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ABORTION, AMENDMENT 1, AND THE FUTURE OF PROCREATIONAL RIGHTS UNDER THE TENNESSEE CONSTITUTION

GLENN HARLAN REYNOLDS*

INTRODUCTION

In November of 2014, Tennessee voters adopted the following amendment 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, but not limited to, circumstances of pregnancy resulting from rape or incest or when necessary to save the life of the mother.[1]

This amendment was a popular response to the Tennessee Supreme Court's ruling in *Planned Parenthood of Middle Tennessee v. Sundquist*,[2] which established a right to abortion under the Tennessee constitution—a right somewhat broader than that found by the United States Supreme Court under the United States Constitution.

The impact of the new language on abortion appears largely straightforward: shifting control of the issue from the Tennessee Supreme Court to the General Assembly. But its adoption raises a related question. The Tennessee Supreme Court's decision in *Planned Parenthood of Middle Tennessee* came at the end of a lengthy series of decisions concerning the Tennessee constitution's right of privacy, which addressed such topics as parental rights to

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1. TENN. CONST. art. I, § 36. The proposed state constitutional amendment appeared as "Amendment 1" on the ballot. *Tennessee Legislative Powers Regarding Abortion, Amendment 1 (2014)*, BALLOTPEDIA, http://ballotpedia.org/Tennessee_Legislative_Powers_Regarding_Abortion,_Amendment_1_%282014%29.

2. 38 S.W.3d 1 (Tenn. 2000).

frozen embryos, the power of the state to pass laws criminalizing homosexual sodomy, grandparent visitation rights, and even the possession of guns in the parental home. The treatment of abortion in *Planned Parenthood of Middle Tennessee* was not a departure, but was instead the logical outgrowth of these earlier cases. But with that decision removed, do the earlier cases retain their authority? Or does the "penumbra" of this new amendment to the Tennessee constitution call those decisions into question as well?

In the pages that follow, I will briefly revisit those earlier decisions, review the adoption of this new amendment, and then discuss what impact—if any—this change has on Tennessee courts' earlier jurisprudence of privacy, procreation, and parenting.

I. PRIVACY AND THE TENNESSEE CONSTITUTION

Like the United States Constitution, and unlike the constitutions of some other states, Tennessee's constitution does not contain language explicitly protecting the right of privacy. However, as in many other states, Tennessee courts have interpreted certain provisions of the Tennessee constitution, acting together, to protect a right of privacy and personal autonomy in areas relating to parenting, procreation, and sex.

The first such case—though not the first Tennessee case to mention a right of privacy—was the *Davis v. Davis* frozen embryo case.[3] The Davises were a married couple, suffering from fertility problems, who entered into efforts to conceive a child using in vitro fertilization ("IVF").[4] The efforts were not successful, and the marriage disintegrated into divorce with several frozen embryos remaining.[5] During the divorce proceedings, the wife, Mary Sue Davis, sought custody of the remaining frozen embryos.[6] The husband, Junior Davis, disputed this, arguing that he did not want to be a father outside of a loving, committed marriage.[7]

The Tennessee Supreme Court held that rights to procreate and not to procreate are equally protected by a right of privacy derived from several provisions of the Tennessee constitution:

> [I]t is not surprising that in the Tennessee Constitution, the concept of liberty plays a central role. Article I, Section 8 provides:

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3. 842 S.W.2d 588 (Tenn. 1992).
4. *Id.* at 589.
5. *Id.*
6. *Id.*
7. *Id.*

"That no man shall be taken or imprisoned, or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or in any manner destroyed or deprived of his life, liberty or property, but by the judgment of his peers or the law of the land."

Indeed, the notion of individual liberty is so deeply embedded in the Tennessee Constitution that it, alone among American constitutions, gives the people, in the face of governmental oppression and interference with liberty, the right to resist that oppression even to the extent of overthrowing the government. The relevant provisions establishing this distinctive political autonomy appear in the first two sections of Article I of the Tennessee Constitution, its Declaration of Rights:

> *Section 1. All power inherent in the people—Government under their control.*
> That all power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety, and happiness; for the advancement of those ends they have at all times, an inalienable and indefeasible right to alter, reform, or abolish the government in such manner as they may think proper.
>
> *Section 2. Doctrine of nonresistance condemned.*
> That government being instituted for the common benefit, the doctrine of non-resistance against arbitrary power and oppression is absurd, slavish, and destructive of the good and happiness of mankind.

The right to privacy, or personal autonomy ("the right to be let alone"), while not mentioned explicitly in our state constitution, is nevertheless reflected in several sections of the Tennessee Declaration of Rights, including provisions in Section 3 guaranteeing freedom of worship ("no human authority can, in any case whatever, control or interfere with the rights of conscience"); those in Section 7 prohibiting unreasonable searches and seizures ("the people shall be secure in their persons, houses, papers and possessions, from unreasonable searches and seizures"); those in Section 19 guaranteeing freedom of speech and press ("free communication of thoughts and opinions, is one of the invaluable rights of man, and every citizen may freely speak, write, and print on any subject, being responsible for the abuse of that liberty"); and the provisions in Section 27 regulating the quartering of soldiers ("no soldier shall, in time of peace, be quartered in any house without the consent of the owner").

> Obviously, the drafters of the Tennessee Constitution of 1796 could not have anticipated the need to construe the liberty clauses of that document in terms of the choices flowing from in vitro fertilization procedures. But there can be little doubt that they foresaw the need to protect individuals from unwarranted governmental intrusion into matters such as the one now before us, involving intimate questions of personal and family concern. Based on both the language and the development of our state constitution, we have no hesitation in drawing the conclusion that there is a right of individual privacy guaranteed under and protected by the liberty clauses of the Tennessee Declaration of Rights.
>
> Undoubtedly, that right to privacy incorporates some of the attributes of the federal constitutional right to privacy and, in any given fact situation, may also share some of its contours. As with other state constitutional rights having counterparts in the federal bill of rights, however, there is no reason to assume that there is a complete congruency.[8]

Because the Court held that the right to procreate and the right to choose not to procreate are equally protected,[9] the *Davis* court ruled in favor of Junior Davis, leaving Mary Sue free to procreate in such independent fashion as she chose.[10]

A few years later, in *Campbell v. Sundquist*, the Tennessee Court of Appeals, applying the right of privacy found in *Davis*, found Tennessee's Homosexual Practices Act to violate the Tennessee constitution.[11] Though the state offered a number of justifications for the Act—ranging from prevention of disease to advancing the moral interests of the people of Tennessee[12]—the Court of Appeals was unpersuaded, writing:

> As stated above, the appellants argue that the "precise source" of the right to privacy is Article I, Section 8 of the Tennessee Constitution, and that since Tennessee courts have interpreted Article I, Section 8 "synonymously" with the Federal Due Process Clauses, the right to privacy in Tennessee does not encompass the right to engage in homosexual conduct. We disagree. Our Supreme Court has not stated that Article I, Section 8 is the precise source of the right to privacy, it has stated that the right to privacy is "ground[ed]" in the "concept of liberty" in our Constitution.

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8. *Id.* at 599–600 (alterations in original).
9. *Id.* at 601.
10. *Id.* at 604.
11. 926 S.W.2d 250 (Tenn. Ct. App. 1996).
12. *Id.* at 262.

> Article I, Section 8's "liberty" provision is certainly part of that "concept of liberty," and it protects and guarantees the right to privacy, but it is not the sole and precise source of the right to privacy. The *Davis* Court clearly stated that the textual sources of the right to privacy include Sections 3, 7, 19, and 27 of the Declaration of Rights contained in Article I. Thus, the construction which the Supreme Court has placed on Article I, Section 8 does not restrict the right to privacy, because the right to privacy does not stem solely from Article I, Section 8. Moreover, the cases which the appellants have cited for the proposition that Article I, Section 8 is "synonymous" with the Due Process Clauses of the Federal Constitution overstate the holdings of these cases. These cases state that the "law of the land" provision of Article I, Section 8 is "synonymous" with the Federal Due Process Clauses; the Courts did not purport to discuss the "liberty" component of the Section in the context of the right to privacy. In any event, *Davis v. Davis* clearly established that "there is no reason to assume that there is a complete congruency" between the Tennessee and the federal right to privacy.
>
> Both the Tennessee Constitution and this State's constitutional jurisprudence establish that the right to privacy provided to Tennesseans under our Constitution is in fact more extensive than the corresponding right to privacy provided by the Federal Constitution. We agree with the plaintiffs that the Tennessee Constitution and especially the Declaration of Rights in Article I, indicate a strong historic commitment by the citizens of this State to individual liberty and freedom from governmental interference in their personal lives. Our Supreme Court noted this commitment in *Davis*.[13]

This right of freedom from governmental interference in personal lives was not limited to matters pertaining to sex and procreation. In *Hawk v. Hawk*, the Tennessee Supreme Court struck down a grandparent-visitation statute on the ground that it was an unconstitutional interference with the right of fit parents to raise their children as they choose.[14] The Court held:

> Tennessee's historically strong protection of parental rights and the reasoning of federal constitutional cases convince us that parental rights constitute a fundamental liberty interest under Article I, Section 8 of the Tennessee Constitution. In

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13. *Id.* at 260–61 (alteration in original) (citations omitted).

14. 855 S.W.2d 573 (Tenn. 1993).

> *Davis v. Davis*, we recognized that although "[t]he right to privacy is not specifically mentioned in either the federal or the Tennessee state constitution, . . . there can be little doubt about its grounding in the concept of liberty reflected in those two documents." We explained that "the notion of individual liberty is . . . deeply embedded in the Tennessee Constitution . . . ," and we explicitly found that "[t]he right to privacy, or personal autonomy ('the right to be let alone'), while not mentioned explicitly in our state constitution, is nevertheless reflected in several sections of the Tennessee Declaration of Rights . . . ." Citing a wealth of rights that protect personal privacy, rights such as the freedom of worship, freedom of speech, freedom from unreasonable searches and seizures, and the regulation of the quartering of soldiers, we had "no hesitation in drawing the conclusion that there is a right of individual privacy guaranteed under and protected by the liberty clauses of the Tennessee Declaration of Rights." Finding the right to procreational autonomy to be part of this right to privacy, we noted that the right to procreational autonomy is evidence by the same concepts that uphold "parental rights and responsibilities with respect to children." Thus, we conclude that the same right to privacy espoused in *Davis* fully protects the right of parents to care for their children without unwarranted state intervention.[15]

And in *Stillwell v. Stillwell*,[16] the Tennessee Court of Appeals combined the parental rights protected under *Hawk v. Hawk* with the right to keep and bear arms under article I, section 26 of the Tennessee constitution to strike down a visitation order prohibiting a father from possessing firearms when his son was visiting.[17] The Court of Appeals explicitly noted the applicability of both the right to bear arms and parental privacy rights.[18]

II. ABORTION UNDER THE TENNESSEE RIGHT OF PRIVACY

The Tennessee Supreme Court applied Tennessee's right of privacy to abortion in *Planned Parenthood of Middle Tennessee v. Sundquist*.[19] The Tennessee Court of Appeals evaluated Tennessee

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15. *Id.* at 579 (alteration in original) (citations omitted).

16. Stillwell v. Stillwell, No. E3001-00245-COA-R3-CV, 2001 WL 862620 (Tenn. Ct. App. July 30, 2001).

17. *Id.* at *3.

18. *Id.*; *see also* Glenn Harlan Reynolds, *Guns and Gay Sex: Some Notes on Firearms, The Second Amendment, and "Reasonable Regulation,"* 75 TENN. L. REV. 137, 142–43 (2007) (describing *Stillwell*).

19. 38 S.W.3d 1 (Tenn. 2000).

abortion statutes requiring waiting periods, informed consent, and medical facility approvals [20] under the Federal Constitution's "undue burden" standard established by the United States Supreme Court in *Planned Parenthood v. Casey*.[21]

The Tennessee Supreme Court reversed, holding that although the Federal Constitution's right of privacy had been held to create only an "undue burden" standard, the right of privacy under the Tennessee constitution required a stronger "strict scrutiny" test for restrictions upon the availability of abortion.[22] The Tennessee Supreme Court reasoned:

> Since the *Davis* decision, we have identified privacy rights in other contexts. We have held that a parent's right to the custody of his or her child implicates a fundamental right of privacy and may not be abridged absent a compelling state interest. The Court of Appeals has relied upon *Davis* to find a privacy interest in consensual adult homosexuality. There is no exhaustive list of activities that fall under the protection of the right to privacy, at either the federal or state level. However, it is clear that such activities must be of the utmost personal and intimate concern. We observe that expressly limiting the substantive scope of the interests comprising the right of privacy serves no helpful purpose, is indeed impossible, and is best left to constitutional amendment or interpretation of individual cases. Our task here is to determine whether the interest asserted in this case constitutes a cognizable privacy interest. We hold that a woman's right to obtain a legal termination of her pregnancy is sufficiently similar in character to those personal and private decisions and activities identified in state and federal precedent to implicate a cognizable privacy interest.[23]

Next, the court concluded that the right was a fundamental one, and thus entitled to strict scrutiny:

> [I]n *Davis*, we found the right to procreational autonomy to be "inherent in our most basic concepts of liberty." That test was essentially a restatement of the fundamental rights approach of *Roe*. Because a woman's right to terminate her pregnancy and an individual's right to procreational autonomy are similar in nature, we find the *Davis* test to be most appropriate here. Thus, a woman's right to terminate

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20. *Id.* at 3.
21. 505 U.S. 833 (1992).
22. *Sundquist*, 38 S.W.3d at 16.
23. *Id.* at 10–11 (citations omitted).

her pregnancy is fundamental if it can be said to be inherent in the concept of ordered liberty embodied in the Tennessee Constitution.

. . . .

Our constitution also contains specific provisions not found in the federal constitution, the most pertinent being Article 1, section 2, condemning the doctrine of nonresistance. This provision exemplifies the strong and unique concept of liberty embodied in our constitution in that it "clearly assert[s] the right of revolution." It provides: "That government being instituted for the common benefit, the doctrine of nonresistance against arbitrary power and oppression is absurd, slavish, and destructive of the good and happiness of mankind." In essence, this section recognizes that our government serves at the will of the people of Tennessee, and expressly advocates active resistance against the government when the government no longer functions to serve the people's needs. There is no better statement of our constitution's concept of liberty than this audacious empowerment of Tennesseans to forcibly dissolve the very government established but one Article later in our constitution.[24]

Holding that "the undue burden approach is essentially no standard at all,"[25] the court applied strict scrutiny:

Application of strict scrutiny, a recognized principle of constitutional law, on the other hand, requires the Court to apply a standard that has been applied repeatedly over the years, and the Court may draw upon that precedent in determining whether the legislation passes muster.[26]

. . . .

Thus, the *Casey* test offers our judges no real guidance and engenders no expectation among the citizenry that governmental regulation of abortion will be objective, evenhanded, or well-reasoned. This Court finds no justification for exchanging the long-established constitutional doctrine of strict scrutiny for a test, not yet ten years old and applicable to a single, narrow area of the law, that would relegate a fundamental right of the citizens of Tennessee to the personal caprice of an individual judge.[27]

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24. *Id.* at 12, 14 (citations omitted).
25. *Id.* at 16.
26. *Id.*
27. *Id.* at 17.

Applying strict scrutiny, the court held that the restrictions involved failed to pass muster.[28] The upshot of *Planned Parenthood of Middle Tennessee*, then, was that in Tennessee restrictions on abortion would henceforth be evaluated under a stricter state constitutional standard (strict scrutiny) rather than under the more forgiving federal undue burden standard.

In fact, that is how Tennessee courts have approached the matter. In *Tennessee Department of Health v. Boyle*,[29] the Tennessee Court of Appeals applied strict scrutiny analysis to a law designating facilities—other than doctors' and (strangely) dentists' offices—where abortions are performed as Ambulatory Surgery Treatment Centers, subjecting them to a substantial degree of regulation.[30] Finding the law was not narrowly tailored to advance a compelling government interest, the Court of Appeals overturned the law on the authority of *Planned Parenthood of Middle Tennessee v. Sundquist*.[31]

III. CONSEQUENCES

After *Planned Parenthood of Middle Tennessee v. Sundquist*, Tennessee had a right to abortion that was stronger than that protected under the Federal Constitution post-*Casey* and—because it was rooted independently in the Tennessee constitution—that protection would survive even if the U.S. Supreme Court overruled the *Roe/Casey* line of cases and found no federal constitutional right to abortion. As the Tennessee Supreme Court itself noted in that case, the delineation of privacy rights is best determined either by judicial decision or constitutional amendment.[32] The Court created the right by the former; the voters responded via the latter:

> 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,

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28. *Id.* at 25.

29. Tennessee Dep't of Health v. Boyle, No. M2001-017380COA-R3-CV, 2002 WL 31840685 (Tenn. Ct. App. Dec. 19, 2002).

30. *Id.* at *1 (discussing that doctors' and dentists' offices were only so designated if they performed a "substantial number" of abortions).

31. *Id.* at *8.

32. *See* Planned Parenthood of Middle Tennessee v. Sundquist, 38 S.W.3d 1, 11 (Tenn. 2000).

> circumstances of pregnancy resulting from rape or incest or when necessary to save the life of the mother.[33]

With the adoption of this amendment, the decision in *Planned Parenthood of Middle Tennessee* was effectively overruled, and the power of the Tennessee Supreme Court to recognize a right to abortion under the Tennessee constitution was removed. In the future—rights protected under the Federal Constitution aside, of course—any such rights will exist only as a product of legislation passed by the Tennessee General Assembly. The practical impact of this change, absent a change in federal law, is likely to be small because the opinion in *Planned Parenthood of Middle Tennessee* suggested that most of the abortion restrictions overturned under strict scrutiny would have also been overturned under the federal "undue burden" test.[34] But, after this Amendment, abortion rights in Tennessee are entirely creatures of federal constitutional law.

Nonetheless, Tennessee courts will continue to hear cases involving the Tennessee constitution's right of privacy, which raises the question of whether Tennessee's right of privacy remains now that the opinion in *Planned Parenthood of Middle Tennessee v. Sundquist* is no longer operative. The answer appears to be yes. There are two reasons why the Tennessee abortion amendment does not affect the right of privacy in other settings. One reason lies in the amendment itself, while the other lies in the roots of the Tennessee right of privacy.

The amendment itself, of course, speaks only of abortion. By its terms, it affects nothing else. The question is, does it have penumbral effects? Though I yield to few in my cordiality toward penumbral reasoning,[35] the extremely focused and specific language of this provision does not lend itself to such. It is specifically about abortion and about the transfer of power over abortion from the Tennessee Supreme Court to the Tennessee General Assembly; it contains nothing at all in the way of generalities.

There is no mention of the Tennessee right of privacy in any other context, though the drafters, of course, must have been entirely familiar with the right and with the cases developing that right. Under the principle of *expressio unius*, this omission suggests that there was no intent on the part of the drafters to reach anything

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33. *See supra* note 1.

34. *See Sundquist*, 38 S.W.3d at 22–24.

35. *See, e.g.*, Brannon P. Denning & Glenn Harlan Reynolds, *Comfortably Penumbral*, 77 B.U. L. REV. 1089 (1998) (describing penumbral reasoning in various settings as a legitimate, and even necessary, interpretive technique); Glenn H. Reynolds, *Penumbral Reasoning on the Right*, 140 U. PA. L. REV. 1333 (1992).

beyond abortion itself. That principle is underscored by established Tennessee case law regarding the interpretation of the Tennessee constitution. As the Tennessee Supreme Court remarked in *Gaskin v. Collins*, "We must also give effect to the intent of the people who adopt a constitutional provision, and their intent should be derived from the language as it is found in the instrument."[36] Likewise, in *Hatcher v. Bell*, the Tennessee Supreme court observed:

> The fundamental purpose in construing a constitutional provision is to ascertain and give effect to the intent and purpose of those who adopted it. And if the language used is clear and unambiguous, the meaning and intent of the provision is to be ascertained from the instrument itself by construing the language as it is written.[37]

Although, as lawyers, all of us are capable of finding ambiguity in any phrase—at least for a sufficient fee—the language in the Tennessee abortion amendment seems straightforward and not the least bit ambiguous. The amendment states clearly that there is no right to abortion under the Tennessee constitution, and that decisions regarding the legal status of abortion are to be made, if at all, by the General Assembly.

Furthermore, the Tennessee right of privacy, being rooted in other provisions not mentioned in this amendment, has its own constitutional footing. It is another principle of Tennessee constitutional interpretation that "[t]he whole instrument must be taken into consideration, and no part so construed so as to impair or destroy any other part. Legislative powers enumerated in one clause must be defined and exercised with reference to limitations and requirements made in other clauses."[38] Limiting the reach of those provisions that support the right of privacy, without explicit authority, would "impair or destroy" the reach of those provisions and thus would be inappropriate.

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36. 661 S.W.2d 865, 867 (Tenn. 1983) (citations omitted) (internal quotation marks omitted).

37. 521 S.W.2d 799, 803 (Tenn. 1974) (citations omitted); *see also* Cocke v. Gooch, 52 Tenn. 294, 309–10 (1871) ("The object of construction as applied to a written Constitution is to give effect to the intent of the people adopting it. In the case of all laws, it is the intent of the lawgiver that is to be enforced. But this intent is to be found in the instrument itself. It is to be presumed that language has been employed with sufficient precision to convey it, and unless examination demonstrates that the presumption does not hold good in the particular case, nothing will remain except to enforce it. . . . Possible or even probable meanings, when one is plainly declared in the instrument itself, the Courts are not at liberty to search for elsewhere.").

38. State v. Memphis City Bank, 19 S.W. 1045, 1048 (Tenn. 1892).

Speaking as an academic, the conclusion is, therefore, unsatisfactorily clear and obvious. The Tennessee abortion amendment does exactly what it says: no more and no less. It would have been a far greater triumph of scholarship to have demonstrated that the amendment, despite its clear language, actually did far more, or far less, than appeared on its face. Such a triumph, however, would be unsupported by the law.

Yet there are some larger lessons here that concern the role of judicial review in a world of written constitutions and popular sovereignty. As the Tennessee Supreme Court itself said in *Sundquist*, "constitutional amendment" was one means of delineating the limits of privacy rights under the Tennessee constitution.[39] That the public chose that means is, of course, a rebuke of sorts to the Tennessee Supreme Court's reasoning on privacy and abortion.

But, as Charles Black has noted with regard to the Federal Constitution, the possibility of popular action to overturn decisions of the judiciary also has a legitimating function. If the public can—and does—impose limits on how far the judiciary may go, then it also follows that where the public remains quiescent, the judiciary is presumptively acting within bounds, adding to the legitimacy of its actions.

As a matter of drafting, it would have been easy enough to come up with a proposed amendment eliminating the right of privacy under the Tennessee constitution entirely or even an amendment providing that the Tennessee Supreme Court could not recognize *any* rights not specifically enumerated therein. The drafters did not do that, either because they had no desire to accomplish that end or because they suspected (probably rightly) that such sweeping language would be much less likely to attract the necessary level of popular support. Either way, the implication is that the right of privacy is acceptable to the people of Tennessee—in contexts other than abortion.

The amendment also answers a criticism of Justice Antonin Scalia in the case of *Lawrence v. Texas*.[40] In his *Lawrence* dissent, Scalia commented that some issues are more amenable to political than judicial resolution because "the people, unlike judges, need not carry things to their logical conclusion."[41] It may have seemed—in fact, it pretty clearly did seem—to the Tennessee Supreme Court that the logic behind the Tennessee right of privacy applied in the

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39. *See Sundquist*, 38 S.W.3d at 11.

40. 539 U.S. 558 (2003).

41. *Id.* at 604 (Scalia, J., dissenting).

context of abortion. The people, however, were able to provide otherwise, establishing that as—however logical—a conclusion too far. What this suggests, then, is that where the people have not provided otherwise, the Tennessee Supreme Court is (probably) on solid ground.

CONCLUSION

Law review articles are more often written about judicial opinions than about constitutional amendments. In part, as this discussion has made clear, that is because judicial opinions give us more to work with: lengthy writings, concurrences and dissents, arguments of the parties, opinions of lower courts, and so on. And, of course, to the delight of law professors everywhere, judicial opinions are easy to include in casebooks.

Constitutional amendments, on the other hand, offer less grist for the scholarly mill. Though the people may speak clearly, they do not do so at length. There is no explanation for the people's reasoning beyond the measure they adopt and the obvious inferences it supports. There is no concurring opinion to suggest alternate grounds and no dissent to explain why the whole thing is wrong and should come out differently next time. Nonetheless, the amendment process is as much a part of constitutional law, and constitutional interpretation, as any judicial opinion. The people, after all, have a role to play in the interpretive process too.