

STATE OF TENNESSEE

OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

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Opinion No. 08-14

Senate Joint Resolution 127

QUESTION

Does amendment 3 to Senate Joint Resolution 127 ensure that a victim of rape or incest or a woman whose life is in danger will have a right to end that pregnancy?

OPINION

The proposed constitutional language used in Amendment 3 to Senate Joint Resolution 127 does not mandate, as a matter of state constitutional law, that an abortion be an available option for women who are victims of rape or incest or whose lives are in danger. Rather, Amendment 3 reserves the right of the legislature “to enact, amend, or repeal statutes regarding abortion,” including statutes regarding abortion for women in these circumstances. Accordingly, this language would give the legislature discretion to determine whether abortions for women in these circumstances would be allowed.

ANALYSIS

Amendment 3 to Senate Joint Resolution 127 rewrites the amendatory language of the resolution and proposes to add the following language to the Tennessee Constitution:

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 circumstances of pregnancy resulting from rape or incest or when necessary to save the life of the mother.

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. The second sentence states that the people of Tennessee, through their legislature, “retain the right” to “enact, amend, or repeal statutes regarding abortion, including circumstances of pregnancy

resulting from rape or incest or when necessary to save the life of the mother.”¹ The language of the second sentence is open-ended, giving the legislature complete discretion to enact, amend, or repeal statutes regarding abortion; to enact, amend, or repeal statutes regarding abortion for women in the enumerated circumstances; or to take no action at all.

Accordingly, in the opinion of this Office, the language of Senate Joint Resolution 127, as amended by Amendment 3, does not ensure that a victim of rape or incest or a woman whose life is in danger will have a right to end that pregnancy.² Rather, the proposed constitutional language would allow the legislature to determine whether abortions for women in these circumstances would be permitted.³

ROBERT E. COOPER, JR.
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

SUE A. SHELDON
Senior Counsel

Requested by:

Honorable James F. Kyle
State Senator
9A Legislative Plaza
Nashville, Tennessee 37243-0028

¹This follows naturally from the first sentence. If the Constitution does not provide for a right to an abortion, the matter of abortions is left up to the legislature.

²In 2004, we reached a similar conclusion with respect to Amendment 9 to Senate Joint Resolution 127, which read:

Nothing in this Constitution secures or protects a right to abortion or the funding thereof. The legislature shall have the sole authority to make and shall make such provisions for abortion as it determines reasonably necessary for victims of rape, incest and to save the life of the mother.

Tenn. Op. Att’y. Gen. No. 04-056 (Mar. 31, 2004).

³We have not been asked, and therefore have not addressed, the question whether women in these circumstances have a right under the United States Constitution to terminate a pregnancy.