

Nos. 25-5738/25-5739

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

RACHEL WELTY; AFTYN BEHN,
Plaintiffs-Appellees and Cross-Appellants,

v.

BRYANT C. DUNAWAY; JASON LAWSON; JENNINGS HUTSON JONES; ROBERT J. CARTER;
RAY WHITLEY; ROBERT J. NASH; GLENN R. FUNK; STACEY EDMONSON; BRENT COOPER;
RAY CROUCH; HANS SCHWENDIMANN,
Defendants-Appellants and Cross-Appellees,

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE AT NASHVILLE
CASE No. 3:24-CV-768

**BRIEF OF *AMICUS CURIAE* GLOBAL JUSTICE CENTER IN SUPPORT OF
PLAINTIFFS-APPELLEES AND CROSS-APPELLANTS**

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IDENTITY & INTEREST OF *AMICUS CURIAE*¹

Global Justice Center is a non-partisan, non-profit organization dedicated to promoting the enforcement of international law in a progressive, nondiscriminatory manner. Global Justice Center works for peace, justice, and security by promoting enforcement of international laws that protect human rights and promote gender equality. The organization seeks to promote gender equality by focusing on and advocating for change in two primary areas: fighting for sexual and reproductive rights and demanding justice for sexual and gender-based violence. Global Justice Center submits this amicus brief to provide the Court with information regarding how international human rights law accords with the district court’s application of the United States Constitution to Tennessee Code § 39-15-201(a).

INTRODUCTION

Following the U.S. Supreme Court’s opinion in *Dobbs v. Jackson Women’s Health Organization*, 597 U.S. 215 (2022), Tennessee enacted Section 39-15-201(a), which purports to prohibit “abortion trafficking of a minor.” Tenn. Code § 39-15-201(a). Prior to the law’s enactment, Plaintiffs Aftyn Behn and Rachel Welty engaged in “public advocacy, information-sharing, and counseling” related to lawful abortion access, including by sharing “information about legal abortion”

¹ No party’s counsel authored this brief in whole or in part. No party, its counsel, or other person contributed money intended to fund the brief’s preparation or submission.

outside of Tennessee. *Welty v. Dunaway*, 791 F. Supp. 3d 818, 830–31 (M.D. Tenn. 2025). The district court held that a provision of Section 39-15-201—the “Recruitment Provision”—penalizes this speech to the extent it criminalizes “intentionally recruit[ing] . . . a pregnant unemancipated minor within the state for the purpose of . . . procuring” an abortion. *Id.* at 832–33. According to the district court, by criminalizing Plaintiffs’ speech, the Recruitment Provision “unconstitutionally regulates speech based on content and is facially overbroad” in violation of the First Amendment. *Id.* at 843.

While U.S. constitutional law provides a clear basis to reject Tennessee’s attempt to silence individuals providing information about safe and lawful healthcare access, affirming the district court’s holding would also align with international human rights law. Several international treaties, including the International Covenant on Civil and Political Rights (“ICCPR”) and the International Convention on the Rights of the Child (“CRC”), support the position that the Recruitment Provision violates longstanding international legal principles protecting free speech. These treaties confirm that all people, including minors, have a right to receive and impart information. International human rights law further confirms that the rights of minors—including to seek out and receive information—cannot be categorically subsumed under the rights of their parents. Accordingly, this Court can be confident

that affirming the district court’s holding accords with international human rights law.

ARGUMENT

The district court’s reasoning aligns with human rights enshrined in both the ICCPR and the CRC. The ICCPR requires its signatories to guarantee individual freedoms and rights such as freedom of expression. ICCPR, art. 19, Dec. 16, 1966, 999 U.N.T.S. 171. The United States has signed and ratified the ICCPR, thereby agreeing to respect, protect, and fulfill the rights and obligations articulated within it. U.S. Const., art. II, § 2, cl. 2. The CRC, which the United States has signed² and took a leading role in drafting,³ confirms that minors have the “freedom to seek, receive and impart information and ideas of all kinds.” CRC, art. 13, Nov. 20, 1989, 1577 U.N.T.S. 3. Both treaties further confirm that minors are rights-holders independent of their parents, especially as children age closer to becoming adults, and that governments must act in their “best interest.” *See, e.g.*, CRC, art. 3.

² In signing an international treaty, “[a] State is obliged to refrain from acts which would defeat the object and purpose of a treaty.” Vienna Convention on the Law of Treaties art. 18, *opened for signature* May 23, 1969, 1155 U.N.T.S. 331.

³ Luisa Blanchfield, Cong. Rsch. Serv., R40484, *The United Nations Convention on the Rights of the Child* 5 n.25 (2015), <https://tinyurl.com/2ua656y2> (discussing the history of and debates surrounding the Convention) (citing Cynthia Price Cohen, *Role of the United States in Drafting the Convention on the Rights of the Child: Creating a New World For Children*, 4 *Loyola Poverty L.J.* 9, Spring 1998).

I. International Human Rights Law Affirms that the Recruitment Provision Is an Unlawful Viewpoint Restriction

Consistent with rights afforded to United States citizens under the First Amendment to the federal Constitution, *see* U.S. Const., amend. I, the ICCPR enshrines a “right to freedom of expression,” ICCPR, art. 19(2). The U.N. Human Rights Committee (“U.N. HRC”), which is responsible for implementing the ICCPR, has described freedom of expression as “essential for any society” and a “foundation stone for every free and democratic society.”⁴ The right to freedom of expression includes the “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.” ICCPR, art. 19(2). The ICCPR also states that “[e]veryone shall have the right to freedom of association with others” and “the right to hold opinions without interference.” ICCPR, arts. 19(1), 22.

Tennessee’s Recruitment Provision contravenes this right to freedom of expression in two ways. First, the law restricts Plaintiffs’ right to impart information by penalizing the sharing of information regarding safe and lawful healthcare. Second, by silencing individuals like Plaintiffs, the law prevents Tennesseans

⁴ Hum. Rts. Comm., *General Comment No. 34, Freedoms of Opinion and Expression*, ¶ 2, U.N. Doc. CCPR/GC/34 (2011).

seeking healthcare information, including minors, from realizing their right to access that information.⁵

A. The Recruitment Provision Contravenes Plaintiffs’ Right to Freedom of Expression by Limiting Their Ability to Impart Information

Article 19 of the ICCPR states that the right to freedom of expression includes a right to “impart information and ideas of all kinds.” ICCPR, art. 19(2). While the ICCPR provides that States may restrict this right in narrow circumstances, such as to protect national security, the U.N. HRC has made clear that “[l]aws restricting the rights enumerated in article 19, paragraph 2 . . . must also themselves be compatible with the provisions, aims and objectives of the Covenant” and “must not violate the non-discrimination provisions of the Covenant.” Hum. Rts. Comm., *General Comment No. 34*, ¶ 26; ICCPR, arts. 19(3)⁶ and 26. As explained below, the

⁵ Defendants argue that the district court erred in interpreting the Recruitment Provision to apply to Plaintiffs’ speech, arguing instead that it applies narrowly to reach only “the intentional targeting of an unemancipated minor to induce or persuade them to obtain an elective abortion without their parents’ or guardian’s consent.” Defs.’ Br. at 8, ECF No. 22, Nov. 13, 2025. Even assuming this narrow reading were correct, the Recruitment Provision would still violate Plaintiffs’ freedom of expression because, “once the client decides to have an abortion, Plaintiffs speak with the purpose of helping and encouraging those minors to carry out their plans.” Pls.’ Br. at 23–24, ECF No. 34 (Jan. 28, 2026); *see also Welty*, 791 F. Supp. 3d at 833 (holding narrow interpretation is still a restriction on Plaintiffs’ speech).

⁶ The United States takes the position that it will interpret the scope of permissible restrictions on speech under the ICCPR in accordance with “the requirements and constraints of its Constitution.” *See* ICCPR, Declarations and Reservations, <https://tinyurl.com/383mu6xr> (last accessed Feb. 2, 2026).

Recruitment Provision contravenes the ICCPR by infringing on Plaintiffs' right to "impart information and ideas." The Recruitment Provision does not meet the ICCPR's strict requirement that any limitation on freedom of expression must comport with other provisions of the ICCPR, as it also violates the ICCPR's prohibition on political and opinion-based discrimination.

i. The Recruitment Provision Violates ICCPR Article 19

The right to impart information enshrined in ICCPR Article 19 is broad. It includes "political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, and religious discourse," as well as "commercial advertising."⁷ The right also includes various forms of expression, including "spoken, written and sign language," as well as "non-verbal expression."⁸

Relevant here, the U.N. HRC has found that laws that impose a "chilling effect on health-care providers" speech violate Article 19. *Mellet v. Ireland*, No. 2324/2013, UN Doc. CCPR/C/116/D/2324/2013, ¶ 3.10 (Nov. 17, 2016). In *Mellet*, the U.N. HRC found that Ireland violated the ICCPR by enacting a law limiting the

⁷ Hum. Rts. Comm., *General Comment No. 34*, ¶ 11; see also *Mika Miha v. Equatorial Guinea*, No. 414/1990, U.N. Doc. CCPR/C/51/D/414/1990 (July 8, 1994), ¶ 6.8 (finding country violated Article 19 by arresting and detaining a former government official "solely or primarily because of his membership in, and activities for, a political party in opposition to the regime.").

⁸ Hum. Rts. Comm., *General Comment No. 34*, ¶ 12.

circumstances in which a medical provider could share information regarding abortion access, including by censoring medical providers “from imparting even legal information,” including about the “legal availability” of procedures both in the country and abroad. *Id.* ¶¶ 3.10, 3.11. Similar to the healthcare providers in *Mellet*, Plaintiffs’ communications here focus on access to safe and legal reproductive healthcare services, including out-of-state care, to ensure pregnant minors have access to information to make informed decisions about their bodies and pregnancies.

The Recruitment Provision is thus inconsistent with Article 19 because it silences individuals like Plaintiffs from providing information about legal and safe health care options by threatening them with criminal penalties. Plaintiffs Behn and Welty have each provided Tennesseans with information about how to obtain lawful reproductive health care. *Welty*, 791 F. Supp. 3d at 827–28. But under the Recruitment Provision, Plaintiffs may face criminal charges if they continue to do so. *Id.* at 828, 836. Further, the Recruitment Provision criminalizes Plaintiffs’ conduct regardless of whether they communicate directly with minors who seek their advice or whether they broadly distribute information about healthcare in other states that anyone, including minors, could access. Tenn. Code § 39-15-201(a); *see Welty*, 791 F. Supp. 3d at 830–33 (describing forms of speech proscribed by the Recruitment Provision). This censorship of information regarding lawfully

available healthcare is exactly the type of censorship the U.N. HRC has determined violates Article 19. *See Mellet v. Ireland*, No. 2324/2013, ¶¶ 3.10, 3.11.

ii. The Recruitment Provision Is an Impermissible Restriction on the Freedom of Expression

The Recruitment Provision also does not meet the ICCPR’s requirements for a restriction on the right to freedom of expression. This right may only be limited in the interest of (1) “the respect of the rights or reputations of others”; (2) “the protection of national security or of public order”; or (3) the protection of “public health or morals.” ICCPR, art. 19(3). Moreover, any restriction under one of these categories “must . . . [still] be compatible with the provisions, aims and objectives” of the ICCPR, including its guarantees for equality, nondiscrimination, and fundamental rights,⁹ and must not be “overbroad.”¹⁰

Even assuming the Recruitment Provision vindicated any of the above interests, it violates Article 26 of the ICCPR, which provides that the State must “prohibit any discrimination,” including based on “political or other opinion.” ICCPR, art. 26. Discrimination includes “distinction, exclusion, restriction or preference which is based on . . . political or other opinion.”¹¹ As the district court held, the Recruitment Provision discriminates in exactly that way by prohibiting

⁹ *Id.* ¶¶ 26, 32.

¹⁰ *Id.* ¶ 34.

¹¹ Hum. Rts. Comm., *General Comment No. 18, Non-Discrimination*, ¶ 7, U.N. Doc. HRI/GEN/1/Rev.1 (1994).

“speech encouraging lawful abortion while allowing speech discouraging lawful abortion.” *Welty*, 791 F. Supp. 3d at 826. It is thus not a legitimate restriction on expression.

B. The Tennessee Law Infringes on Minors’ Rights by Impeding Their Ability to Receive Information

Just as the ICCPR enshrines a right to impart information, it protects the corollary right to seek and receive information. ICCPR, art. 19(2). According to the U.N. HRC, this right “encompasses information concerning health issues, including critical information for making informed choices about one’s sexual and reproductive health.” *Mellet v. Ireland*, No. 2324/2013, ¶ 3.8. Limiting access to information regarding legally available health care “is not a permissible limitation on [the] right to information under article 19” of the ICCPR. *Id.* ¶ 3.12.

The right to receive information is not limited to adults. Indeed, the ICCPR provides that “*everyone* shall have the right to freedom of expression.” ICCPR, art. 19(2) (emphasis added). That this right extends to minors is made clear by the CRC—the leading convention on the rights of minors—which states that minors “have the right to freedom of expression,” including the “freedom to seek, receive and impart information and ideas of all kinds.” CRC, art. 13.¹² The implementing

¹² See also Comm. on the Rts. of the Child, *Statement on Article 5 of the Convention on the Rights of the Child*, ¶¶ 4–5 (2023) (confirming that minors “have rights, irrespective of their age,” and that they are “rights holders separately from their parents.”); Comm. on the Rts. of the Child, *General Comment No. 4: Adolescent*

committees for both treaties have found that restrictions on access to reproductive healthcare information violates minors' rights to receive information. In *Lucía v. Nicaragua*, the U.N. HRC found that Nicaragua violated Article 19 of the ICCPR by denying a pregnant thirteen-year-old rape victim information regarding sexual health and "her right to give up her child for adoption." No. 3627/2019, U.N. Doc. CCPR/C/142/D/3627/2019, ¶ 8.15 (Apr. 25, 2025). In that case, the thirteen-year-old victim was repeatedly raped and forced to continue her pregnancy, while state authorities failed to investigate the sexual violence and denied the victim information about abortion, adoption, or other reproductive options. *Id.* ¶¶ 2.5–2.15. In finding Nicaragua had violated Article 19, the U.N. HRC highlighted that Nicaragua's failure to provide minors with "sexual and reproductive health education" prevented the minor victim from identifying the sexual violence she experienced or realizing that she was pregnant. *Id.* ¶ 8.15. Additionally, "the lack of information about [the minor victim's] options," including "the possibility of placing her child for adoption," "prevented [her] from making informed decisions about her sexual and reproductive health and resulted in forced motherhood." *Id.*

Health and Development in the Context of the Convention on the Rights of the Child, U.N. Doc. CRC/GC/2003/4, ¶ 22 (2003) ("Adolescents have the right to access adequate information essential for their health and development and for their ability to participate meaningfully in society.").

¶ 8.16; *see also Susana v. Nicaragua*, No. 3626/2019 U.N. Doc. CCPR/C/142/3626/2019, ¶¶ 8.15–8.16 (June 4, 2025) (same).

Similarly, in *Camila v. Peru*, the Committee on the Rights of the Child—the Committee charged with implementing the CRC—found that Peru violated the rights of a minor rape victim to “seek and receive information” under Article 13 of the CRC by failing to provide her with “information intended to promote her physical and mental health,” including about her “sexual and reproductive health that would have enabled her to make informed decisions and assert her rights.” No. 136/2021, U.N. Doc. CRC/C/93/D/136/2021, ¶ 8.14 (June 13, 2023). There, the minor was raped by her parent, forced to continue with the pregnancy until it ended in a miscarriage, and criminally prosecuted “for her pregnancy loss.” *Id.* ¶¶ 2.4–2.11, 2.21, 2.26–2.28, 8.14. The Committee found that the country violated her right to receive information by denying her access to information on “the availability of pregnancy tests,” “pregnancy-related risks,” “or the possibility of requesting a therapeutic abortion” before her miscarriage occurred. *Id.* ¶ 8.14. The Committee explained that this lack of information “led to [her] obstetric emergency and miscarriage.” *Id.*

Like the Nicaraguan and Peruvian governments, Tennessee has impeded minors’ access to critical healthcare information¹³ in violation of the ICCPR and CRC. Although the Recruitment Provision does not penalize minors for seeking information, it dramatically limits their access to it by targeting those who would provide it. No longer can the trusted non-parental adults in their lives—whether teachers, doctors, or extended family—provide them with information regarding legal rights and actions. Though the instant litigation centers the free speech rights of adult speakers, rather than the minor recipients of the information, upholding the lower court decision would support the internationally protected rights of both the Plaintiffs *and* the minors they seek to inform by removing barriers to information access.

By upholding minors’ rights to information as enshrined in international treaties, this Court would also protect their rights under the U.S. Constitution. The U.S. Constitution entitles minors to a “significant measure of First Amendment protection, and only in relatively narrow and well-defined circumstances may government bar public dissemination of protected materials to them.” *Brown v. Ent. Merchs. Ass’n*, 564 U.S. 786, 794 (2011) (internal citations omitted). In alignment

¹³ See Am. Acad. of Pediatrics, Comm. on Adolescence, Policy Statement: *The Adolescent’s Right to Confidential Care When Considering Abortion*, 139 Pediatrics e20163861 (2017) (“Timely access to medical care is especially important for pregnant teenagers because of the significant medical, personal, and social consequences of adolescent childbearing.”).

with the ICCPR and CRC, the First Amendment prevents U.S. states from “restrict[ing] the ideas to which children may be exposed” to “protect the young from ideas or images that a legislative body thinks unsuitable for them.” *Id.* at 794–95 (quoting *Erznoznik v. Jacksonville*, 422 U.S. 205, 213–14 (1975)); *see also* Pls.’ Br. at 48–51. Furthermore, a U.S. state may not “forbid[] the *depiction of*” certain content merely because it has a law “against *committing* it.” *Brown*, 564 U.S. at 791 (emphasis in original).

II. Under International Human Rights Law, the Parents’ Right to Make Decisions for Their Children Must Not Supersede Minors’ Rights by Default

Defendants stress the importance of “parental authority” in their support for the Recruitment Provision. *See* Defs.’ Br. at 4. But international law recognizes that parental control cannot be absolute because children are “rights holders separately from their parents,”¹⁴ and obligates States to act in the “best interests” of minors. CRC, art. 3. These dual commands—to recognize minors’ rights and act in their best interest—prevent governments from enacting laws that make parents the gatekeepers of minors’ medical care in *all instances*.¹⁵

¹⁴ Comm. on the Rts. of the Child, *Statement on Article 5 of the Convention on the Rights of the Child*, ¶¶ 4–5.

¹⁵ *See also Brown*, 564 U.S. at 795 n.3. Laws that “prevent children from hearing or saying anything *without their parents’ prior consent*” are unconstitutional because they “impose governmental authority, subject only to a parental veto.” *Id.* (emphasis in original).

A. The Tennessee Law Abdicates the State’s Responsibility to Safeguard Minors’ Rights

“In accordance with the [CRC], it is not acceptable to use the immaturity of children as a justification for depriving them of rights that would otherwise be enjoyed only by adults.”¹⁶ As the above cases make clear, children have the right to seek and receive information, and states are obligated not to impede that right. *See e.g., Camila*, No. 136/2021 (age 13); *Lucia*, No. 3627/2019 (same). In the context of reproductive and sexual health, the Committee states that parties should “enact laws or regulations to ensure that confidential advice concerning treatment is provided to adolescents so that they can give their informed consent.”¹⁷ The Committee has further confirmed that States should provide adolescents with “access to sexual and reproductive information, including on family planning and contraceptives regardless of their marital status and *whether their parents or guardians consent.*”¹⁸

B. The Recruitment Provision Is Not in Minors’ Best Interest

Not only does international law obligate states to respect minors’ individual rights, but also it requires that governments act in their “best interest.” CRC, art. 3.

¹⁶ Frank LaRue (Special Rapporteur), *Rep. on the Promotion and Protection of the Rt. to Freedom of Opinion and Expression*, U.N. Doc. A/69/335, ¶ 2 (2014).

¹⁷ Comm. on the Rts. of the Child, *General Comment No. 4*, U.N. Doc. CRC/GC/2003/4, ¶ 29.

¹⁸ *Id.* ¶ 24 (emphasis added).

Under the CRC, even “taking into account the rights and duties of [a child’s] parents, legal guardians, or other individuals legally responsible” for the child, the State’s obligation is to the “well-being” and “the best interests of the child.” CRC, art. 3. Most relevant here, “[t]his principle must be observed in all health-related decisions.”¹⁹

The Recruitment Provision ignores these considerations in favor of an absolutist view of parental power. While, for many minors, parental guidance regarding reproductive healthcare may be appropriate, the Recruitment Provision forecloses any balancing of minors’ rights when their interests conflict with those of their parents or guardians. By silencing individuals like Plaintiffs, the Recruitment Provision prevents minors from learning about safe and lawful healthcare options, even in instances where their parents may agree with the choice to seek safe and lawful reproductive health care. Even worse, in instances of familial abuse, such as in *Camila v. Peru* where the minor victim was raped by a parent, this lack of access to information will be particularly damaging. *See, e.g., Camila*, No. 136/2021, ¶ 8.14.²⁰ Indeed, the prohibition on providing information to minors also prevents

¹⁹ Comm. on the Rts. of the Child, *General Comment No. 15 on the Right of the Child to the Enjoyment of the Highest Attainable Standard of Health (Art. 24)*, U.N. Doc. CRC/C/GC/15, ¶ 12 (2013).

²⁰ Lauren J. Ralph et al., *Reasons for and Logistical Burdens of Judicial Bypass for Abortion in Illinois*, 68 *J. Adolescent Health* 71, 77 (2021) (finding half of study participants seeking judicial bypass around required parental notification “feared a

them from seeking reproductive healthcare when their parents or guardians (who are otherwise responsible for their wellbeing) have already caused them grave harm.

This stripping of minors' rights in favor of parental control is contrary to international law's mandate that the "best interests of the child" come first. *See* CRC, art. 3. It also conflicts with Tennessee's approach, as outlined in the district court's order granting a preliminary injunction in this case. As the court noted, "[n]umerous Tennessee statutes" require officials "to consider and protect the best interests of the children affected by their policies." *Welty v. Dunaway*, 749 F. Supp. 3d 882, 908 (M.D. Tenn. 2024) (citing Tenn. Code § 34-2-103 (appointment of a guardian); Tenn. Code § 36-1-113 (termination of parental rights); Tenn. Code § 36-6-401 (custody and visitation)).

CONCLUSION

For the foregoing reasons, *amicus curiae* Global Justice Center respectfully submits that this Court should affirm the district court's order holding that the Recruitment Provision is an unconstitutional restriction on free speech.

parent would force them to continue the pregnancy; more than two-fifths feared being kicked out of the house or cutoff financially; one in six feared abuse.”).

DATED: February 4, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation, as provided in Fed. R. App. P. 32(g) and Fed. R. App. P. 29(a)(5) because, exclusive of the exempted portions of the brief, the brief contains 3,770 words.

2. This brief complies with the type-face requirements, as provided in Fed. R. App. P. 32(a)(5), and the type-style requirements, as provided in Fed. R. App. P. 32(a)(6), because the brief has been prepared in proportionally spaced typeface using Microsoft Word 2010 in 14 point Times New Roman font.

3. As permitted by Fed. R. App. P. 32(g)(1), the undersigned has relied upon the word count feature of this word processing system in preparing this certificate.

Dated: February 4, 2026

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit by using the appellate CM/ECF system on February 4, 2026, which will cause notice of filing to be sent to all counsel of record.

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