The original documents are located in Box 28, folder "Abortion" of the Betty Ford White House Papers, 1973-1977 at the Gerald R. Ford Presidential Library.

September 22, 1976

To: Mrs. Ford

From: Kaye Pullen

The bill with the ban on federal funds for abortion "except where the life of the mother would be endangered if the fetus were carried to term" is now on the President's desk. He has until midnight September 29th to act. The ban is part of the $56.6 billion fiscal 1977 appropriations bill for the Departments of Labor and Health, Education and Welfare. The appropriations level is $4 billion more than the President's budget request.

The anti-abortion proposal adopted in conference was proposed by Rep. Silvio Conte. After adopting the Conte amendment, the conference agreed on language in the accompanying report to clarify that the intent was to limit abortions for "family planning" and for "the emotional and social convenience" of the mother.

The House version had ban the use of federal funds for abortion for <u>any</u> reason. That would have ended federal payments to Medicaid for about 300,000 abortions sought by low income women. HEW estimates the cost of abortions paid for by federal funds at $45-million a year. The Senate had opposed a ban.

Pro-abortion groups plan a court-test if the bill becomes law. The argument is that the ban is discriminatory, because it affects poor women only.

If you supported this legislation, it would undermine your "out of the backwoods into the hospitals" statement. I think your only choice is to turn back questions by saying you have already given your view on abortion and you believe there are other issues to discuss right now.

cc: Sheila Weidenfeld
Patti Matson
Liz O'Neil

F.Y.I. Research by Kay Pullen

Abortion

The 1973 abortion decision involved two cases, one from Texas and one from Georgia. The basic decision was rendered in the Texas case, Roe v. Wade. The majority opinion was written by Justice Harry Blackmum with Chief Justice Warren Burger and Justice William O. Douglas writing separate agreeing opinions.

Justices Bryon White and William Rehnquist disagreed with the Court's decision. These multiple opinions have been common in recent years and usually deal with fairly technical legal questions. For practical purposes, the vote on the case is recorded as seven to two.

Ruling

The majority opinion said this: (paraphrased)

1. In the first approximately three months of pregnancy, the abortion decision and implementation are up to the medical judgment of the pregnant woman's doctor.

2. For approximately the second three months, the state in promoting its interest in the health of the mother may regulate the abortion procedure in ways reasonably related to maternal health.

3. For the stage after viability (the final three months), the state in promoting its interest in the potentiality of human life may, if it chooses, regulate and even forbid abortion,

except where necessary, in appropriate medical judgment for the preservation of the life or health of the mother.

The language of the opinion never refers to "abortion on demand"; instead it speaks of a "woman's qualified right to terminate pregnancy."

Legal Justification

The Court justified its decision on the right of privacy, which it said is found in the 14th Amendment's concept of personal liberty and restrictions upon state action. The lower court interpreted the privacy right as coming from the Ninth Amendment's reservation of rights to the people. The Court said regardless of which Constitutional basis is used, the right of privacy is broad enough to encompass a woman's decision as to whether or not to terminate her pregnancy. (Privacy is a relatively modern legal concept dating from 1890.)

Other Observations

Very significantly, the Court did not rule on the issue of when life begins. But in tracing the historical background of abortion laws, the Court certainly leaned toward a liberal view and pointed out relatively minor legal sanctions against abortion before quickening. Actual state laws against abortion were not

common in the United States until after the Civil War. The concept of life at the moment of conception did not become official Roman Catholic dogma until the 19th century.

This is how the Court sums up the historical review:

> "Those laws, generally proscribing abortion or its attempt at any time during pregnancy except when necessary to preserve the pregnant woman's life, are not of ancient or even of common law origin. Instead they derive from statutory changes effected, for the most part, in the latter half of the 19th century."

The general tone of the majority opinion is oriented toward the Mother, and the refusal of the Court to give any legal rights to the unborn is, of course, at the heart of the controversy for the "right to life" people. The Court denied that "person" in the Constitution refers to the unborn, and it also cited legal precedents that the unborn had no standing under the law.

Aftermath

Doctors can refuse to perform abortions, but the area of whether hospitals can do so is very confused at the present. The hospital question is snarled up over the issue of federal funds.

The Issue of States' Rights

On many issues and for most of the history of the Court, the question of how far the Court can and should go in reviewing state laws has been debated. It is one of the key areas where opposing Constitutional scholars fight.

As a practical matter, if abortion laws (through a Constitutional amendment) were returned to the states, the resulting hodge-podge would work to discriminate against the young and the poor. The dangers of a return to backroom abortions are obvious, but the emotional problems caused by illegal abortions and furtive out-of-town treatment by unknown doctors are also important.

What Next?

There are some 50 different versions of a potential Constitutional amendment, ranging from "right-to-life" to returning the power to the states to decide on their own laws.

The amendment route is long and arduous, and in this instance would involve considerable controversy just to get the amendment approved by Congress.

The other possibility is for the Supreme Court to accept another case and reverse itself. A reversal by essentially the same Court within a short span of time has been very rare, but it is a possibility, probably remote.

pink Carnations / yellow roses - large hot pink ribbon

Red Roses, white Carnations

purple orchids — Bicentennial print Ribbon

Senior Citz
Retarded Grp.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

July 13, 1976

TO: Mrs. Ford

FROM: Sheila

RE: JULY 1 SUPREME COURT DECISION ON ABORTION

1. The Court ruled that a State may define "viability" as "the stage of fetal development when the life of the unborn child may be continued indefinitely outside the womb by natural or artificial life-supportive systems."

   But the Court ruled the actual time of viability should be the judgment of the attending physician and should not be fixed by State law.

2. States may require a woman's written consent before the abortion to say her consent is "informed and freely given and is not the result of coercion."

3. The State may not constitutionally require the consent of the husband as a condition of abortion during the first 12 weeks of the pregnancy. (This is the period during which the State cannot regulate or prevent an abortion, and the decision is solely between the woman and her doctor.) The Court said that if the State cannot intervene, then neither can the husband.

   The Court said that although it recognized the importance of the marital relationship and the possible impact of an abortion upon a marriage, the State still did not have the constitutional authority to give the husband the ability to stop the wife from having an abortion.

4. The Court also said the State may not require the consent of a parent or a person acting as parent as a condition of an abortion for an unmarried minor during the first 12 weeks of her pregnancy. The legal logic was the same as for a husband: the State cannot grant to a third party an arbitrary veto of an abortion during the first 12 weeks, when it lacks that authority itself.

But it left open this door: "we emphasize our holding does not suggest every minor, regardless of age or maturity may give effective consent for termination of her pregnancy."

5. The court ruled the State cannot bar the use of saline amniocentesis as a method of abortion after the first 12 weeks. Testimony showed this method to be more safe for the mother than even continuation of the pregnancy until normal childbirth.

6. The Court said States may require records for health facilities and physicians concerned with abortions. All such information shall be confidential and used for statistical purposes.

7. The Court rules States may not require doctors performing abortions to try as hard to save a fetus during an abortion as would be required to preserve the life of a fetus intended to be born alive.

SUMMARY OF MASSACHUSETTS CASE

1. The State cannot control an abortion of a minor during the first twelve weeks of a pregnancy any more than it can control that of an adult. The rights of a minor outweigh the competing rights of the minor's parents and must be protected.

# # #