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GEORGETOWN LAW

Hon. Kelly L. Stephens
Clerk of the Court
United States Court of Appeals for the Sixth Circuit
540 Potter Stewart U.S. Courthouse
100 E. Fifth Street
Cincinnati, Ohio 45202-3988

August 20, 2026

Re: *Welty v. Dunaway*, Nos. 25-5738/25-5739

Dear Ms. Stephens:

Plaintiffs respectfully write to draw the Court’s attention to *Planned Parenthood Great Northwest, Hawai‘i, Alaska, Indiana, Kentucky, Inc. v. Commissioner of the Indiana State Department of Health*, --- F.4th ---, 2026 WL 2409722 (7th Cir. Aug. 18, 2026).

Planned Parenthood concerned an as-applied, pre-enforcement challenge to a law prohibiting “knowingly or intentionally aiding or assisting an unemancipated pregnant minor in obtaining an abortion without” parental consent. *Id.* at *1. Planned Parenthood provides clients, including “unemancipated pregnant minors,” “factually accurate information about abortion providers who operate lawfully in other states.” *Id.* The district court permanently enjoined enforcement of the statute as applied to that speech. *Id.*

The Seventh Circuit affirmed. It first found sufficient “evidence of the law’s chilling effects on protected expression” to support pre-enforcement standing. *Id.* at *7.

On the merits, the Seventh Circuit held that the statute violated the First Amendment as applied to Planned Parenthood’s speech. The panel rejected defendants’ argument that Planned Parenthood’s speech was unprotected because it was integral to criminal conduct, holding that because the injunction “applie[d] only to information about

providers who operate[d] lawfully, there [wa]s no predicate criminal offense to which the speech could be said to be integral,” and the State could not “make it illegal to provide information about lawful conduct in other states.” *Id.* at *9-11.

The panel further concluded that the aid-or-assist law was “not viewpoint-neutral” because it prohibited “speech of the view that an unemancipated minor would benefit ... from the information or referrals shared, while permitting speech with the opposite viewpoint.” *Id.* at *14. The panel then held that the law failed strict scrutiny, distinguishing the State’s authority to regulate minors’ activities from impermissible attempts to “restrict[] the flow of information” to minors. *Id.* at *15-16.

This reasoning applies equally to Plaintiffs’ as-applied challenge here. The recruitment provision of Tenn. Code Ann. § 39-15-201(a) discriminates based on viewpoint by banning speech that “recruits” a minor to have a lawful out-of-state abortion, while permitting speech intended to prevent a minor from having an abortion. The provision therefore violates the First Amendment.

Respectfully submitted,

/s/ Elizabeth R. Cruikshank

Elizabeth R. Cruikshank

Counsel for Appellees

CC: All counsel of record (via CM/ECF)

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing letter complies with the word limit in Federal Rule of Appellate Procedure 28(j) because it contains 345 words.

/s/ Elizabeth R. Cruikshank

Elizabeth R. Cruikshank

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of August 2026, this letter was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Elizabeth R. Cruikshank
Elizabeth R. Cruikshank