2016 STATE LEGISLATIVE ISSUES BRIEFING
Bill TRACKING LIST

ABORTION

Administration-related Bills

SB 1985 (Bowling) / HB 2075 (Sexton) Administrative, Reporting Requirements

Increases the reporting requirements for each abortion performed and provides for strong penalties if a clinic or Doctor does not cooperate.

- Deletes § 39-15-203, the current abortions records and reporting requirement statute.
- Replaces it by adding and clarifying the following physician recording requirements:
  - Abortion facilities must keep a record of each abortion procedure and provide a copy of the record to the commissioner of health, the office of vital statistics, and to the attorney general in the district it was performed.
  - Any facility or person who knowingly fails to comply is subject to a civil penalty of not more than $500 for each report not filed. Failure to file the report is grounds for suspension of the facility's license and failure of physician's office to file a report is grounds for suspension of the physician's license for 30 days.
- The report shall include the gestational age of the aborted fetus, the date and method of the procedure, the gender of the fetus (if ascertainable), the age of the woman, the name of the facility and the physician, and the specific method of disposal of the fetal remains.
- ANALYSIS
  - The bill strengthens reporting requirements and adds an enforcement mechanism.
  - The constitutionality of suspending the license of the facility and/or the Doctor for violating the reporting requirements is questionable, though it does appear that a few other states (PA, AZ, MT, etc.) have similar penalties for violations.

SB 1986 (Bowling) / HB 2076 (Sexton) Administrative, Reporting

Allows the financial records of an abortion clinic to be available upon request by the comptroller or a district attorney general.

- Requires financial records of facilities and physician's offices that perform abortions to be available upon request for inspection by the comptroller and district attorneys general.
- ANALYSIS
  - Another administrative requirement that increases the accountability of abortion providers, and may help guard against some of the Medicaid fraud that has been associated with abortion clinics in other states.

Fetal Tissue Bills

SB 1624 (Bailey) / HB 1709 (VanHuss) Fetal Tissue

Ensures that aborted baby parts or fetal tissue may not be bought or sold in Tennessee.

- Clarifies that the prohibition on offering or accepting money or anything of value for an aborted fetus includes the tissue or body parts from an aborted fetus.
- ANALYSIS
    - An important clarification to ensure that the sale/purchase of fetal tissue is prohibited.

SB 2522 (Bowling) / HB 2518 (Lynn) Fetal Tissue

Prohibits baby parts or fetal tissue from being bought or sold and prevents the use of fetal tissue for any purpose without consent of the mother.

- Deletes § 39-15-208, the statute governing the research, sale, and experimentation on aborted fetuses, and replaces it by clarifying the prohibition on receiving anything of value in exchange for human fetal tissue.
    - "Anything of value" is defined as donations (monetary or in-kind), payments associated with costs incurred by the provider for the transportation, processing, preservation, quality control, or storage of human fetal tissue.
- The bill prohibits the use of fetal tissue without the prior knowledge and consent of the mother.
- The bill places record requirements on an organ procurement organization that receives fetal tissue.
- ANALYSIS
    - Record keeping and consent provisions help create a record of transactions that can facilitate state health department audits and aid in the prosecution of violations. Under this bill, a violation of this requirement is punishable as a Class E felony.
    - There is a question as to whether the definition of "anything of value" would pass legal scrutiny as there is a federal law (National Institutes of Health Revitalization Act of 1993) that permits "reasonable payments" associated with the transportation, processing, and storage of human fetal tissue. This bill would prohibit what is expressly permitted under federal law.

SB 2568 (Norris) / HB 2577 (McCormick) Fetal Tissue, Reporting Requirements

Prohibits buying/selling aborted baby parts or remains and increases the reporting requirements of all abortion clinics and Doctors.

- The bill prohibits receiving anything of value for an aborted fetus or fetal remains, including reimbursement for costs associated with the transfer and preservation of the fetus or remains.
- The bill revises the reporting requirements for abortion clinics and physicians. Within 10 days of an abortion a report must be filed to the office of vital records that shall include:
    - The method of abortion used

  - Which method authorized by the Board of Health's rules was used to dispose of the remains
  - If the remains were transferred to a 3rd party, the name, date, and address of the 3rd party.
- ANALYSIS
  - This bill combines some of the elements of SB 2522 and SB 1985 by tightening reporting requirements and further clarifying the prohibition against receiving money or anything of value for an aborted fetus or fetal tissue.
  - As with SB 2522, the legality of prohibiting even "reasonable costs" of transferring fetal tissue is questionable since it is explicitly permitted under federal law.

SB 2240 (Hensley) / HB 1654 (Terry) Mother's Consent

Requires written consent from the mother before any research, experiments, or photos can be taken of her aborted fetus.

- Clarifies that the consent required of a woman in order for medical experiments, research, or the taking of photographs upon her aborted fetus must be in writing.
- The current statute only requires "prior knowledge and consent" of the mother, so arguably, consent could be given any number of ways.
- ANALYSIS
  - The bill strengthens the consent requirement by requiring that the consent be in writing.

Abortion Procedures

SB 1769 (Beavers) / HB 1459 (Womick) Ultrasound Requirement

Requires an ultrasound be performed before any abortion procedure.

- Requires an ultrasound be performed prior to an abortion, except in a medical emergency.
  - Medical emergency is defined as a physician's good faith clinical judgment that necessitates immediate termination of the pregnancy to avert mother's death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function (*Planned Parenthood v. Casey*, 1992).
- The woman is given the opportunity to view the ultrasound image and hear the fetal heart tone though not required to look or listen. If she "opts-out" she must sign a waiver saying she was offered the opportunity.
- If, according to the medical opinion of the provider and in accordance with the guidelines of the American College of Obstetrics and Gynecology, a transabdominal ultrasound is not feasible to obtaining a quality image of the unborn child, no ultrasound is required.
- A physician's failure to comply with this section provides a basis for a civil healthcare liability action, and intentional violation of this section constitutes medical malpractice.
- ANALYSIS
  - Over 20 states have similar laws, this bill is a good step toward ensuring mothers contemplating abortion understand what they are doing.

SB 1770 (Beavers) / HB 1758 (Weaver) Late-term Prohibition

Bans abortion after 20 weeks gestation except to preserve the life and health of the mother.

- Prohibits abortions after 20 weeks except to preserve the life and health of the mother.
- ANALYSIS
  - Passage of the bill would invite a federal court lawsuit over its constitutionality. In 2014, Arizona passed a 20-week ban that was ruled unconstitutional by the 9th Circuit, and the Supreme Court declined an appeal of the ruling.

EDUCATION

SB 1439 (Hensley) / HB 1418 (Butt) Religious Curriculum

Prohibits religious doctrine in school curriculum for all grades prior to grade 10, grades 10-12 can have religion in the curriculum for history and geography purposes.

- Prohibits the state board from including religious doctrine in the curriculum standards for grades prior to grades 10 through 12.
- Requires the state board to provide curriculum standards for grades 10, 11, and 12 that teach comparative religion as it relates to history or geography, but no religion shall be emphasized or focused on over another religion.
- ANALYSIS
  - Similar to SB 2186 as it seeks to ensure that one religion is not given preferential treatment and that no religious doctrine is taught to younger students.
  - The bill attempts to preserve parental rights to raise their child in accordance with their religious beliefs without interference from a school or teacher possibly teaching beliefs or doctrines counter to what the child is learning at home.
  - Raises practical questions as to what constitutes a "religious doctrine." Is a statement that Christians believe Jesus is God a "religious doctrine"? If that can't be taught how will Jesus be characterized? Since Christianity more than any other religion shaped Western Civilization and the American founding, will its role have to be diminished to avoid charges that it is being "emphasized" over another religion?

SB 1894 (Nicely) / HB 2184 (Hill) Religious Curriculum

Requires the state board return to comparative world religion curriculum standards use in the 2013-2014 school year.

- As introduced, mandates the state board return to the standards for the study of comparative world religions in the sixth and seventh grades to those in place during the 2013–2014 school year. Amends TCA Title 48, Chapter 6.
- ANALYSIS
  - Much of the recent controversy regarding instruction in Islam and the infusion of Islam into the curriculum began when the curriculum standards changes after the 2013-2014 school year. This bill would reinstate the old curriculum standard. How a return to the former standard will not play out in the classroom is unclear.

SB 2186 (Bell) / HB 1905 (Hill) Religious Curriculum

Requires religion in curriculum not be used to promote any one religion, and requires local school boards to adopt a policy regarding religion in their curriculum and provide an opportunity for public comment before the policy is adopted.

- Adds new provision to TCA 49-6-10 stating that the inclusion of religion in curriculum is for educational purposes only and shall not be used to promote or establish any religion.
- Requires each local school board to adopt a policy regarding the appropriate inclusion of religion and provide an opportunity for public comment before the policy is adopted.
- Teacher training institutions shall provide candidates with instruction on what is constitutionally permissible when teaching religious content.
- ANALYSIS
    - Bill is solid constitutionally and consistent with current judicial decisions.
    - Provision requiring the publication of policy and public comments protects parents' rights and influence on the manner in which religion will be presented.

SEX/GENDER ISSUES

SB 1682 (Bowling) / HB 1694 (Coley) Sexual Offenses

Increases the penalty for sexual contact by an authority figure and those in possession of child pornography videos.

- Increases the penalty for the offense of sexual contact by an authority figure from Class A misdemeanor to a Class E felony with a mandatory minimum $1,000 fine if victim is under 13.
- The penalty for possession of child pornography is based on the number of images involved (i.e. 'x' number of images = 'x' class felony). With respect to videos, the bill provides that each video recording will be equivalent to 51 still images (resulting in possession of one video being at least a Class C felony, which carries a sentence of 3 to 15 years and fines up to $10,000).
- Aggravated sexual battery as a lesser included offense of aggravated rape and rape of a child.
- ANALYSIS
    - Anything that strengthens the penalties for sexual predators and those in possession of child pornography is a step in the right direction.
    - State fiscal cost for increased incarceration may derail the bill.

SB 2000 (Ketron) / HB 1693 (Coley) Sex Trafficking

Takes away two court defenses for sex trafficking.

- Clarifies that it is no defense to the offense of trafficking for a commercial sex act that:
    - The intended victim of the offense is a law enforcement officer; or
    - The victim of the offense is a minor who consented to the acts.
- ANALYSIS
    - This bill is an important clarification that explicitly eliminates two possible defenses against sex trafficking.

SB 2387 (Bell) / HB 2414 (Lynn) Student Restrooms

Requires students in TN public schools and universities to use the restrooms and locker rooms of their birth sex.

- Requires students in public education institutions to use restrooms and locker rooms that are assigned to persons of the same sex as shown on the students' original birth certificates.
- ANALYSIS
    - Bill is on solid legal ground under Title IX and all recent case law. It would protect a student's right to privacy and safety. It preserves parental authority and fosters a safer environment, more conducive to learning and education.
    - The bill also protects schools and school districts from potential tort liability from an invasion of privacy claim by students subjected to being seen in an unclothed or partially unclothed state by a member of the opposite sex in an intimate environment (bathroom, locker room, changing area, etc.) that was ordered by the school district.

SB 1656 (Tracy) / HB 1494 (Lamberth) Teacher Sex Crimes

Requires teachers convicted of any misdemeanor sexual offense arising out of their role as a teacher to forfeit their retirement benefits.

- Requires forfeiture of retirement benefits for teachers if they are convicted of any misdemeanor sexual offense arising out of their employment or committed in their official capacity. The law already requires forfeiture of retirement benefits for any felony offense arising out of their employment or official capacity.
- ANALYSIS
    - This bill increases the consequences to teacher for sexual misconduct and provides an enforcement mechanism against those who commit sexual offenses in their role as teachers.

SB 2283 (Kyle) / HB 2057 (Jones) Transgender Birth Certificates

Allows someone to change the sex listed on the birth certificate with just a sworn statement from a health professional or social worker.

- Currently TCA § 68-3-203 (d) prohibits a birth certificate from being changed even if there is a "Sex change surgery." Under current law, birth certificates are treated as a historical record of what happened at one's birth.
- The bill replaces (d) with the following: "upon receipt of a sworn statement by a physician…psychiatrist, psychologist, or social worker indicating that the gender of a person has been changed, the certificate of birth shall be amended to reflect this change."
- ANALYSIS
    - The bill allows one's sex on a birth certificate to be changed based on a statement from a social worker, which is going to be based on what the person says. Essentially, the bill creates an illusory veneer of science while, as a practical matter, allowing a person to decide what to put on their birth certificate years later.
    - Presumably, the individual could also change his or her birth certificate back and forth as many times as necessary to reflect their changing gender self-identification.

- All that stands between a man "becoming a woman" for all purposes both official and unofficial (including unimpeded access to women's bathrooms, government minority contract rights, etc.) is the signature of a social worker based on what the individual says.

MARRIAGE

HJR 529 (Lynn) Opposes Obergefell Analysis

Resolution that affirms the lawsuits filed that challenge the issues of federalism and separation of powers that were disregarded in the *Obergefell v. Hodges* decision.

- Resolution notes that declaratory judgment actions that have been filed raise the constitutional issues of federalism and separation of powers disregarded in *Obergefell's* mandate that states issue same-sex marriage licenses in the absence of legislative action authorizing the same.

SB 2462 (Bowling) / HB 2379 (VanHuss) Marriage Solemnization

Allows only religious leaders to solemnize marriages.

- The bill removes from the list of those who are authorized to solemnize a marriage all current and past elected officials leaving only ministers, preachers, pastors, priest, rabbis, and other spiritual leaders of every religious belief to solemnize a marriage.
- ANALYSIS
  - The bill could be an unconstitutional establishment of religion because no one other than a religious figure who will now be authorized by the state to solemnize a marriage.

SJR 506 (Bell)

Resolution recognizing Tennessee's rights under the 10th Amendment and urges Congress to return the definition of marriage back to the states and restrain the federal judiciary.

- ANALYSIS
  - Resolutions such as these are important to reassert concepts of federalism and state sovereignty that have been minimized in recent years due to executive actions, poor legislating, and judicial activism.
  - It also serves as an important reminder to our representatives in Congress to defend the laws and interests of the citizens of Tennessee.
  - The federal judiciary is assuming far more power than it has been granted, it is vital that the people and the states send a message urging the courts to use restraint in their rulings.

BIRTH CONTROL

SB 1677 (Dickerson) / HB 1823 (Hazelwood) Birth Control

Amends the definition of "contraceptive supplies" to include "oral hormonal contraceptives" and "hormonal contraceptive patches."

- Amends § 68-34-102 (3) by adding the underlined words to the definition of "contraceptive supplies" for the purposes of the Family Planning Act of 1971:
    - "Contraceptive supplies" means those medically approved items designed to prevent conception through chemical, mechanical or other means; <u>including oral hormonal contraceptives and hormonal contraceptive patches</u>."
- ANALYSIS
    - We are still trying to determine why this change is needed and what the implications are relative to those places in the Tennessee Code where the term "contraceptive supplies" is used.

SB 1958 (Yarbro) / HB 1847 (Jernigan) Birth Control

Allows pharmacists to prescribe birth control without a prior prescription from a Doctor and minors would be eligible to obtain birth control though this method without parental consent.

- Adds a new provision in § 63-10-2 (pharmacy practice) that permits pharmacists to prescribe and dispense birth control (pills or patches) to a person *regardless of whether the person has evidence of a previous prescription from a Doctor or medical practitioner* for the birth control.
- Provides regulatory requirements for the pharmacists
- Prohibits the pharmacist from requiring an appointment to be scheduled for the prescribing or dispensing
- Allows pharmacist to continue dispensing birth control without a physician's order for up to three years following the pharmacist's initial decision to dispense birth control.
- <u>ANALYSIS</u>
    - Several issues here without touching possible medical reasons to oppose:
        - There is no age minimum in the bill (Oregon requires 18 or older, under 18 requires prior Dr. prescription). This bill would allow "a person" to get the BC, no mention of an age requirement.
        - Neither consent of nor notice to parents relative to their minor children is required.
        - The bill does say pharmacists "may" prescribe, but possible backlash if a pharmacist refuses to prescribe?
        - What else will we begin to ask pharmacists to prescribe and what else could eventually be defined as "birth control" e.g. abortifacients, etc.?

GOVERNMENT ADMINISTRATION

SB 2389 (Bell) / HB 2068 (Daniel) Restrictions on Agency Rule-making

Restricts administrative agencies ability to issue regulations without first proving that the action is within its authority.

- Deletes provision in TCA § 4-5-103 (a) of the Uniform Administrative Procedures Act (UAPA) that allows for a liberal construction of agency powers and for questions regarding the extent of an agency's powers to be resolved in favor of the existence of the power.

- Replaces the foregoing provision by narrowing the authority of administrative agencies and construing any question of the extent of agency power against the agency.
- Places the burden of proof on the agency to demonstrate by clear and convincing evidence that it is acting within its authority and that the rule is clear, consistent, and necessary to secure the health, safety, or welfare of the public.
- ANALYSIS
    - Increasingly, the progressive agenda is being implemented through administrative agencies who issue rules and regulations that can have significant consequences for non-compliance.
    - This bill limits and narrows the ability for administrative agencies to push an agenda, and it helps confine the agency to its statutory purpose.

SB 2610 (Norris) / HB 2143 (Casada) Creates Solicitor General

Creates the office of Solicitor General that will represent the interests of TN in the court systems.

- Creates the office of Solicitor General, filled by election of a joint vote of both houses of the general assembly to a term of four years.
- Current Attorney General would no longer represent the state in legal matters.
- ANALYSIS
    - A Solicitor General is a lawyer whose primary role would be to represent the interests of Tennessee, serving as the state's advocate in the court systems.
    - This bill eliminates the General Assembly's reliance on the attorney general who, as the state's general counsel, has the prerogative as a member of the judicial branch of government not to defend certain laws or prosecute certain legal actions that have widespread support in Tennessee and in the General Assembly.

RELIGIOUS LIBERTY

SB 1761 - (Briggs) / HB 2043 (Farmer) – Healing Prayers/Criminal Neglect

Allows for a parent to be charged with a felony if they decline medical treatment in lieu of "prayer" in accordance with their religion and their child ends up with a "serious bodily injury."

- Deletes §39-15-402 (c) which means that if a parent who, in accordance with the tenets or practices of a recognized church or religious denomination by a duly accredited practitioner or the recognized church or religious denomination, prays for their child's healing in lieu of medical treatment and their child winds up with a "serious bodily injury" then the parents can be charged with a Class B felony, or if the child is under 9 years of age, a Class A felony.
- ANALYSIS
    - A difficult issue to reconcile with the medical needs of the child and a parent's right to raise their child in accordance with their religious beliefs.
    - Consideration must be given to what other parental rights could be taken away because the religious beliefs of a court or legislative body are in conflict with a parent's right to raise their children according to their religious convictions.

- The bill adds incarceration to the pain the parent experiences as a result of the child's injury.

SB 1556 (Johnson) / HB 1840 (Howell) Religious liberty for counselors

Protects the ability of counselors and therapists to refer patients to other professionals if the client's goals, desired outcomes, or behaviors conflict with the sincerely held religious beliefs of the counselor.

- Under the bill, no counselor or therapist shall be required to serve a client as to goals, outcomes, or behaviors that conflict with a sincerely held religious belief of the counselor, provided an appropriate referral is made.
- Under current state regulations, a counselor or therapist is potentially subject to discipline for referring a client whose goals and desired outcomes conflict with a counselor's religious beliefs, even if the counselor lacks the competence to treat such a patient.
- ANALYSIS
  - This is an important bill to safeguard a counselor or therapist's religious beliefs and moral convictions. It protects the right of conscience of the counselor but also allows the clients to receive treatment from someone who is better suited to treat them.

SB 1814 (Yarbro) / HB 1849 (Jernigan) – Secularizing Pastoral Therapy

Reduces the requirements for licensure as a clinical pastoral therapist (CPT), and requires CPT's to undergo clinical training from the American Psychological Association which claims that gender "non-conformity" is not a mental disorder.

- Revises educational requirements for licensure as a clinical pastoral therapist (CPT's), and authorizes issuance of temporary licenses to CPT's who are in training.
- ANALYSIS
  - The bill cuts in half the graduate hours required and deletes the requirement that the Master's or Doctorate be in pastoral therapy or a closely related field
  - The bill deletes requirements of a practicum accredited by the Association for Clinical Pastoral Education (ACPE) and an internship of two years in an approved pastoral therapy training program and substitutes a requirement of clinical experience under the American Psychological Association's most current DSM manual for mental disorders.
  - <u>Among standards in the APA's new DSM (which CPT's will have to be trained in) is a statement that "gender non-conformity is not in itself a mental disorder," and it lists as evidence of gender dysphoria in children as a "desire that must be present and verbalized</u>."
- CONCLUSION
  - The bill is a subversive attempt to secularize clinical pastoral therapy. It lowers the educational standards and strips all ties to any national pastoral counseling groups.
  - It adds a requirement to be trained under the APA manual, which clearly follows all current progressive trends of sexuality, gender dysphoria, etc.
  - It seems the primary goal of this bill is to broaden who can become a clinical pastoral therapist and to impose a progressive viewpoint/mentality on prospective CPT's.

MISCELLANEOUS

SB 2321 (Kyle) / HB 2310 (Parkinson) Marijuana Enforcement

Allows local governments to put a question of marijuana enforcement by police on a ballot as a referendum.

- Authorizes any metropolitan or municipal government to submit a question by resolution to voters on police prioritization regarding marijuana possession. The question reads:
    - Should local law enforcement reprioritize enforcement of possession of one ounce or less of marijuana by an adult for personal use so that such adults are provided a warning in lieu of arrest?
- ANALYSIS
    - The bill would allow for local governments to direct police to not enforce state law regarding marijuana possession.
    - The bill raises numerous questions and concerns. Does this create an equal protection issue as a state law is enforced in some areas and not in others? Also, will this set a precedent for local exemption of other state criminal laws that local governments disagree with?

SB 2048 (Harris) / HB 2276 (Turner) – Abolishes Death Penalty

This bill effectively ends capital punishment in Tennessee.

- Eliminates the death penalty as a sentence for first-degree murder.
- ANALYSIS
    - Effectively ends capital punishment in Tennessee.

SB 1657 (Tracy) / HB 1728 (Sexton) – Replaces Electoral College with National Popular Vote

This bill would award all of Tennessee's Electors in a presidential election to the Party of the candidate who wins the national popular vote.

- Joins Tennessee to the Agreement Among the States to Elect the President by a National Popular Vote
- The bill would require all of Tennessee's electors be awarded to the Party of the candidate who wins the national popular vote in the presidential election. Thus, if the Democrat candidate won the popular vote, then he or she would be awarded Tennessee's Electors even if the Republican candidate won TN by in a landslide.
- ANALYSIS
    - The movement to subvert the Electoral College and go to a National Popular Vote (NPV) is strongly supported by Democrats.
    - Democrats have won every NPV since 1992, except one, and all 10 states that have currently adopted this provision are strongly Democratic.
    - A NPV is supported by the ACLU, George Soros and Hillary Clinton; it is opposed by the RNC and the Heritage Foundation.
    - The bill circumvents the electoral process designed in the Constitution and supported by the Founding Fathers.