attach for ‘recruiting.’”); *id.* at 33 (asserting that the Act criminalizes “offering to arrange . . . transportation” for an “out of state” abortion).

19. Although Welty’s counsel sent Defendants a pre-suit letter requesting that they “disavow *all* enforcement” of the Act’s “recruiting” provision against her, that letter did not ask Defendants to disavow enforcement of the “recruiting” provision with respect to the specific conduct outlined in Welty’s preliminary-injunction hearing testimony. Doc. 1-4 (emphasis added); Hearing Tr., Doc. 39-1, 7:19-22; 13:21-14:10, 15:7, 16:3-17:4, 18:5-19:2, 24:16-18.

RESPONSE: Disputed. *See* Doc. 1-4; *see also* Doc. 35 at 117:3–6.

20. Representative Behn did not request that any Defendant disavow enforcement of the Act’s “recruiting” provision against her specific speech prior to filing suit. Hearing Tr., Doc. 39-1, 57:20-23.

RESPONSE: Undisputed for purposes of Defendant’s Motion for Summary Judgment.

21. Defendants, through counsel, have expressly stated that the Act’s “recruiting” provision does not apply to the specific abortion-related activities Welty and Representative Behn described at the preliminary-injunction hearing. Oral Arg., R.35, 84:8-87:24; Supp. PI Resp., Doc. 39.

RESPONSE: Disputed. *See* Doc. 35 at 14–25.

It also is disputed that the Defendants have made any statements, expressly or otherwise, “through counsel,” as opposed to Defendants’ counsel having articulated his own position in the alternative. *See* Doc. 40 at 25 (“The defendants have had an unusual number of opportunities to explain how they will or will not enforce the statute. Welty sent them letters, and she gave them plenty of time to respond—so much time that it ultimately interfered with her ability to obtain a temporary restraining order. Nevertheless, the defendants completely ignored her. The defendants could have explained that refusal at the court’s hearing, but not one defendant even attended, let alone testified. At the hearing, the court made very clear that its consideration of the case would benefit from some shred of evidence regarding the defendants’ intentions—even simply signed declarations confirming that the lawyers representing them are accurately

representing the defendants' understanding of the statute. Still, however, they provided nothing. This startling disjunction between what the defendants' lawyers claim and what the defendants are actually willing to endorse is unusual, but not wholly without precedent."); Doc. 35 at 84:22; Doc. 70 at 28 ¶ 104 (admitting it is undisputed that "[t]he Defendants have maintained that 'even if the Act could be read to cover the sort of speech Plaintiffs allegedly intend to engage in, it would still pass constitutional muster[.]'").

It is further disputed that the Defendants' counsel has asserted that the Act's recruiting provision does not apply to the specific abortion-related activities Welty described at the preliminary-injunction hearing. *Compare, e.g.*, Doc. 69 at 17 ("Of course, if someone were to intentionally target and induce a minor to be transported out of state without parental consent for the purpose of obtaining an elective abortion, liability might attach for 'recruiting.'"); *id.* at 33 (asserting that the Act criminalizes "offering to arrange . . . transportation" for an "out of state" abortion), *with* Doc. 70 at 7 ¶ 25 (not disputing for purposes of summary judgment that "Ms. Welty helps clients carry out their choice by connecting them with resources, including financial resources; giving them information about what clinics are available for them out of state; or giving them information about abortion pills[.]"); *id.* at ¶ 24 (not disputing for purposes of summary judgment that once Ms. Welty's clients "choose a path, [Ms. Welty] help[s] them execute it[.]"); *id.* at ¶ 27 (not disputing for purposes of summary judgment that "Ms. Welty 'put[s] the word out' that she does this work[.]"); Doc. 35 at 14:1–15 (testifying that her abortion fund gives block grants to abortion clinics outside of Tennessee that are earmarked for Tennessee residents, provides resources to minors seeking abortions, and "connect[s] those minors with clinics out of state[.]").

PLAINTIFFS' STATEMENT OF ADDITIONAL MATERIAL FACTS

1. Plaintiff Rachel Welty serves on the board of an abortion fund that gives block grants to abortion clinics outside of Tennessee that are earmarked for Tennessee residents, provides resources to minors seeking abortions, and “connect[s] those minors with clinics out of state[.]” Doc. 35 at 14:1–15.

RESPONSE:

2. Plaintiff Rachel Welty intentionally provides accurate information about abortion to her minor clients, knowing that such information persuades some of those clients to have an abortion. *Id.* at 31:7–14.

RESPONSE:

3. Plaintiff Behn intentionally validates, supports, and encourages her clients' decision to get an abortion if they decide they want one. *Id.* at 45:1–22.

RESPONSE:

4. When the Plaintiffs' clients decide they want an abortion, the Plaintiffs intentionally support them, encourage them, and act for the purpose of helping them procure one legally or obtain one medically. *Id.* at 9:22–10:5, 45:1–22.

RESPONSE:

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 6, 2025, a copy of the foregoing and all exhibits and attachments were sent via CM/ECF, USPS Mail, and/or via email, to:

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