

## Restricting Abortion: Tennessee<sup>1</sup>

In far too many places throughout this country, it has become extremely difficult for women to safely and legally end a pregnancy. In too many states, politicians have enacted laws that single out the provision of abortion services for restrictions that are more burdensome than those imposed on medically comparable procedures, do not significantly advance women's health or the safety of abortion services, and make abortion services more difficult to access. It's time for politicians to stop interfering with women's personal decision-making. We need a federal law that puts women's health, safety, and rights first. The Women's Health Protection Act does just that.

In Tennessee, the following restrictions are among those that would be unlawful under the Women's Health Protection Act once enacted:

- ) **REQUIREMENT** that abortion providers have admitting privileges at a local hospital, a medically unnecessary requirement that is designed to prevent qualified, experienced physicians from providing care to their patients.<sup>2</sup>
- ) **REQUIREMENT** that forces a woman to wait at least 48 hours and make two separate trips to a provider before she can obtain an abortion.<sup>3</sup>
- ) **REQUIREMENT** that second trimester abortions be performed in a hospital, although the procedures can be performed safely in clinics.<sup>4</sup>
- ) **REQUIREMENT** that any woman seeking an abortion at a clinic in Tennessee prove that she is a Tennessee resident.<sup>5</sup>

***“As someone who was born with spina bifida, I am especially sensitive to valid and severe risks involved in pregnancy for many women. I was fortunate to have 3 very healthy children, but I was able to depend on medical advice from my physician, not politicians.”***

— Kimberli Rose Jensen, a Tennessee resident

- ) **REQUIREMENT** that providers who administer medication abortion procedures be licensed physicians,<sup>6</sup> despite recommendations from the World Health Organization that other highly qualified health care providers can safely provide medication abortion.<sup>7</sup>
- ) **REQUIREMENT** that some clinics meet the same strict structural and other regulatory standards as ambulatory surgical facilities, essentially becoming “small hospitals,” despite those standards being completely unrelated to ensuring patient safety.<sup>8</sup>
- ) **BANS** the use of telemedicine to provide medication abortion, reducing the potential for access to safe, nonsurgical abortion services and eliminating an important way to expand access to many low-income and rural women.<sup>9</sup>

## (Endnotes)

- <sup>1</sup> The restrictions highlighted herein are examples of the types of restrictions that the **Women's Health Protection Act** seeks to invalidate. This fact sheet is not intended as a comprehensive guide to abortion restrictions in Tennessee.
- <sup>2</sup> Tenn. Code Ann. § 39-15-202, *presumptively unconstitutional under* Whole Woman's Health v. Hellerstedt, 136 S. Ct. 2292, 2310-13 (2016).
- <sup>3</sup> The 48-hour waiting period has an exception for the life, but not the health, of the woman. Tenn. Code Ann. § 39-15-202.
- <sup>4</sup> 2 See Tenn. Code Ann. § 39-15-202, *as construed by* Planned Parenthood of Middle Tenn. v. Sundquist, 38 S.W.3d 1, 18 (Tenn. 2000). The *Sundquist* court declared this law unconstitutional. Akron v. Akron Ctr. for Reprod. Health, Inc., 462 U.S. 416, 438-39 (internal citations omitted) (1983) (state may not require that second-trimester abortions be performed in hospitals); Planned Parenthood v. Ashcroft, 462 U.S. 476, 481-82. (1983) (same holding). This holding of *Akron* is unaffected by the Supreme Court's subsequent decision in Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833, 877 (1992), because the *Akron* Court applied a standard virtually identical to the “undue burden” standard later adopted in *Casey*.
- <sup>5</sup> Tenn. Code Ann. § 39-15-201(d), *declared unconstitutional by* Planned Parenthood of Middle Tenn. v. Sundquist, No. 01A01-9601-CV-00052, 1998 WL 467110, at \*53 (Ct. App. Tenn. 1998), *aff'd in part, rev'd in part by* Planned Parenthood of Middle Tenn. v. Sundquist, 38 S.W.3d 1, 25 (Tenn. 2000).
- <sup>6</sup> Tenn. Code Ann. § 53-10-104(c).
- <sup>7</sup> See World Health Org., Safe Abortion: Technical and Policy Guidance for Health Systems 65 (2nd ed. 2012), available at [http://apps.who.int/iris/bitstream/10665/70914/1/9789241548434\\_eng.pdf?ua=1](http://apps.who.int/iris/bitstream/10665/70914/1/9789241548434_eng.pdf?ua=1).
- <sup>8</sup> Tenn. Code. Ann. § 68-11-201(3), *presumptively unconstitutional under* Whole Woman's Health v. Hellerstedt, 136 S. Ct. 2292, 2314-18 (2016). This law is currently blocked by a federal court pending the outcome of a case filed against the law.
- <sup>9</sup> Tenn. Code Ann. § 63-6-241.