

29 April 2024

Via U.S. Mail and Email to bill.lee@tn.gov

The Honorable Bill Lee
Governor of the State of Tennessee
Tennessee State Capitol, 1st Floor
600 Dr. Martin Luther King Jr. Blvd.
Nashville, TN 37243

Re: SB 1971/HB 1895

Dear Governor Lee,

On behalf of the ACLU of Tennessee and its thousands of members throughout the state, we write to urge you to veto SB 1971/HB 1895. This legislation would create a new criminal offense for anyone who “recruits, harbors or transports” a minor for the purpose of obtaining an abortion without the parent’s or legal guardian’s notarized consent. This bill harms young people’s ability to access the support of those they trust when they need it most and is an unprecedented attack on the First Amendment right to free speech and expression. Abortion travel bans like SB 1971/HB 1895 do nothing to protect anyone’s health or safety and will only exacerbate the ongoing maternal health crisis in Tennessee.

When abortion is restricted or banned, the impact of these bans falls hardest on those already facing unequal barriers to health care, especially young people, people with limited incomes, LGBTQ+ people, and Black and Brown people. Although most teenagers who seek abortion care involve their parents in the decision, SB 1971/HB 1895 does not account for complicated family situations that may make seeking parental consent for an abortion unsafe or even impossible. This bill provides no consideration for pregnant teens in abusive family environments where disclosing pregnancy status may create a risk of physical or psychological harm, nor does it consider situations where a minor’s parent is absent or estranged to the point where obtaining notarized consent is not possible. These are not hypothetical scenarios but are the harrowing realities of many pregnant young people across this state. It is absurd and cruel to force a pregnant young person to navigate laws and systems that are designed to deprive them of their own bodily autonomy, while simultaneously removing the ability for trusted adults to provide guidance and support when they need it most.

In addition to the immediate harm this bill will cause pregnant young people in Tennessee, SB 1971/HB 1895 raises several significant constitutional concerns that call into question the legality of this bill. The legislative language in the bill is unworkably vague, as neither the bill nor Tennessee Code defines the terms “recruits,” “harbors,” or “transports” that are criminalized by this legislation. The meaning of the term “recruits” is particularly unclear, as the bill’s sponsor



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said during the legislative debate that “‘to recruit’ could include just about anything.”¹ The Constitution requires that a valid criminal law must “define the offense with sufficient definiteness that ordinary people can understand prohibited conduct,”² and the fact that the bill sponsor himself is unable to define the conduct the bill seeks to criminalize strongly indicates that SB 1971/HB 1895 is unconstitutionally vague.

SB 1971/HB 1895 also takes aim at Tennesseans’ First Amendment rights. SB 1971/HB 1895 uses the guise of “parental rights” to censor the speech and expressive activities of a particular viewpoint with which the state disagrees: discussion of abortion access. Under the expansive definition of “recruits” referenced during legislative debate on the bill, SB 1971/HB 1895 would seemingly impose a significant restriction on pure speech. It is easy to imagine how discussing abortion’s legality in other states, explaining the availability of funding to obtain out-of-state abortions and how to access such funding, and detailing how one can go about making an appointment for an abortion in another state could all potentially become criminal acts under this bill. A similar law recently passed in Idaho was enjoined by a federal court based on the likelihood that the law poses an unconstitutional restriction on First Amendment protected speech³, and there is nothing in the legislative language of SB 1971/HB 1895 that suggests a court will look more favorably on its content-based criminalization of speech and expression.

Tennessee already has one of the most extreme abortion bans in the nation, and SB 1971/HB 1895 marks a significant escalation in the state’s effort to criminalize reproductive healthcare and limit Tennesseans’ ability to travel out of state to seek an abortion. As rural hospitals across the state close obstetric care facilities⁴ and Tennessee continues to lead the nation in infant mortality rates⁵, the Tennessee General Assembly had every opportunity to pass legislation to address our state’s maternal health crisis. Instead, state lawmakers chose to double down on harmful efforts to further restrict and stigmatize pregnant young people’s ability to access vital, life-saving reproductive healthcare. SB 1971/HB 1895 is not only unconstitutional but is also out-of-step with Tennessee voters, an overwhelming majority of whom

¹ See https://tnga.granicus.com/player/clip/29485?view_id=703&redirect=true.

² See *Belle Maer Harbor v. Charter Twp. of Harrison*, 170 F.3d 553, 556 (6th Cir. 1999)

³ See *Matsumoto v. Labrador*, No. _ F.Supp.3d _, 2023 WL 7388852 (D. Idaho Nov. 8, 2023) (granting preliminary injunction)

⁴ See [Report: More than half of all rural Tennessee hospitals no longer deliver babies • Tennessee Lookout](#)

⁵ See Fleszar LG, Bryant AS, Johnson CO, et al. Trends in State-Level Maternal Mortality by Racial and Ethnic Group in the United States. [Trends in State-Level Maternal Mortality by Racial and Ethnic Group in the United States | Health Disparities | JAMA | JAMA Network](#)

oppose making it a crime to assist someone with obtaining an abortion out of state.⁶

We ask that you respect the will of the voters you were elected to serve by rejecting this harmful, unnecessary piece of legislation. **Please veto SB 1971/HB 1895.**

Sincerely,



Bryan Davidson
ACLU of Tennessee, Policy Director



⁶ See [Vanderbilt Poll: Actionable consensus on guns and abortion exists between Tennessee's MAGA Republicans, Democrats | Vanderbilt University](#) ("At a rate of 3 to 1, Tennesseans oppose the idea that a person should be charged with a crime if they help a Tennessee citizen get an abortion in another state. Opposition to this idea is again bipartisan, with 93 percent of Democrats, 82 percent of Independents, 62 percent of non-MAGA Republicans and 53 percent of MAGA Republicans.")