**S T A T E O F T E N N E S S E E**
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Opinion No. 09-31

Senate Joint Resolution 127 – Abortion

## QUESTIONS

SJR 127 currently reads as follows:

> Nothing in this Constitution secures or protects a right to abortion or requires the funding of an abortion. The people retain the right through their elected state representatives and state senators to enact, amend, or repeal statutes regarding abortion, including, but not limited to, circumstances of pregnancy resulting from rape or incest or when necessary to save the life of the mother.

If a third sentence were added by amendment, reading "The General Assembly shall pass the necessary law to ensure that a woman may choose to end her pregnancy whenever necessary to save her life:"

1. Would the language of the amendment be unconstitutionally vague?

2. Would the language of the amendment be in conflict with any other provision contained in SJR 127?

3. If the language of the amendment becomes a provision of the Tennessee Constitution, would the General Assembly have a duty to enforce the language pursuant to the General Assembly's oath of office as required by Article X of the Tennessee Constitution?

## OPINIONS

1. No.

2. No.

3. The language of the proposed amendment would, if enacted, direct the General Assembly to pass necessary law to ensure that a woman may choose to end her pregnancy whenever necessary to save her life. Each house of the General Assembly would have the sole authority to determine whether its members had violated the oath of office by failing to act in accordance with the directive.

## ANALYSIS

1-2. You have asked whether the language of the proposed amendment is unconstitutionally vague. It is our opinion that it is not.

As a threshold matter, we are unaware of any authority that would support the proposition that the language of the Constitution itself could be unconstitutionally vague. Rather, the vagueness doctrine, which is grounded in the fair notice requirement of due process and the requirement of minimal guidelines to direct law enforcement, applies to statutes and ordinances. *See State v. Boyd*, 925 S.W.2d 237, 243 (Tenn. Crim. App. 1995); *State v. Forbes*, 918 S.W.2d 431, 448 (Tenn. Crim. App. 1995).

Second, laws permitting abortion to save a mother's life are well understood. In 1973, the United States Supreme Court invalidated Texas statutes that made it a crime to procure an abortion, or to attempt one, except with respect to an abortion procured or attempted by medical advice for the purpose of saving the life of the mother. The Court noted that similar statutes were in existence in a majority of the states, including Tennessee, and had been in effect in many states for approximately a century. *Roe v. Wade*, 410 U.S. 113, 93 S.Ct. 705, 708-09 (1973).

Nor do we believe that the language of the proposed amendment conflicts with other provisions of the resolution. When construing a constitutional provision, the courts must give the words used their ordinary and inherent meaning. *Gaskin v. Collins*, 661 S.W.2d 865, 867 (Tenn. 1983). The first sentence of the resolution indicates that the Tennessee Constitution will not "secure or protect" a right to abortion or require the funding of an abortion. The language of the second sentence is open-ended. It gives the people of Tennessee, through their legislature, complete discretion to enact, amend, or repeal statutes regarding abortion; to enact, amend, or repeal statutes regarding abortion for women in the instances of pregnancy resulting from rape, incest or when necessary to save the life of the mother; or to take no action at all. The language of the third sentence modifies the second sentence somewhat, requiring the legislature to enact law(s) necessary to ensure that a woman may choose to end her pregnancy whenever necessary to save her life.

3. Your final question inquires whether the language of the proposed amendment would impose upon the General Assembly a duty to enforce the language pursuant to its oath of office under Article X of the Tennessee Constitution.

Article X, Section 2 provides that:

> Each member of the Senate and House of Representatives, shall before they proceed to business take an oath or affirmation to support the Constitution of this State, and of the United States and also the following oath: I _____ do solemnly swear (or affirm) that as a member of this General Assembly, I will, in all appointments, vote without favor, affection, partiality, or prejudice; and that I will not propose or assent to any bill, vote or resolution, which shall appear to me injurious to the people, or consent to any act or thing, whatever, that shall have a tendency to lessen or abridge their

rights and privileges, as declared by the Constitution of this State.

In prior opinions, we have addressed questions about this constitutional provision. We have stated that a legislator would violate the oath by failing to exercise his or her impartial judgment in voting for an appointment, by voting for a bill or resolution that "appears" to him or her to be "injurious to the people," or by consenting to "any act or thing . . . that shall have a tendency to abridge [the people's] rights and privileges" under the Tennessee Constitution. We have also noted that determining whether a legislator may have violated this oath requires a subjective judgment. Op. Tenn. Att'y Gen. 05-106 (July 7, 2005). Finally, we have stated that any lawsuit claim that a legislator violated his or her oath of office by voting for any particular bill is barred by legislative immunity, and that each house of the General Assembly has the sole authority to decide whether one of its members has violated the oath of office and to determine the appropriate sanctions for such violation. *Id.*, *see also* Op. Tenn. Att'y Gen. 02-014 (February 5, 2002).

The language of the proposed amendment would, if enacted, direct the General Assembly to pass necessary law to ensure that a woman may choose to end her pregnancy whenever necessary to save her life. Each house of the General Assembly would have the sole authority to determine whether its members had violated their oath of office by failing to act in accordance with the directive.

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