

February 20, 1979

LB 316

SENATOR MARSH: Senator Simon.

SENATOR SIMON: A question of Senator DeCamp, please, if he will yield.

SENATOR MARSH: Senator DeCamp.

SENATOR SIMON: Senator DeCamp, not being an attorney I have a question dealing with the time span of decisions. Now as I understand it the Roe v. Wade decision was about seven years ago and the Colautti case just came down six weeks ago. Now would you explain for me if you can, when a decision...we are dealing with somewhat similar subject matter in terms of a definition. When you have one Supreme Court decision that was handed down six or seven years ago and another one that was handed down on a similar subject matter more recent, does one have more validity than another one?

SENATOR DeCAMP: Well, let me put it this way, Senator Simon. Let us assume that, what, an 1859 case Fuzzy v. Ferguson came down on a certain subject, subject of whether, well anyway, let's say some particular subject. Another case came down a hundred years later on a completely unrelated subject. That has no overturning of the first case. Now you are assuming in your arguments that this later case directly deals and redefines viability. It is my contention, rightly or wrongly, that this is not true, that at best it was a discussion of the overall subject of viability that Roe v. Wade is still the case on this subject, that relying on the language and definition of Roe v. Wade you will be constitutional on this issue. The opponents as you can see, say this later case in effect, overturns or redefines Roe v. Wade. I am simply disagreeing.

SENATOR SIMON: Okay, thank you. In the interest of fairness let me ask the same question of Senator Hoagland.

SENATOR HOAGLAND: Madam Chairman and colleagues, the entire subject matter of the Colautti case is the definition of viability and the Colautti case declared unconstitutional a provision of Pennsylvania law which defined viability in the same terms that Roe v. Wade defined viability. I think it really makes no sense for us not to adopt this new, more modern definition that is going to get us past this threshold issue and it is going to enable the court to reach the other more important questions that everybody is interested in today.

SENATOR SIMON: Let me ask you one other question, Senator