

ACLU NEWS

ACLU, Planned Parenthood Challenge Tennessee Abortion Law; Argue that 1989 Restrictions are Unconstitutional

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In the first challenge to a state law after the recent U.S. Supreme Court decision on abortion, the American Civil Liberties Union and Planned Parenthood Federation of America today filed a lawsuit against a 1989 Tennessee abortion law, saying it places substantial and unconstitutional burdens on a woman's ability to choose an abortion.

The lawsuit -- filed in State Circuit Court in Davidson County by the American Civil Liberties Union of Tennessee, the ACLU's national headquarters and Planned Parenthood Federation of America -- contends that the restrictions violate the Tennessee Constitution's right to privacy, which the Tennessee Supreme Court recently found to include a right of "procreational autonomy."

The measure challenged in today's lawsuit requires that all abortions after three months be performed in a hospital; requires that women who obtain abortions be residents of Tennessee; mandates doctor-only biased counseling; requires that all women seeking abortions wait three days after their initial visit to a health-care provider, and requires a minor to inform both parents of her intent to have an abortion. The parental consent provision does not include a bypass procedure.

The lawsuit says that the 1989 abortion law violates a woman's right to liberty, privacy, procreational autonomy and due process guaranteed by the Tennessee Constitution. The lawsuit also says that the law violates the state constitution's guarantees of equal

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protection of the laws, travel, freedom of conscience and freedom of speech. In addition, the complaint alleges that the Tennessee law violates the federal constitution, even under the relaxed standard approved by the United States Supreme Court in *Planned Parenthood v. Casey*.

In a recent landmark decision involving seven frozen embryos, the Tennessee Supreme Court ruled that the state constitution's right of privacy "is composed of two rights of equal significance -- the right to procreate and the right to avoid procreation."

"We have no hesitation in drawing the conclusion that there is a right of individual privacy guaranteed under and protected by the liberty clause of the Tennessee Declaration of Rights," the Court said.

"Our federal constitutional right to an abortion is hanging by a thread," said Hedy Weinberg, the Executive Director of the ACLU of Tennessee.

"Although we believe that most if not all of the Tennessee restrictions would be found unconstitutional even under the standard outlined by the Supreme Court," Weinberg added, "we decided that the state constitution provides the best chance to secure a woman's right to choose abortion in Tennessee."

The Tennessee law was approved by the State Legislature and Governor in 1989. Prior to *Casey*, the law was not enforced because state officials believed it would be found unconstitutional by the United States Supreme Court.

The lawsuit says that the overall effect of the Tennessee restrictions is that access to abortion services in Tennessee will be severely curtailed, depriving many women of their constitutional right to abortion. In addition, the lawsuit says that the informed consent

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requirement would interfere with the practice of medicine and the doctor-patient relationship by compelling speech.

The lawsuit says that by not providing for a bypass mechanism, the parental notice provision opens minors to parental abuse, retaliation or harassment. "Many minors," the lawsuit says, "will choose not to notify their parents, instead leaving the state to obtain abortions, adding further delay and expense to the procedure.

"Others unable to do so will resort to illegal abortions or carry unwanted pregnancies to term," the lawsuit says.

Steven R. Shapiro, Associate Legal Director at the ACLU's national headquarters, said the U.S. Supreme Court's decision in *Casey* has returned the abortion battle to the states. "This suit is the first," he said, "but many others will undoubtedly be brought across the country to resist further erosions of a woman's fundamental right to decide whether or not to bear a child."

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