

**CONSTITUTIONAL AMENDMENTS
RELATING TO ABORTION**

HEARINGS
BEFORE THE
SUBCOMMITTEE ON
THE CONSTITUTION
OF THE
COMMITTEE ON
THE JUDICIARY
UNITED STATES SENATE
NINETY-SEVENTH CONGRESS

FIRST SESSION

ON

**S.J. Res. 17, S.J. Res. 18, S.J. Res. 19,
and S.J. Res. 110**

BILLS PROPOSING A CONSTITUTIONAL AMENDMENT WITH RESPECT TO
ABORTION

OCTOBER 5, 14, 19, NOVEMBER 4, 5, 12, 16,
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Clearly then, the actual wording of the amendment negates the claim of its proponents that it is a compromise, a middle ground on the abortion issue. It is neither a compromise nor a middle ground, because it removes abortion rights' constitutional protection and enables Congress to ban abortion.

No attempt to mask the intent of Senate Joint Resolution 110 by calling it democratic will make it so. Opponents of women's right to choose have everything to gain from its passage. Prochoice advocates have everything to lose.

Under this amendment, if Congress does not exercise legislation regulation abortion, a patchwork of different rules and regulations would develop, creating a truly inequitable situation in which some States would have liberal laws and others more restrictive laws.

This would mean that, just as before 1973, rich women would be able to obtain safe abortions by traveling to liberal States while low-income women, unable to pay the fare to a liberal State, would have to turn to illegal, unsafe procedures.

We are totally opposed to an amendment which would deprive some women of their right to privacy and could create a situation of unequal protection under the law and conflict with the 14th amendment of the Constitution itself.

Finally but most important, any law or amendment designed to outlaw abortion will fail to achieve its goal. What the proposed amendment will do, in fact, is drive abortions underground, recreating the situation which existed before *Roe v. Wade*, where a woman with an unwanted pregnancy was faced with the choice of bringing a pregnancy to term or risking her physical and mental health and even her life at the hands of an illegal abortionist.

Many of us have vivid memories of those terrible days, when women who were desperate to avoid bearing children they did not want and could not care for subjected themselves to dangerous and demoralizing procedures in dingy hideaways. Rich women went to see real doctors, often traveling out of the country to Europe, Canada, or Puerto Rico. They were exploited financially, paying enormous prices for a simple procedure. Low income women often resorted to persons totally untrained in medical procedures under shockingly unsanitary conditions.

One woman recently told us about her 1959 abortion. She was then an unmarried college student and managed to scrape up the \$500 to pay a backroom abortionist for a D&C procedure which involved scraping the womb. It was terribly painful, and because the procedure was illegal the abortionist was unwilling to allow her to stay and recover, so she was forced out into the street, where she boarded a city bus for the long trip home. She bled for 6 weeks afterward and had to go back to an abortionist to have the procedure corrected. Later, when she married and wanted children, she bore them gladly.

She is one of the lucky women who did not die of infection, hemorrhaging, or lose her ability to bear children, but I assure you she will carry the emotional scars of that terrifying experience and the stigma of participating in an illegal act all the days of her life.

This story is important, Mr. Chairman, because it is not an exception. Why should legislation be enacted to recreate this pain

and grief when laws restricting or outlawing abortion will be flagrantly violated anyway? It is really beyond our comprehension.

Women have always sought ways to end unwanted pregnancies, and there is every reason to believe that they will continue to do so. Why should anyone want a woman to be a mother against her will? She is unable physically and emotionally to take care of a child.

Just as Prohibition was unenforceable, we know from experience that laws prohibiting abortion are unenforceable. This would be especially true now, at a time when 75 percent of the population indicates that it believes in a woman's right to choose.

Mr. Chairman, in closing I want to say that the New York City Commission on the Status of Women is strongly opposed to all attempts to restrict a woman's right to choose to have an abortion regardless of what form the legislation takes.

Thank you for this opportunity to present our views on this terribly important issue.

Senator HATCH. Rabbi Portnoy?

STATEMENT OF RABBI MINDY PORTNOY, UNION OF AMERICAN HEBREW CONGREGATIONS, CENTRAL CONFERENCE OF AMERICAN RABBIS

Rabbi PORTNOY. Mr. Chairman, I am Rabbi Mindy Portnoy, an ordained rabbi of the Reform movement of Judaism and a member of the Central Conference of American Rabbis, comprising more than 1,400 rabbis throughout the United States.

I am here today speaking for the Central Conference and also the Union of American Hebrew Congregations, which is the central congregational body of Reform Judaism in this country, representing more than one million men, women, and children in over 750 congregations. I am pleased to appear here today to express our concerns regarding the current debate about abortion and to voice our opposition to Senate Joint Resolution 110.

We approach the question of abortion based upon a long Jewish tradition. Our religious tradition is one which has revered and sanctified human life for nearly 4,000 years. We have always sought to preserve a sensitive regard for the sanctity of human life. We have also always stressed the importance of the family for the preservation of religious and moral values.

It is precisely because of our regard for life's sanctity, our emphasis on family life, and our historical teachings, that we cannot accept the validity of the resolution under discussion.

To Jews, human life is more than simply the biological joining of a man's sperm and a woman's egg. To Jews, each human being, whether male or female, is created in the image of God, and that creation implies freedom and personal dignity.

To Jews, with long and often painful experience as a minority group, the right to exercise freely one's religion is a right too long struggled for in human history, and still denied us in certain parts of the globe, to be easily relinquished.

Reform Judaism opposes any constitutional amendment on abortion as a violation of every person's first amendment right to free exercise of religious beliefs. At the foundation of any amendment

which seeks to limit the right of women to exercise freely their own religious conscience lies a belief about personhood, whether specifically stated or not, which is totally contrary to Jewish faith as well as contrary to the beliefs of many of our Christian friends.

Judaism does not believe that the word "person" applies to human life from conception. Judaism does not equate abortion with murder. On the contrary, in Judaism a fetus is not considered a full human being and for this reason has no "juridical personality" of its own.

Jewish law is clear in its statement that an embryo is not reckoned a viable living thing until birth.—Rash: on Talmud, Tractate Sanhedrin—726.—According to Jewish law, a child is considered a "person" only when it is "come into the world."

The biblical text which forms the initial basis for this position, Exodus, chapter 21, verses 22–23, states:

If men strive and wound a pregnant woman so that her fruit be expelled, but no harm befall her, then shall he be fined as her husband shall assess, and the matter placed before the judges. But if harm befall her, then thou shalt give life for life.

In June of 1980 the Central Conference of American Rabbis reaffirmed its position on abortion rights, stating that, "Jewish legal literature permits therapeutic abortion;" that, "the decision concerning any abortion must be made by the woman and not by the State or any other external agency;" and that, "we oppose all constitutional amendments and legislation which would abridge or circumscribe this right."

The Union of American Hebrew Congregations has stated:

While recognizing the right of religious groups whose beliefs differ from ours to follow the dictates of their faiths in this matter, we vigorously oppose the attempts to legislate the particular beliefs of those groups into the law which govern us all. This is a clear violation of the first amendment.

The statement continues:

We are opposed to attempts to restrict the right to abortion through constitutional amendments.

Mr. Chairman, I strongly suggest that Jewish religious teaching is perfectly valid and does not suggest a lesser morality or less of a respect for human life than that of those religious leaders who have appeared here and condemned abortion.

In Jewish law there is a clear distinction made between fetus and woman. In Jewish law and practice there are conditions and circumstances under which abortion, although never sanctioned lightly, is clearly sanctioned and is a valid religious option, and in more limited circumstances is even required—for example, to save the life of the mother.

Reform Judaism believes that no woman should be punished by the whims of biological roulette and be forced to bear a child against her will. Reform Judaism believes that women, as fully responsible ethical and religious human beings, must be free to make those decisions which affect them most directly, in consonance with their individual consciences and religious beliefs.

Reform Judaism believes that all persons' rights to exercise freely these religious beliefs would be endangered by any constitutional amendment designed to restrict a right to abortion.

I respect the views presented by Dr. Rogers, as well as Cardinal Cooke, Archbishop Roach, and others at earlier hearings. They are entitled to hold and express their convictions. Their parishoners are entitled to follow their admonitions against abortion. Certainly, no woman should ever be forced to undergo an abortion against her will.

Just as certainly, however, no woman should be forced to undergo a pregnancy which would negatively affect her life, health, or her family. In our view, it is not the States' role, for example, to decide whether a Jewish woman should bear a Tay-Sachs baby. This disease, a genetic disease fatal to infants and most common among Jews of Eastern European origin, condemns a child to live a life no longer than a few years and to die an agonizing death. Tay-Sachs disease is incurable. It cannot be detected until the second trimester of pregnancy, and, thus, no therapeutic action can be taken until that time.

In conclusion, Mr. Chairman, I would like to say that this country has been the greatest experiment in the world's history by allowing more freedom and giving more individual rights than any other. We have survived for over 200 years by recognizing the inherent value of individual choice in matters not impinging on the choices of others. Among others, we Jews have thrived in this environment of freedom.

It would be a tragic mistake for this Congress to supplant our historical traditions of pluralism and diversity of belief with a theological doctrine subscribed to by only a small minority of Americans.

On behalf of the members of the Union of American Hebrew Congregations and the Central Conference of American Rabbis, I respectfully request that you turn away from religious speculation and judgment and instead uphold traditional American principles, including the free exercise of religious beliefs, that have proved to be so successful. Thank you.

Senator HATCH. Thank you.

Dr. Rosenfield.

STATEMENT OF DR. ALLAN G. ROSENFELD, AMERICAN PUBLIC HEALTH ASSOCIATION

Dr. ROSENFELD. Mr. Chairman, thank you for the opportunity to speak. I am Allan Rosenfield, professor of obstetrics and gynecology in public health at the College of Physicians and Surgeons, Columbia University.

I am here representing the American Public Health Association, which is a nongovernmental, professional society established in 1872, and one that represents more than 45 disciplines and specialties in the field of public health. Its nationwide membership includes approximately 53,000 health professionals from all 50 States.

APHA is devoted to the universal protection and promotion of public health and the equality of health services for all persons.

APHA in 1968 was among the first major organizations of health professionals to recognize the detrimental health and social consequences of the illegality and inaccessibility of abortion services, particularly for poor women.

WITNESS LIST

PUBLIC OPINION ON ABORTION

Before

THE SENATE JUDICIARY SUBCOMMITTEE ON THE CONSTITUTION

December 7, 1981
1:30 P.M., RM 6226 DSOB

1) { PROFESSOR RAYMOND J. ADAMEK
Department of Sociology & Anthropology
Kent State University

2) { DR. BARBARA BRYANT
Market Opinion Research

P A N E L

5) FAYE WATTLETON
Planned Parenthood Federation of America

PATRICIA GAVETT
Religious Coalition for Abortion Rights

JUDY WIDDECOMB
National Abortion Rights Action League

3) MRS. ROSEMARY MEYERS
Chairman
The National Committee for a Human Life Amendment

P A N E L

MARY PURCELL
American Association of University Women

6) RAYDEAN ACEVEDO
Mexican American Women's Organization

KATHY WILSON
National Women's Political Caucus

4) FATHER CHARLES C. FIORE & PETER GEMMA
National Pro-Life Political Action Caucus

BARBARA REACH
New York City Commission on the Status of Women

RABBI MINDY PORTNOY
Union of American Hebrew Congregations
Central Conference of American Rabbis

DR. ALAN G. ROSENFELD
American Public Health Association