

STATEMENT OF SENATOR EDWARD W. BROOKE ON THE PROPOSED CONSTITUTIONAL AMENDMENTS REGARDING ABORTION

Mr. BROOKE. Mr. President, last year, in perhaps its most controversial decision of the past decade the U.S. Supreme Court ruled that a woman has a constitutional right to terminate her pregnancy under certain circumstances.

The decision, instead of resolving the abortion issue, has precipitated an intensification of an already heated debate. Opponents and proponents of the decision have flooded Capitol Hill with hundreds of thousands of letters. This attention has focused primarily on the various proposed amendments to the Constitution, designed to overturn the Supreme Court decision.

Because I have many reservations concerning these amendments, I cannot in good conscience support the efforts to enact them.

In order to discuss the constitutional amendments, it is first necessary to understand precisely what the Supreme Court decided. In the companion cases, *Roe* against *Wade*, and *Doe* against *Bolton*, the Supreme Court held: First, that during the first trimester—usually meaning the first 13 weeks of gestation—the decision to have an abortion must be left solely to the woman and her doctor; second, that during the second trimester, Government regulations “reasonably related to maternal health,” such as licensing of the facility and its personnel, are permissible; and third, that after the 26th or 27th week of pregnancy—when the fetus is potentially capable of life outside the mother’s womb—anti-abortion laws may be passed to protect the State’s “interest in the potentiality of human life,” but that abortion prohibitions must make exception for the preservation of the woman’s life and health.

Regrettably, confusion still exists as to what the Supreme Court actually allowed. For example, some contend that the decision authorizes “abortion on demand”. This is not so. The Court held that based on her right to privacy, a woman has a qualified right to have an abortion. But, this right, as outlined above in the summary of the Court’s holdings, is dependent on a number of factors.

Second, the Supreme Court decision does not force anyone to do anything that would be inconsistent with one’s religious or personal beliefs. In fact, the essence of the Supreme Court decision is freedom of choice. The Government assumes a neutral position. It forces no one to have an abortion, nor does it compel anyone to perform an abortion.

On the other hand, I fear that the proposed constitutional amendments might preclude individuals from acting in accordance with the dictates of their consciences. In these amendments the Federal Government assumes an affirmative role. It can be argued that the religious or personal beliefs of some would be imposed upon others. If so, I believe that these amendments might endanger a central Judeo-Christian tenet—freedom of conscience. Such a result might also be violative of the spirit of the first amendment’s freedom of religion clause.

I am apprehensive about endorsing any measure that might threaten one of our most precious heritages.

In considering whether one should support one of the proposed amendments, it is also important to ask a practical, realistic question: Will this amendment stop abortions? Available evidence suggests that passage of an amendment would merely restore the practice of millions of illegal abortions—many under back-alley conditions—that have prevailed until recently. This would mean a return to high maternal death rates, unequal treatment of poor women, and an increase in abandoned, abused and unwanted children. In addition, severe laws would again be permitted with criminal penalties for women who feel they must prevent childbirth. We must ask ourselves whether approval of such a constitutional amendment would create greater problems than it would solve.

Another consideration is my reluctance to use the constitutional amendment process to solve the social problems that beset our country. In recent times there seems to be a disturbing trend to resort to a constitutional amendment as a panacea. In addition to threatening the independence of the judiciary, I believe that this tendency distorts the concept of our Constitution. It was not meant to be the repository of every proposed solution to every social ill.

In addition to the aforementioned factors, one other major reason contributes to my disinclination to endorse a constitutional amendment. Too many important and relevant questions remain unresolved. As the recent abortion hearings before the Senate Subcommittee on Constitutional Amendments amply demonstrated, many issues deserve to be thoroughly studied. Included would be consideration of the legal status of the unborn child, the intention of the framers of the 14th amendment regarding the meaning of a “person,” the origins and limitations of the “right to privacy,” the rights of the father of the unborn child, the medical and psychological consequences of abortion, et cetera. If the subject of abortion is to be fully and fairly treated, all these issues must be comprehensively examined.

The cumulative effect of all these reservations is to make me quite dubious about the merits of these constitutional amendments. The available evidence appears to indicate that passage of such an amendment would only exacerbate an already difficult situation.

The abortion question is truly agonizing. I am fully sympathetic to the views expressed by individuals on both sides of the issue. I do hope that all involved in the debate will remain tolerant of one another’s beliefs. Unfortunately, on occasion, the debate has been marked by uncommon bitterness.

Although we may believe our causes to be right and just, we must still respect differences of opinion—especially on an issue that embodies so many legal, moral, medical, religious, and sociological factors.

EDWARD W. BROOKE
MASSACHUSETTS

United States Senate

WASHINGTON, D.C. 20510

January 30, 1976

COMMITTEES:
APPROPRIATIONS
BANKING, HOUSING AND
URBAN AFFAIRS
SPECIAL COMMITTEE ON AGING
SELECT COMMITTEE ON
STANDARDS AND CONDUCT

OFFICES:
2003-F KENNEDY FEDERAL BLDG.
BOSTON, MASSACHUSETTS 02203
617-223-7240

421 RUSSELL OFFICE BLDG.
WASHINGTON, D.C. 20510
202-224-2742

Mr. Paul E. Healy
City Clerk
City Hall
Cambridge, Mass. 02139

Dear Mr. Healy:

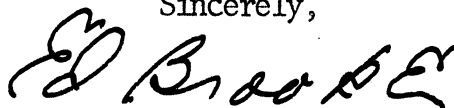
Thank you for your communication regarding the proposed constitutional amendments designed to overturn the 1973 Supreme Court decision on abortion.

The proposed amendments are perhaps the most controversial measures before the Congress. Opponents and proponents of these amendments have inundated Capitol Hill with hundreds of thousands of letters, calls, and telegrams.

Because of the complexity of the abortion issue, I have enclosed a copy of a statement which I delivered in the United States Senate on March 22, 1974. In this statement I discussed in detail my thoughts on these amendments. I believe that it will convey to you precisely what I have said and the reasons behind my statement.

With warmest regards, I am

Sincerely,



Edward W. Brooke

EWB:mf

Enclosure

RECEIVED BY
OFFICE OF CITY CLERK
FEB 6 11 08 AM '76
CAMBRIDGE, MASS.

8. S-48

Comm. from Senator Edward W. Brooke thanking
the City Council for notifying him of their
concern re: the proposed constitutional
amendments re: abortion.

In City Council,
Feb. 9, 1976

2/9/76
Placed on File -