

August 29, 2008

Secretariat Human Rights Tulip Award
Institute of Social Studies
P.O. Box 29776
2502 LT The Hague
The Netherlands

Dear Nominating Committee,

We write with enthusiasm to nominate Dr. George Tiller for the Human Rights Defender Tulip award. Dr. Tiller has owned and operated Women's Health Care Services (WHCS) in Wichita, Kansas, USA since 1975. He specializes in post-viability abortion services for women who face substantial health risks should they continue with their pregnancy, or for women carrying fetuses with severe anomalies. Because he is one of only a handful of physicians in the country who provides abortions at a later stage of pregnancy, he is a frequent target for harassment and violence by anti-abortion extremists and politicians opposed to abortion rights. Yet, for 33 years Dr. Tiller has courageously defended women's constitutional right to access safe abortion care—a service vital to the exercise of women's fundamental human rights to life, health, reproductive health and reproductive autonomy.

Since the constitutional right to an abortion was recognized in the U.S. Supreme Court decision *Roe v. Wade* in 1973, U.S. physicians who provide abortions have been targeted for harmful treatment by both state and non-state actors. Anti-abortion extremists, who cannot legally prohibit women from exercising their rights, target physicians to make it nearly impossible for them to provide abortion services. Despite frequent attacks on his physical security, professional reputation, and personal and family life, Dr. Tiller has kept his clinic doors open because of his commitment to women's human right to reproductive healthcare.

Dr. Tiller, like other physicians who provide abortions in the U.S., is forced to work under circumstances far more dangerous and difficult than other healthcare providers. There is a long history of violations to physicians' physical security—including murder, attempted murder, and assault and battery—without adequate protection from the state. Physicians providing abortions increasingly are faced with other forms of violence and harassment, including destruction of personal property, smear campaigns, intimidation of family members, and stalking.

The government has failed to take adequate measures to protect Dr. Tiller. Federal and state laws are inadequate to deter many forms of violence and harassment directed at him and his family, and enforcement of protective laws that do exist has

waned in recent years. Further, the state and federal government have passed legislation targeting abortion providers like Dr. Tiller with threats of criminal penalties and other sanctions that are not imposed on providers of comparable medical services. State laws in Kansas are specifically designed to impose additional burdens on abortion providers, with an explicit view towards shutting down Dr. Tiller's clinic. Finally, state actors have allowed private groups to turn state mechanisms like the court system into a tool of harassment against Dr. Tiller.

In the United States, women's rights to health, life, and dignity include a constitutional right to abortion. These rights cannot be fulfilled unless medical professionals are able to provide abortion and other related services free of violence and harassment by public and private actors. For this reason, the U.N. Special Representative on Human Rights Defenders has recognized those who promote women's right to sexual and reproductive health as women's human rights defenders. She also identified healthcare providers as human rights defenders where those individuals faced great risk in working to promote the rights of others.

I. Persistent Attacks Against Dr. Tiller

A. Attacks on Physical Security

On August 19, 1993, an anti-abortion extremist attempted to assassinate Dr. Tiller, shooting him in both arms. Demonstrating remarkable courage, he not only survived the attack but returned to the clinic to provide services the following day. This attack fits into a long history of violence, death threats, and murder of physicians who perform abortions in the United States, undertaken with the express purpose of preventing physicians from providing abortions. Since 1973, three physicians and four clinic workers in the U.S. have been killed by anti-abortion extremists. Five other physicians or clinic workers have been seriously injured in such attacks.

Prior to the shooting, WHCS had been targeted for two years by anti-abortion forces dedicated to closing the clinic at whatever cost. In 1991, an extremist group called Operation Rescue led a six-week siege on WHCS during its "Summer of Mercy" protest in Wichita, which involved numerous blockades of clinic entrances; death threats to doctors who perform abortions; and daily, often violent, protests at abortion clinics. The government did not take adequate measures to protect Dr. Tiller, such as ordering federal marshal protection, despite a known, significant association between severe intimidation tactics and violence against abortion clinic staff and physicians. Tellingly, Dr. Tiller's would-be assassin had participated in the Summer of Mercy blockades as a member of the Army of God, an underground network that believes violence is acceptable and justifiable to end abortion. The correlation between intimidation and severe violence continues today. In 2005, clinics facing one or more forms of intimidation were three times more likely to experience violence compared with clinics that experienced no intimidation tactics. Although the incidence of severe clinic violence has decreased over the past decade, moderate-level violence—including vandalism, home picketing, and home or clinic invasions—is on the rise.

Severe violence has decreased in large part because providers have been forced to take extreme security measures that are expensive and burdensome to maintain. Dr. Tiller wears a bullet proof vest. He moved to a home in a gated community with a state-of-the-art security

system and barrier wall in order to protect himself and his family from shootings by extremists. His clinic has spent thousands of dollars to install maximum security measures, including security barriers, bulletproof glass, metal detectors, and security cameras. Maintenance of alarm systems and security personnel amount to tens of thousands of dollars per year. Although Dr. Tiller has been placed under federal marshal protection for brief periods of time, in general he must provide and pay for his own security.

The 1994 Federal Access to Clinic Entrances (FACE) Act aims to protect physicians providing abortions and women seeking to access clinics. It was successfully used to prosecute Dr. Tiller's attacker. However, FACE provides only narrow protection against the most severe forms of violence, not the multiple forms of harassment or severe intimidation that are linked to violence. Moreover, FACE fails to adequately protect providers because it allows for injunctive relief or civil remedies only *after* a FACE violation has occurred. Predictably, abortion opponents soon learned the loopholes in FACE and began to exploit them. First, they concentrated their harassment on a smaller number of physicians, namely Dr. Tiller, with the aim of forcing them to stop performing abortions. Second, their tactics gradually shifted to the private sphere, involving protests at providers' private homes where FACE does not reach. Therefore, attacks against Dr. Tiller have not abated since the passage of FACE but have rather changed form and become more personal.

B. Destruction of Private Property

In 2007, Dr. Tiller's facility was attacked by vandals who cut a hole in the ceiling, inserted a garden hose, and flooded part of the facility with several inches of water. They also attempted to seal the gates of the parking lot. WHCS was forced to close for more than a month due to mold damage. The closure prevented approximately 230 women from obtaining reproductive health services at the clinic and resulted in at least \$86,000 of damages, not including lost income. This was the second time that WHCS was forced to close; the first was in 1986, when a bomb exploded at the clinic and caused \$100,000 in damage. Again, attacks on WHCS reflect a national trend of attacking the property of reproductive health clinics. Between the years 1977-2007, there were over 41 bombings, 175 arsons, 94 attempted bombings and arsons, and 623 bomb threats directed at abortion providers, resulting in \$8.5m in damages.

C. Attacks against Private Life, Family, and Reputation

Now that a federal law prohibits clinic blockades, anti-abortion extremists have shifted tactics and begun to wage smear campaigns—some of which advocate violence—against doctors providing abortions. Dr. Tiller was featured in “most-wanted” posters resembling the posters used by the FBI to track down most-wanted criminals. Some of these posters offered a \$1,000 reward for stopping physicians from performing abortions. Two physicians featured on these posters were later assassinated. Some anti-abortion extremists, including the extremist who tried to murder Dr. Tiller, defend the murder of abortion providers as “justifiable homicide.” These actions are facilitated by websites such as the infamous “Nuremburg Files,” which until it was shut down by a federal judge in 1999 published the names, addresses, and other identifying information of abortion providers, with the names of those who had been killed crossed out in black.

Smear campaigns are carefully coordinated by anti-abortion extremists to pressure abortion clinics to go out of business. Employees of Dr. Tiller's clinic have been subjected to continuous smear campaigns since the 2004 "Year of Rebuke" organized by the anti-abortion group Operation Rescue. The "name and shame" campaign involved targeted picketing of each clinic employee. Protesters picketed outside private homes, mailed postcards to the neighbors of clinic employees, greeted employees at restaurants with photos of mangled fetuses, and even sorted through employees' home garbage. They also drove a moving billboard of bloody post-abortion fetuses around the neighborhoods where clinic employees live and work. Operation Rescue even mounted an attack against over 200 companies doing business with the clinic or Dr. Tiller personally, demanding that they cease their affiliations or face a boycott. Recently, anti-abortion extremists in Wichita have begun a public intimidation and shaming campaign entitled "People Are Watching," where they wear binoculars and stake out the movements of Dr. Tiller and his employees.

Many of these forms of harassment are protected speech under the U.S. Constitution. However, the established link between forms of intimidation and violence against abortion providers requires heightened diligence on the part of state actors to monitor potential threats, provide proper training to law enforcement and other public officials to offer the same level of protection to abortion providers as other human rights defenders, and promptly investigate instances when public expression crosses the line to threatening behavior. Because the law treats abortion providers differently than other healthcare providers, the U.S. government has failed to adequately protect Dr. Tiller from attacks on his physical security or provide an adequate remedy once attacks have occurred.

II. Government Regulations and Restrictions on the Right to an Abortion

The state has a duty to respect the right of human rights defenders to the lawful exercise of their profession. However, the federal and state governments are making it increasingly difficult for Dr. Tiller to exercise this human right, in turn compromising his ability to provide comprehensive reproductive healthcare to his patients. A panoply of state and federal laws create a complicated legal minefield, placing him at greater risk of legal liability than physicians who provide comparable medical services. He works with fear of criminal sanctions, civil liability, or loss of his medical license if he unintentionally fails to comply with one of the many regulations governing every aspect of his medical practice.

A. Criminal Penalties and other Severe Sanctions

Laws that single out abortion providers regulate everything from the methods physicians use to perform abortions, the physical plant requirements of their facilities, and staffing levels and qualifications. Failure to comply with these requirements can result in substantial criminal sanctions, civil penalties, or loss of medical licensure. In contrast, all other doctors, including those in the field of gynecology and obstetrics who do not perform abortions, are subject only to professional ethics codes and medical malpractice laws. As a physician who provides abortion services in the state of Kansas, Dr. Tiller must comply with four laws that *do not apply* to other kinds of physicians:

- A state ban on certain methods of abortion that carries a penalty of **imprisonment for non-compliance**. Kan. Stat. Ann. § 65-6721.
- A federal ban on certain methods of abortion that carries a penalty of **2 years imprisonment**. 18 U.S.C.A. § 1531 (2003).
- A Kansas law requiring that another financially and legally independent doctor verify the first physician's independent judgment that a post-viability abortion is necessary. Failure to comply could result in **one year imprisonment, the loss of a medical license or fines**. Kan. Stat. Ann. § 65-6703(a).
- A biased counseling law that requires Dr. Tiller to provide patients medically unnecessary or inappropriate materials 24 hours prior to receiving an abortion. A violation could lead to **loss of a medical license or fines**. Kan. Stat. Ann. §§ 65-6701; 65-6708-15.

B. Selective Investigations and Prosecutions

Navigating the legal minefield is difficult in itself for physicians, but public officials with political motivations can substantially heighten the risk. A zealous prosecutor in Kansas abused the power of his state office to investigate and prosecute Dr. Tiller for lawfully performing abortions. Former Kansas Attorney General Phill Kline, who described himself as “unabashedly pro-life,” initiated an aggressive multi-year inquisition of Dr. Tiller for the purpose of investigating whether he violated Kansas abortion law. Kline issued subpoenas for the private medical records of 90 of Dr. Tiller's patients and eventually charged him with 30 misdemeanor crimes based on their contents. Kline's successor as Attorney General, Paul Morrison, convinced the Kansas Supreme Court to drop the misdemeanor charges against Dr. Tiller because according to his office, the basis of the charges was “absolutely inaccurate and false” and “based on a political agenda.”

Even though the court dismissed Kline's baseless charges, Dr. Tiller must still contend with a different state investigation involving unsubstantiated allegations that he failed to maintain an independent financial relationship with a referring physician, as required by Kansas law. He faces 19 misdemeanor charges carrying penalties of a prison sentence and loss of his medical license. Even if a jury clears Dr. Tiller of all wrongdoing, the process has burdened him with the considerable time and expense required to defend himself against such charges, in addition to the fear of sanctions or damage to his professional reputation.

The state of Kansas also grants private citizens the power to trigger the minefield of legal liability for abortion providers. For instance, two anti-abortion extremist groups in Kansas used an 1887 state law to convene a “citizen grand jury” to investigate whether Dr. Tiller violated the state's abortion laws, even though the state was conducting its own investigation of Dr. Tiller at the time. Fortunately, the Kansas Supreme Court recently held that the citizen grand jury must take certain precautions to protect patient privacy when issuing subpoenas of medical records. Despite these limits, the state has allowed the citizen grand jury to be turned into a mechanism for the harassment of physicians and an anti-abortion “political weapon.”

Dr. Tiller deserves the Human Rights Defenders Tulip because of his brave perseverance in providing women their human right to reproductive health services in the face of great risks to his safety, reputation, and profession. He must endure the constant stress of harassment and intimidation, the fear of greater violence, and the burden of substantial expenses in security measures and legal fees. Other physicians in Dr. Tiller's position have been forced to abandon their abortion practices out of sheer stress and exhaustion or out of necessity to protect themselves and their families.

Quite simply, without Dr. Tiller women would lose access to a vital reproductive health service. The words of one of Dr. Tiller's patients, Sarah Coe, are instructive. Sarah obtained an abortion from Dr. Tiller after her fetus was diagnosed with severe hydrocephaly in her 22nd week of gestation, a condition denying oxygen to the brain that would certainly lead to fetal death during pregnancy or birth. Sarah was unable to find a physician near her home who would perform an abortion and was directed to WHCS. In acknowledging her gratitude to Dr. Tiller, she also stated, "It scares me. If something happens to Dr. Tiller, where would women turn?"

Thank you for considering this nomination. We are happy to provide you with additional information upon request.

Sincerely,

A handwritten signature in black ink, appearing to read "Katrina Anderson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Katrina Anderson
Human Rights Attorney
U.S. Legal Program