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**United States Court of Appeals**  
*for the*  
**Sixth Circuit**

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Case Nos. 25-5738,  
25-5739

RACHEL WELTY; AFTYN BEHN,

*Plaintiffs-Appellees-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-Cross-Appellees.*

ON APPEAL FROM THE U.S. DISTRICT COURT FOR THE MIDDLE DISTRICT  
OF TENNESSEE AT NASHVILLE, DISTRICT COURT NO. 3:24-CV-00768,  
THE HONORABLE JULIA SMITH GIBBONS

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**BRIEF OF MIDWEST ACCESS COALITION, INC.  
AS *AMICUS CURIAE* IN SUPPORT OF APPELLEES**

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## **CORPORATE DISCLOSURE STATEMENT**

Amicus Curiae Midwest Access Coalition, Inc. is a corporation that does not have a parent corporation and does not issue stock.

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## INTEREST OF AMICUS CURIAE<sup>1</sup>

Midwest Access Coalition, Inc. (“MAC”) is a nonprofit organization based in Illinois working towards a world where all people can access safe, free, and legal abortion care wherever they live. To that end, MAC provides people information about and referrals for legal abortion care, and coordinates and funds their transportation, lodging, meals, and childcare. Until Tennessee’s statutory prohibition on helping minors obtain abortions, Tenn. Code Ann. § 39-15-201 (2024) (“Ban on Abortion Support”), took effect, MAC provided these services to minors living in Tennessee seeking legal abortions in other states regardless of their parents’ involvement in their lives.<sup>2</sup>

MAC seeks to resume providing its services to minors living in Tennessee to publicly express that they deserve dignity, respect, and community irrespective of their relationship with their parents. To the minors it serves, MAC seeks to express

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<sup>1</sup> All parties have consented to this brief’s filing. *See* Fed. R. App. P. 29(a)(2). No counsel for any party authored this brief in whole or in part, and no person or entity other than MAC or their counsel contributed money intended to fund the brief’s preparation or submission. *See* Fed. R. App. P. 29(a)(4)(E).

<sup>2</sup> Shortly before it took effect, MAC challenged the entirety of the Ban on Abortion Support, including its prohibition against “recruit[ing], harbor[ing], or transport[ing],” Tenn. Code Ann. § 39-15-201 (2024), because the Ban violates MAC’s rights to free expression and freedom from unduly vague laws. *See SisterReach v. Skrmetti*, No. 2:24-cv-02446 (W.D. Tenn. Filed 2024). MAC’s motion to preliminarily enjoin the Defendant Tennessee officials from enforcing the Ban, and the Defendants’ motion to dismiss the case, have been pending for nineteen and sixteen months, respectively.



radical love and solidarity, letting them know they are not alone during a frightening time. To states that have criminalized abortion care, MAC seeks to express protest and defiance, making it clear that their attempts to isolate and punish people for wanting to end a pregnancy will not stand.

The Defendants' contention that the Ban on Abortion Support can be constitutionally applied to "speech that interferes with parental rights" raises important issues about the nature and scope of parental rights. Defs.' Br. at 39. MAC submits this brief 1) to clarify that parental rights cannot be violated without State interference in the parent-child relationship, 2) to distinguish parents' rights against the State from the State's interest in helping parents fulfill their obligations, and 3) to explain why the Ban on Abortion Support neither strengthens parental rights nor advances the State's interest in helping parents discharge their responsibilities, and thus lacks a constitutional application involving either parental rights or the State's interest in helping parents.

## **INTRODUCTION AND SUMMARY OF ARGUMENT**

The Defendants weaponize parents' rights under the Due Process Clause of the Fourteenth Amendment to justify a restriction on speech that actually undermines parents' rights and does nothing to help parents discharge their responsibilities. In flagrant disregard of the precedent and history underlying parents' rights, the Defendants claim the authority to squelch the speech of third parties like MAC in

ways that parents may or may not want under the guise of upholding parental rights. What is more, Defendants conflate parents' rights, which, like other rights, are rights *against the State*, with the State's interest in helping parents exercise their authority. The Ban on Abortion Support undercuts parents' rights by stymying the will of parents who want their children to receive support from organizations like MAC. Defendants fare no better with an asserted interest in helping parents fulfill their obligations because the Ban on Abortion Support does not affect whether minors will confide in their parents about their decision to have an abortion. The Defendants' only recourse is to ask this Court to dismiss as unprotected the speech that MAC and like-minded individuals seek to engage in simply because the State disfavors that speech. This is anathema to the First Amendment. *See Matal v. Tam*, 582 U.S. 218, 244 (2017) ("We have said time and again that the public expression of ideas may not be prohibited merely because the ideas are themselves offensive to some of their hearers." (citation omitted)).

## **ARGUMENT**

### **I. Parental Rights are Defensive Rights Against State Interference**

The Defendants fundamentally misunderstand parental rights. *See, e.g.*, Defs.' Br. at 44 ("The Act can also be constitutionally applied to speech that interferes with parental rights."). The "right of parents to make decisions concerning the care, custody, and control of their children" under the Due Process Clause of the Fourteenth

Amendment obligates the State not to interfere with parents’ direction of their children’s upbringing—it does not entitle parents to State assistance with gaining greater control over their children. *Troxel v. Granville*, 530 U.S. 57, 66 (2000) (plurality op.); *Doe v. Irwin*, 615 F.2d 1162, 1168 (6th Cir. 1980).

“The Constitution is a charter of negative liberties; it tells the state to let people alone; it does not require the federal government or the state to provide services . . . .” *Pierce v. Springfield Tp., Ohio*, 562 F’App’x. 431, 436 (6th Cir. 2014) (quoting *Bowers v. DeVito*, 686 F.2d 616, 618 (7th Cir.1982) (Posner, J.)); see *Obergefell v. Hodges*, 576 U.S. 644, 727–78 (2015) (Thomas, J., dissenting) (“‘Liberty in the eighteenth century was thought of much more in relation to “negative liberty”; that is, freedom *from*, not freedom *to*, freedom from a number of social and political evils, including arbitrary government power.’”).

In *Pierce v. Society of the Sisters of the Holy Names of Jesus & Mary*, 268 U.S. 510, 535 (1925), for example, the Supreme Court emphasized that the “child is not a mere creature of the state . . . .” “[T]he Due Process Clause does not permit a State to infringe on the fundamental right of parents to make child rearing decisions simply because [the State] believes a ‘better’ decision could be made.” *Troxel*, 530 U.S. at 66, 72–73 (holding that a state statute enabling a state court to grant grandparents increased visitation over a fit mother’s wishes because the court believed

that the visitation was in the child’s best interest violated the mother’s parental rights).

While parents’ rights under the Due Process Clause protect parents from state infringement on their parenting decisions, this Court and several others have expressly held that they do not encompass a right to enlist the State to enhance parents’ authority over their children—including, and perhaps especially, in the medical context.<sup>3</sup> This Court previously “f[ound] no deprivation of the liberty interest of parents” in a state’s operation of a clinic that provided contraception to minors without parental notice.<sup>4</sup> *Doe*, 615 F.2d at 1168. The Court reasoned that the state’s provision

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<sup>3</sup> In fact, in *Kanuszewski v. Michigan Department of Health & Human Services*, 927 F.3d 396, 415–16 (6th Cir. 2019), which the Defendants rely on, this Court held that parents lack a clearly established right even to consent to State collection and screening of their infants’ blood. The Court noted that the caselaw on “parents’ right to control their children’s medical care” is “sparse,” but that “limitations on parents’ control over their children are particularly salient in the context of medical treatment.” *Id.* at 415, 419. Likewise, in *Parham v. J.R.*, 442 U.S. 584, 604 (1979), a procedural due process case, the Supreme Court acknowledged that parents “retain[ed] plenary authority to seek” the temporary institutionalization of children as young as “six” or “seven” for severe mental illness, but that such authority was “subject to a physician’s independent examination and medical judgment.”

<sup>4</sup> Although the Defendants trace parents’ rights in the medical context to a belief that minors lack the capacity to make medical decisions, the Defendants’ authorities are limited to cases involving infants or very young children—a far cry from the pregnant sixteen- and seventeen- year- olds mostly burdened by the Ban on Abortion Support. *See* Defs.’ Br. at 47 (citing *Kanuszewski*, 927 F.3d at 418–19 and *Parham*, 442 U.S. at 602–03); Diana Parker-Kafka Decl. ¶¶ 19, 23–24,

of contraception to minors “imposed no compulsory requirements or prohibitions which affect the rights of the plaintiff[ parents]. . . . There is no requirement that the children of the plaintiffs avail themselves of the services offered by the Center and no prohibition against the plaintiffs’ participating in decisions of their minor children on issues of sexual activity and birth control.” *Id.* at 1168; *accord Anspach v. City of Phila., Dep’t of Pub. Health*, 503 F.3d 256, 267 (3d Cir. 2007) (dismissing a parental rights claim where a state agency provided a teenager with emergency contraception without parental notice because the “facts in no way suggest[ed] that the state injected itself into the . . . private familial sphere”).

There was “one fundamental difference” between *Doe* and the earlier “Supreme Court decisions which define parental rights.” 615 F.2d at 1168. “In each of the Supreme Court cases the state was either requiring or prohibiting some activity.” *Id.* (first citing *Meyer v. Nebraska*, 262 U.S. 390 (1923); then citing *Pierce v. Society of the Sisters of the Holy Names of Jesus & Mary*, 268 U.S. 510 (1925); then citing *Wisconsin v. Yoder*, 406 U.S. 205 (1972); and then citing *Prince v. Massachusetts*, 321 U.S. 158, (1944)); *see Anspach*, 503 F.3d at 266 (“The real problem alleged by Plaintiffs is not that the state actors *interfered* with the Anspachs as parents; rather, it is that the state actors did not *assist* the Anspachs as parents or affirmatively *foster*

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*SisterReach v. Skrmetti*, No. 2:24-cv-02446-SHL-tmp (W.D. Tenn. June 27, 2024), ECF No. 6-3.

the parent/child relationship. However, the Anspachs are not entitled to that assistance under the Due Process Clause.”). But when the State does not interfere in the parent-child relationship, parental rights cannot be violated.

## **II. Defendants Ignore the Critical Distinction Between Parents’ Rights Against the State and the State’s Interest in Helping Parents**

In addition to fundamentally misconstruing parents’ rights under the Due Process Clause, the Defendants conflate parents’ rights against the State with the State’s interest in helping parents discharge their responsibilities. *See, e.g.*, Defs.’ Br. at 47 (“The Constitution uniquely assigns *to parents* the ‘fundamental right’ of consenting to available healthcare treatments, and States can act to stop strangers from circumventing that fundamental right.” (internal citations omitted)). This conflation collapses the distinction between fundamental rights and State interests: While rights constrain the State, valid State interests are aims that the State may pursue. *Supra* at 4.

For example, *Ginsberg v. New York*, 390 U.S. 629, 631 (1968), which the Defendants rely on, concerned a prohibition against selling to minors under 17 materials deemed obscene and harmful for them. The Court held that unlike the Ban on Abortion Support, the prohibition did not infringe on free speech because obscenity is one of the very few categories of unprotected expression. *Id.* at 635; *see United States v. Stevens*, 559 U.S. 460, 468–69 (2010) (“These historic and traditional categories long familiar to the bar—including obscenity . . . defamation . . . fraud . . .

incitement . . . and speech integral to criminal conduct . . . —are well-defined and narrowly limited classes of speech . . .” (citations omitted)).

*Ginsberg* lacked any discussion of parental rights because it involved no State interference in the parent-child relationship. Instead, the Court held that the prohibition against selling certain materials to minors was justified by a state’s rational interest in helping children’s caregivers, including teachers, fulfill their obligations. *Ginsberg*, 390 U.S. at 639. “[The prohibition] expressly recognizes the parental role in assessing sex-related material harmful to minors . . . Moreover, the prohibition against sales to minors does not bar parents who so desire from purchasing the magazines for their children.” *Id.*

### **III. The Ban on Abortion Support Neither Strengthens Parents’ Rights Nor Furthers the State’s Interest in Helping Parents Fulfill Their Obligations**

Contrary to Defendants’ argument, the Ban on Abortion Support cannot be justified by parents’ constitutional rights or the State’s interest in helping parents with their parenting responsibilities. *See* Defs.’ Br. at 4, 44–48. This is because the Ban on Abortion Support (1) undermines parents’ constitutional rights and (2) does nothing to ensure that minors will confide in their parents about their decision to have an abortion.

#### **A. The Ban on Abortion Support Undermines Parental Rights**

The Ban on Abortion Support prevents parents from helping their children obtain necessary support from organizations like MAC unless they provide “written,

notarized consent” for the support. Tenn. Code Ann. § 39-15-201(c)(2). Far from protecting parents from State interference, the “written, notarized consent” requirement burdens and potentially precludes the exercise of parental rights. *See* Defs.’ Br. at 6, 45.

The “written, notarized consent” requirement prevents some parents from helping their children secure necessary support obtaining an abortion.<sup>5</sup> In rural parts of Tennessee, parents may lack access to the resources needed to locate or travel to a notary on short notice.<sup>6</sup> They may also lack the technology needed to use a virtual notary.<sup>7</sup> Parents without valid state-issued identification—comprising

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<sup>5</sup> *See* Diana Parker-Kafka Decl. ¶ 40, *SisterReach, Inc. v. Skrmetti*, No. 2:24-cv-02446-SHL-tmp (W.D. Tenn. June 27, 2024), ECF No. 6-3 (“[The Ban on Abortion Support] would also force MAC to turn away some Tennessee minors whose parents consent to their seeking a legal out-of-state abortion. If their parents lack state-issued identification, cannot visit a notary on short notice, or lack the technology needed to use a virtual notary, the minor will be unable to secure written, notarized parental consent.”).

<sup>6</sup> *See, e.g., Rural Areas*, TN DEP’T OF HEALTH, <https://www.tn.gov/health/cedep/environmental/healthy-places/healthy-places/land-use/lu/rural-areas.html> (last visited Feb. 3, 2026) (noting that 93% of Tennessee is rural, and residents of rural parts of the state have “unique differences and challenges when it comes to economic and community development and health,” including “fewer service providers and resources for . . . community services”).

<sup>7</sup> *See Rural Broadband in Tennessee*, UNIV. OF TENN., KNOXVILLE, <https://dae.utk.edu/communityengagement/tennessee-rural-broadband/#:~:text=Broadband%20internet%20is%20still%20out,digitally%20underserved%20communities%20in%20Tennessee> (last visited Feb. 3, 2026) (explaining that “many rural communities in Tennessee” do not have broadband internet,



approximately 9% of the voting age population and disproportionately low-income people and people of color<sup>8</sup>—may be unable to use a notary at all.<sup>9</sup> Additionally, the cost of notary services may be prohibitive for some low-income parents, making it impossible to comply with the Ban on Abortion Support despite their adamant desire to help their children obtain an abortion.<sup>10</sup>

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“making them some of the most digitally disconnected communities in Tennessee”).

<sup>8</sup> Jillian Andres Rothschild, Samuel B. Novey & Michael J. Hanmer, *Who Lacks ID in America Today? An Exploration of Voter ID Access, Barriers, and Knowledge*, UNIV. OF MD, CTR. FOR DEMOCRACY & CIVIC ENGAGEMENT 2–3 (June 2024), <https://cdce.umd.edu/sites/cdce.umd.edu/files/pubs/Voter%20ID%20survey%20Key%20Results%20June%202024.pdf>. Nationally, Black and Hispanic Americans are less likely to have state-issued identification than the rest of the population. *Id.*

<sup>9</sup> Notaries require a form of identification that verifies the identity of the document signer. *See How to Get Something Notarized*, NAT’L NOTARY ASS’N, <https://www.nationalnotary.org/resources-for/public/how-to-prepare-for-notarization#:~:text=notarial%20certificate%20wording.-,Bring%20Acceptable%20Identification,identification%20that%20meets%20state%20requirements> (last visited Feb. 3, 2026). In a 2024 case study analyzing the impact of a variety of abortion restrictions in Virginia, researchers observed that the state’s notarized parental consent requirement significantly burdened parents, patients, and clinics. *See* Julia Rollison et al., *Understanding the State and Local Policies Affecting Abortion Care Administration, Access, and Delivery: A Case Study in Virginia* 7, RAND Research Report (Sept. 23, 2024), [https://www.rand.org/pubs/research\\_reports/RRA3324-2.html](https://www.rand.org/pubs/research_reports/RRA3324-2.html).

<sup>10</sup> Unlike many states, Tennessee does not set a specific maximum rate for notarization services. *Compare* Tenn. Code Ann. § 8-21-1201(a) (allowing notary to “demand and receive reasonable fees and compensation”) *with* Tex. Gov’t Code Ann. § 406.024(a) (setting a maximum fee of \$10 “for a notarial act”).

The Ban on Abortion Support burdens even those parents who can satisfy the “written, notarized consent” requirement. By saddling parents with an onerous prerequisite to exercising their parenting choices, the Ban on Abortion Support inverts the foundational principles of parental rights. *See, e.g., Troxel*, 530 U.S. at 68–69 (“[S]o long as a parent adequately cares for his or her children . . . there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent’s children.”). In *Troxel*, for instance, the Supreme Court instructed a lower court to enjoin enforcement of the challenged law against the plaintiff mother because it “[i]n effect” required her to “disprov[e] that visitation [by her children’s grandparents] would be in the[ir] best interest” instead of allowing her to make choices “concerning the[ir] rearing” free from State interference. *Id.* at 69–70 (emphasis added). Likewise, the “written, notarized consent” requirement forces parents to prove to the State that they approve of their child receiving help in obtaining an abortion, and therefore unconstitutionally injects the State into the family unit.

At best, the Ban on Abortion Support inflicts stress and uncertainty on parents at the very moment their children need their care and guidance the most. *Cf. Hodgson v. Minnesota*, 497 U.S. 417, 451 (1990) (denouncing two-parent notice requirement for an abortion that “distract[ed]” some parents and their children “from the minor’s imminent abortion decision”), *abrogated on other grounds by Dobbs v. Jackson*

*Women's Health Org.*, 597 U.S. 215, 231 (2022). At worst, the Ban on Abortion Support bars parents from effectuating their parenting choices.

**B. The Ban on Abortion Support Does Not Advance the State's Interest in Helping Parents Discharge Their Responsibilities**

In addition to undermining parents' rights, and contrary to the Defendants' assertions, the Ban on Abortion Support does not further the State's interest in helping parents provide care and guidance to their children. *See* Defs.' Br. at 45. In stark contrast to laws that provide information or support to parents, *see, e.g., Frazier ex rel. Frazier v. Winn*, 535 F.3d 1279, 1285 (11th Cir. 2008) (upholding facial constitutionality of law that helped ensure parents knew "how their children will be educated on civic values"), the Ban on Abortion Support confers no benefits on parents because it does nothing to ensure that their children will confide in them about their decision to have an abortion.

Despite years of enforcement of laws requiring parental involvement for abortion care, there is a "lack of data demonstrating that such laws . . . lead to better communication" between parents and children.<sup>11</sup> The research is clear: Most minors willingly confide in a parent about their abortion decision even without laws

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<sup>11</sup> Lee A. Hasselbacher et al., *Factors Influencing Parental Involvement Among Minors Seeking an Abortion: A Qualitative Study*, 104(11) AM. J. PUB. HEALTH 2207, 2210 (Nov. 2014), <https://ajph.aphapublications.org/doi/full/10.2105/AJPH.2014.302116>.

mandating parental involvement.<sup>12</sup> See, e.g., *Planned Parenthood of Cent. N.J. v. Farmer*, 762 A.2d 620, 640 (N.J. 2000) (“[P]arents in states both with and without mandatory parental notification laws generally were comparably informed about their children’s childbearing decisions.”). The younger a person is, the more likely they are to involve a parent in their abortion decision.<sup>13</sup> Minors who voluntarily tell a parent about their abortion decision report family relationships that are healthy and positive.<sup>14</sup>

By contrast, the small proportion of minors who do not confide in a parent about an abortion decision, also irrespective of parental involvement requirements for an abortion, typically have unavailable, incapacitated, abusive, or unsupportive

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<sup>12</sup> Studies have found that up to 91% of minors voluntarily tell their parents about their abortion decision. See, e.g., Robert D. Webster et al., *Parental Involvement Laws and Parent-Daughter Communication: Policy Without Proof*, 82 CONTRACEPTION 310 (2010), [https://www.contraceptionjournal.org/article/S0010-7824\(10\)00400-2/abstract](https://www.contraceptionjournal.org/article/S0010-7824(10)00400-2/abstract) (summarizing research concluding that up to 91% of minors tell parents about their abortion decision, with most studies concluding that at least 50% of minors choose to involve a parent regardless of legal requirements). See also Lauren Ralph M.P.H. et al., *The Role of Parents and Partners in Minors’ Decisions to Have an Abortion and Anticipated Coping after Abortion*, 54 J. ADOLESCENT HEALTH, 428, 430 (2014), [https://www.jahonline.org/article/S1054-139X\(13\)00520-X/pdf](https://www.jahonline.org/article/S1054-139X(13)00520-X/pdf); Hasselbacher et al., *supra* note 11, at 2208–09.

<sup>13</sup> Stanley K. Henshaw & Kathryn Kost, *Parental involvement in minors’ abortion decisions*, 24(5) FAM. PLAN. PERSP. 196, 200 (1992), <https://pub-med.ncbi.nlm.nih.gov/1426181/>.

<sup>14</sup> Hasselbacher et al., *supra* note 11, at 2208 (explaining that minors are most likely to confide in a parent about their abortion if they have a “close existing relationship” with their parents).

parents.<sup>15</sup> Minors in such circumstances may not be able to rely on their parents for safety or support navigating their pregnancy because they “live in fear of violence by family members” or are “victims of rape, incest, neglect and violence.”<sup>16</sup> *Hodgson*, 497 U.S. at 439. Minors who do not involve a parent in their abortion decision describe powerful motivations for their decision, including fear that they will be kicked out of their home, fear of physical or emotional abuse, and fear of damage to their family relationships.<sup>17</sup>

The Ban on Abortion Support “cannot transform a household with poor lines of communication into a paradigm of the perfect American family.”<sup>18</sup> *Farmer*, 762

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<sup>15</sup> See, e.g., Kate Coleman-Minahan et al., *Adolescents Obtaining Abortion Without Parental Consent: Their Reasons and Experiences of Social Support*, 52(1) PERSP. ON SEXUAL & REPROD. HEALTH 15, 17–18 (Mar. 2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7155056/pdf/PSRH-5215.pdf>.

<sup>16</sup> Shockingly, the Ban on Abortion Support applies even to minors whose pregnancy was caused by a parent’s rape or incest. See Am. 9 to H.B. 1895, Gen. Assemb., Sec. Reg. Sess. (Tenn. 2023) (rejecting amendment that would have created such an exemption).

<sup>17</sup> Hasselbacher et al., *supra* note 11; Kate Coleman-Minahan et al., *Young Women’s Experiences Obtaining Judicial Bypass for Abortion in Texas*, 64(1) J. ADOLESCENT HEALTH, 20, 20–25 (Jan. 2019), <https://pmc.ncbi.nlm.nih.gov/articles/PMC7274206/pdf/nihms-1588813.pdf>. See also Diana Parker-Kafka Decl. ¶ 30, *SisterReach v. Skrmetti*, No. 2:24-cv-02446-SHL-tmp (W.D. Tenn. June 27, 2024), ECF No. 6-3.

<sup>18</sup> See, e.g., Kate Coleman-Minahan et al., *Exploring Adolescents’ and Young Adults’ Abortion Disclosure and Adolescents’ Experiences Navigating Colorado’s Parental Notification Law*, 76 J. ADOLESCENT HEALTH 665, 669 (2025), <https://www.jahonline.org/action/showPdf?pii=S1054139X%2824%2900835-8>

A.2d at 640. To the contrary, “it is the parties’ pre-existing relationship that determines whether a young woman involves a parent” in her decision to seek an abortion—not the presence or absence of a parental consent rule. *Id.*; *see also Am. Acad. of Pediatrics v. Lungren*, 940 P.2d 797, 835 (Cal. 1997) (Kennard, J., concurring) (“[I]f a trusting and supportive relationship between a parent and child has not already been established, it is unlikely that the State can create in a moment of crisis what the parents were unable to develop over the course of the preceding years.”).

Instead of helping parents improve their relationship with their children, the Ban on Abortion Support may exacerbate unhealthy relationships and harm minors living in unstable family environments.<sup>19</sup> For example, in requiring parental consent to obtain information about legal abortion options, the Ban on Abortion Support may force some minors to confront “abusive or potentially abusive” parents, threatening them with further “physical or mental risk” or increased “instability and dysfunction[.]” *Am. Acad. of Pediatrics*, 940 P.2d at 829; *see Farmer*, 762 A.2d at 640

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(concluding that Colorado’s parental notice requirement for an abortion “did not improve already unhealthy or unsupportive parent-child relationships”).

<sup>19</sup> The American Medical Association, by contrast, not only instructs physicians to “strongly encourage” their patients who are minors “to involve their parents” in their abortion decision, but also to help the parents “develop their listening, communicating, and nurturing skills” to serve as a resource for their children. Paula K. Braverman et al., *The Adolescent’s Right to Confidential Care When Considering Abortion*, *Am. Acad. of Pediatrics*, 139(2) PEDIATRICS (2017), <https://publications.aap.org/pediatrics/article/139/2/e20163861/59961/The-Adolescent-s-Right-to-Confidential-Care-When?autologincheck=redirected>.

(explaining that forced parental notice of an abortion “often precipitates a family crisis, characterized by severe parental anger and rejection of the minor” (citation omitted)). For minors who have an estranged relationship with their family, the Ban on Abortion Support serves only as a “painful reminder” of those damaged relationships.<sup>20</sup> The Ban on Abortion Support therefore incentivizes some minors to delay their abortion until they are over 18 and no longer need parental consent to receive help obtaining an abortion<sup>21</sup> or to find a way to obtain an abortion that does not require parental consent, including potentially dangerous attempts to induce an abortion.<sup>22</sup>

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<sup>20</sup> *Forced Parental Involvement and Judicial Bypass in Minnesota*, IF/WHEN/HOW 9 (2021), [https://ifwhenhow.org/wp-content/uploads/2023/06/21\\_07\\_MN\\_Report\\_YASI.pdf](https://ifwhenhow.org/wp-content/uploads/2023/06/21_07_MN_Report_YASI.pdf) (“When a minor has to reach out to a parent who has been absent in their life, then you’re giving them the power to be involved in this important decision when they haven’t been involved in any other decisions throughout their entire life.”).

<sup>21</sup> See Silvie Colman & Ted Joyce, *Minors’ Behavioral Responses to Parental Involvement Laws: Delaying Abortion Until Age 18*, 41(2) PERSP. ON SEXUAL & REPROD. HEALTH 119, 125 (June 2009), [https://www.guttmacher.org/sites/default/files/article\\_files/4111909.pdf](https://www.guttmacher.org/sites/default/files/article_files/4111909.pdf) (finding that a Texas parental consent requirement for obtaining an abortion “caused a 10-percentage-point increase” in the number of older 17-year-olds who chose to delay their abortion until they turned 18).

<sup>22</sup> See Kate Coleman-Minahan, Mar Galvez Seminario & Lauren J. Ralph, *Exploring Adolescents’ and Young Adults’ Abortion Disclosure and Adolescents’ Experiences Navigating Colorado’s Parental Notification Law*, 76(4) J. OF ADOLESCENT HEALTH, 665, 669 (2025), <https://www.sciencedirect.com/science/article/pii/S1054139X24008358> (describing a minor who took large doses of Vitamin C and considered taking large doses of ibuprofen to terminate her pregnancy because she was unable to involve a parent in her abortion decision).



In recognition of these realities, courts across the country have consistently held that parental involvement requirements concerning abortion care do not advance a State interest in facilitating parent-child communication or strengthening families. *See, e.g., Planned Parenthood of Mont. v. State*, 554 P.3d 153, 171 (Mont. 2024) (holding that one such parental consent law was “unlikely to enhance parental control or strengthen the family unit where the minor and nonconsenting adult are obviously in conflict and the family structure is fractured”); *Farmer*, 762 A.2d at 640 (“The State . . . asserts that the Notification Act was passed to facilitate and foster familial communications. The reality is that the Act applies to many young women who are justified in not notifying a parent about their abortion decisions.”); *Am. Acad. of Pediatrics*, 940 P.2d at 829 (holding that a parental involvement law for an abortion “would not serve—but rather would impede” the State interest in “enhancing the parent-child relationship”). The Ban on Abortion Support suffers from the same shortcomings.

Even if the Ban on Abortion Support helped parents discharge their responsibilities, the Defendants are flatly wrong that it is the least restrictive means of furthering that goal. *See* Defs.’ Br. at 48; *Brown v. Ent. Merchants Ass’n*, 564 U.S. 786, 803–04 (2011). By making the assistance needed to obtain an abortion contingent on a parent’s “written, notarized consent,” the Ban on Abortion Support prevents some parents who want their children to receive that assistance from effectuating



their decision. *See supra* at 9–10; *Brown*, 564 U.S. at 804 (“Not all of the children who are forbidden to purchase violent video games on their own have parents who *care* whether they purchase violent video games. While some of the legislation’s effect may indeed be in support of what some parents of the restricted children actually want, its entire effect is only in support of what the State thinks parents *ought* to want. This is not the narrow tailoring to ‘assisting parents’ that restriction of First Amendment rights requires.” (emphases in original)). Further, the Ban on Abortion Support applies even to minors suffering from parental abuse, rape, or incest, and consequently allows unfit parents to make life-altering decisions for them. *See supra* at 14 n.16. Therefore, the Ban on Abortion is not narrowly tailored to the State’s purported interest in helping parents exercise their parenting authority.

#### **IV. The Ban on Abortion Support Lacks a Constitutional Application Involving Either Parental Rights or the State’s Interest in Helping Parents**

The Ban on Abortion Support lacks a constitutional application involving either parental rights or the State’s interest in helping parents fulfill their obligations for the simple reasons that it undermines parental rights, *see supra* at 8–12, and fails to advance that interest, *see supra* at 12–17.

Perhaps understanding this, the Defendants suggest this Court take the extraordinary step of recognizing a new category of unprotected expression for the speech targeted by the Ban on Abortion Support. Defs.’ Br. at 46 (“[M]inors ‘have no First Amendment right to access speech that is obscene to them.’ . . . . The same

goes here.” (quoting *Free Speech Coal. v. Paxton*, 606 U.S. 461, 482 (2025))). This Court should squarely reject the Defendants’ attempt because it defies well-settled Supreme Court precedent and lacks any foundation in the historic common law.

“From 1791 to the present . . . the First Amendment has permitted restrictions upon the content of speech in a few limited areas, and has never included a freedom to disregard these traditional limitations . . . . [I]n *Stevens*, [the Supreme Court] held that new categories of unprotected speech may not be added . . . by a legislature that concludes certain speech is too harmful to be tolerated.” *Brown*, 564 U.S. at 791 (rejecting a state’s attempt to restrict speech about violence that was not obscene); *see supra* at 7–8. “Speech that is neither obscene as to youths nor subject to some other legitimate proscription<sup>23</sup> cannot be suppressed solely to protect the young from

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<sup>23</sup> The Defendants also argue that “the [Ban on Abortion Support] constitutionally applies to recruiting incident to the crimes of ‘harboring’ and ‘transporting’ minors in this State.” Defs.’ Br. at 42. These arguments are beyond the scope of this brief. But MAC notes that it has challenged both the “harbor[ing]” and “transport[ing]” provisions in its own lawsuit. Tenn. Code Ann. § 39-15-201 (2024); *see supra* at 1 n.2.

And in arguing that the Ban on Abortion Support can be constitutionally applied to speech about lawful abortion in states with parental involvement requirements for obtaining an abortion, the Defendants betray how severely they misunderstand the First Amendment. *See* Defs.’ Br. 41–42. For example, they conveniently ignore that minors may satisfy those requirements by obtaining judicial, instead of parental, approval for an abortion. *See, e.g.,* Ky. Rev. Stat. Ann. 311.732(3). As a result, speech about an abortion authorized by a judicial bypass order is not “speech integral to criminal conduct.” *See* Eugene Volokh, *The “Speech Integral to Criminal Conduct” Exception*, 101 Cornell L. Rev. 981, 987 (2016) (“[T]he *Giboney*

ideas or images that a legislative body thinks unsuitable for them.” *Brown*, 564 U.S. at 795 (citing *Erznoznik v. Jacksonville*, 422 U.S. 205, 213–14 (1975)).

“To put a category of speech outside the protection of the First Amendment, rather, the government must identify a ‘long-settled tradition of subjecting *that speech* to regulation.’” *Cath. Charities of Jackson, Lenawee, & Hillsdale Cntys. v. Whitmer*, 162 F.4th 686, 694 (6th Cir. 2025) (quoting *Stevens*, 559 U.S. at 469). And Defendants utterly fail to do so. Their reliance on Justice Thomas’s dissent in *Brown* is misplaced. *See* Defs.’ Br. at 45. As the majority in *Brown* recognizes, the dissent identifies various eighteenth-century figures and laws that supported parents’ authority over their children, but offers zero evidence of *any* tradition of restricting speech to minors absent parental consent:

Most of [Justice Thomas’s] dissent is devoted to the proposition that parents have traditionally had the power to control what their children hear and say. . . . But it does not follow that the state has the power to prevent children from hearing or saying anything *without their parents’ prior consent*. The latter would mean, for example, that it could be made criminal . . . to give a person under 18 a religious tract, without his parents’ prior consent.

*Brown*, 564 U.S. at 795 n.3; *see id.* at 829 (Thomas, J., dissenting) (“Two parenting books published in the 1830’s gave prototypical advice. In *The Mother’s Book*, Lydia Child advised that the first and most important step in management is, that

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doctrine can’t justify treating speech as ‘integral to illegal conduct’ simply because the speech is illegal under the law that is being challenged.”).

whatever a mother says, always *must* be done.” (citation omitted)). By the same token, any authority that parents have traditionally held over their children in no way empowers the State to make it criminal to give a person under 18 information about lawful abortion care without her parents’ prior consent.

### **CONCLUSION**

The district court’s judgment should be affirmed.

Dated: February 4, 2026

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/s/ Bryce Ashby  
Bryce Ashby

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I hereby certify that, on February 4, 2026, a true and correct copy of the foregoing document was filed with the clerk of the court for the U.S. Court of Appeals for the Sixth Circuit and served on all counsel of record via the Court's CM/ECF system.

/s/ Bryce Ashby  
Bryce Ashby