



May 12, 2017

The Honorable Bill Haslam
Governor of Tennessee
Office of Governor Bill Haslam
1st Floor, State Capitol
Nashville, TN 37243

Dear Governor Haslam,

On behalf of the more than thirty thousand American Civil Liberties Union of Tennessee constituents across the state, I write to urge you to veto SB 1180/HB 1189. This legislation places an undue burden on both women seeking legal and safe reproductive care and the doctors who care for them.

SB 1180/HB 1189 essentially bans abortions after 20-weeks except in medical emergencies, makes the definition of "medical emergency" harder to meet, and places the burden on doctors to prove their innocence should the state try to prosecute them under this law.

This measure drastically limits a woman's constitutional right to make her own medical decisions. The courts long ago established constitutional precedent that the decision to terminate a pregnancy belongs to the woman and the individuals she chooses to be involved, not the government.

As you are aware, Tennessee Attorney General Herbert H. Slatery III issued an opinion on March 31, 2017 describing SB 1180/HB 1189 as "constitutionally suspect."

The Sixth Circuit Court of Appeals has ruled that legislation imposing criminal liability without requiring that the defendant have at least some level of intent to commit a criminal act is unconstitutionally vague.¹ SB 1180/HB 1189 threatens doctors with criminal liability for decisions they make when acting in good faith using their best medical judgement. The doctor would, at no time, be knowingly committing the crime, or even acting with recklessness. The bill, therefore, runs afoul of the Constitution.

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¹ *Women's Medical Professional Corp. v. Voinovich*, 130 F.3d 187 (6th Cir. 1997)

Additionally, as the American Congress of Obstetricians and Gynecologists points out, even medical experts can disagree on when something is a medical necessity or an emergency.² Yet SB 1180/HB 1189, which the American Congress of Obstetricians and Gynecologists opposes, puts doctors acting in good faith, using their best medical judgment at risk of criminal prosecution.

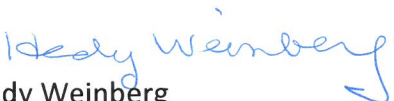
SB 1180/HB 1189 is also constitutionally suspect because it does not actually include a true medical exception. Rather the bill states that if a physician performs an abortion to prevent the death of or severe physical harm to the mother this can be used as an affirmative defense to criminal prosecution. In other words, if a woman was about to die and needed a post-viability abortion, the doctor who provides it would still run the risk of being sued in court under this legislation.

Furthermore, to the extent that this medical necessity exception language is included in the bill at all, it is too narrow. The Sixth Circuit has held that legislation that proscribes post-viability abortions must contain a health exception that includes the risk of severe psychological or emotional harm. SB 1180/HB 1189 does not include severe mental and emotional injury in its medical necessity exception language.³

While we may not all agree about abortion, it is important that we support a woman and allow her to make the best decision for her health and circumstances. She should be able to make these decisions in consultation with her doctor, faith and family, without politicians interfering in the conversation or trying to force her hand by narrowing the window in which she can decide what is best for her family.

For these reasons, ACLU-TN urges you to veto SB 1180/HB 1189. If you would like to further discuss our concerns, I can be reached at 615-320-7142. Thank you for your consideration.

Sincerely,


Hedy Weinberg
Executive Director

² <https://www.usnews.com/news/best-states/tennessee/articles/2017-04-19/tennessee-senate-committee-passes-abortion-bill>

³ *Women's Medical Professional Corp. v. Voinovich*, 130 F.3d 187 (6th Cir. 1997)