



## **The Outcome of Planned Parenthood of Middle Tennessee et al. v. Sundquist**

In Planned Parenthood of Middle Tennessee et al. v. Sundquist, the Tennessee Supreme Court reaffirmed the right to privacy found in the Tennessee Constitution. In a momentous decision, the Court, for the first time in its history, considered the issue of abortion under the State Constitution. The Court held that the Tennessee Constitution provides an independent right to privacy and greater protections for reproductive freedom than the United States Constitution.

This memorandum summarizes the September 5, 2000 ruling by the Tennessee Supreme Court in Planned Parenthood of Middle Tennessee et al. v. Sundquist. The American Civil Liberties Union of Tennessee (ACLU-TN), National ACLU Reproductive Freedom Project (RFP) and Planned Parenthood Federation of America (PPFA) filed the suit in 1992 to challenge Tennessee's restrictive abortion statute. Eight years and many appeals later, the Tennessee Supreme Court struck down several provisions in the statute. The lawsuit focused on four key elements:

### **1. The Right to Privacy Under the Tennessee Constitution**

ACLU-TN, RFP, and PPFA argued that the abortion statute was unconstitutional because it violated privacy rights guaranteed by the Tennessee Constitution. Since its decision in Davis v. Davis 842 S.W.2d 588 (Tenn. 1992), the Tennessee Supreme Court has repeatedly ruled that Tennesseans are entitled to greater privacy protections under the state constitution than under the federal constitution.

This "strict scrutiny" standard was not applied by the Court of Appeals in the 1998 decision that upheld the statute. Instead, the Appeals Court ruled that local courts must use the "undue burden" standard used by the United States Supreme Court (a less restrictive standard) to review abortion regulations.

Upon appeal to the Tennessee Supreme Court, the Court ruled that the right to privacy was fundamental. Therefore, any regulation affecting this right must be reviewed using the strict scrutiny standard. Applying this standard, the Court said that "a woman's right to terminate her pregnancy is a vital part of the right to privacy guaranteed by the Tennessee Constitution" and affirmed greater privacy protections under the state constitution.

### **2. Prohibition of Second Trimester Abortions Outside a Hospital**

The statute required all abortions performed after the first trimester to be performed at a hospital. ACLU-TN, RFP, and PPFA argued that no matter what

standard of review was applied to the provision it was unconstitutional because it imposed greater costs and delays while decreasing access.

The Court ruled the hospitalization requirement did not meet the strict scrutiny test. While the Court said the state had a compelling interest of protecting women's health in enacting the provision, the Court found the regulation was not narrowly tailored to meet that interest. Although the state argued that second trimester abortions required hospitalization because of possible complications, the Court agreed with the evidence presented by ACLU-TN, RFP, and PPFA that abortions could be performed safely in doctor's offices, outpatient clinics, and free-standing surgical centers.

### **3. Requirement that a Woman be Given State-Mandated Information by her Physician Three Days Before an Abortion**

The statute required physicians to provide state-mandated information and counseling to any woman seeking an abortion. After the information had been provided, the statute imposed a two-day waiting period before a woman could return to her doctor to have an abortion performed. ACLU-TN, RFP, and PPFA argued these provisions threatened a woman's health by imposing a significant delay and mandated the provision of information that is sometimes inaccurate or irrelevant.

The Court found both of these provisions to be unconstitutional. The Court said the physician-only counseling requirement had not been narrowly tailored to meet the state's interest, saying there was no reason why a woman could not receive similar information from another source. The Court also ruled that the mandatory two-day waiting period was unconstitutional because it had the effect of putting a "substantial obstacle" in the way of a woman seeking an abortion. The Court agreed with ACLU-TN, RFP and PPFA's argument that the waiting period jeopardized women's physical and psychological health and placed additional hardships on impoverished women or women in abusive relationships.

### **4. The Emergency Exception**

The statute contained two medical emergency exceptions. First, it contained a narrow provision stating the two-day waiting period would not apply in situations where a physician determined that the waiting period would endanger the life of the woman. Secondly, the statute waived the provision of state-mandated information by a physician if necessary to preserve the life of the woman seeking the abortion.

Although the Appeals Court had ruled that these emergency exception provisions were unconstitutional as they did not adequately protect a woman's health, ACLU-TN, RFP, and PPFA asked the Supreme Court to make clear that without adequate emergency exceptions, the regulations to which they applied also were unconstitutional.

The Court held that the emergency exceptions infringed upon a woman's fundamental privacy right by not permitting immediate abortions necessary to protect a woman's health.