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THE PRESIDENT HAS SEEN...

THE WHITE HOUSE

WASHINGTON

September 6, 1974

INFORMATION

MEMORANDUM FOR THE PRESIDENT

FROM: KEN COLE

SUBJECT: Abortion

*gmc*

As you are well aware, the controversy over abortions is one of the most emotional and volatile issues this year and could become even more so as the elections approach. Below is a brief review of the situation and of your current position.

BACKGROUND

The current abortion issue had its inception with the liberalization of some State abortion laws in the late 1960's and came to a head following the Supreme Court's January 22, 1973, two concurrent decisions on abortion.

The Court ruled 7-2 in both cases that States could not interfere with the decision of a woman and her doctor to terminate a pregnancy during its first three months. Further, while States could exercise some control over abortion in the second three months, they could constitutionally ban abortion only in the last trimester.

A majority held that the historic rationale for laws controlling abortion -- to protect the health and safety of a woman -- no longer applied during the early stages of pregnancy. But key questions remained unanswered. The Court did not find whether or not an unborn child is a "person" entitled to constitutional protection or resolve the question of when life actually begins.

CURRENT SITUATION

Since the Court's decision a major effort has been underway on the part of anti-abortionists -- led by the Right to Life movement -- to overturn or get around the ruling. These efforts have mainly run on two tracks. One has been to limit the scope of the ruling by attaching anti-abortion amendments to legislation. For instance, attempts have been made to prohibit use of Medicaid funds for abortions, and to amend the Labor-HEW appropriations bill so that none of HEW's funds could be used for abortions, family planning, or contraception. Opponents of these two as yet unsuccessful attempts have argued that as long as abortions are constitutional, such measures would only serve to discriminate against the poor and those who depend on public funds for health care and family planning services.

The second track has been to overturn the ruling by constitutional amendment. Three major amendments have been offered, each with a different approach to the situation. In the House, Larry Hogan's proposal would amend the Constitution so that no human being "from the moment of conception" could be deprived of life without due process or be denied equal protection of the law.

Buckley's is the major Senate proposal and would give constitutional rights to "unborn offspring at every stage of their biological development" but allow abortions to save the life of the mother.

Most abortion opponents are not satisfied with the compromise approach, the Whitehurst proposal, for it would allow States to ignore the Supreme Court ruling. You cosponsored this amendment. It reads:

"Nothing in this Constitution shall bar any State or territory or the District of Columbia, with regard to any area over which it has jurisdiction, from allowing, regulating, or prohibiting the practice of abortion."

So far none of the amendments have had any committee action, although Birch Bayh did hold some hearings on the matter.

CURRENT POSITION

As far as the Ford Administration is concerned, the issue first arose with the nomination of Nelson Rockefeller, who had supported liberal abortion laws in New York as Governor and had vetoed legislation that would have overturned those liberal laws. In fact, most of the adverse mail on the nomination was because of abortion. Then at her press conference, Mrs. Ford allied herself with the Rockefeller position over the Buckley one.

As announced by Jerry terHorst, your position seems to be that one, you favor an amendment that would let each State enact its own laws on the subject; and two, that, personally, you and Mrs. Ford believe in abortions for limited situations such as rape, or illness but not on demand.

TerHorst said that you have not been in favor of Federal legislation on the subject but of a constitutional amendment. He pointed out that you opposed a 1972 Michigan referendum that would have permitted abortion on demand. And he said that your and Mrs. Ford's concerns are that "there must be a remedy for persons where abortion becomes necessary because of serious illness, or in a case of a criminal attack of some kind."